

CASE REVIEW QUESTIONS

In furtherance of our continuing duty to fully and fairly disclose material to the defense pursuant to *Giglio v. U.S.*, 405 U.S. 150 (1972), *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976) and the Rules of Professional Conduct, 22NYCRR part 1200 (2009), the following is provided to Assistant District Attorneys and is intended to be used as a reference aid and reminder when reviewing criminal cases.

A particular criminal case may or may not contain the items enumerated in the categories of potential materials referenced below. Where necessary, however, prosecutors should always seek to affirmatively resolve the existence or non-existence of applicable items.

Circumstances may arise in which a duty to disclose information may come into conflict with a duty of confidentiality or otherwise jeopardize the well-being of a witness. In such situations, Assistant District Attorneys are expected to seek advice from their supervisor as soon as is practicable.

General

Do you have any information that would indicate that the suspect did not commit this crime?

Misidentifications, Non-Identifications and Other Suspects

1. Has anyone identified someone *other than the defendant* as the perpetrator of the crime in any of the following?
 - A. Photo display
 - B. Photo array
 - C. Street encounter/show up
 - D. Line-up
 - E. Non-police arranged viewing
 - F. By name
 - G. Other
2. Has anyone *failed to identify* the defendant as the perpetrator of the crime in any of the following?
 - A. Photo display
 - B. Photo array
 - C. Street encounter/show up
 - D. Line-up

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- E. Non-police arranged viewing
- F. Other
- 3. Has anyone indicated that the defendant did not commit the crime?
- 4. Did the police stop, question or arrest any suspect other than the defendant in connection with this crime?
- 5. Did the police suspect any person other than the defendant as the perpetrator of this crime?
- 6. Did the police conduct any of the following identification procedures with another suspect in connection with this case?
 - A. Photo array
 - B. Show up
 - C. Line-up
 - D. Other
- 7. Is there scientific or other evidence that tends to implicate someone else?
 - A. Does a DNA report indicate the presence of contributors other than the suspect?
 - B. Does a latent fingerprint report indicate the presence of another individual, whether identified or unidentified?
 - C. Have all relevant elimination samples been collected?

Witness Statement Considerations

- 1. Has any witness ever:
 - A. Denied witnessing the crime?
 - B. Denied that the crime occurred?
 - C. Denied that the charged defendant committed the crime?
 - D. Provided a version of events that varies materially from his/her expected trial testimony?
 - E. Indicated a lapse in memory with respect to the matter?

Cooperating Accomplices

- 1. Has such a witness ever:
 - A. Provided a version that corroborates, in whole or in part, the version given by the defendant?
 - B. Provided a version that contradicts, in whole or in part, the version given by the defendant?
 - C. Overstated or understated the facts of the crime?
 - D. Denied participating in the crime?
 - E. Minimized his/her participation in the crime?

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Benefits to a Witness or Third Party

1. Has any witness, or any third party on behalf of a witness, been:
 - a. Offered or given a reduced plea?
 - b. Offered or given immunity?
 - c. Offered or given a *non-prosecution* agreement?
 - d. Offered or given a reduced sentence?
 - e. Offered or given a letter to other law enforcement detailing his/her assistance?
 - f. Offered or given a letter to other law enforcement making a recommendation on his/her behalf?
 - g. Offered or made a favorable bail recommendation?
 - h. Given money in connection with the witness' testimony or cooperation?
 - i. Paid expenses or fees, including witness fees?
 - j. Offered or received immigration assistance?
 - k. Relocated or received housing assistance?
 - l. Any other benefit, financial or otherwise? (e.g., money for food, relocation expenses, living expenses, damage expenses, intervention with another agency on behalf of a witness or third party, etc.)

Mental and Physical Health Issues

1. Does any witness have a mental health condition which might impair his/her ability to perceive, recall or recount the events about which the witness is expected to testify?
2. Does any witness have a physical, or health condition which might impair his/her ability to perceive, recall or recount the events about which he/she is expected to testify (e.g., alcohol abuse, drug abuse, wears eyeglasses, etc)?

Bias or Motive to Fabricate

1. Does any witness have a pending civil lawsuit arising out of the subject matter of the testimony?
2. Does any witness have a relationship, or past history, with the defendant that would tend to bias him/her against the defendant?
3. Has any witness been paid, or sought a reward, for information which is the subject matter of his/her testimony (e.g., payment through Crime Stoppers, payment through NYPD gun recovery program, etc.)?

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Known Acts Which Adversely Affect Credibility

1. Does any witness have a criminal conviction?
2. Does any witness have a pending criminal charge?
3. Has the witness claimed similar victimization in the past (whether founded or unfounded)?
4. Have any police officers involved in the case received professional discipline?

Suppression Claims

1. Is there any information tending to support defendant's suppression claim?