

[CAPTION]

**MOTION FOR ORDER COMPELLING THE PRODUCTION OF ALL  
BRADY V. MARYLAND EVIDENCE**

Comes now the Accused and Moves the Court for an Order compelling the State of Indiana, by and through its Prosecuting Attorney, to produce and furnish to counsel all evidence that is material to either guilt or punishment in the above cause, and more specifically says:

**THE FEDERAL/INDIANA BASES**

**THE BEDROCK OF OUR CRIMINAL JUSTICE SYSTEM**

1. Justice White, in *Williams v. Florida*, 399 U.S. 78, 82 (1970), described the fundamental basis of our criminal justice system by observing that “[our] adversary system of trial is hardly an end in itself; it is not yet a poker game in which players enjoy an absolute right always to conceal their cards until played.”

2. *Sewell v. State*, 592 N.E.2d 705, 707 n.4 (Ind.Ct.App. 1992) has clearly asserted that the *Brady* rule can require the disclosure of evidence not otherwise discoverable if the evidence is shown to be exculpatory because “the defendant’s right to fundamental due process outweighs the State’s interest in nondisclosure.”

**THE GOVERNMENT’S OBLIGATION TO DISCLOSE**

3. In the seminal decision of *Brady v. Maryland*, 373 U.S. 83, 87 (1963) the Court established the bright line rule 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.”

4. *State ex rel. Grammer v. Tippecanoe Circuit Court*, 337 N.E.2d 1359, 1361 (Ind. 1978) established that the primary goals of the court when confronted with a request for the use of a particular discovery device are “facilitating the administration of criminal justice and promoting the orderly ascertainment of the truth.” *See also Sewell*, 592 N.E.2d at 708.

### **THE GOVERNMENT'S OBLIGATION OF DUE DILIGENCE**

5. The High Court asserted in *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) that prosecutors have a duty “to learn of any favorable evidence known to the others acting on the government’s behalf in the case.” In *Martinez v. Wainwright*, 621 F.2d 184, 186 (5<sup>th</sup> Cir. 1980), it was affirmed that “[t]he duty to produce requested evidence falls on the state; there is no suggestion in *Brady* that different ‘arms’ of the government are severable entities.” See *United States v. Deutsch*, 475 F.2d 55, 57 (5th Cir. 1973).

6. Indiana is in accord with these rulings as shown by the holding in *Farris v. State*, 732 N.E.2d 230 (Ind.Ct.App. 2000).

7. *United States v. Agurs*, 427 U.S. 97, 106-07 (1976) established the proposition that the government has a duty to volunteer exculpatory evidence even if a defendant has not specifically requested it, or only generally requested it.

8. This is a reasonable and sensible approach, because an accused is sometimes without specific information and forced to grope in the dark for the information he believes necessary to adequately prepare his defenses. See *Strickler v. Greene*, 527 U.S. 263, 289 (1999).

9. *Bunch v. State*, 964 N.E.2d 274 (Ind.Ct.App. 2012) firmly establishes the applicability of these basic *Brady* principles in our trial court system.

### **ETHICAL DUTY OF PROSECUTORS TO DISCLOSE**

10. The American Bar Association issued Formal Opinion 09-454, effective January 1, 2010, which officially clarified Rule 3.8(d) of the Model Rules of Professional Conduct which provides that a prosecutor in a criminal case shall:

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 mitigates 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.

### **THE EFFECTS OF PROSECUTOR IMMUNITY**

11. In *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009), Justice Breyer, writing for a unanimous Court, found prosecutors have immunity for anything they do in the course of presenting evidence or in argument to the court, and additionally have immunity for implementing managerial or administrative policies causing *Brady* violations.

12. Because there are no rights to civil redress for egregious *Brady* violations, there are no incentives to comply with *Brady* mandates.

#### **ACCUSED'S REQUEST FOR RELIEF**

13. The Accused has tendered contemporaneous herewith his proposed Order for consideration by the Court and requests the same be entered requiring the government to produce all *Brady* material.

14. The Accused further requests that this Court enter an Order requiring that the government respond to this request by specifically designating not only the agencies from whom it has requested the production of *Brady* material, but to further identify the individual(s) in the agency from whom the information has been requested.

15. That transparency and accountability for disclosure of the information sought is a basis underpinning the integrity of the disclosure process.

[signature]