

# THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

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## Judges Should Avoid 'Acquitted Conduct' in Determining Criminal Sentences, TCP Says

WASHINGTON, D.C. -- A judge sentencing a defendant convicted of a crime should not be allowed to consider alleged conduct for which the individual has already been acquitted, says The Constitution Project, a bipartisan legal watchdog group.

In a [friend-of-the-court brief](#) filed late yesterday asking the U.S. Supreme Court to consider the case of former Alabama Governor Don Siegelman, TCP said that when a court increases a sentence based on acquitted conduct, it oversteps its sentencing authority granted by the jury, in violation of the Sixth Amendment.

"The Founders clearly intended that the jury play a central role in our system of justice, and allowing judges to ignore the will of the people by increasing sentences on the basis of conduct for which a jury has found a defendant not guilty is inconsistent with that intent. Acquitted conduct should have absolutely no place in sentencing," said TCP President Virginia Sloan.

In 2006, a federal jury convicted Siegelman of appointing former HealthSouth CEO Richard Scrushy to a state board in exchange for campaign donations. However, in determining Siegelman's sentence, the judge considered not only the crimes for which the jury found him guilty, but also several charges on which he had been acquitted, substantially increasing the amount of time he would serve.

The Constitution Project Sentencing Initiative convened a blue-ribbon committee of current and former judges, prosecutors, defense attorneys, scholars, and sentencing experts to examine principles for sentencing. Chaired by President Reagan's Attorney General, Edwin Meese, and President Clinton's Deputy Attorney General, Philip Heymann, the Initiative's [2006 report](#) criticized the use of acquitted conduct in criminal sentencing.

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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.*