SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE
NOTICE OF PROPOSED RULEMAKING

Proposed Amendment of Pa.R.Crim.P. 573

The Criminal Procedural Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 573 (Pretrial Discovery and Inspection) for the reasons set forth in the accompanying explanatory report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor will be officially adopted by the Supreme Court.

Additions to the text of the proposal are bolded and underlined; deletions to the text are bolded and bracketed.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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Supreme Court of Pennsylvania
Criminal Procedural Rules Committee
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All communications in reference to the proposal should be received by **no later than Friday, February 14, 2020.** E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

November 19, 2019 *BY THE CRIMINAL PROCEDURAL RULES COMMITTEE:*

Brian W. Perry
Chair

RULE 573. PRETRIAL DISCOVERY AND INSPECTION.

(A) **[INFORMAL] INITIATION OF DISCOVERY**

Before **any motion for** disclosure or discovery can be **filed [sought]** under these rules by either party, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information **and material** required or requested under these rules as to which there is no dispute. When there are items requested by one party which the other party has refused to disclose **within a reasonable time,** the demanding party may make appropriate motion. Such motion shall be made within **[14] 30** days after arraignment, unless the time for filing is extended by the court. In such motion the party must set forth the fact that a good faith effort to discuss the **[requested] information and** material has taken place and proved unsuccessful. Nothing in this provision shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

(B) DISCLOSURE BY THE COMMONWEALTH

(1) MANDATORY:

In all court cases, **[on request by the defendant, and]** subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the defendant's attorney all of the following **[requested]** items or information **[, provided they are material to the instant case]**. The Commonwealth shall, when applicable, permit the defendant's attorney to inspect and copy or photograph such items.

(a) **[Any evidence] Information** favorable to the accused **[that is material either to guilt or to punishment] including information that tends to exculpate the defendant, to mitigate the level of the defendant's culpability, to support a potential defense, or that tends to impeach a prosecution witness's credibility,** and is within the possession or control of the attorney for the Commonwealth**, regardless of the form that information takes and whether the attorney for the Commonwealth credits the information**;

(b) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;

(c) the defendant's prior criminal record*;*

(d) the circumstances**, [and]** results**, and any related documentation or notes** of any identification **or attempted identification** of the defendant by voice, photograph, or in-person identification**, and the circumstances, results, and any related documentation or notes of**

any identification or attempted identification of any other person conducted during the investigation of the instant case;

(e) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the defendant that are within the possession or control of the attorney for the Commonwealth;

(f) any tangible objects, including documents, **law enforcement notes or reports made in response to and in investigation of the current case,** photographs, **audio, video, or other electronic recordings,** fingerprints, or other tangible **[evidence] information**; and

(g) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

(2) DISCRETIONARY WITH THE COURT:

(a) In all court cases, except as otherwise provided in Rules 230 (Disclosure of Testimony Before Investigating Grand Jury) and 556.10 (Secrecy; Disclosure), if the defendant files a motion for pretrial discovery, the court may order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph any of the following requested items, upon a showing that they are material to the preparation of the defense, and that the request is reasonable:

(i) the names**, [and]** addresses, and the criminal record of eyewitnesses;

(ii) all written or recorded statements, and substantially verbatim oral statements, of eyewitnesses the Commonwealth intends to call at trial;

(iii) all written and recorded statements, and substantially verbatim oral statements, made by co-defendants, and by co-conspirators or accomplices, whether such individuals have been charged or not; and

(iv) any other **[evidence] information** specifically identified by the defendant, provided the defendant can additionally establish that its disclosure would be in the interests of justice.

(b) If an expert whom the attorney for the Commonwealth intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare, and that the attorney for the Commonwealth disclose, a report stating the subject

matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(c) Nothing in this rule is intended to limit disclosure of the foregoing information by agreement with the opposing party.

