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### Greetings!

I hope you enjoyed a peaceful holiday season. With the next presidential election just ten months away, 2012 promises to be an exhilarating year. The Constitution Project has an ambitious agenda for the year ahead and we look forward to working with you in support of the Constitution, the rule of law, and criminal justice reform. We recognize that the level of political partisanship has been great in recent times, and that it increases during election years, but that's what makes our mission of finding bipartisan consensus all the more important.



Thanks for your interest in our work, and please accept my best wishes for a healthy and happy new year.

Sincerely,

Virginia Sloan  
President, The Constitution Project

## Obama Signs Law Authorizing Indefinite Detention

Detention and Prosecution of Terrorism Suspects

After weeks of threatening to veto the legislation over controversial provisions relating to the detention of suspected terrorists, President Obama signed the 2012 National Defense Authorization Act (NDAA) into law on December 31st. TCP



[Watch Video:](#)[House discussion of NDAA Conference Report](#)

President Virginia Sloan said in a [statement](#) following the signing, "We remain concerned that provisions in the new law threaten to undermine our constitutional traditions and commitment to the rule of law. One of those provisions codifies the executive branch's power to subject a broad category of terrorism suspects to military detention without charge or trial until 'the end of hostilities,' a point that remains dangerously elusive more than a decade after the attacks of September 11, 2001. Other provisions prohibit the transfer of Guantanamo detainees to the U.S. for any reason, including trial, and impose a burdensome set of certification requirements before a detainee can be released to another country, even when the detainee no longer poses a threat, making it extremely difficult for President Obama to follow through on his promise to close the Guantanamo Bay prison."

Despite the president's assurances contained in a signing [statement](#) that he would interpret the law consistent with both the Constitution and the laws of war, and would not authorize the indefinite military detention without trial at least of American citizens, Sloan said, "While the president's pledge is a step in the right direction, it is not legally binding-either on this administration or succeeding ones."

Sloan also noted TCP's long-standing [criticism](#) of the misuse of presidential signing statements. "We are troubled by President Obama's assertion that he might treat certain of NDAA's provisions, unrelated to detention, as 'non-binding,' thereby effectively vetoing them without affording Congress the opportunity to override the veto," she said. "If the president truly believes that some provisions of the NDAA are constitutionally infirm, he should have vetoed the bill," she added.

TCP spoke out against the detention provisions as the NDAA moved through Congress. TCP Board member and former judge and FBI director William Sessions detailed the problems with the bill in a letter to members of Congress, which was cited extensively during [the debate](#) on the House floor by House Judiciary Chair John Conyers (D-MI) and House Constitution Committee Chair Jerrold Nadler (D-NY) and, according to those behind closed doors, was extraordinarily influential in private debates among members about whether to support the bill or oppose it as unconstitutional. Sloan wrote an [op-ed](#) for *The Huffington Post* in which she urged President Obama to veto the NDAA if Congress did not fix the offensive provisions.

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## TCP Backs Miami Public Defender in Effort to Better Represent Indigent Clients

Indigent Defense

Briefing has begun in the Florida Supreme Court case of *State v. Public Defender, Eleventh Judicial Circuit*, a case centering on the current public defense crisis in Florida. The case originated when the Public Defender for the Eleventh Judicial Circuit (Miami, Florida) filed a motion seeking permission to be relieved of its statutory obligation to represent indigent defendants in noncapital felony cases, arguing that underfunding had led to excessive caseloads that prevented the Public Defender from carrying out its legal and ethical obligations to indigent defendants.

The lower appellate court held that it could not order such relief, ruling that, for the Public Defender to be relieved of its duty to represent indigent defendants, it needed to prove, on a case-by-case basis, prejudice or conflict resulting from something other than an excessive caseload. Last year, the Florida Supreme Court agreed to hear the case.

With the invaluable pro bono assistance of attorneys at Greenberg Traurig, TCP organized an

[amicus brief](#), filed last week, from prominent Floridians with professional experience with the state's criminal justice system, including former judges and prosecutors. The brief argues that the courts can and should address the ethical issues associated with excessive caseloads in this case, rather than leave it to the state legislature.

Additionally, TCP joined other advocacy organizations such as the Florida Association of Criminal Defense Lawyers, National Association of Criminal Defense Lawyers and Brennan Center for Justice in an amicus brief that argues the Public Defender's excessive caseloads have created systemic problems that threaten not only ethical violations, but also violations of their clients' constitutional right to the effective assistance of counsel.

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## TCP Lauds Nominations of Wald and Medine to Privacy Board

### Privacy and Technology

On December 15th, President Obama announced that he had selected [three new members](#) to serve on the Privacy and Civil Liberties Oversight Board (PCLOB), including longtime TCP Liberty and Security Committee member Judge Patricia Wald and David Medine, a prominent lawyer at WilmerHale and reporter for two of TCP's committee reports. In a statement released the day of the announcement, TCP Senior Counsel Sharon Bradford Franklin said of Wald and Medine, "We know from our work with both of them that they are excellent choices for this critical work."



