



### **E12 What Is *Brady vs. Maryland* and Why Do I Care? A Review of Cases Discussing a Prosecutor's Duty to Disclose Exculpatory Evidence**

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After attending this presentation, attendees will understand the facts and holdings of cases that impose a duty upon the prosecution to disclose to the defense information that exculpates an accused or that leads to impeachment evidence of important witnesses giving significant testimony. Attendees will also understand the significance of that duty for prosecutors in the context of consequence for appeals in criminal convictions.

This presentation will impact the forensic science community by discussing the prosecutor's duty to disclose exculpatory evidence. In the report by the American Bar Association (ABA) Criminal Justice Section's Ad Hoc Innocence Commission to Ensure the Integrity of the Criminal Justice Process, *Achieving Justice: Freeing the Innocent, Convicting the Guilty*, a recommendation regarding this body of law is made: "Prosecutors should ensure that law enforcement agencies, laboratories, and other experts understand their obligation to inform prosecutors about exculpatory or mitigating evidence." The intent of this presentation is to do just that.

During the commission of a robbery by two men, Brady and Boblit, a murder occurred. Felony murder, in Maryland, was considered to be first-degree murder and punishable by death. The State of Maryland sought to convict each man of the capital murder offense and condemn each one to die. Of course, only one of the men actually pulled the trigger and he, Boblit, admitted to doing so before Brady's trial. Should his confession to killing the victim have been provided to Brady for his use, especially in the sentencing phase? The United States Supreme Court held that Maryland should have provided it to Brady and a new line of cases and codified rules regarding prosecutors' disclosure was begun.

Today, *Brady* and its progeny impose on the prosecution a "duty to learn of" as well as disclose to the defense all "favorable" material information known to the prosecutor and others acting on the government's behalf. This group is commonly referred to as "the prosecution team." The prosecution must disclose this information "at such a time and in such a manner as to allow the defense to use the favorable material effectively," because "the due process obligation under *Brady* is for the purpose of allowing defense counsel an opportunity to investigate the facts of the case and craft an appropriate defense."

Phrases that are frequently used demand a clear understanding for expert witnesses involved in an investigation and prosecution. What do those legal terms mean? What is "exculpatory?" What is "impeachment evidence" or "mitigating evidence?" Are there relevant factors to the prosecutor's duty to know about the information such as whether a witness is important or whether their testimony is significant? What is "significant?" Are personnel files of government experts information the prosecutor should know about? What about the type of an expert witness' findings in scientific testing of evidence in a case? What about "worksheets" that are created during the process of determining findings? How do existing cases answer those questions? What are those cases? Should knowing the answers aid experts in the application of them to unanswered questions? Should quality control information about a lab, competency information about the expert, or the findings of a peer reviewer be provided to the prosecutor?

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