(C) DISCLOSURE BY THE DEFENDANT

(1) In all court cases, if the Commonwealth files a motion for pretrial discovery, upon a showing of materiality to the preparation of the Commonwealth's case and that the request is reasonable, the court may order the defendant, subject to the defendant's rights against compulsory self-incrimination, to allow the attorney for the Commonwealth to inspect and copy or photograph any of the following requested items:

(a) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, that the defendant intends to introduce as evidence in chief, or were prepared by a witness whom the defendant intends to call at the trial, when results or reports relate to the testimony of that witness, provided the defendant has requested and received discovery under paragraph (B)(1)(e); and

(b) the names and addresses of eyewitnesses whom the defendant intends to call in its case - in - chief, provided that the defendant has previously requested and received discovery under paragraph (B)(2)(a)(i).

(2) If an expert whom the defendant intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare and the defendant disclose a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(D) CONTINUING DUTY TO DISCLOSE

(1) The obligations of the parties under this rule extend to material and information in the possession or control of members of the parties' staff and of any others either who regularly report to or, with reference to the current case, have reported to the parties.

(2) The attorney for the Commonwealth shall make reasonable efforts to ensure that material and information favorable to the defendant is provided to the attorney for the Commonwealth's office by the police or other investigative personnel. The attorney for the Commonwealth shall report to the Court, with notice to the defense, if the police or other investigative

personnel fails to provide to the attorney for the Commonwealth information within its possession that would be discoverable if in the possession of the attorney for the Commonwealth.

(3) If the attorney for the Commonwealth is aware that information that would be discoverable if in the possession of the attorney for the Commonwealth is in the possession or control of a governmental agency not reporting directly to the prosecution, the prosecution should disclose the fact of the existence of such information to the defense.

(4) If a governmental agency not reporting directly to the attorney for the Commonwealth or a police department fails to provide information within its possession that would be discoverable if in the possession of the attorney for the Commonwealth, a motion to compel the disclosure of this information may be filed by either the attorney for the Commonwealth or the defense.

(5) If, prior to or during trial, either party discovers additional **[evidence] information** or material previously **required to be disclosed,** requested**,** or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party shall promptly notify the opposing party or the court of the additional **[evidence] information**, material, or witness.

(E) REMEDY

If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing **into** evidence **information or material** not disclosed, other than testimony of the defendant, or it may enter such other order**, including an order of dismissal or a finding of contempt against the party that has failed to comply,** as it deems just under the circumstances.

(F) PROTECTIVE ORDERS

Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court *in camera*. If the court enters an order granting relief following a showing *in camera*, the entire text of the statement shall be sealed and preserved in the records of the court to be made available to the appellate court(s) in the event of an appeal.

(G) WORK PRODUCT

Disclosure shall not be required of legal research or of records, correspondence,

reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the Commonwealth or the attorney for the defense, or members of their legal staffs.

COMMENT: This rule is intended to apply only to court cases. However, the constitutional guarantees mandated in *Brady v. Maryland*, 373 U.S. 83 (1963), and the refinements of the *Brady* standards embodied in subsequent judicial decisions, apply to all cases, including court cases and summary cases, and nothing to the contrary is intended. For definitions of "court case" and "summary case," see Rule 103. ***See also Commonwealth v. Green*, 640 A.2d 1242 (Pa. 1994)*; Commonwealth v. Johnson,* 815 A.2d 563 (Pa. 2002); *Commonwealth v. Paddy*, 800 A.2d 294 (Pa. 2002); *Commonwealth v. Smith*, 985 A.2d 886 (Pa. 2009).**

See Rule 556.10(B)(5) for discovery in cases indicted by a grand jury.

The attorney for the Commonwealth should not charge the defendant for the costs of copying pretrial discovery materials. However, nothing in this rule is intended to preclude the attorney for the Commonwealth, on a case-by-case basis, from requesting an order for the defendant to pay the copying costs. In these cases, the trial judge has discretion to determine the amount of costs, if any, to be paid by the defendant.

Paragraph (A) was amended in 2019 to recognize the more common practice of the parties to provide mandatory discovery information to the opposing party as a matter of course. This had previously been called "informal discovery." However, this terminology was changed to recognize that the first step in discovery should be the voluntary disclosure of mandatory discovery information without the need for there to be a solicitation by the opposing party. In the event that there is a disagreement between the parties, the process for seeking a motion to compel discovery is available as provided in the rule.

Any motion under this rule must comply with the provisions of Rule 575 (Motions and Answers) and Rule 576 (Filing and Service by Parties).

