

DISCOVERY AND THE BRADY DOCTRINE

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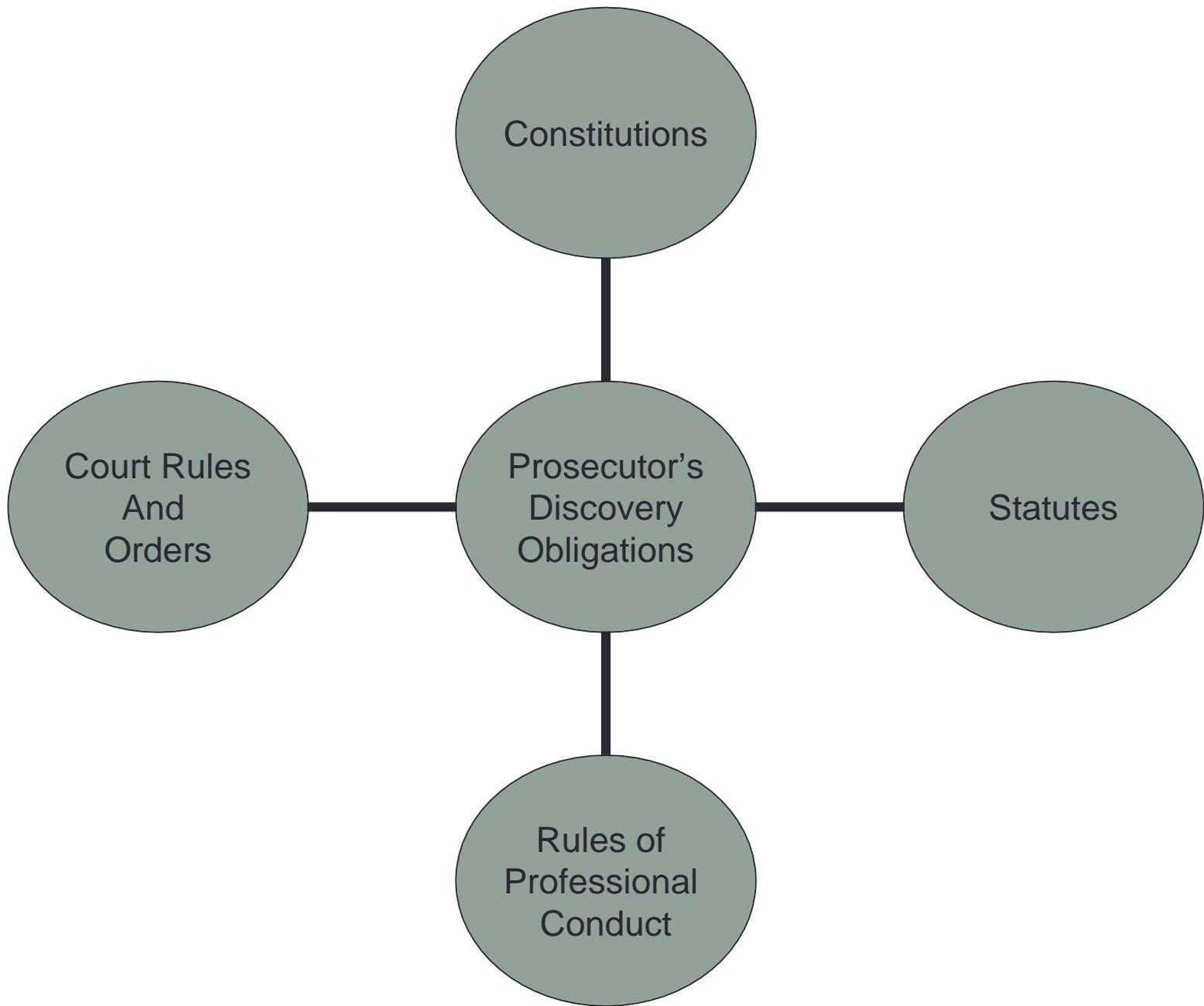
91st Judicial Circuit

Switzerland County

A prosecutor's broad duty of disclosure springs not simply from a defendant's right to present a complete defense, but also from a prosecutor's special status as a representative of a government whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done.



Berger v. United States, 295 U.S. 78 (1935)



Constitution

Brady v. Maryland

373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)

“suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or punishment irrespective of the good or bad faith of the prosecution...”

Requisites for a Brady Violation

- **Has the “State” failed to disclose evidence?**
- **Is the evidence favorable to the accused?**
- **Is the evidence “material?”**

An “**Open File**” policy
doesn't necessarily always
protect you



Who is the State?

- **Individual prosecutor**
- **Other prosecutors and employees in the prosecutor's office**
- **Law enforcements agencies connected to the investigation**
 - **Local, State, Federal**
 - **Jail**
 - **DCS**
 - **Expert witnesses**

What you don't know can hurt you

Kyles v. Whitley

514 U.S. 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)

“the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case...”

What is “favorable” evidence?

