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THE CONSTITUTION PROJECT

 Safeguarding Liberty, Justice & the Rule of Law

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Dear Friend of TCP -

The Constitution Project celebrated its 9th Annual Constitutional Champions Gala on April 27th. In his remarks accepting the award, one of our Champions, nationally-syndicated columnist George Will, made a compelling case, as he has for four decades, for why conservatives ought to support sweeping reforms of the criminal justice system. We also honored Senator Dianne Feinstein for her courage and leadership, both as an overseer and as a legislator, in ensuring that the United States never again engages in government-sanctioned torture or cruel treatment of suspected terrorists. I was also personally thrilled to recognize Representative Don Edwards, whom one columnist famously labeled the Congressman from the Constitution. The unassuming former FBI agent from San Jose, who died last year at the age of 100, was a friend, a former boss, a mentor and a true inspiration for our mission of working across the aisle to develop consensus solutions to tough constitutional challenges.



If you were not able attend - or, if you did, and just want to recall the great time - we now have a [photo album](#) up on our website. Thanks to all who made it such a smashing success. I especially want to thank the Jones Day law firm for sharing their marvelous space overlooking the Capitol, and all our sponsors whose ongoing support makes our work possible.

Sincerely,

Virginia Sloan
 President, The Constitution Project

Groups Want National Archives to Ensure Preservation of Senate Torture Report

Transparency and Accountability

Thirty open government, human rights, civil liberties and media organizations joined TCP in urging the National Archives to ensure preservation of the report on the CIA's post-9/11 detention and interrogation program prepared by the Senate Select Committee on Intelligence. In December 2014, then-committee chair Dianne Feinstein (D-Calif.) delivered the [full study](#) to President Obama and other executive branch offices "for use as broadly as appropriate to help make sure that this experience is never repeated." Current SSCI chair, Richard Burr (R-N.C.), subsequently wrote to the president asking him to return all copies of the full study to the committee.

In an [April 29 letter](#) to David Ferriero, the groups urged the National Archives and Records Administration (NARA), which he heads, to declare the SSCI report a federal record, and hence subject to the agency's jurisdiction. "There is also no reasonable dispute that the full study contains historically important evidence of the U.S. government's actions and decisions, and is appropriate for preservation," they wrote. According to [one report](#), NARA has rejected the request pending the outcome of ongoing FOIA litigation.

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TCP Backs Equal Justice Under Law Act

Right to Counsel

The Constitution Project has announced its support for the Equal Justice Under Law Act of 2016, which creates a federal cause of action that allows a class of indigent defendants to sue in federal court on a pre-conviction basis for systemic violations of the right to counsel guaranteed by the Sixth Amendment. In an [April 29 letter](#) to Representative Sean Patrick Murphy (D-N.Y.), TCP President Virginia Sloan wrote that the legislation implements a key recommendation in the 2009 report of the TCP National Right Counsel Committee, [Justice Denied](#). Murphy is the chief sponsor of the bill.

Under current law, the only time most defendants can effectively assert claims of inadequate representation is after they have been convicted or pleaded guilty. By providing a pre-conviction opportunity for federal judicial relief, the legislation may create an avenue to motivate states to fulfill their obligation to provide adequate representation to all defendants.

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Intel Community Urged to Change Classification System, Incorporate Public Input

Transparency and Accountability

A dozen civil society organizations, including TCP, expressed appreciation for the direction the Office of the Director of National Intelligence provided to the heads of major intelligence agencies urging them to consider concrete changes in the way they classify and declassify information and to look at implementing a proactive discretionary declassification program.

In an [April 25 letter](#) to DNI James Clapper, the groups wrote: "[O]verclassification is a longstanding and widely acknowledged problem in the federal government. Far too much information is unnecessarily classified, is classified at too high a level, or remains classified too long. A periodic review of classification guides can be a potent mechanism for limiting classification activity."

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House Passes Email Privacy Act, TCP Calls for Swift Senate Action

Government Surveillance and Searches

After a multi-year effort by a broad coalition of privacy advocates and tech companies, on April 27, the U.S. House of Representatives unanimously adopted the [Email Privacy Act \(H.R. 699\)](#), introduced by Reps. Kevin Yoder (R-Ks.) and Jared Polis (D-Colo.), and more than 300 cosponsors. The legislation updates the 1986 Electronic Communications Privacy Act, which currently allows law enforcement agencies warrantless access to emails that have been kept for more than 180 days and to information stored "in the cloud," giving emails and online documents the same Fourth Amendment protections afforded to physical letters sent through the Post Office and stored in filing cabinets. In a [press release](#), TCP President Virginia Sloan called for swift Senate action. "It's long past time to close the loophole that leaves our sensitive personal and proprietary online communications subject to warrantless snooping," she said.

