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Dear Friend of TCP,

Happy New Year. I hope you had a relaxing and peaceful holiday season.

The coming year promises to be an exciting one, and perhaps not so relaxed. There is renewed attention on government surveillance, criminal sentencing reform, and a host of other priorities of The Constitution Project and many of you. We plan to be very active in all of these important national debates, with our usual mission of finding bipartisan solutions that protect our shared constitutional values.



I want to thank again everyone who donated to The Constitution Project during our end-of-year appeal and remind others that it is never too late to contribute. Your support is critical to our work.

I also invite you join us for our 7th Annual Constitutional Champions Gala on Thursday, April 24, 2013 in Washington, DC. This event will honor the head of the Associated Press, Gary B. Pruitt, 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 that highlighted the prosecutors' failure to hand over exculpatory evidence in the Stevens case. These individuals 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. If you are interested in sponsorship opportunities, please contact Jenny Donley at [jdonley@constitutionproject.org](mailto:jdonley@constitutionproject.org) or 202.580.6942. Go to [our website](#) for more details.

Sincerely,

Virginia Sloan

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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## Conference Examines Impediments to Quality Care at Guantanamo

Counter-Terrorism Policies & Practices

On December 2, TCP and Global Lawyers and Physicians at Boston University School of Public Health co-sponsored a day-long conference entitled "Medical Care & Medical Ethics at Guantanamo." Held at the National Academy of Sciences building in Washington, D.C., the conference for the first time brought together physicians, correctional experts and leaders of medical associations from around the world. As an outgrowth of the examination by TCP's Task Force on Detainee Treatment of the [role of medical professionals](#) in the detention and interrogation of suspected terrorists, the conference sought to identify, analyze and propose solutions to structural and other obstacles that impede physicians' ability to deliver quality ethical medical care to Guantanamo detainees.

Conference materials, speakers' biographies and panel videos are [available online](#).

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## More Than 100 Former Judges and Prosecutors Back Federal Sentencing Reform

Sentencing Reform

In early December, more than 100 former judges and prosecutors sent [a letter](#) urging Congress to adopt bipartisan legislation designed to relieve the nation's overcrowded prisons by granting judges greater discretion to sentence non-violent drug offenders below the federal mandatory minimum. The letter, organized by TCP, was delivered to Senators Dick Durbin (D-IL) and Mike Lee (R-UT), co-sponsors of the Smarter Sentencing Act of 2013 (S. 1410, H.R.3382).

The Smarter Sentencing Act would authorize federal judges to impose a prison sentence below the statutory mandatory minimum for a broader category of non-violent drug offenses, would lower the mandatory minimum sentences for certain drug offenses, and would make retroactive the provisions in the Fair Sentencing Act of 2010 that reduced the disparity between sentences for crack and powder cocaine possession. The former federal judges and prosecutors note in their letter that the bill's "modest expansion of the current 'safety valve,' coupled with the reduction of some mandatory minimums for non-violent drug offenses - while maintaining statutory maximums - allows courts to make individualized assessments in non-violent drug cases. This maintains consistency in sentencing for drug-related offenses, but allows for discretion to give less lengthy sentences, where appropriate."

Among those signing the letter are Judge William S. Sessions, former director of the FBI (and TCP Board member); John Schmidt, former Associate Attorney General of the Department of Justice; and former state attorneys general from Illinois, New Jersey, Pennsylvania, and Virginia. The Senate Judiciary Committee may consider the Smarter Sentencing Act, as well as the Justice Safety Valve Act (S. 619), another sentencing reform bill [supported](#) by many of the same former judges and prosecutors, later this month.

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# Review Group Recommendations May Not Cure Bulk Collection of Phone Records, TCP Says

Government Surveillance & Searches

On December 18, 2013, the Review Group on Intelligence and Communications Technologies, the five-person panel appointed by President Obama to examine the surveillance programs of the National Security Agency (NSA), released a report in which it recommended that the NSA no longer keep a massive phone database that includes nearly every phone call made and received in the United States. The report included a total of 46 recommendations.

TCP Senior Counsel Katherine Stern told [TechNewsWorld](#), "The report is a prodigious effort, thorough and wide-ranging," but noted that TCP remained concerned that "the report leaves the door open for more secret domestic spying." TCP was also quoted in [News Daily](#) on December 18.

In a public statement released the same day as the Review Group issued its report, TCP President Virginia Sloan noted that President Obama is free to accept, reject or modify any of the panel's ideas. She also pointed out that the independent Privacy and Civil Liberties Oversight Board will issue a report on many of the same issues early this year.

