

IN THE SUPREME COURT OF FLORIDA

AMENDMENTS TO FLORIDA RULES )  
OF CRIMINAL PROCEDURE 3.851, ) Case No. 96,646  
3.852, AND 3.993 )

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**CORRECTION AND CLARIFICATION TO THE  
SOLICITOR GENERAL’S COMMENTS ON THE  
PROPOSED AMENDMENTS TO FLORIDA RULES OF  
CRIMINAL PROCEDURE 3.851, 3.852, AND 3.993**

The Solicitor General hereby offers the following correction and clarification to the legal argument set forth in the Comments that he filed in this proceeding on June 1, 2000:

1. The opening paragraph of the “Argument in Support of Comments” section on page 5 of the Solicitor General’s Comments is corrected and clarified to read as follows:

A criminal defendant has a constitutional right to a fair trial which may be violated if the State fails to disclose evidence or information favorable to the defense. *See Brady v. Maryland*, 373 U.S. 83 (1963); *see also Strickler v. Greene*, 527 U.S. 263 (1999) (summarizing post-*Brady* cases). The State’s obligation to disclose extends not only to exculpatory evidence, but also to impeachment evidence, *see United States v. Bagley*, 473 U.S. 667, 676 (1985); it also extends to evidence known to the police investigators but not known to the prosecutor, *Kyles v. Whitley*, 514 U.S.

419, 438 (1995); and the duty to disclose applies even if there has been no request by the defendant. *See United States v. Agurs*, 427 U.S. 97, 107 (1976). Thus, whether framed as an obligation to disclose on the part of the State or a defendant's right to obtain favorable information, the defendant's right to a fair trial can only be ensured if there is a mechanism to enforce the State's obligation to disclose and an opportunity for the defendant to 'discover' possible violations of his constitutional rights. The discovery rules in the Florida Rules of Criminal Procedure, enacted pursuant to this Court's authority in Article V, section 2(a) to "adopt rules for the practice and procedure in all courts", provide the mechanism to enforce the State's obligation and serve to protect the defendant's constitutional rights. *See Henderson v. State*, 745 So.2d 319, 324 (Fla. 1999); *see also State v. Tascarella*, 580 So.2d 154, 156 (Fla. 1991) (explaining that the purpose of the criminal discovery rules "is to avail the defense of evidence known to the state so that convictions will not be obtained by the suppression of evidence favorable to a defendant or by surprise tactics in the courtroom.").

2. In all other respects, the Comments filed by the Solicitor General on June 1, 2000, remain unchanged.

Respectfully submitted this \_\_\_\_ day of June, 2000.

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THOMAS E. WARNER  
Solicitor General  
Florida Bar No.176725

T. KENT WETHERELL, II  
Deputy Solicitor General  
Florida Bar No. 060208

OFFICE OF THE SOLICITOR GENERAL  
The Capitol – Suite PL-01  
Tallahassee, Florida 32399-1050  
(850) 414-3681  
(850) 410-2672 (fax)

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_ day of June, 2000, a true and correct copy of the foregoing was provided by facsimile transmission to the following:

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Attorney

Hon. Stanley R. Morris  
201 E. Univ. Ave. Ste 302  
Gainesville, FL 32601-5461  
FAX - (352) 374-5238

Hon. Philip John Padovano  
1<sup>st</sup>. Dist. Court of Appeal  
301 S. Martin L. King Jr. Blvd  
Tallahassee, FL 33301-3304  
FAX - (850) 488-7989

Hon. John Patrick Kuder  
MC Blanchard Judicial Bldg.  
190 W. Gov. St. Fl. 6  
Pensacola, FL 32501-5773  
FAX - (850) 595-4552

Hon. Charles J. Kahn, Jr.  
1<sup>st</sup> DCA  
301 ML King Jr. Blvd  
Tallahassee, FL 32399-1850  
FAX - (850) 488-7989

Hon. Susan F. Schaeffer  
545 1<sup>st</sup>. Ave. N.  
St. Petersburg, FL. 33701-3701  
FAX - (727) 582-7806

Hon. Scott Jay Silverman  
1351 NW 12<sup>th</sup>. Ste 712  
Miami, FLA 333125-1627  
FAX - (305) 324-7213

Hon. Joseph P. Farina, Jr.  
73 W. Flagler St. Ste. 511  
Miami, FL 33130-1707  
FAX - (305) 375-1355

Hon Oscar H. Eaton, Jr.  
Seminole county Courthouse  
301 N. Park Ave.  
Sanford, FL 32771-1243  
FAX - (407) 665-4241

