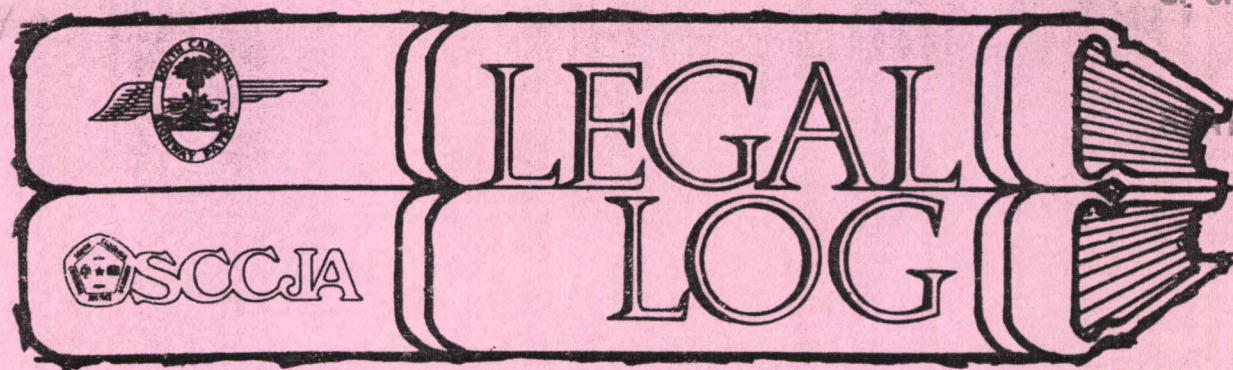


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Brady v. Maryland

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

There has been some confusion concerning the duties of a prosecutor or prosecuting officer when evidence becomes known to the prosecutor or officer which is favorable in any way to the defense, but is not known to the defense. In order to address that question, a look at the role of the State in criminal prosecutors is appropriate.

Courts have consistently stated that the obligation of the State goes beyond blind prosecution.

The State's obligation is not to convict, but to see that, so far as possible, truth emerges. This is the ultimate statement of its responsibilities to provide a fair trial under the Due Process clause of the Fourteenth Amendment. No respectable interest of the State is served by its concealment of information which is material...to the case; including all possible defenses. Giles v. Maryland 386 U.S. 66 (1967) concurring opinion.

In a unified effort to keep you informed on legal matters and upgrade our profession we are pleased to present to you this issue of LEGAL LOG. This publication will be made available to you on a regular basis.

The LEGAL LOG will discuss only legal issues and will in no way attempt to dictate policy of the Highway Patrol on subjects covered.

Questions of policy pertaining to those matters are to be handled through District Commanders and/or Patrol Headquarters.

Your comments and suggestions for future issues are solicited. Correspondence should be addressed to S.C. Highway Patrol Training Officer, 5400 Broad River Road, Columbia, S.C. 29210.

Clyde F. Collins
Lieutenant

The issue of what is the legal duty of the prosecutor or officer is addressed in Brady v. Maryland, 373 U.S. 83 (1967). Brady was convicted of murder and sentenced to death. Before that, the defense counsel asked to examine statements made by a co-defendant. Some statements were shown to the defense, but a statement wherein the co-defendant actually admitted the shooting was not shown to the defense. After the sentence of death was imposed, Brady appealed. The U.S. Supreme Court agreed that the evidence should have been revealed to the defense. The court stated:

We 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 punishment, irrespective of the good faith or bad faith of the prosecution. Brady at 87.

of the record, Agurs at 103.

If it is a close case, then a small non-disclosure might tip the scales in favor of a new trial, while if the non-disclosure does not affect the verdict of guilt beyond a reasonable doubt, then a new trial may not be in order. This decision rests in the total context of each individual case. While Brady dealt with requested information, occasionally a defense attorney will fail to ask for favorable material. It is clear that some material must be disclosed even if not requested.

In this decision the Court points out that not only evidence as to guilt or innocence should be revealed, but also any mitigating circumstances which might affect punishment. The motive of the prosecution is not controlling.

In Agurs the court recognized that although the prosecution must act with "earnestness and vigor, he must always be faithful to his client's overriding interest 'that justice shall be done'." Agurs at 103.

The remedy for not revealing information favorable to the defendant is the granting of a new trial. The test as to whether a new trial should be granted is set forth in United States v. Agurs, 427 US.S 97 (1976). In this case, the U.S. Supreme Court indicates that not all omitted evidence will require a new trial. If the non-disclosure is "harmless under the customary harmless error standard", then no new trial is allowable. The court stated:

The court goes on to point out that elementary fairness requires the disclosure of evidence of obvious substantial value to the defense whether requested or not.

The proper standard of materiality must reflect the overriding concern with the justice of the finding of guilt. It necessarily follows that if the omitted evidence creates a reasonable doubt that did not otherwise exist constitutional error has been committed. This means that the omission must be evaluated in the context

While sometimes it is tempting for the prosecution to adopt a "we against them" attitude, it is important to keep in mind that the goal of truth must be kept above that of conviction. The Brady rule can be more easily understood in that context.

LEGAL LOG will devote its columns to law enforcement's legal problems. An attempt will be made to offer practical guidelines to law enforcement officers rather than abstract legal theories.

LEGAL LOG is published monthly by the South Carolina Criminal Justice Academy of which John A. O'Leary is Executive Director and Henry R. Wengrow is General Counsel. Patrol programs are under the direction of Patrol Commander, Col. P. L. Meek and Lt. Clyde F. Collins, Assistant Training Officer.