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THE CONSTITUTION PROJECT

 Safeguarding Liberty, Justice & the Rule of Law

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Dear Friend of TCP,

I am excited to announce that The Constitution Project will host its 7th Annual Constitutional Champions Gala on Thursday, April 24, 2013 in Washington, DC. This event will honor individuals who have, in the face of adversity, stood up for the American ideals of liberty, justice, and the rule of law, fighting to defend our nation's Constitution and the rights it guarantees.



I'm delighted this year that we will honor Gary B. Pruitt, the President and CEO of the Associated Press, for publicly challenging the government's unprecedented use of surveillance to intimidate journalists; Brendan V. Sullivan Jr., Robert M. Cary, and other members of the late Senator Ted Stevens' legal team at Williams & Connolly LLP, for their insistence that federal prosecutors fulfill their constitutional obligation to disclose exculpatory evidence; and Henry F. Schuelke III, along with William B. Shields, his colleague at Blank Rome LLP, for writing the report for the court that substantiated the prosecutors' failure to hand over exculpatory evidence in the Stevens case.

Our friends at the law offices of Jones Day have agreed to host the gala again this year, providing us with their room with the magnificent view of the Capitol. Go to [our website](#) for more details and, if you are interested in sponsorship opportunities, please contact Jenny Donley at jdonley@constitutionproject.org or 202.580.6942.

Sincerely,

Virginia Sloan
 President, The Constitution Project

About Post-9/11 Torture

Counter-Terrorism Policies & Practices

Members of TCP's Task Force on Detainee Treatment continue to hold public education events around the country to build support for changing U.S. policies on detainee treatment. On November 20, Task Force member Brig. Gen. David Irvine joined Georgetown Law professors Rosa Brooks and David Luban for a [panel discussion](#), co-organized by TCP and Georgetown's Center on National Security and the Law, titled *Torture, Secrecy, and Accountability: How should America respond to abuse of post-9/11 detainees?* The panel debated whether America has done enough to reckon with the treatment of suspected terrorists held in U.S. custody. Approximately 60 people attended, including several military defense counsel for detainees on trial in the military commissions at Guantanamo Bay.

The next day, November 21, Gen. Irvine and Dr. David Gushee, who also served on the Task Force, led an [in-depth discussion](#) about America's pre- and post-9/11 actions related to the capture, detention, and interrogation of suspected terrorists at the Carnegie Council on Ethics in International Affairs in New York City.

Finally, on December 2, TCP joined Global Lawyers and Physicians at Boston University School of Public Health to host a day-long conference at the National Academy of Sciences in Washington, DC. Doctors, medical ethicists, other health professionals, and national security experts discussed possible solutions to structural and other obstacles that impede physicians' ability to deliver quality, ethical medical care to the remaining detainees at Guantanamo. The conference followed the November 4 release of a [new report](#) in which an independent panel found that military and intelligence agencies forced doctors and medical personnel to perform acts that violated their professional ethics, including participating in the torture of suspected terrorists in U.S. custody and the force-feeding of hunger strikers at the prison at Guantanamo Bay. The new report included recommendations that mirrored those found in the [earlier report](#) of TCP's Task Force on Detainee Treatment.

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Doctors Urge Congress to Relax Restrictions on Medical Transfers Out of Gitmo

Counter-Terrorism Policies & Practices

Two medical doctors who have evaluated detainees and accused terrorists at Guantanamo Bay are urging the Senate to allow transfers out of the prison facility for critical medical treatment. In a [letter](#) organized by The Constitution Project and delivered to Senate offices on November 19, Dr. Sondra Crosby and Dr. Stephen Xenakis asked the lawmakers to give the Secretary of Defense the "flexibility to authorize the temporary transfer of Guantanamo detainees to a military medical facility in the United States to prevent death or imminent harm to a detainee's health." The two doctors, who have spent nearly 1000 hours in Guantanamo and evaluating detainees and their medical records, say the prisoners there are aging, their health is deteriorating and, after more than a decade in captivity, their medical needs are outstripping the ability of the hospital at Guantanamo to provide necessary care.

The FY2014 National Defense Authorization Act (NDAA), currently being debated in the Senate, contains provisions that loosen restrictions on transfers out of Guantanamo, including a provision allowing for temporary medical transfers to the United States. An effort to strip those provisions and add further restrictions failed on the Senate floor in a bipartisan vote. Barring any additional Guantanamo-related amendments, which are not expected, the NDAA will soon head to a House-Senate conference committee with the improved transfer provisions - including the medical transfer provision - fully intact. The bill authorizes most Department of Defense operations, but the actual

funding for military personnel, activities and weapon systems comes through separate appropriating legislation.

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Supreme Court Rejects Ineffective Assistance of Counsel Claim

Right to Counsel

In [Burt v. Titlow](#), decided on November 6, a unanimous U.S. Supreme Court reversed the Sixth Circuit's holding that an attorney provided constitutionally inadequate representation by rejecting a plea deal with prosecutors without taking time to learn more about the case and the prosecutor's evidence. In an opinion by Justice Samuel Alito and joined by seven other justices, the Court held that the appeals court incorrectly assumed ineffective assistance of counsel despite the state court's reasonable factual findings and a record that was silent on the issue.