See Rule 576(B)(4) and *Comment* for the contents and form

of the certificate of service.

See Rule 569 (Examination of Defendant by Mental Health Expert) for the procedures for the examination of the defendant by the mental health expert when the defendant has given notice of an intention to assert a defense of insanity or mental infirmity or notice of the intention to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant.

For purposes of this rule, "information" means any evidence, document, item, or other material or data concerning the case.

Included within the scope of paragraph (B)(2)(a)(iv) is any information concerning any prosecutor, investigator, or police officer involved in the case who has received either valuable consideration, or an oral or written promise or contract for valuable consideration, for information concerning the case, or for the production of any work describing the case, or for the right to depict the character of the prosecutor or investigator in connection with his or her involvement in the case.

Pursuant to paragraphs (B)(2)(b) and (C)(2), the trial judge has discretion, upon motion, to order an expert who is expected to testify at trial to prepare a report. However, these provisions are not intended to require a prepared report in every case. The judge should determine, on a case-by-case basis, whether a report should be prepared. For example, a prepared report ordinarily would not be necessary when the expert is known to the parties and testifies about the same subject on a regular basis. On the other hand, a report might be necessary if the expert is not known to the parties or is going to testify about a new or controversial technique.

Whenever the rule makes reference to the term "identification," or "in-person identification," it is understood that such terms are intended to refer to all forms of identifying a defendant by means of the defendant's person being in some way exhibited to a witness for the purpose of an identification: *e.g.*, a line-up, stand-up, show-up, one-on-one confrontation, one-way mirror, *etc*. The purpose of this provision is to make possible the assertion of a rational basis for a claim of improper identification based upon *Stovall v. Denno*, 388 U.S. 293 (1967), and *United States v. Wade*,

388 U.S. 218 (1967).

This rule is not intended to affect the admissibility of evidence that is discoverable under this rule or evidence that is the fruits of discovery, nor the standing of the defendant to seek suppression of such evidence. *See* Rule 211 for the procedures for disclosure of a search warrant affidavit(s) that has been sealed.

Paragraph (C)(1), which provided the requirements for notice of the defenses of alibi, insanity, and mental infirmity, was deleted in 2006 and moved to Rules 567 (Notice of Alibi Defense) and 568 (Notice of Defense of Insanity or Mental Infirmity).

It is intended that the remedies provided in paragraph (F) apply equally to the Commonwealth and the defendant as the interests of justice require.

The provision for a protective order, paragraph (G), does not confer upon the Commonwealth any right of appeal not presently afforded by law.

It should also be noted that as to material which is discretionary with the court, or which is not enumerated in the rule, if such information contains exculpatory **[evidence] information** as would come under the *Brady* rule, it *must* be disclosed. Nothing in this rule is intended to limit in any way disclosure of **[evidence] information** constitutionally required to be disclosed.

Paragraph (B)(1)(a) was amended in 2019 to remove the provision of "materiality" from the requirement of mandatory disclosure by the prosecution of information favorable to the defense. While originally intended to convey the idea that the information was relevant to the case at issue, the term had become more narrowly defined in practice and used as an obstacle for disclosure. Additionally, paragraph (B)(1)(a) requires disclosure of favorable information regardless of the form in which that information might be or whether the attorney for the Commonwealth believes that the information is credible.

Paragraph (D) was amended in 2019 to clarify that the obligation of the parties to provide required discovery extends to the offices of the attorneys for the

Commonwealth and defense counsel, including those who regularly report to the respective attorneys. Additionally, the attorney for the Commonwealth has the obligation to obtain favorable materials relevant to the case from the police or other investigating entities that report to the prosecution. The attorney for the Commonwealth does not have an obligation to seek out favorable information affirmatively from governmental agencies that do not report to the prosecution but must inform the defense if they learn that favorable information is in the possession of those governmental agencies. For purposes of this rule, such governmental agencies may include, but are not limited to, child and youth agencies, child protective agencies, and the Department of Corrections. If discoverable information in the possession of the police or a governmental agency is being withheld, either the prosecution or defense may seek an order from the court to compel the information's disclosure.

