

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

**1**

The State **MUST** turn over all evidence in its possession or control that is FAVORABLE to the accused.

**2**

The State **MUST** turn over all evidence in its possession or control that tends to NEGATE the guilt of the accused.

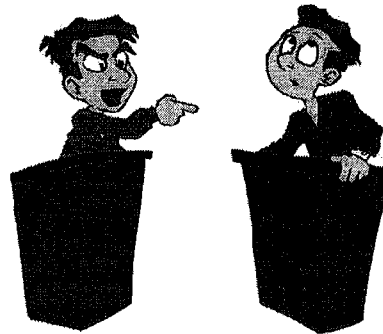
**3**

The State **MUST** turn over all impeachment evidence. *Giglio v. U.S.*, 405 U.S. 150 (1972).

## Establishing a Brady Violation

The defense must prove:

1. **The State possessed evidence favorable to the defendant, including impeachment evidence**
2. **The defendant could not obtain the evidence himself through the exercise of reasonable due diligence**
3. **The prosecution suppressed the favorable evidence**
4. **The evidence was material**

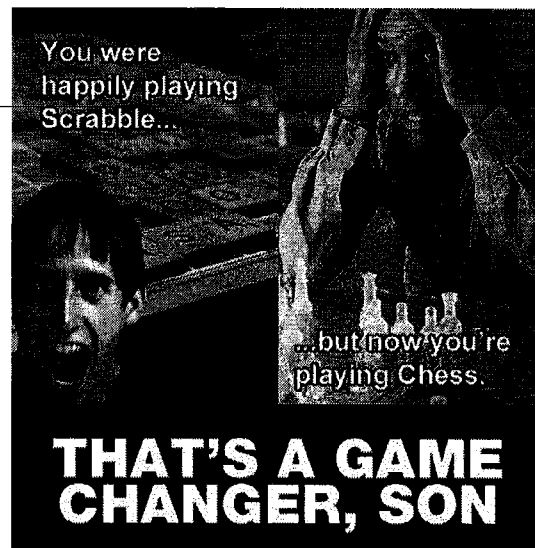


Caselaw:

*Strickler v. Greene*, 527 U.S. 263 (1999); *Jones v. State*, 709 So.2d 512 (Fla. 1998)

## Materiality Requirement

- “The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *U.S. v. Bagley*, 473 U.S. 667 (1985)



## DEFENSE BURDEN

Mere speculation by defense that information MAY be exculpatory is not enough to trigger state's obligation to disclose.

Caselaw:

U.S. V. Quinn, 123 F.3d 1415 (11th Cir. 1997) (Mere speculation that a government file may contain Brady material not enough)

U.S. v. Navarro, 737 F.2d 625 (7th Cir. 1984) (Speculation that INS file may contain cooperation agreement not enough)

Downs v. State, 740 So.2d 506 (Fla. 1999) (Mere suspicion of existence of evidence not enough)