

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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Sloan Commends D.C. District Court on Proposed Disclosure Rule

WASHINGTON, D.C. -- Virginia Sloan, president of The Constitution Project, a bipartisan legal watchdog group, offered the following comment commending the U.S. District Court for the District of Columbia on a [local rule proposed](#) earlier in the week on the obligation of prosecutors to disclose exculpatory evidence:

"Prosecutors have a constitutional duty to hand over evidence that might help lawyers for an accused person to mount an effective defense. Unfortunately, what that entails is all too often left to the discretion of the individual prosecutor. This proposed rule offered by the D.C. District Court will help clarify for the government what must be turned over to defense counsel and when. This rule is especially important in light of a [recent report](#) that shows exonerations for people wrongfully convicted of a crime are at an all-time high, with many of the cases involving *Brady* violations."

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."

The proposed rule would codify the government's discovery obligation set out by the Supreme Court. Most significantly, it imposes specific timelines on prosecutors and defines for the first time what constitutes "favorable information" under *Brady*.

In 2012, TCP [released a statement](#) from nearly 150 criminal justice experts, including more than 100 former federal prosecutors, urging changes in the criminal discovery process. In addition, TCP has organized [several friend-of-the court briefs](#) arguing for clearer disclosure rules. In 2014, TCP's bipartisan Death Penalty Committee [recommended](#) "open file" discovery in capital cases.

The legal community and the public have 45 days to comment on the proposed rule.

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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.