Hon. Belvin Perry, Jr.  
Circuit Judge  
425 N. Orange Ave.  
Orlando, FL 32801-1544  
FAX - (407)836-2006

Hon. Dudley Goodlette  
3391 Tamiami Trail  
Administration Bldg. Suite 203  
Naples Fl. 34112  
FAX - (941) 435-1218

Hon. Tom Feeney  
P. O. box 622109  
101 Geneva Drive  
Oviedo, FL 32762-2109  
FAX - (407) 977-6504

Hon Johnnie B. Byrd, Jr.  
P. O. Drawer E  
121 N. Collins St., Suite 202  
Plant City, FL 33564  
FAX - (813) 757-9109

Hon. Bennett H. Brummer  
Public Defender's Office  
1320 NW 14<sup>th</sup>. St.  
Miami 33125-1609  
FAX - (305) 545-1997

Hon. Nancy Ann Daniels  
Public Defender's Ofc.  
301 S. Monroe St. #401  
Tallahassee, FL 32301-1803  
FAX - (850) 488-9148

Hon. Richard L. Jorandby  
421 3<sup>rd</sup> St.  
West Palm Beach, FL 33401  
FAX - (561) 355-7737

Hon. James Marion Moorman  
Polk County Courthouse  
P. O. Box 9000-Drawer  
Bartow, FL 33830-9000  
FAX - (941) 534-4355

Hon. James B. Gibson  
Public Defender's Office  
251 N. Ridgewood Ave.  
Daytona Beach, FL 32114-3275  
FAX - (904) 239-7731

John A. Boggs  
The Florida Bar  
650 Apalachee, PKWY  
Tallahassee, FL 32399  
FAX - (850) 561-5665

Billy Jack Hendrix  
The Florida Bar  
650 Apalachee, PKWY  
Tallahassee, FL 32399  
FAX - (850) 561-5665

William Carl McLain  
Leon Co. Cthse  
301 S. Monroe St. Ste 401  
Tallahassee, FL. 32301-1803  
FAX - (850) 487-7964

Michael J. Minerva  
Leon Co. Cthse  
301 S. Monroe St. Ste 401  
Tallahassee, Fl. 32301  
FAX - (850) 487-7964

Chet Kaufman  
Public Defender's Off.  
Leon Co. Court House Ste. 401  
Tallahassee, FL 32301  
FAX - (850) 488-0299

Gary Caldwell  
Public Defender's Off.  
421 3<sup>rd</sup> St.  
West Palm Beach, FL 33401  
FAX - (561) 355-7737

Stephen Krosschell  
14020 Roosevelt Blvd.  
Clearwater, FL 33762

FAX - (727) 524-8786

FAX - (850)561-5665

Timonthy P. Schardl  
Mark E. Olive  
320 W. Jefferson St.  
Tallahassee, FL 32301  
FAX - (850) 224-3331

Richard Greene  
Office of the Public Defender  
421-3rd. St. FL 6  
West Palm Beach, FL 33401  
FAX - (561)355-7737

Christina A. Spaulding  
Off. of Public Defender  
1320 NW 14<sup>th</sup> St. Room 519  
Miami, FL 33125  
FAX - (305) 545-1997

Larry B. Henderson  
Public Defender's Office  
112 Orange Ave. Ste. A  
Daytona Beach 32114-4310  
FAX - (904)254-3943

John W. Moser  
Capital Collateral Regional Counsel  
3801 Corporex. Park Dr. Ste. 210  
Tampa, FL 33619  
FAX - (813) 673-4503

Michael Pearce Dodson  
2305 Forsythe Ct.  
Tallahassee, FL 32308-3011  
FAX - (850)922-9866

Arthur I. Jacobs  
401 Centre St. 2<sup>nd</sup> Fl.  
P. O. Box 1110  
Fernandina Beach, FL 32035  
FAX - (904)261-7879

Elliott C. Metcalfe, Jr.  
2071 Ringling Blvd. Fl 5  
Sarasota, FL 34237-7036  
FAX - (941)951-4291

Neal A. Dupree  
Todd G. Scher  
101 N.E. 3<sup>rd</sup> Ave. Ste. 400  
Ft. Lauderdale, FL 33301  
FAX - (954) 713-1299

Gregory Conley Smith  
Andrew B. Thomas  
P. O. Box 5498  
Tallahassee, FL 32314-5498  
FAX - (850)488-7200

Jerome C. Latimer  
Stetson College of Law  
1401-61st South  
St. Petersburg, FL 33707  
FAX - (727) 347-3738

John F. Harkness, Jr.  
Executive Director, Fl. Bar  
P. o. Box 389  
Tallahassee, FL 32302