In July, TCP filed an [amicus brief](#) arguing that, if the Court found ineffective assistance of counsel, Titlow was entitled to the benefit of the original plea deal, which her attorney rejected. Though the Court's finding of no ineffective assistance of counsel meant it never reached the issue, TCP believes the Court should take the earliest opportunity to clarify what relief a defendant is entitled to in such a situation. TCP's brief, prepared with the generous *pro bono* support of Venable LLP, argued that the Court's decision in [Lafler v. Cooper](#) requires that in cases of ineffective assistance of counsel at the plea stage, the prosecution must reoffer, and the trial court must accept, the original plea agreement.

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TCP Helps Promote Commutation for Weldon Angelos

Sentencing Reform

More than 100 prominent people - including former elected and appointed government officials, former federal judges and prosecutors, as well as authors, scholars, activists and religious and business leaders - sent [a letter](#) appealing to President Obama to commute the sentence of a man condemned to 55 years in prison as the result of what the federal sentencing judge called "unjust, cruel and irrational" mandatory minimum sentencing laws.

In 2004, a federal judge in Utah sentenced Weldon Angelos to 55 years imprisonment for possessing firearms in connection with selling \$350 worth of marijuana. In imposing the sentence, the court acknowledged that Angelos, a first-time offender with no criminal record, never brandished the guns in his possession, nor did he cause or threaten to cause any injury. Nonetheless, because the crimes occurred in three separate transactions, the judge determined that federal mandatory minimum sentencing guidelines required him to impose the lengthy sentence.

Among those signing the letter were Norm Bangerter, former Republican Governor of Utah; Mark White, former Democratic Governor of Texas; former U.S. Senator Jake Garn (R-UT); Mark Shurtleff, former GOP Attorney General of Utah; onetime Salt Lake City mayor and civil rights lawyer Rocky Anderson; former federal judge and FBI Director William S. Sessions, and Frank O. Bowman III, former special counsel for the United States Sentencing Commission. Bowman was also a reporter for TCP's Sentencing Committee, which urges greater [sentencing discretion](#) for federal judges. TCP helped recruit signers for the letter, which was cited in [Forbes](#) and [National Journal](#).

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Coalition Backs Restraints on NSA Bulk Collection of Records

Government Surveillance & Searches

A [broad coalition](#) of civil society organizations, trade associations and tech companies has joined with The Constitution Project in backing legislation aimed at curbing bulk collection of American's telephone and internet records by the National Security Agency and providing greater transparency of policies underlying government surveillance programs. In a letter delivered to Congressional leaders on November 21, the members of the coalition welcomed the introduction of the USA Freedom Act ([S.1599/H.R.3361](#)) and opposed legislation to codify sweeping bulk collection activity. TCP [endorsed](#) the legislation when it was first introduced.

Companies signing the letter include CREDO Mobile, Dropbox, Hewlett-Packard, Meetup, Mozilla and Tumblr. In addition to TCP, privacy and civil liberties advocates joining the letter include the American Library Coalition, ACLU, Center for Democracy and Technology, Competitive Enterprise Institute, FreedomWorks, National Association of Criminal Defense Lawyers, Reporters Without Borders and The Rutherford Institute.

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American Law Institute Elects Sloan to Membership

Current Events

The American Law Institute (ALI) recently announced the election of TCP president Virginia Sloan as one of just 69 new members. This group includes highly accomplished individuals in many areas of the law, recognized both nationally and internationally. ALI welcomed as new members 15 jurists, 29 practicing lawyers, and 25 scholars from 24 states and the District of Columbia, and one new international member from Austria. ALI is a prestigious, independent organization that produces scholarly work to clarify, modernize, and otherwise improve the law.

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TCP Newsmakers in Brief

Current Event

- Author, Georgetown law professor and TCP Liberty & Security Committee co-chair David Cole reviewed the Task Force on Detainee Treatment's report for the November 7 edition of [The New York Review of Books](#).
- U.S. Representative Raul Labrador (R-ID) mentioned TCP's support for mandatory minimum sentencing reform in [an op-ed](#) he wrote on November 11 for the *Bonnors Ferry Herald*. His article was titled. "A new era of bipartisanship: The way forward."
- TCP's Scholar-in-Residence Louis Fisher delivered the annual Andrus Lecture at Boise State University on November 6. His remarks focused on "Presidential War Making and the Constitution." Andrus Center for Public Policy director David Adler said, "Fisher's scholarly works have established him as a national treasure. His work on some of the most pressing challenges confronting America, including presidential resort to unilateral executive war making, has insured a lasting influence in the corridors of power and the halls of academe."
- Mr. Fisher also published a [guest commentary](#) in the November 18 issue of the *National Law Journal* entitled "Getting it Wrong Again and Again - Judicial Error's Compounding Effect."
- On November 12, TCP President Virginia Sloan, who chairs the Death Penalty Due Process

Review Project of the American Bar Association's Individual Rights and Responsibilities Section, moderated the National Symposium on the Modern Death Penalty in America, co-sponsored by the Project, the Carter Center, and others. The symposium, held at the Carter Center in Atlanta, was the culminating event of the Project's eight-year assessment of the fairness and accuracy of various death penalty jurisdictions in the United States. Remarks by, and photos of, former President Jimmy Carter, ABA President Jim Silkenat, Virginia Sloan, Project Director Sarah Turberville, and a host of experts on issues such as arbitrariness, wrongful convictions, intellectual disabilities, and professionalism, can be [found here](#).

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