SUPREME COURT AUTHORITIES ON THE PROSECUTOR'S MANDATE TO DISCLOSE INFORMATION UNDER *BRADY* AND *GIGLIO* AND REMEDIES FOR VIOLATIONS THEREOF.

CASES THAT PRE-DATED & INFORMED *BRADY*

Berger v. United States, 295 U.S. 78, 86 (1935) ("The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win the case, but that justice shall be done.").

Mooney v. Holohan, 294 U.S. 103, 112 (1935) ("Due process is violated where the state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured.").

Pyle v. Kansas, 317 U.S. 213, 215-216 (1942) ("[Defendant's] imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain [] conviction, and from the deliberate suppression by those same authorities of evidence favorable to [defendant]. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody.")

Napue v. Illinois, 360 U.S. 264, 269 (1959) ("[t]he principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, [is] implicit in any concept of ordered liberty");

***BRADY* & ITS PROGENY**

Brady v. Maryland, 373 U.S. 83 (1963) ("The suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.").

> The principle [] is not punishment of society for misdeeds of a prosecutor but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: 'The United States wins its point whenever justice is done its citizens in the courts.' A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice.

Id. at 87-88

Giglio v. United States, 405 U.S. 150 (1972) (Exculpatory evidence includes material that goes to the heart of the defendant's guilt or innocence as well as that which might alter the jury's judgment of the credibility of a prosecution witness).

United States v. Agurs, 427 U.S. 97, 108-11 (1976) (prosecutor must "resolve doubtful questions in favor of disclosure"; "defendant should not have to satisfy the severe burden of demonstrating that newly discovered evidence probably would have resulted in acquittal.")

United States v. Bagley, 473 U.S. 667, 682-83 (1985) (evidence favorable to the defense--whether exculpatory or for impeachment purposes--is deemed to be material, and its suppression by prosecutors demands a new trial without further showing of prejudice if "its suppression undermines confidence in the outcome of the trial"; government's incomplete and misleading "summaries" could wrongly "represent [] to the defense that the evidence does not exist" and cause the defense "to make pretrial and trial decisions on the basis of this assumption.").

Kyles v. Whitley, 514 U.S. 419, 434-35, 441 (1995) (Defendant need not prove that the evidence presented was insufficient to convict, or that the suppressed evidence would "more likely than not" have led to a different result. Rather, an accused can prove a *Brady* violation by showing that the favorable evidence "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.").

Strickler v. Greene, 527 U.S. 263 (1999) (under *Brady*, the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case).

Banks v. Dretke, 540 U.S. 668, 695-96 (2004) ("Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed….. The State here nevertheless urges, in effect, that "the prosecution can lie and conceal and the prisoner still has the burden to ... discover the evidence," Tr. of Oral Arg. 35, so long as the "potential existence" of a prosecutorial misconduct claim might have been detected, *id.*, at 36. A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process.").

Cone v. Bell, 556 U.S. 449, 475-76 (2009) (state "courts' procedural rejection of [defendant's] *Brady* claim does not bar federal habeas review of the merits of that claim").

District Attorney's Office for the Third Judicial Dist. v. Osborne, 557 U.S. 52, 68-69 (2009) (in case regarding DNA testing; framework and due process demands of *Brady* are not applicable to post-conviction procedure).

Smith v. Cain,132 S. Ct. 627, 630 (2012) ("We have observed that evidence impeaching an eyewitness may not be material if the State's other evidence is strong enough to sustain confidence in the verdict. That is not the case here. [The witness'] testimony was the only evidence linking [defendant] to the crime.") (citation omitted).