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Greetings!

The [2012 Constitutional Champions Gala](#) is just weeks away! I really hope you can join us on March 29th from 6:30 to 9:30 pm as we present TCP's annual awards to David A. Keene, former longtime chairman of the American Conservative Union, and the Digital Due Process Coalition, a diverse coalition of technology companies, privacy advocates, and think tanks.



Both honorees [are extremely deserving](#). Dave Keene is one of the most widely respected conservatives in Washington, D.C. and around the country. Because he puts principle above partisanship, he has played an indispensable role in the battle for smart criminal justice reforms. He also is a staunch defender of the rule of law. A true conservative, Dave distrusts government overreaching, believing that the government should have the tools it needs -- but not necessarily all the tools it wants.

The Digital Due Process (DDP) coalition is leading the campaign to make sure the laws protecting our privacy keeps pace with the technological advances in the digital age. DDP members have come together to urge reform of the Electronic Communications Privacy Act (ECPA), the law that governs how and when the government may access electronic communications. For example, the DDP insists that, just as a search warrant is required for law enforcement to obtain documents stored on your computer at home, a warrant should be required before law enforcement can obtain a document you store online "in the cloud."

We are very grateful that Judy Woodruff, senior correspondent for PBS NewsHour, and Al Hunt, executive editor of Bloomberg News in Washington D.C. and host of Bloomberg Television's 'Political Capital with Al Hunt,' have agreed to act as masters of ceremonies. Please [purchase your tickets online today](#) or contact Kelly Davies at 202-580-6942 or kdavies@constitutionproject.org to learn more about sponsorship opportunities and program advertising.

Sincerely,



Virginia Sloan
President, The Constitution Project

Panel of Experts Discuss Upcoming Cybersecurity Legislation and Civil Liberties

Privacy and Technology

The U.S. Senate is considering comprehensive cybersecurity legislation to protect our nation from potentially devastating cyber-attacks. On February 9th, TCP, the Center for Democracy & Technology (CDT), and the American Civil Liberties Union (ACLU) hosted a standing room only [briefing](#) on Capitol Hill to discuss how legislation can protect the United States from cyber-attacks while preserving Americans' constitutional rights and civil liberties. The panelists concurred that Congress need not, and should not, sacrifice civil liberties to protect the nation from cyber-attacks.

The panelists included two members of TCP's Liberty and Security Committee - Asa Hutchinson, former Undersecretary for the Department of Homeland Security and former member of Congress (R-Ark.); and Mary O. McCarthy, former Associate Deputy Inspector General for Investigations at the Central Intelligence Agency. Also on the panel were Gregory Nojeim, Senior Counsel and Director for the Project on Freedom, Security & Technology at CDT, Michelle Richardson, Legislative Counsel for the ACLU, and TCP's Senior Counsel Sharon Bradford Franklin moderated the discussion. To learn more about cybersecurity read our recently released report [Recommendations for the Implementation of a Comprehensive and Constitutional Cybersecurity Policy](#).

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Civilian Court Success: Underwear Bomber Gets Life Sentence

Prosecution of Terrorism Suspects

On February 16th, Umar Farouk Abdulmutallab, the so-called "Underwear Bomber," received a sentence of life in prison. Abdulmutallab pleaded guilty last October to terrorism charges after trying to blow up a U.S. airliner bound for Detroit on Christmas Day 2009 with a bomb concealed in his underwear. In a [statement](#), TCP President Virginia Sloan said, "We are pleased with the swift justice afforded Mr. Abdulmutallab by our civilian justice system. The Abdulmutallab case proves, yet again, that our traditional criminal justice system is capable of handling complex terrorism cases, contrary to the concerns raised by some in Congress in last year's debate on the National Defense Authorization Act."

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Former Judges and Prosecutors Urge Clemency for Death

Row Inmate Based on *Brady* Violations

Exculpatory Evidence

Earlier this month, TCP helped to assemble a group of over 30 former judges and prosecutors to file an *amicus* brief in support of Virginia death row inmate Justin Wolfe's *habeas* petition. Wolfe was convicted of hiring another individual to murder Daniel Petrole, and the triggerman's testimony that Wolfe had hired him to commit the murder was the primary evidence used to convict Wolfe. However, during a recent hearing, a federal district court found that prosecutors had withheld two key pieces of evidence before trial, including evidence that the triggerman initially confessed that he had acted alone.

The *amicus* brief filed in the United States Court of Appeals for the Fourth Circuit argued that the withholding of this evidence constituted a clear violation of *Brady v. Maryland*, in which the U.S. Supreme Court held that prosecutors must disclose to a criminal defendant all material, favorable evidence in their possession, and resulted in "an unacceptable risk that an innocent man may have been sentenced to death." The group urged the court to affirm the district court's decision to vacate Wolfe's conviction and sentence.