The limited suspension of Section 5720 of the Wiretapping and Electronic Surveillance Control Act, 18 Pa.C.S. § 5720, see Rule 1101(E), is intended to insure that the statutory provision and Rule 573(B)(1)(g) are read in harmony. A defendant may seek discovery under paragraph (B)(1)(g) pursuant to the time frame of the rule, while the disclosure provisions of Section 5720 would operate within the time frame set forth in Section 5720 as to materials specified in Section 5720 and not previously discovered.

NOTE: Present Rule 305 replaces former Rules 310 and 312 in their entirety. Former Rules 310 and 312 adopted June 30, 1964, effective January 1, 1965. Former Rule 312 suspended June 29, 1973, effective immediately. Present Rule 305 adopted June 29, 1977 and November 22, 1977, effective as to cases in which the indictment or information is filed on or after January 1, 1978; *Comment* revised April 24, 1981, effective June 1, 1981; amended October 22, 1981, effective January 1, 1982; amended September 3, 1993, effective January 1, 1994; amended May 13, 1996, effective July 1, 1996; *Comment* revised July 28, 1997, effective immediately; *Comment* revised August 28, 1998, effective January 1, 1999; renumbered Rule 573 and amended March 1, 2000, effective April 1, 2001; amended March 3, 2004, effective July 1, 2004; *Comment* revised March 26, 2004, effective July 1, 2004; amended January 27, 2006, effective

August 1, 2006; amended June 21, 2012, effective in 180 days **[.] ; amended , 2020, effective , 2020.**

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COMMITTEE EXPLANATORY REPORTS:

Report explaining the September 3, 1993 amendments published at 21 Pa.B. 3681 (August 17, 1991).

Final Report explaining the May 13, 1996 amendments published with the Court's Order at 26 Pa.B. 2488 (June 1, 1996).

Final Report explaining the July 28, 1997 Comment revision deleting the references to the ABA Standards published with the Court's Order at 27 Pa.B. 3997 (August 9, 1997).

Final Report explaining the August 28, 1998 Comment revision concerning disclosure of remuneration published with the Court's Order at 28 Pa.B. 4883 (October 3, 1998).

Final Report explaining the March 1, 2000 reorganization and renumbering of the rules published with the Court's Order at 30 Pa.B. 1478 (March 18, 2000).

Final Report explaining the March 3, 2004 amendments to paragraphs (A), (C)(1)(a), and (C)(1)(b), and the revision to the Comment adding the reference to Rules 575 and 576 published with the Court's Order at 34 Pa.B. 1561 (March 20, 2004).

Final Report explaining the March 26, 2004 Comment revision concerning costs of copying discovery materials published with the Court's Order at 34 Pa.B. 1933 (April 10, 2004).

Final Report explaining the January 27, 2006 changes to paragraph (C) deleting the notice of defenses of alibi, insanity, and mental infirmity published with the Court's Order at 36 Pa.B. 694 (February 11, 2006).

Final Report explaining the June 21, 2012 amendments concerning discovery when case is indicted by grand jury published with the Court's Order at 42 Pa.B. 4140 (July 7, 2012).

Report explaining the proposed amendments concerning discovery of favorable information obligations published for comment at 49 Pa.B. (_____, 2019).

REPORT

Proposed Amendment of Pa.R.Crim.P. 573

MANDATORY DISCLOSURE OF FAVORABLE MATERIALS IN DISCOVERY

The Committee has been studying possible improvements to the discovery procedures regarding the mandatory disclosure of *Brady* materials, *i.e.*, information favorable to the defendant.[1] This inquiry was prompted by a recently adopted procedure in New York State that provides for the issuance of "*Brady* Orders" to remind prosecutors of their constitutional obligations to disclose exculpatory materials and to remind defense attorneys of their obligations of providing effective assistance. Additionally, the Committee reviewed suggested rule changes from the Pennsylvania Innocence Project ("Innocence Project") that proposed the adoption of the concept of "open file discovery."

