

Every state is free under the United States Constitution to establish whatever discovery rules it wants. California provides more criminal discovery than many other states. Florida stands out as one of the strongest states for defense attorneys because it allows pretrial depositions of key witnesses.

In civil lawsuits involving money, lawyers routinely send written questions and take depositions of witnesses long before trial. Yet in criminal cases, where life and liberty are at stake, these tools are rarely allowed. Florida is one of the few exceptions. New York does not even require the prosecution to give the defense a witness list.

California has adopted Penal Code sections 1054 and following. Penal Code section 1054 subdivision (e) states that no discovery shall occur in criminal cases except as provided by this chapter, other express statutory provisions, or as mandated by the Constitution of the United States.

Fortunately, a long line of cases beginning with Brady versus Maryland require prosecutors to turn over exculpatory evidence to the defense. However, under federal Brady law, this obligation is limited to exculpatory evidence that is “material.” The word “material” gives prosecutors a great deal of discretion about what must be disclosed.

This article focuses on California’s statute, specifically Penal Code section 1054.1 subdivision (e), which requires the turnover of exculpatory evidence.

Many lawyers are not aware that this requirement applies to ALL exculpatory evidence, even if it is not material. This makes California’s provision far broader than the federal Brady rule.

In Barnett versus Superior Court, decided in 2010 by the California Supreme Court, the Court clearly contrasted the two standards. The showing required to obtain post-conviction relief under Brady is different from what is needed for pretrial discovery under 1054.1(e).

Penal Code section 1054.1 subdivision (e) requires the prosecution to disclose any exculpatory evidence, not just material exculpatory evidence. To win a claim that the prosecution violated this duty after conviction, a defendant would have to prove materiality. But to simply receive the evidence before trial, no such showing is required.

The broadest application of both Brady and 1054.1(e) is in the area of impeachment.

Impeachment evidence is subject to the same disclosure rules as any other evidence favorable to the defendant.

The duty to disclose such evidence applies even without a request from the defense, and it includes impeachment evidence as well as directly exculpatory evidence.

Here are some key areas of impeachment and the cases that establish their exculpatory value:

First, evidence potentially contradicting a witness’s claim. In Youngblood versus West Virginia, the Supreme Court addressed a suppressed note written by alleged sexual assault victims that could have supported a consensual-sex defense.

Second, evidence contradicting a witness’s statements. See People versus Boyd.

Third, evidence undermining a prosecution witness’s expertise, such as inaccurate statements or prior expert opinions. In People versus Garcia, the court held that various deficiencies in an expert’s prior opinions in unrelated cases had to be disclosed.

Fourth, rough notes of officers and prosecutors that contain exculpatory material. In Carrillo versus County of Los Angeles, contemporaneous handwritten notes that undercut a lineup identification were considered Brady material. Similarly, in Paradis versus Arave, a prosecutor’s notes recording contradictory opinions of a medical examiner were discoverable.

Fifth, evidence of a faulty investigation. The defense has the right to present a defense that casts

doubt on the quality of the investigation. In *United States versus Howell*, the court held that even inculpatory information can be Brady material if it casts doubt on the quality of the investigation. Sixth, information for cross-examining experts. Wide latitude should be allowed when cross-examining experts on their qualifications and the basis for their opinions. As stated in *Grimshaw versus Ford Motor Company*, once an expert offers an opinion, he or she may be subjected to the most rigid cross-examination concerning their qualifications, their opinion, and its sources.

Finally, impeachment by contradiction. When a witness testifies that certain facts occurred, proof that even one of them did not occur is strong evidence of a general lack of credibility.

If you or a loved one is facing criminal charges in California, hire the best criminal defense lawyer possible. Daniel Horowitz is a published author on Brady and discovery issues. He is a former law professor and a veteran trial lawyer. Daniel Horowitz is one of the very few attorneys certified by the State Bar of California Board of Legal Specialization as a true Criminal Law Specialist.

Call Daniel today at nine two five, two eight three, one eight six three.