

CONSTITUTIONAL RIGHTS: BRADY, INFORMANTS, AND PEACE OFFICERS (2 Hours)

I. *LEARNING NEED:*

Students will receive an overview of law enforcement's obligations under the Brady v. Maryland, Massiah v. United States, 6th Amendment, and Informants.

A. Prosecution Team

1. Evidence

- a. The prosecutor's duty under Brady to disclose material exculpatory evidence extends to evidence that the prosecution team knowingly possesses or has the right to possess.

2. Prosecution Team

- a. DA's Office
- b. Investigating Agency
- c. Assisting Agencies

3. Law Enforcement's Interest: Not to win a case, but to ensure that justice shall be done.

4. Our mandate: To afford every defendant equal treatment under the law.

B. Case law overview

- a. Brady v. Maryland: The prosecutor has a due process affirmative duty to disclose to the defendant all material evidence that is favorable and that is possessed by the prosecution team.

2. Giglio v. United States: Brady to include impeachment, not just exculpatory, evidence.

3. United States v. Bagley: Supreme Court eliminated the requirement that the defendant make a request for the evidence.

4. Banks v. Dretke: Brady is a self-executing, affirmative obligation on the prosecution, independent of any defense action.

C. The Brady Rule

1. Overview

- a. No request for Brady material is needed

- b. There is a duty on the part of the prosecution to disclose all substantial material evidence favorable to an accused, whether such evidence relates to guilt, punishment, or credibility.
- c. United States v. Zuno–Arce and Youngblood v. West Virginia: The prosecution team’s duties of disclosure under the due process clause are independent of any statutory scheme of reciprocal discovery. The due process requirements are self-executing and need no statutory support to be effective.
- d. Inadmissibility: Brady does not require the disclosure of information that is of mere speculative value.
- e. Kyles v. Whitley: The scope of the disclosure encompasses the duty to ascertain and divulge any favorable evidence known to the others acting on the government’s behalf, including the police.
- f. Brady and Experts: Prosecution team has a Brady duty to disclose to the defense as exculpatory evidence information that reflects negatively on a prosecution witness.
- g. Components of a Brady violation.
- h. A prosecutor does not have a duty to disclose exculpatory evidence or information to a defendant unless the prosecution team actually or constructively possesses that evidence or information.
- i. Risks and Dangers of Brady Violations

D. Confidential Informants and In-Custody Informants

- a. Massiah v. United States
- b. Sixth Amendment
- c. Perkins Operations
- d. Statutory Discovery Obligations