

**Research Memorandum #75:  
Prosecution's Duty to Provide Defendant  
with Exculpatory Evidence**

**Branty v. State, 201 Maj. 2d 86 (20XX-26):**  
“Appellant and a co-defendant were charged and convicted of first-degree murder, and sentenced to death. At his trial, which had been severed from that of his co-defendant, appellant had conceded participation in the fatal robbery and therefore liability under felony-murder principles. Appellant had, however, unsuccessfully sought to avoid the death penalty by relying upon his unsupported testimony that his co-defendant, and not him, had committed the actual killing. Several weeks after his conviction it was discovered that the prosecution had in its possession a statement of the co-defendant admitting to the killing. Appellant's trial counsel had requested all extrajudicial statements of the co-defendant. While some statements had been shown to her, this crucial one was never provided. This suppression provides the factual basis for the constitutional issue raised today.

“We have already held that both the deliberate use of perjured testimony and intentional suppression of favorable testimony by the prosecution violates principles of due process. The State argues that where, as in the present case, the suppression was unintentional, no due process violation can occur. We disagree. The basis of our previous holdings in this area was not to punish society for the misdeeds of the prosecution, but to avoid an unfair trial to an accused. Accordingly, we hold that suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to either guilt or to punishment, irrespective of the good or bad faith of the prosecution. Appellant is entitled to a new trial on the issue of punishment.”

**State v. Augle, 228 Maj. 2d 118 (20XX-20):**  
“This duty to provide exculpatory evidence under *Branty* focuses upon ‘materiality.’ We herein further refine *Branty* by articulating three categories of evidence upon which the prosecutor's *Branty* duty could focus and the respective standards of materiality which accompany each category:

- (1) perjured testimony that the prosecutor knew or should have known of will always be considered material;
- (2) suppressed information following a specific request for information, such as in *Branty*, will be material if the suppressed information might have affected the outcome of the trial;
- (3) suppressed information following no request for exculpatory information or a general request such as ‘all *Branty* evidence’ (which we find equivalent to no request) will be found material if the omitted evidence creates a reasonable doubt that did not otherwise exist such that its exculpatory nature would be obvious to the prosecution.”