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TCP Hosts Supreme Court Panel in New York City on March 6th

Upcoming Event

On March 6th, TCP will host a panel discussion in New York City about the wide range of important cases that the U.S. Supreme Court is confronting this term. The focus will be on those cases in which a decision has not yet been handed down and those cases that will be argued in the near future. Our expert panelists are: **Linda Greenhouse**, Senior Research Scholar in Law, Knight Distinguished Journalist in Residence and Joseph M. Goldstein Senior Fellow, Yale Law School, former Supreme Court Reporter, *The New York Times*; **E. Joshua Rosenkranz**, Partner, Orrick, Herrington & Sutcliffe LLP, founding President and CEO, Brennan Center for Justice; **Steven R. Shapiro**, Legal Director, American Civil Liberties Union; and **Paul Saunders** (moderator), Of Counsel, Litigation Department, Cravath, Swaine & Moore LLP, and TCP Board Member.

The event will take place at Clifford Chance LLP (31 West 52nd Street, New York, NY) from 6-8pm. Light fare will be served. Please RSVP by emailing Brian Yourish at byourish@constitutionproject.org or calling (202) 580-6924. We are grateful to Holland & Knight for their generous support for the panel.

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Panel to Examine Location Tracking in Wake of Supreme Court Decision

Checks and Balances

On January 23rd, a unanimous Supreme Court held in *United States v. Jones* that when the police attach a GPS device to an individual's car and use it to track the vehicle's movements, this constitutes a search under the Fourth Amendment. Therefore, unless an exception applies, a warrant is required. However, the Court issued three separate opinions that raised almost as many questions

as they answered about the rules going forward for law enforcement use of such technologies.

TCP filed an *amicus curiae* ("friend of the court") brief in *United States v. Jones*, and on March 6th, will host an in-depth discussion of the future legal status of location tracking as well as the broader questions of protecting privacy in an age of rapidly advancing technology. Our panel of experts includes: TCP Liberty and Security Committee member **Bob Barr**, CEO, Liberty Strategies, LLC, former Member of Congress, (R-GA), former U.S. Attorney; **Peter Eckersley**, Technology Projects Director, Electronic Frontier Foundation; **Jeffrey Rosen**, Professor of Law, The George Washington University, Legal Affairs Editor, *The New Republic*, co-author of *Constitution 3.0: Freedom and Technological Change*; and **Jason Weinstein**, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice. TCP Senior Counsel **Sharon Bradford Franklin** will moderate the discussion.

The event will take place on Tuesday, March 6th from 11:45 am to 1:30 pm at The Interchurch Center (475 Riverside Drive, New York, NY). A light lunch will be served. [RSVP today.](#)

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TCP Joins Criticism of New CIA Document Declassification Fee

State Secrets

On February 23, 2012 TCP joined 35 other organizations in signing a [letter](#) opposing a new regulation that would hinder effective declassification of documents by the Central Intelligence Agency (CIA). On September 23, 2011, without any notice or opportunity for public comment, the CIA promulgated a regulation that would seriously jeopardize the agency's Mandatory Declassification Review (MDR) program. Under the Program, a person or organization can request that the CIA review certain documents to determine whether they should remain classified.

Under the new regulation a requester will have to pay up to \$72 per hour even if no information is found or released. As the letter points out, "the effect of the CIA's new policy will be to price the public out of submitting MDR requests." This prohibition is contrary to President Obama's call for "an unprecedented level of openness in government." TCP released a [statement](#) in conjunction with the letter and, in 2009, also published a report on the topic titled [Reining in Excessive Secrecy: Recommendations for Reform of the Classification and Controlled Unclassified Information Systems.](#)

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TCP Newsmakers in Brief

Current Events

- Senior Counsel **Sharon Bradford Franklin** was quoted in a February 5th [Washington Times story](#) about the privacy implications of a plan to install thousands of anti-crime public surveillance cameras in the Georgetown neighborhood of Washington, D.C.
- **Ms. Franklin** also was the only privacy advocate to be included in NPR's ["Morning Edition" story](#) on the Senate's hearing on cybersecurity legislation, and [was a guest](#) on Mari Frank's legal affairs program on KUCI, an NPR affiliate in southern California.

- TCP Scholar-in-Residence **Louis Fisher** wrote an article about the Constitution's war power that was featured in the February [ABA Journal](#). His article appeared alongside an opposing op-ed drafted by former George W. Bush Office of Legal Counsel head, John Yoo. On February 17th, Mr. Fisher and TCP Fellow **Mort Rosenberg** appeared on [a panel](#) at the American University School of Law to discuss congressional control over executive agencies.
- TCP Senior Counsel **Mary Schmid Mergler** participated in a panel discussion, Too Many Crimes, Too Many Criminals, at the 2012 Conservative Political Action Conference in Washington, D.C., along with TCP Board member and former chairman of the American Conservative Union **David Keene**; Eli Lehrer, vice president of The Heartland Institute; and Pat Nolan, vice president of Prison Fellowship.

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