

Federal Criminal Practice Seminar
November 3, 2016

SPEAKER:
Sidney Powell

LICENSED TO LIE: EXPOSING CORRUPTION IN THE DEPARTMENT OF JUSTICE
(Books will be for sale for \$32 each, cash check or credit card)

1. Draft of Brady Order (attached)
2. [Judge Alex Kozinski, Preface to the Georgetown Law Journal, Criminal Law 2.– Preface to the 44th Annual Review of Criminal Procedure, 44 Geo. L.J. Ann. Rev. Crim. Proc \(2015\)](#)
3. Favorite misconduct cases:

[Arthur Andersen LLP v. United States, 544 U.S. 696 \(2005\)](#)

[Berger v. United States, 295 U.S. 78 \(1935\)](#)

[Brady v. Maryland, 373 U.S. 83 \(1963\)](#)

[Giglio v. United States, 405 U.S. 150 \(1972\)](#)

[Kyles v. Whitley, 514 U.S. 419 \(1995\)](#)

[Smith v. Cain, 132 S. Ct. 627 \(2012\)](#)

[United States v. Kohring, 637 F.3d 895 \(9th Cir. 2011\)](#) (especially Judge Betty Fletcher wrote on a separate opinion: [These] “egregious violations of [its] basic responsibilities” and “unrepentant attitude indicates that no lesser remedial action would be effective.”).

[United States v. Kott, 423 Fed.Appx. 736 \(9th Cir. 2011\)](#)

[United States v. Olsen, 737 F.3d 625, 631-33 \(9th Cir. 2013\)](#) (Kozinski, C.J., dissenting from denial of rehearing *en banc*)

[Yeager v. United States, 557 U.S. 110 \(2009\)](#)

[Wearry v. Cain, 136 S. Ct. 1002 \(2016\)](#)

See www.LicensedtoLie.com for source documents.

See www.federalappeals.com for sample briefs.

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UNITED STATES OF AMERICA,)
)
Plaintiff,)
) Criminal No. _____
v.)
)
[DEFENDANT’S NAME],) ORDER
)
Defendant.)
)

Pursuant to *Wearry v. Cain*, 136 S. Ct. 1002 (2016) and *Brady v. Maryland*, 373 U.S. 83 (1963), and their progenies, the government has a continuing obligation to produce all evidence required by the law and the Federal Rules of Criminal Procedure. See *id.* at 87 (due process requires disclosure of “evidence [that] is material either to guilt or to punishment” upon request); *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995) (the obligation to disclose includes evidence “known only to police investigators and not to the prosecutor,” and that “the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government’s behalf ..., including the police.”); *United States v. Agurs*, 427 U.S. 97, 107 (1976) (the duty to disclose exculpatory evidence applies even when there has been no request by the accused); *Giglio v. United States*, 405 U.S. 150, 153-54 (1972) (*Brady* encompasses impeachment evidence); see also FED. R. CRIM. P. 16(a) (outlining information subject to government disclosure).

Evidence that qualifies under both *Brady* and the Jencks Act shall be deemed *Brady* material and produced forthwith accordingly. The government's obligation to provide exculpatory evidence pursuant to *Brady* in a timely manner is not diminished either by the fact that such evidence also constitutes evidence that must be produced later pursuant to the Jencks Act, 18 U.S.C. § 3500, or by the fact that such evidence need not be produced according to Rule 16. *See* Advisory Committee Note to FED.

R. CRIM. P. 16 (1974) (“The rule is intended to prescribe the minimum amount of discovery to which the parties are entitled.”).

Where doubt exists as to the usefulness of the evidence to the defendant, the government must resolve all such doubts in favor of full disclosure. *See United States v. Paxson*, 861 F.2d 730, 737 (D.C. Cir. 1988); *United States v. Starusko*, 729 F.2d 256, 263 (3d Cir. 1984).

Accordingly, the Court, sua sponte, directs the government to produce to defendant within fourteen days from issuance of this Order any and all evidence that is favorable to the defense either to defendant’s guilt or punishment including that which tends to impeach any government witnesses. Further, the production requirement of this order repeats every 21 days and continues throughout the appellate process as any new evidence appears from any source. *Strickler v. Greene*, 527 U.S. 263, 281, 119 S. Ct. 1936, 1948 (1999).

This mandates includes all discoverable evidence and information in the possession, custody, or control of the government, the existence of which is known or may be obtained, or by the exercise of due diligence may become known or obtained. Government attorneys’ own notes and those of all its agents and officers are also included and must be reviewed by government counsel in compliance with this Order. **This discoverable evidence and information must be produced regardless of whether it would meet the appellate materiality standard.**

The government is further directed to produce all discoverable evidence in a readily usable form. For example, the government must produce documents as they are kept in the usual course of business or must organize and label them clearly. The government must also produce electronically stored information in a form in which it is ordinarily maintained unless the form is not readily usable, in which case the government is directed to produce it in a readily usable form. If the information already exists or was memorialized in a tangible format, such as a document or recording, the information shall be produced in that format.

The court requires production of actual transcripts, FBI 302s, raw notes and other actual, original documents unless the government establishes a need for those documents or the identity of specific persons to be protected. *United States v. Brown*, 303 F.3d 582, 593 (5th Cir. 2002), *cert. denied*, 537 U.S. 1173, 123 S. Ct. 1003 (2003); *Williams v. Whitley*, 940 F.2d 132, 133 (5th Cir. 1991); *Conley v. United States*, 415 F.3d 183, 188-89 (1st Cir. 2005); *United States v. Harrison*, 524 F.2d 421, 427 (D.C. Cir. 1975).

A summary may be provided only with the express approval of the court. A summary must include sufficient detail and specificity to enable the defense to assess its relevance and potential usefulness. In any case in which a summary is used, the underlying materials from which that summary was created must be submitted to this Court for *in camera* review along with the proposed summary.

The Court strongly discourages the use of summaries, and government counsel is hereby on notice that any information not produced to the court and omitted from a summary may be considered an intentional violation of *Brady* and shall be punished accordingly.

Any violation of this order may be punished by contempt of Court or any other sanctions the Court deems appropriate, including but not limited to: being barred from practice before this Court; being barred from practice within this District; being referred to the bar association for disciplinary review; being named in an opinion of this Court; being fined; and/or being referred for investigation and criminal prosecution. *Bank of Nova Scotia v. United States*, 487 U.S. 250, 263, 108 S. Ct. 2369, 2378 (1988); 18 U.S.C. § 401.

In the event of a finding that this Order has been violated, this Court may also sanction the United States by precluding the government from introducing particular evidence, granting a mistrial or new trial, and dismissing an indictment with or without prejudice. *United States v. Hastings*, 461 U.S. 499, 505, 103 S. Ct. 1974, 1978 (1983); *Brady*, 373 U.S. at 87, 83 S. Ct. at 1197; *see also United States v. Chapman*, 524 F.3d 1073 (9th Cir. 2008), *Gov't of the Virgin Islands v. Fahie*, 419 F.3d 249 (3d Cir. 2005); *United States v. Shaffer Equipment Co.*, 11 F.3d 450 (4th Cir. 1993); *United States v. Kojayan*, 8 F.3d 1315, 1325 (9th Cir.1993).

SO ORDERED this __ day of _____, 201__.

UNITED STATES DISTRICT JUDGE