



## **The Human Cost of *Brady* Violations: The Need for Meaningful Discovery Reform**

[www.nacdl.org/discoveryreform](http://www.nacdl.org/discoveryreform)

Nearly fifty years ago, in *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court recognized the constitutional importance of providing a person accused of a crime with any and all favorable information that might affect the case. This decision established certain constitutional obligations for prosecutors during the pre-trial information sharing process known as “discovery.” Unlike discovery in civil cases, where the rules require that all parties get equal access to the same information, criminal discovery all too often is guided by prosecutors’ exceedingly narrow reading of the requirement established in *Brady* that the government disclose all favorable information to the defense. The failure to satisfy *Brady* obligations presents an obvious risk of conviction of the innocent and puts a significant financial burden on the accused. Yet, such failures are commonplace. These are the stories of real people whose lives were dramatically harmed by the government’s failure to comply with the constitutional demands of *Brady*.

**Former U.S. Sen. Theodore “Ted” Stevens:** *In re Special Proceedings*, Case No. 09-mc-198 (D.D.C. 2012).

Senator Ted Stevens was prosecuted and convicted for criminal ethics violations, subsequently lost his re-election campaign, and, only shortly before his tragic passing, was exonerated after a whistleblower revealed that prosecutors withheld critical evidence of the Senator’s innocence in violation of his constitutional rights. From the start, this prosecution was permeated with government misconduct, making it impossible for the Senator to get a fair trial. During a pretrial interview, for example, the government’s star witness made statements that would have been strong evidence for the defense to use at trial. The prosecutors did not, however, give this information to the defense. Instead, they covered up its existence and eventually procured a new and inconsistent statement from the witness. Also, during the trial, the prosecutors knowingly introduced false business records and refused to give the defense the grand jury testimony of another witness who had made statements helpful to the Senator, instead representing that the testimony was not “material.” As a result of numerous egregious violations committed by the experienced prosecutors in this case, the Senator’s conviction was eventually dismissed. Ordering an investigation into the misconduct, U.S. District Court Judge Emmet G. Sullivan explained that “[t]he government’s ill-gotten verdict in the case not only cost that public official his bid for re-election, the results of that election tipped the balance of power in the United States Senate.” The investigation cannot, however, undo the damage to the Senator’s reputation and legacy, all the more irreparable due to his tragic passing.

**Lindsey Manufacturing:** *U.S. v. Aguilar, et al.*, Case No. CR-10-1031(A)-AHM, (C.D.Cal. 2011).

Companies facing criminal charges rarely go to trial, but Lindsey Manufacturing President and CEO Keith Lindsey and Vice-President and CFO Steve K. Lee took the trial risk and mounted an aggressive defense, on behalf of themselves and their company, that lifted the veil on numerous violations of their constitutional rights. The Lindsey defendants were charged and ultimately convicted of multiple violations of the foreign bribery statute (FCPA). In a lengthy post-trial order, however, U.S. District Court Judge Howard Matz described this case as an “unusual and extreme picture of a prosecution gone awry,” threw out all the convictions, and banned the government from retrying the case. Occurring over a three year period, the misconduct included the intentional withholding of several grand jury transcripts evidencing the serious flaws in the investigation and substantially undercutting the government’s case. Judge Matz characterized these transcripts as the “most

complete and compelling evidence that the Government investigation had been tainted” and explained that without the transcripts, the defense was severely hamstrung. Despite all this, the Lindsey defendants were able to fight for their innocence and protect their rights. But the successful defense of these individuals and their company came at great cost.

**Edgar Rivas:** 377 F.3d 195 (2<sup>nd</sup> Cir. 2004).

Originally sentenced in 2003 to over ten years in prison, Edgar Rivas only regained his freedom after the 2<sup>nd</sup> Circuit Court of Appeals ruled that prosecutors violated his constitutional rights when they intentionally withheld a statement made by their main witness that actually supported Rivas’ version of events. A sailor on a foreign freighter, Rivas was charged and ultimately convicted of smuggling cocaine from Venezuela to New York despite his assertion that the drugs belonged to his shipmate. Prior to trial, the government’s main witness, a fellow shipmate, admitted that he was the one who brought the drugs onto the ship, but the government hid that admission and it only came to light after the jury found Rivas guilty. The 2<sup>nd</sup> Circuit threw out Rivas’ conviction, stating that the government’s behavior was “totally unacceptable.” Ultimately, the prosecutors declined to retry Rivas. But if the shipmate’s admission had remained undisclosed, he would have spent over ten years in prison.

**Anthony Washington:** 263 F.Supp.2d 413 (D.Conn. 2003).

Charged and convicted of unlawful possession of a gun, it took Anthony Washington nearly two years to clear his name after the government failed to disclose that the 911 caller, upon whom the government based its entire case, had been previously convicted of making a false report. In this case, the only question for the jury was whether Washington possessed a gun. It was not until the first day of trial, however, that prosecutors revealed that the now-deceased 911 caller—who provided the only real evidence in this case—had been criminally convicted for lying. As U.S. District Court Judge Janet Bond Arterton explained, this “impeachment evidence was critical in this context” because the defense could have fully explored the caller’s character and discredited the 911 tape had this information been disclosed as required. After nearly two years of waiting, Washington finally got the closure he deserved when Judge Arterton threw out his unconstitutionally-obtained conviction.

**These stories, and all those left untold, make it clear: the time for discovery reform is now.**

In case after case, federal prosecutors have failed to discharge their constitutional obligation under *Brady*, whether as a result of intentional tactical decisions, negligence, or a misunderstanding of the obligation. Immediate passage of legislation that creates clear and meaningful standards governing the prosecutor’s duty to disclose any and all evidence favorable to the defendant is an absolutely critical first step to preventing further injustice. For more information on NACDL’s discovery reform work visit: [www.nacdl.org/discoveryreform](http://www.nacdl.org/discoveryreform).

**Meaningful Discovery Reform Will Play a Critical Role in Greater Overcriminalization Reform.**

NACDL believes true overcriminalization reform necessitates discovery reform. The injustices inflicted upon individuals through discovery abuse and the violation of constitutional *Brady* rights are emblematic of the greater overcriminalization of America. To learn more about NACDL’s efforts to halt and reverse the tide of overcriminalization visit: [www.nacdl.org/overcrim](http://www.nacdl.org/overcrim).

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