Patricia Wald



David Medine

Created by Congress based on the recommendations of the bipartisan 9/11 Commission, the PCLOB is designed to play a vital independent role in oversight of privacy and civil liberties. However, since 2007 when Congress authorized the Board as an independent agency with subpoena power, no members have been confirmed to serve, and the PCLOB currently exists in name only. TCP has long urged Congress and the President to create and staff an independent Board. Most recently, in August, TCP led a diverse coalition [urging the administration](#) to fill the long-standing vacancies on the Board. We hope the Senate will act on these nominations expeditiously.

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## DNA Testing Shows Florida Has Wrong Man on Death Row

### Death Penalty

DNA testing results released in early December by the Florida Department of Law Enforcement (FDLE) strongly suggests that the state has the wrong person on its death row for the 1986 rape and murder of Vronzettie Cox. The FDLE had already determined that DNA found at the crime scene did not match that of convicted murderer, Paul Hildwin, but the most recent results reveal that the DNA instead was that of William Haverty, Cox's boyfriend at the time of her death, who is currently incarcerated in Florida for a number of other crimes not related to Cox's murder.

Despite repeated requests by Hildwin's attorneys that the DNA in his case be compared against the

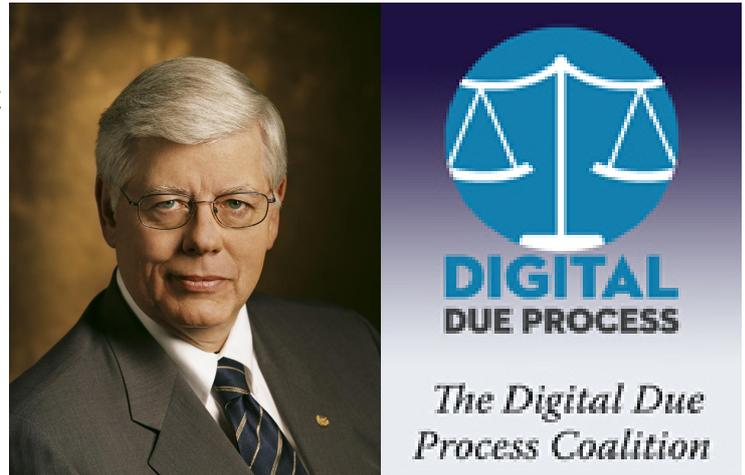
genetic profiles in databases of known criminals, the state resisted testing for a number of years. In keeping with the findings of its Death Penalty Committee in the landmark 2005 study, [Mandatory Justice: The Death Penalty Revisited](#), TCP filed an [amicus brief](#) in support of Hildwin's request. Finally, on November 10, 2011, the Florida Supreme Court granted Hildwin's request for testing. Based on this explosive new exculpatory evidence, his attorneys have asked the Florida Supreme Court to vacate Hildwin's conviction.

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## 2012 Constitutional Champions Gala in March

Upcoming Event

Mark your calendars now for our [2012 Constitutional Champions Gala Awards](#). The event will take place on March 29, 2012 from 6:30 to 9:30 pm. We are excited to present The Constitution Project's annual awards to David A. Keene, former chairman of the American Conservative Union, and the Digital Due Process Coalition, a diverse coalition of technology companies, privacy advocates, and think tanks. For more information about [sponsorship opportunities and program advertising](#), please contact Kelly Davies at 202-580-6942 or [kdavies@constitutionproject.org](mailto:kdavies@constitutionproject.org).



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## TCP to Host Location Tracking Event in New York

Upcoming Event

On March 6th, TCP will host a timely panel discussion in at the Rockefeller Brothers Fund in New York City on location tracking issues. The public discussion will focus on *United States v. Jones*, a case involving the use by police of GPS tracking devices without a warrant. More broadly, we will look at how to preserve Fourth Amendment protections in the digital age. We aim to present a variety of perspectives and views on the issue. For more information, check our website at [www.constitutionproject.org](http://www.constitutionproject.org).

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## TCP Newsmakers in Brief

Current Events

- On December 19th, TCP filed [comments](#) with the State Department concerning its proposed Partner Vetting System program. The program is designed to make certain that federal funding provided to overseas aid organizations is not passed on to groups who provide material support for terrorists. TCP's comments relied upon recommendations in our past reports on material support, data mining, and terrorist watch lists.
- In a December 10th op-ed in the [Statesman-Journal](#) former Governor of Texas and TCP Death Penalty Committee Co-Chair **Mark White** spoke out in support of Governor John Kitzhaber's

decision to institute a death penalty moratorium in Oregon. Having himself overseen 19 executions, Governor White believes, "such a decision should be welcomed by all who value justice, regardless of their personal beliefs about the death penalty."

- On December 7th, Senior Counsel **Sharon Bradford Franklin** spoke on a panel at a conference sponsored by the Alliance for Peacebuilding and 3P Human Security about reforming the [material support laws](#).
- TCP's President **Virginia Sloan** and Senior Counsel **Mary Schmid Mergler** were quoted in a December 1st [Stateline article](#) critiquing flat-fee contracting systems for indigent defense. In these difficult economic times, many states have experimented with fixed-rate contracts in an effort to cut costs, but Ms. Sloan says, "It really is penny-wise and pound-foolish to use a flat-fee compensation system that doesn't pay lawyers what they need for investigations and casework."

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