level of materiality by classifying the situation under which the exculpating information was withheld. Second, it was not clear, if the fairness of the trial was at issue, why the circumstances of the failure to disclose should affect the evaluation of the impact that such information would have had on the trial. Ultimately, the Court addressed these issues in *United States v. Bagley* [1100].

In *Bagley*, the Court established a uniform test for materiality, choosing the most stringent requirement that evidence is material if there is a reasonable probability that, had the evidence been disclosed to the defense, the outcome of the proceeding would have been different.[1101] This materiality standard, found in contexts outside of *Brady* inquiries,[1102] is applied not only to exculpatory material, but also to material that would be relevant to the impeachment of witnesses.[1103] Thus, where inconsistent earlier statements by a witness to an abduction were not disclosed, the Court weighed the specific effect that impeachment of the witness would have had on establishing the required elements of the crime and of the punishment, finally concluding that there was no reasonable probability that the jury would have reached a different result.[1104]

The Supreme Court has also held that "*Brady* suppression occurs when the government fails to turn over even evidence that is 'known only to police investigators and not to the prosecutor.' . . . '[T]he individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police.'" [1105]

Proof, Burden of Proof, and Presumptions.—It had long been presumed that "reasonable doubt" was the proper standard for crimi-

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[1100] 473 U.S. 667 (1985).

[1101] 473 U.S. at 682. Or, to phrase it differently, a *Brady* violation is established by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. Kyles v. Whitley, 514 U.S. 419, 435 (1995). *Accord* Smith v. Cain, 565 U.S. ___, No. 10–8145, slip op. (2012) (prior inconsistent statements of sole eyewitness withheld from defendant; state lacked other evidence sufficient to sustain confidence in the verdict independently).

[1102] *See* United States v. Malenzuela-Bernal, 458 U.S. 858 (1982) (testimony made unavailable by Government deportation of witnesses); Strickland v. Washington, 466 U.S. 668 (1984) (incompetence of counsel).

[1103] 473 U.S. at 676–77.

[1104] Strickler v. Greene, 527 U.S. 263 (1999). *But see* Banks v. Dretke, 540 U.S. 668, 692–94 (2004) (failure of prosecution to correct perjured statement that witness had not been coached and to disclose that separate witness was a paid government informant established prejudice for purposes of habeas corpus review); Smith v. Cain, 565 U.S. ___, No. 10–8145, slip op. (2012) (prior inconsistent statements of sole eyewitness withheld from defendant; state lacked other evidence sufficient to sustain confidence in the verdict independently).

[1105] Youngblood v. West Virginia, 547 U.S. 867, 869–70 (2006) (per curiam), quoting Kyles v. Whitley, 514 U.S. 419, 438, 437 (1995).