



Senate Bill 492

House Committee on
Judiciary

May 16, 2013

SB492

ORS 135.815(1)(g):

- “The district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney: . . .”
 - “any material or information”
 - “that tends to”
 - “exculpate the defendant, negate or mitigate the defendant’s guilt or punishment”
 - “or impeach a witness the state intends to call at trial.”

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“Any material or information . . .”

- *Carriger v. Stewart*, 132 F.3d 463, 481 (9th Cir. 1997 (en banc) (*Brady* material “***need not have been independently admissible.***”).
- *U.S. v. Rodriguez*, 496 F.3d 221, 226 (2d Cir. 2007) (“The obligation to disclose information covered by the *Brady* and *Giglio* rules exists ***without regard to whether that information has been recorded in tangible form.***”).

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“ . . . that *tends to* . . . ”

- *Brady v. Maryland*, 373 U.S. 83, 87-88 (1963) (“A prosecution that withholds evidence on demand of an accused which, if made available, would ***tend to*** exculpate him or reduce the penalty . . . does not comport with standards of justice.”).
- ORPC 3.8(b) (Prosecutors must produce evidence “***that tends to*** negate the guilt of the accused or mitigates the offense.”).
- *U.S. v. Olsen*, 704 F.3d 1172, 1181 (9th Cir. 2013) (“The prosecution must disclose materials that are ***potentially*** exculpatory or impeaching.”).

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“... **guilt or punishment** ...”

- *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (government must produce exculpatory information relating “either to **guilt or to punishment**.”).
- *U.S. v. Price*, 566 F.3d 900, 911-12 (9th Cir. 2009) (“[T]he government should therefore disclose all evidence relating to **guilt or punishment** which might reasonably be considered favorable to the defendant’s case.”).

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“... or *impeach* a witness the state intends to call at trial.”

- *U.S. v. Bagley*, 473 U.S. 667, 676 (1985) (prosecutor’s *Brady* obligations extend not only to exculpatory evidence, but also to “evidence that the defense might have used to *impeach the Government’s witnesses*” (citing *Giglio v. U.S.*, 405 U.S. 150 (1972))).

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- *Brady* obligations are **not** limited to information “actually known” by the prosecutor.
- *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995) (“[T]he individual prosecutor has a **duty to learn** of any favorable evidence **known to the others acting on the government’s behalf in the case, including the police.**”).
- *Youngblood v. West Virginia*, 547 U.S. 867, 869-70 (2006) (“*Brady* suppression occurs when the government fails to turn over **even evidence that is known only to police investigators and not to the prosecutor**” (internal quotation omitted)).
- *State v. Warren*, 304 Or. 428, 433 (1987) (“[T]he prosecutor is **responsible for evidence in the possession of the police. . . . even if it was not in the prosecutor’s physical possession.**”).

QUESTIONS?