

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Contact: Larry Akey, Director of Communications, (202)580-6922 [o] or (202)580-9313 [c]
lakey@constitutionproject.org

Justice Department Must Disclose Criminal Discovery Manual, TCP Tells Court

WASHINGTON, D.C. -- The Department of Justice cannot refuse to make public the contents of its manual that explains how and when federal prosecutors must disclose information favorable to a criminal defendant pursuant to the Supreme Court's decision in *Brady v. Maryland*, a bipartisan constitutional watchdog group argues in a [friend-of-the-court brief](#) filed with the U.S. Circuit Court of Appeals for the District of Columbia late yesterday.

The brief from The Constitution Project contends that "government agencies cannot cite to secret governmental materials as part of a public debate on an issue, then withhold those materials when the public asks to see them."

The manual is called the Federal Criminal Discovery Blue Book, or Blue Book for short, and has been used by DOJ to resist federal criminal discovery reforms. "By injecting the Blue Book into the important public debate about *Brady* issues, at the highest levels of government, DOJ made clear that the Blue Book is exactly the sort of information that must be disclosed," the brief claims.

The U.S. Supreme Court [recognized](#) in its landmark 1963 decision in *Brady v. Maryland* that the due process clause of the Constitution obligates prosecutors to make potentially exculpatory evidence available to defendants. While most prosecutors make good-faith efforts to comply with this duty, confusion and disagreement regarding the scope of required disclosures often leads to the failure by a prosecutor to provide necessary information, referred to as a "*Brady* violation."

In one high-profile case from 2009, less than six months after a jury found former Senator Ted Stevens (R-Alaska) guilty of making false statements and arguably ending his 40-year career in the U.S. Senate, a federal judge set aside the verdict and dismissed all charges against him. The judge took this extraordinary step after the Department of Justice revealed that prosecutors had not provided information to Stevens' legal team that might have led to his acquittal. A [comprehensive report](#) by an independent, court-ordered investigator detailed federal prosecutors' numerous failures to disclose exculpatory evidence during the trial.

In 2012, Senator Lisa Murkowski (R-Alaska) introduced bipartisan legislation that would clarify prosecutors' disclosure obligations and provide courts with the necessary tools to hold violators accountable. The Constitution Project [released a statement](#) from more than 150 criminal justice system experts, including more than 100 former federal prosecutors, supporting discovery reform. The Department of Justice vehemently opposed the legislation, stating that Congress need not act because the agency was addressing these concerns through internal training and other changes, including creation and dissemination of the Blue Book.

Despite the department's assertion, the friend-of-the-court brief argues "discovery violations in federal prosecutions continue." The brief also cites Ninth Circuit Chief Judge Alex Kosinski's [recent opinion](#) that "*Brady* violations have reached epidemic proportions in recent years, and the federal and state reporters bear testament to this unsettling trend."

Release of the contents of the manual to the public is necessary to "hold DOJ accountable and ensure that DOJ itself is not circumventing the law (*Brady*) by hiding behind its own manual," the brief says.

The National Association of Criminal Defense Lawyers initially requested access to the Blue Book under the Freedom of Information Act. After the department declined to provide it, NACDL sued. A federal district judge backed the DOJ, and NACDL appealed.

The Innocence Project, an organization dedicated primarily to providing pro bono legal and related investigative services to indigent prisoners whose actual innocence may be established through post-conviction evidence, joined TCP in filing the friend-of-the-court brief in support of NACDL, which was prepared with pro bono assistance from Miller & Chevalier.

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[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 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 through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.