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Conference on Criminal Appeals
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INEFFECTIVE ASSISTANCE OF COUNSEL AND STATE MISCONDUCT

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MOST COMMON GROUNDS RAISED IN APPLICATIONS FOR WRIT OF HABEAS CORPUS

- 1. State Misconduct by Suppression
of Exculpatory Evidence.**
- 2. Ineffective Assistance of Counsel.**

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Do Not Suppress Favorable Evidence



**If you have to think about it, that's
a clue you need to Turn it over!**

3

SUPPRESSION OF EXCULPATORY EVIDENCE

We now hold 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.

***Brady v. Maryland*
373 U.S. 83 (1963)**

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THREE PART TEST TO OBTAIN RELIEF BASED ON SUPPRESSION OF EXCULPATORY EVIDENCE

- **The prosecution withheld or suppressed evidence.**
- **The evidence was favorable to the defense.**
- **The evidence was material to either guilt or punishment.**

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MATERIALITY TEST

Evidence qualifies as material when there is “any reasonable likelihood” it could have “affected the judgment of the jury.” To prevail on a *Brady* claim, the applicant need not show that he “more likely than not” would have been acquitted had the new evidence been admitted. He must show only that the new evidence is sufficient to “undermine confidence” in the verdict.

***Wearry v. Cain*, 136 S.Ct. 1002 (2016)**

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