



F31 Prosecutorial Misconduct and Breaches in the *Brady* Doctrine

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The goals of this presentation are to review the *Brady* Doctrine and examine cases of prosecutorial misconduct and breaches in the *Brady* Doctrine that have resulted in due process violations.

This presentation will impact the forensic science community by raising awareness of how *Brady* Doctrine violations prevent citizens from obtaining their due process rights.

The Registry of Prosecutorial Misconduct defines prosecutorial misconduct as any conduct, intentional or inadvertent, during the course of prosecution that: (1) violates the applicable code of professional ethics; (2) breaks a pertinent law; or, (3) prejudices, or appears to prejudice, the administration of justice.¹

A major claim against prosecutors is violations of the *Brady* Doctrine.² In *Brady v. Maryland*, the Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material, either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”³ Most disputes over *Brady* issues focus on the definition of what is “material.” Recently, the Supreme Court defined evidence as “material” when “there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been a different.”⁴ In toxicology cases, failure to produce an exculpatory lab test occurs and the ramifications of this will be discussed.

Moreover, there are a number of questions related to the prosecutor’s duty to disclose material exculpatory evidence that are still unresolved: (1) what is the depth of the duty *Brady* imposes on prosecutors to look for and turnover material exculpatory evidence; (2) do a district attorney, attorney general, and United States attorney all share the same duty under *Brady*; (3) if a prosecutor fails to meet the duty under *Brady*, is the director of that operation vicariously liable for the omissions of subordinates; (4) can a prior defendant who was prejudiced by that action sue for civil liability; and, (5) in the absence of the right to sue for civil liability, what other legal remedies does the defendant have to right a prior breach? Filing a petition for a new trial and alleging both fraud against the government and ineffective assistance of counsel who represented the defendant are common. Failure to discover the withheld documents is ineffective, and the government’s failure to conduct an adequate search for the material exculpatory information or produce it in a timely manner rendered the trial fundamentally flawed.

Connick, District Attorney, et al. v. Thompson addressed the issue of vicarious liability of local government agencies.⁵ In *Connick*, John Thompson was convicted of attempted armed robbery. The Orleans Parish District Attorney’s Office conceded that prosecutors failed to disclose evidence that should have been turned over to the defense under *Brady*. Thompson was convicted. Because of that conviction, Thompson elected not to testify in his own defense in his later trial for murder and he was again convicted. Thompson spent 18 years in prison, including 14 years on death row. One month before Thompson’s scheduled execution, his investigator discovered that evidence had been withheld in his armed robbery trial. The reviewing court determined that the evidence was exculpatory and both of Thompson’s convictions were vacated.

After his release from prison, Thompson sued the Orleans Parish District Attorney, Harry Connick, in his official capacity for damages, alleging that Connick had failed to train his prosecutors adequately about their duty to produce exculpatory evidence and that the lack of training had caused the failure to disclose in Thompson’s robbery case.⁶ The jury awarded Thompson fourteen million dollars and the Court of Appeals for the Fifth Circuit affirmed. The Supreme Court ruled that local government liability for failure to train cannot be based on a single incident, but the plaintiff must show a pattern of similar constitutional violations.

Commonwealth v. Christina Martin, a case where the prosecution failed to turnover a negative confirmatory gas chromatography/mass spectrometry test will be discussed, and the analysis of the motions judge shared.⁷



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References:

1. Maintained by the Center for Prosecutor Integrity
 2. *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)
 3. *Brady v. Maryland*, 373 U.S. 83, S.Ct. 1194, 10 L.Ed.2d 215 (1963) at page 87
 4. *Cone v. United States*, 129 S.Ct. 1769, 1783 (2009) (citing *Bagley*, 473 US at 682)
 5. *Connick, District Attorney, et al. v. Thompson*, 131 S.Ct. 1350 (2011) (No. 09-571)
 6. *Ibid*
 7. *Commonwealth v. Christina Martin*, SJC-06789, 1998
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Prosecutorial Misconduct, The Brady Doctrine, Material Exculpatory Evidence