

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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TCP Renews Call for Federal Criminal Discovery Reform *Sloan: 'Systemic failure' at DoJ requires legislative response*

WASHINGTON, D.C. -- A bipartisan constitutional watchdog group again called on Congress to pass legislation ensuring that federal prosecutors disclose favorable information to defendants and that they be appropriately penalized when they do not.

Virginia Sloan, the president of The Constitution Project (TCP), sent a [letter to members](#) of the Senate Judiciary Committee asking them "to carefully consider the need for legislation to clarify federal prosecutors' discovery obligations in the face of mounting evidence that the Department of Justice's efforts to address the problem internally have proven insufficient."

Federal prosecutors have a constitutional duty to hand over evidence that might help lawyers for an accused person to mount an effective defense. The committee conducted a hearing on the topic earlier today.

"The U.S. Supreme Court has ruled repeatedly that the failure of prosecutors to share evidence with defendants that is favorable to their cases, whether intentional or inadvertent, violates the constitutionally guaranteed right to due process. Yet, despite the Court's clear mandate and the Department's best efforts, all too often defendants are not given the evidence that they are constitutionally entitled to receive," Sloan said.

Sloan noted in her letter that, in recent months, "the extent of the Department's systemic failure to adequately disclose evidence has only become clearer." She pointed to recent reports in The Washington Post that, over a period of years, federal prosecutors had failed to disclose to defendants in at least 24 cases the findings of an internal Department of Justice task force investigating flawed forensic evidence.

She also cited D.C. Federal District Court Judge Gladys Kessler's recent statement that "there [was] not the slightest doubt" that federal prosecutors had violated their constitutional obligations to turn over exculpatory information in a conspiracy case against Charles Daum, Daaiyah Pasha, and Iman Pasha.

The Department of Justice told the Senate Judiciary Committee it could deal with the problem through internal policies, but Sloan disagreed.

"Internal Department policies, by design, cannot be relied upon by courts or defendants, and are,

therefore, inadequate to ensure fairness in criminal proceedings," she wrote to the committee members. "It seems clear that in an adversarial system, prosecutors cannot be expected to consistently adhere to policies when the consequences for violating those policies are minimal or nonexistent," she added.

The U.S. Supreme Court held in its 1963 decision in *Brady v. Maryland* that prosecutors have a constitutional obligation to provide the defense with "evidence favorable to an accused . . . where the evidence is material either to guilt or to punishment." The failure by a prosecutor to disclose appropriate information is often referred to as a "*Brady* violation."

Earlier this year, TCP released a statement from more than 140 criminal justice experts, including more than 100 former federal prosecutors, calling on Congress to adopt legislation to address the problem. TCP's [Call for Congress to Reform Federal Criminal Discovery](#) with a full list of signatories is available online.

[About The Constitution Project](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project (TCP) brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time. TCP seeks to reform the nation's broken criminal justice system and to strengthen the rule of law through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.