The New York procedures, found in New York Uniform Rules for Courts Exercising Criminal Jurisdiction 200.16 and 200.27, 22 NYCRR 200.16 and 200.27, require that, in all criminal cases, when the defense counsel has provided the prosecution with a written discovery request, the trial court shall issue an order reminding the prosecution of its obligation to make timely disclosures of information favorable to the defense. These orders set out a broad list of materials that could be included in the definition of "favorable" materials and place on the prosecution a duty to disclose them in a timely fashion and "to learn of such favorable information that is known to others acting on the government's behalf in the case…." Personal sanctions may be imposed against prosecutors who commit "willful and deliberate" misconduct. The orders directed to defense counsel go beyond matters of discovery and address matters of professional responsibility in the general handling of the case.

The Committee reviewed the requirements of the New York procedures and compared them to the requirements of Rule 573 and Rule of Professional Conduct 3.8(d) (Special Responsibilities of a Prosecutor). The Committee concluded that issuing

[1] *See Brady v. Maryland*, 373 U.S. 83 (1963), the seminal U.S. Supreme Court case that established the obligation on the part of the prosecution to turn over exculpatory evidence to the defense.

a *Brady* order be included for every case, as in the New York procedures, would result in only "boilerplate" paperwork of little substantive value. Additionally, the Committee believes that the provisions of the New York procedures regarding defense counsel obligations were more a matter of professional responsibility and should not be included in a procedural rule. However, the Committee did conclude that some of the concepts regarding the prosecution's duties as defined in the New York procedures might be worthwhile to incorporate into Pennsylvania discovery practice as discussed below.

The Innocence Project proposed the adoption of "open file discovery," which, in concept, is the practice of automatically granting the defense access to all unprivileged information that, with due diligence, is known or should be known to the prosecution, law enforcement agencies acting on behalf of the prosecution, or other agencies such as forensics testing laboratories working for the prosecution. Such a policy reduces discretionary decisions in determining what evidence should be disclosed to the defense, effectively providing access to the prosecution's entire file. Open discovery has its roots in the 1994 American Bar Association (ABA) standards for criminal discovery, which recognized a growing trend toward expanding pretrial discovery in criminal cases.

In particular, the Innocence Project proposed eliminating the provision, contained in current Rule 573(A), requiring efforts at informal discovery, relying instead on provisions for broad mandatory disclosure by the prosecution. Their proposal also would establish an open file requirement for the Commonwealth that would include a detailed definition of the term "file," the contents of which must be disclosed, as well as other forms of information that must be disclosed even if not with the prosecution's case file. It would impose a duty of due diligence to ensure that all offices involved in the investigation of the case disclose the required information. The current provisions regarding discretionary discovery would be removed as unnecessary since discovery essentially would be mandatory. Also suggested was a statement of the Commonwealth's *Brady* obligations, derived from the New York procedures, to be added to the *Comment* to Rule 573. As with its review of the New York procedures, the Committee believes that adoption of the entirety of the Innocence Project's proposal would not be warranted but did conclude that incorporation of a number of the suggested concepts into discovery practice would be beneficial.

The Committee, therefore, is proposing that Rule 573 be amended in a number of particulars. First, the changes attempt to better define the duties of the parties to provide favorable information in a timely fashion and the remedies when such disclosure is not made. This would include a change in terminology of what is to be provided from “evidence” to “information” to indicate the broader scope of materials to be turned over. The rule changes would also provide more detail in describing some of the types of information, such as that relating to identification, to be disclosed to the defense. The changes would also remove the requirement that *Brady* information be “material.” Rather, the rule would be changed to rely on whether the information could be considered favorable, and require that such information be disclosed regardless of the form that information takes and whether the prosecutor credits the information. The proposed changes would more clearly define the duty of prosecutors to discover and disclose evidence favorable to the defense, including obligating the prosecution to make reasonable efforts to obtain information relating to the defendant and the offenses charged that is in the possession of investigative personnel as well as define the organizations covered by this obligation. The Rule 573 *Comment* would also be revised to cross-reference some of the key caselaw in defining *Brady* obligations.

In developing these proposed changes, the Committee first examined the language in paragraph (A) of Rule 573, currently titled “Informal Discovery,” and concluded that it does not adequately describe current discovery practice. The most common practice is for prosecutors to make available most of their investigative file to the defense at a fairly earlier stage in the proceeding without the need for a formal request by the defense. The Committee initially agreed that it is unnecessary to retain the caption "informal discovery" but did believe that the provisions in paragraph (A) regarding filing a motion to seek relief when there is a dispute about compliance should be retained.

