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#### **Fourth Circuit Court of Appeals**

(Note: You may access the court's opinion by clicking on the case name)

#### **Court Holds That Federal Prosecutors' Failure to Disclose Impeachment Evidence Concerning Key Government Witness Violated *Brady v. Maryland*, 373 U.S. 83 (1963), and Orders New Trials for Defendants**

[United States v. Parker](#), \_\_\_ F.3d \_\_\_, 2015 WL 3895452 (4th Cir. June 25, 2015). The defendants were convicted in federal district court of engaging in illegal gambling. The central contested issue in the jury trial was the sufficiency of the evidence to prove the statutory requirement that the gambling operation involve at least five people. A key government witness, Ben Staples, testified about Tammy Parker's involvement in the gambling operation. She was among the people mentioned at trial that could have constituted the fifth person involved in the gambling operation. Three days before the trial began, Staples advised federal prosecutors that the Securities and Exchange Commission (SEC) was actively investigating him for fraud unrelated to this criminal trial, but the prosecutors did not inform defense counsel of this information. On the second day of trial, an attorney in the civil division of the same U.S. Attorney's Office prosecuting the defendants received a draft SEC civil complaint alleging fraud against Staples, which was filed in the same district court two days after the jury returned guilty verdicts. This information also was not disclosed to defense counsel. After defense counsel learned of this information after trial, they filed a motion for a new trial based on the prosecutors' failure to disclose this impeachment evidence, which they contended was material to the jury's guilty verdicts because the jury could have found that Parker was the fifth participant based primarily on Staples's testimony. The district court denied the motion. The fourth circuit reversed. It noted that the defense could have used the fraud evidence in two ways: (1) demonstrate Staples's potential bias in testifying as a government witness when he knew that a significant federal investigation was pending against him; and (2) show Staples's general character for untruthfulness under Rule 608(b). After analyzing the impact of the undisclosed evidence on the jury's verdicts, the court held the evidence to be both favorable and material under *Brady v. Maryland*, 373 U.S. 83 (1963), reversed the defendants' convictions, and ordered new trials.