In an [April 26 letter](#) to members of the House, nearly 70 technology companies, trade associations and privacy groups joined TCP in urging the House to pass the bill. The groups noted that the legislation does not achieve all of the ECPA reforms they had hoped for. However, the groups wrote, "it does impose a warrant-for-content rule with limited exceptions. We are particularly pleased that the bill does not carve out civil agencies from the warrant requirement, which would have undermined the very purpose of the bill." TCP Board member David Beier, who helped draft ECPA when he was a counsel to the House Judiciary Committee, had [earlier published an op-ed](#) in The Hill arguing against a civil agency carve-out.

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Grewal Urges Judicial Conference to Back Stronger Federal Public Defender

Right to Counsel

On April 13, TCP Senior Counsel Madhu Grewal testified in support of several reforms to strengthen federal public defenders at the Philadelphia [hearing](#) of the Judicial Conference of the United States' Committee to Review the Criminal Justice Act (CJA) Program. Enacted by Congress in 1964, immediately following the Supreme Court's landmark decision in *Gideon v Wainwright*, the CJA is intended to secure the right to counsel guaranteed by the Sixth Amendment for all federal criminal defendants. It provides a system for appointing and compensating lawyers to represent defendants in federal criminal proceedings who are financially unable to hire a lawyer or other defense services on their own. Video of Grewal's [testimony is online](#) as part of Panel 8.

The Constitution Project is also backing a congressional request for additional funding for federal public defenders. "By providing an additional \$25 million for federal indigent defense, you will help improve case outcomes and judicial fairness and efficiency, while also reducing risk of recidivism and saving money in the federal criminal justice system for the highest cost offenders," TCP President Virginia Sloan wrote in an [April 29 letter](#) to the chair and ranking member of the House Appropriations' Subcommittee on Financial Services and General Government.

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U.S. Supreme Court Must Stand Against Racial Bias in Capital

Cases

Death Penalty

In an April 21 [USAToday op-ed](#), former Virginia Attorney General Mark Earley and former federal judge Timothy Lewis urged the U.S. Supreme Court to take the case of Duane Buck, a Texas man essentially sentenced to die for being black. Lewis serves on the TCP Board of Directors and co-chairs its [National Right to Counsel Committee](#). Earley is a co-chair of [Public Safety Officials on the Death Penalty](#) and a member of the TCP [Death Penalty Committee](#). Both are signatories to a [friend-of-the-court brief](#) that TCP helped to organize supporting Buck's request.

Tim Cole, a former Texas prosecutor and a member of Public Safety Officials on the Death Penalty, also weighed in on the issue in a [letter-to-the-editor](#) in The New York Times, condemning the racial bias in Buck's initial death sentence and urging a new sentencing hearing.

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Strong Editorial Support for Oklahoma Death Penalty Review Commission

Death Penalty

The editorial board of the state's largest newspaper, The Oklahoman, has given the Oklahoma Death Penalty Review Commission its [strong editorial endorsement](#), saying they "wish the commission luck and look forward to what it finds about Oklahoma's process in carrying out the ultimate punishment." The well-known conservative columnist Richard A. Viguierie called for a [moratorium on executions](#) until the group completes its work in early 2017. The Commission is a bipartisan, [blue-ribbon panel](#) of prominent Oklahomans that is conducting the first ever independent, research-driven examination of the state's entire system of capital punishment. TCP is providing organizational and logistical support.

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Laperruque Responds to Surveillance Disclosures

Government Surveillance and Searches

On April 19, the Office of the Director of National Intelligence released in redacted form three opinions of the secretive Foreign Intelligence Surveillance Court. In a [column on the blog Just Security](#), TCP Privacy Fellow Jake Laperruque looks at the implications of a November 2015 decision by Judge Thomas Hogan, which offered significant insights into the operation of data minimization and use procedures for Americans' information "incidentally" collected in the process of foreign surveillance. In a separate [Just Security column](#), Laperruque examines the Obama administration's proposal to expand sharing of the mass signals intelligence collected by NSA pursuant to Executive Order 12333, which would grant access to raw data by other intelligence agencies, including the FBI.

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