Ultimately, the Committee concluded that the rule should retain some language regarding voluntary discovery of mandatory information but should not be defined by a formal request of discoverable materials. The Committee also believes that the current 14-day time limit for filing any motion to compel when voluntary compliance has failed places an unrealistic burden on both the prosecution and defense and should be increased to 30 days following the arraignment. To these ends, paragraph (A) would be

retitled to “Initiation of Discovery” and paragraph (A) would be revised to indicate that discovery among the parties should be the first step and that the involvement of the trial court occur when there is a dispute over discovery. The language in paragraph (A) also would be modified to emphasize that mandatory discovery should proceed without the need for a formal request to be lodged. *Comment* language would be added to explain this concept further.

Paragraph (B)(1), regarding mandatory disclosure by the Commonwealth, would be modified in several ways. This would include a more detailed definition of “favorable information” as any information that “tends to exculpate the defendant, to mitigate the level of the defendant’s culpability, to support a potential defense, or that tends to impeach a prosecution witness’s credibility.” The requirement that the defense must first request mandatorily discoverable information also would be removed.

Furthermore, the requirement that the information must be “material” would be eliminated. The Committee concluded that this terminology was originally intended to convey the idea that the information was relevant to the case at issue. However, it appears that this term had become more narrowly defined in practice and used in some cases as an obstacle to disclosure.

The changes to paragraph (B)(1) would also include an expanded description of the types of information that should be considered favorable. For example, the prosecution would be required to disclose the circumstances of identification and attempted identifications of the defendant and other persons during the investigation of the instant case as well as notes and reports by investigative personnel concerning identifications made in response to the investigation of the instant case. Finally, paragraph (B)(1) would state that the disclosure of favorable information is required regardless of the form in which that information might be or whether the attorney for the Commonwealth believes that the information is credible.

Paragraph (B)(2), regarding discovery of prosecution information that is discretionary with the court, and Paragraph (C), defining disclosures by the defendant, would remain effectively unchanged. However, a new paragraph (B)(2)(c) would recognize the practice of disclosure by agreement among opposing counsel of discretionarily discoverable information.

The Committee also is proposing a number of changes to paragraph (D) that would better define the continuing duty of the parties to disclose favorable information, with particular emphasis on the Commonwealth's obligations. New paragraph (D)(1) would state that the duty to disclose extends to the parties' staff or others who report to the parties. New paragraph (D)(2) would obligate the attorney for the Commonwealth to make reasonable efforts to obtain information relating to the defendant and the offenses charged that is in the possession of the police and other investigative personnel. The Committee is not proposing to place an affirmative obligation on the attorney for the Commonwealth to seek out favorable information in the possession of other governmental agencies other than the police or other investigative personnel. These "other governmental agencies" would include entities outside of the control of the attorney for the Commonwealth, such as the Department of Corrections and child and youth services agencies. As provided in new paragraph (D)(3), the attorney for the Commonwealth must advise the defense of the existence of such information when the Commonwealth becomes aware of it. These duties would be further elaborated in the *Comment* to Rule 573.

Several members of the Committee identified a problem of police departments who either fail to provide discoverable information to the attorney for the Commonwealth or provide such information at a late date despite efforts by the attorney for the Commonwealth, thus necessitating a delay in trial. To address this problem, new paragraph (D)(2) would require the attorney for the Commonwealth to alert the trial judge when there is difficulty in obtaining information from the police or other investigative personnel and, in paragraph (D)(4), to permit all parties to the case, including the attorney for the Commonwealth, to seek an order to compel this disclosure.

Paragraph (E), regarding remedies for failure to abide by the rule, would be modified to state that the sanctions that may be imposed include dismissal and contempt. The Committee also concluded that the substantive interpretation of *Brady* obligations would be more effectively addressed by adding to the Rule 573 *Comment* cross-references to the key United States Supreme Court and Pennsylvania Supreme Court cases that define the *Brady* obligation.