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# Military, National Security and Religious Leaders Urge Senate to Release Report on CIA Interrogations

Counter-Terrorism Policies & Practices

On December 13, 2013, nearly 60 former military officers, national security and foreign policy experts, and religious leaders urged the Senate Select Committee on Intelligence (SSCI) to declassify its report on the CIA's treatment of suspected terrorists after 9/11, and to make the report available to the public. TCP joined the Center for Victims of Torture, Human Rights First and the National Religious Campaign Against Torture in releasing the statement on the one-year anniversary of the committee's bipartisan adoption of the report.

The 6,300-page report details the capture, detention, interrogation, and conditions of confinement of all known CIA detainees. The report is the product of three years of work, including a review of more than six million pages of materials. Committee Chair Dianne Feinstein (D-CA) has called the study "one of the most significant oversight efforts in the history of the United States Senate, and by far the most important oversight activity ever conducted by this committee." Yet the report remains classified, and thus hidden from public view.

In a [report published](#) in April, TCP's Task Force on Detainee Treatment found that the U.S. engaged in torture and that our country's most senior officials were responsible. It made a number of recommendations designed to prevent a return to torture and abuse in the face of any future terrorist attack. Increased transparency, including release of the SSCI report, is at the heart of many of the recommendations. On December 23, the *New York Daily News* published [an op-ed](#) written by Task Force members Brigadier General David Irvine, Ambassador James Jones, Ambassador Thomas Pickering, and Judge William S. Sessions, urging release of the SSCI report.

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# Upcoming Event: Task Force on Detainee Treatment Leaders in Chicago

Counter-Terrorism Policies & Practices

On January 23, 2014, Task Force on Detainee Treatment member Ambassador Thomas Pickering and top human rights law policymaker Ambassador David Scheffer will lead a discussion of extraordinary rendition, torture, and cruel, inhumane, and degrading treatment. The discussion will also include a review of the Task Force's conclusions and recommendations. The event, which will begin with a reception at 5:30 p.m., will take place at The Chicago Council on Global Affairs. [RSVP here.](#)

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## Civil Liberties Groups Oppose Authorization of Mass Surveillance Program

Government Surveillance & Searches

On December 18, 54 civil liberties and public interest groups, including TCP, sent [a letter](#) to congressional leaders opposing S. 1631, the FISA Improvements Act, sponsored by Senator Dianne Feinstein (D-CA) and others. The bill would legalize and extend the bulk collection of telephone and Internet metadata, one of the NSA mass surveillance programs confirmed by documents released by former NSA contractor Edward Snowden earlier this year.

The coalition letter highlighted the free speech concerns with continued bulk data collection by the NSA, noting, "The NSA mass surveillance programs already sweep up data about millions of people daily. This shadow of surveillance chills freedom of speech, undermines confidence in US Internet companies, and runs afoul of the Constitution." In addition to TCP, signers include the American Civil Liberties Union, Center for Democracy and Technology, Electronic Frontier Foundation, Liberty Watch, PEN American Center, Progressive Change Campaign Committee, TechFreedom, Rutherford Institute and others.

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## Sherburne Joins TCP Board of Directors

Current Events

The Constitution Project is delighted to announce that Jane C. Sherburne has joined its board of directors. Sherburne currently serves as Senior Executive Vice President and General Counsel to The Bank of New York Mellon, and as a member of the Council of the Administrative Conference of the United States.

Sherburne is well-known primarily for her expertise in crisis management, her work in civil rights, and her counseling to corporate boards and major financial institutions. She was Special Counsel to President Bill Clinton and managed the White House response to ethics investigations by the Independent Counsel, most notably during the Whitewater controversy. She will add great skill and talent to our already strong board, and we are looking forward to working with her.

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## TCP Newsmakers in Brief

Current Events

- TCP Scholar-in-Residence Dr. Louis Fisher wrote [an article](#) about President Obama's implementation of the Affordable Care Act, which was published December 9 in *Boston Review*.

- At the end of the month, Dr. Fisher will release a new book, [The Law of the Executive Branch: Presidential Power](#), which explores the sources and limits of presidential power by focusing on the law of the executive branch in the context of constitutional language, the framers' intent, and more than two centuries of practice.
- On December 13, the Senate confirmed Judge Patricia Wald to serve a full five-year term on the Privacy and Civil Liberties Oversight Board (PCLOB). TCP organized [a letter](#) urging Judge Wald's confirmation signed by nearly 30 trade associations, privacy advocates and civil society organizations. Judge Wald is a former member of both TCP's Liberty & Security Committee and the Task Force on Detainee Treatment. We also honored her as a Constitutional Champion at our 2011 Gala. Earlier this year, Judge Wald received the Presidential Medal of Freedom, the nation's highest civilian honor.

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