- **Evidence that suggests the Defendant did not commit the crime**
- **Evidence that reduces the Defendant’s culpability**
- **Anything that reduces a prosecutions witness’s credibility**
- **Anything that is good for the Defendant**

Examples of exculpatory evidence

- **Misidentifications**
- **Non-identifications**
- **Witness statements**
 - **He wasn't the shooter...I was!**
 - **He didn't do it!**
 - **I couldn't see from where I was standing!**
 - **He wasn't there!**
 - **I wasn't looking!**
 - **I didn't see anything!**



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Impeachment Evidence Examples

- **Prior inconsistent statements**
- **Draft reports of an expert**
- **Multiple versions of a story**
- **Criminal History**
- **Drug/Alcohol use**
- **Mental health issues**
- **Consideration for testimony/cooperation with State**
 - **Consideration for pending case**
 - **Payment to witness or witness family**
 - **Promises to witness or witness family**
 - **Relocation**
 - **Job**

“Material” Evidence

United States v. Bagley

...evidence is material for the purposes of the duty to disclose “only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different...”

A reasonable probability is “a probability sufficient to undermine confidence in the outcome” of the proceeding

Forget Materiality-Turn it Over?

- **Disclosing the evidence doesn't necessarily mean it's admissible at trial....disclose and fight it's admission.**
- **Fighting non-disclosure of favorable evidence that you believe is not "material" is harder in the press than it is in the courtroom.**



What about facts that undermine the admissibility of evidence?



Duty to Preserve Evidence

Defendant must show:

- **State acted in bad faith**
- **The Defendant could not have secured comparable evidence elsewhere**
- **The evidence was “material”**

Indiana Courts and Brady

- **Failure to disclose benefits to a witness**
 - *Goodner v. State*, 714 N.E.2d 638 (Ind. 1999)
 - *Gardner v. State*, 724 N.E.2d 624 (Ind.App. 2000)
 - *Williams v. State*, 714 N.E.2d 644 (Ind. 1999)
- **Failure to disclose previous conviction**
 - *Carroll v. State*, 740 N.E.2d 1225
- **Failure to disclose expert witness prior opinion**
 - *Bunch v. State*, 964 N.E.2d 274 (Ind.App. 2012)

Preservation/Destruction of Evidence

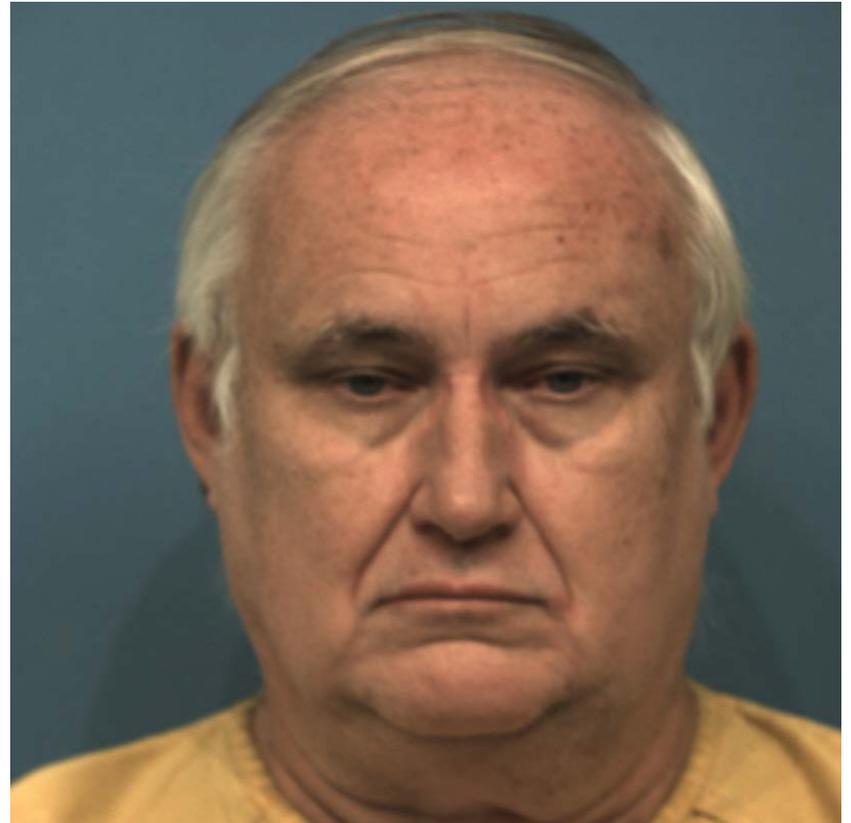
- **Materially Exculpatory Evidence**
 - *Wade v. State*, 718 N.E.2d 1162
 - Possesses an exculpatory value that was apparent before the evidence was destroyed
 - Defendant unable to obtain comparable evidence by other reasonably available means
 - Good faith/bad faith irrelevant
- **Potentially Useful Evidence**
 - *Blanchard v. State*, 802 N.E.2d 14
 - Exculpatory value not immediately apparent
 - Defense must show the state acted in bad faith
 - Conscious wrongdoing

Brady who?

Disbarred



Incarcerated



Statutory Discovery Obligations

- **Alibi defense – I.C. 35-36-4**
- **Testimony of laboratory analyst – I.C. 35-36-10**
- **Child pornography and discovery – I.C. 35-36-11**

Local Rules



Rules of Evidence

- **Rule 404(b)**
- **Upon request by Defendant**
- **Prosecutor must provide reasonable notice**
- **The general nature of any evidence of other crimes, wrongs or acts that the prosecution intends to introduce at trial.**

Rules of Professional Responsibility



IRPC Rule 3.8(d)

The prosecutor in a criminal case shall...

(d) Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

“It takes less time to do a thing right than explain why you did it wrong.”

~Henry Wadsworth Longfellow

