

IN THE WAKE OF MICHAEL MORTON

BRADY V. MARYLAND & TEXAS DISCOVERY

PRESENTED BY PROF. GEARY REAMEY,
ST. MARY'S UNIVERSITY SCHOOL OF LAW

Brady – The Constitutional Standard

- In 1963 the United States Supreme Court decided the case of *Brady v. Maryland*, holding that: “the suppression by the prosecution of evidence favorable to the accused...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.”

Brady v. Maryland, 373 US 83, 87 (1963)

What does that mean?

1. *Brady* applies to “**exculpatory**,” “**material**” information in **possession of the government**
2. The prosecution has a **duty to find** this information
3. The prosecution has a **duty to disclose** this information to the accused, whether requested or not

OK, but what does “exculpatory” mean?

- ⦿ *Brady* material includes more than just information that would prove the defendant not guilty
- ⦿ It includes **favorable** information
- ⦿ “Favorable” information includes impeachment evidence that tends to bring into question the credibility or reliability of a witness for the state

How is “exculpatory” different than “favorable?”

- Exculpatory information is information of any type that tends to reduce the likelihood of guilt or bears favorably on culpability or some other component of punishment; in other words – information that tends to show the defendant didn’t do it or that punishment should be mitigated

“Favorable” isn’t limited to what’s favorable at trial

- Favorable information may relate to both pretrial matters and trial matters
 - For example, information related to the circumstances surrounding an out-of-court identification process would be relevant to determining the admissibility of the identification testimony for trial purposes – so the information would need to be disclosed prior to the suppression hearing.

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