

NOVEMBER 2010

On My Mind: Monthly Message from TCP President Virginia Sloan

Like so many of you, we at The Constitution Project were riveted by the unfolding events on election day. We are seeing a parade of new faces in Congress and in state houses around the nation, and are wondering how the actions of these men and women might affect our daily lives. The Constitution Project has begun to evaluate the new political landscape and to consider the implication of these developments for the criminal justice and rule of law reforms that constitute our mission. We are lucky to work with so many experts from across the political spectrum and have already begun reaching out to them to evaluate the consequences of the election, so that we can continue to develop the consensus-based recommendations that are our hallmark. We will keep you posted on our progress.

U.S. Supreme Court to Hear Case Involving Right to Counsel

On November 1st, the United States Supreme Court granted *certiorari* in the case of *Turner v. Price*, in which The Constitution Project (TCP) filed an *amicus* brief in support of a case involving indigent defendant, Michael Turner. Earlier, the South Carolina Supreme Court held that Turner, who was involved in a civil contempt proceeding based on his alleged nonpayment of child support, had no constitutional right to counsel, despite his being sent to jail for one year as a result of the proceedings. The court reasoned that the right to counsel hinges upon whether a proceeding is “criminal” or “civil” in nature.

However, TCP’s National Right to Counsel Committee has taken a different view. The Committee recommended, and the *amicus* brief argued, that the assistance of counsel should be provided “in proceedings that result in a loss of liberty regardless of

White House Executive Order Strengthens Transparency

On November 4th, 2010, the White House issued an [Executive Order](#) on Controlled Unclassified Information (CUI); this is information that does *not* meet the standards for classified national security information, but is still considered sensitive enough to warrant some level of protection. Previously, over 100 different marking labels (such as “sensitive but unclassified” and “for official use only”) were used by various federal agencies, creating confusion and preventing agencies from sharing information within government and with the public. In a [statement](#) released by TCP, Senior Counsel Sharon Bradford Franklin noted, “We are particularly pleased that the Executive Order clarifies that a control marking on a document does *not* provide a basis for the Executive Branch to withhold the document from either Congress or the judiciary.” Sharon was also quoted in a [New York Times](#) story on this development.

In July 2009, The Constitution Project’s Liberty and Security Committee released its report: [Reining in Excessive Secrecy: Recommendations for Reform of the Classification and Controlled Unclassified Information Systems](#) which included a series of specific recommendations on the use of such control markings.

Renewed Call for GTMO Policy Reform

On November 4, 2009, The Constitution Project (TCP) published [Beyond Guantanamo: A Bipartisan Declaration](#) to provide the Obama administration and Congress with policy guidelines associated with terrorism suspects being held at Guantanamo Bay. A year later, the number of signatories who have joined the call for reform recommendations—including the use of federal criminal courts to try detainees and ending the policy of indefinite detention of Guantanamo detainees without charge—has swelled to over [140 respected policymakers and practitioners](#) from throughout the political spectrum.

Unfortunately, the U.S. government has not taken steps to reform its detention policies, but this fact has only served to spur our public education efforts. In the months ahead, we look forward to briefing new—and old—members of Congress, holding background discussions with reporters and hosting events that will be open to the public.

Farewell to a Reform Champion

With the passing of Theodore C. Sorensen, of counsel at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison and a former

whether the proceeding is denominated civil or criminal in nature.” According to TCP Senior Policy Counsel Mary Schmid Mergler, “It is simply outrageous that a person could be imprisoned in this country without access to a lawyer. Hopefully the U.S. Supreme Court will restore sanity to the system.”

special counsel and adviser to President John F. Kennedy, the nation has lost a tireless champion of reform. Mr. Sorensen not only agreed to join the signatories to The Constitution Project’s [Beyond Guantanamo declaration](#), but spent many hours briefing lawmakers and the media on the ways we could improve our handling of Guantanamo terrorism suspects.

According to TCP Policy Counsel Mason Clutter, who spent time with Mr. Sorensen during an event on Capitol Hill last fall, “It was an honor to work with him. He was passionate about preserving the rule of law and ending the policies and practices from GTMO. He will be missed.”

Amicus Brief Challenges Overbroad Application of Material Support Law

On October 27, 2010, The Constitution Project (TCP) joined peace groups, charities and other civil liberties organizations in filing an [amicus brief](#) in the Holy Land Foundation case challenging a dangerously broad interpretation of the material support statute. Filed in the U.S. Court of Appeals for the Fifth Circuit, the brief argues that the district court’s jury instruction violated due process by allowing a criminal conviction without requiring proof that the defendants knew their charitable donations would end up in the hands of a designated foreign terrorist group.

According to TCP Senior Policy Counsel Sharon Bradford Franklin, “It’s critical that the appeals court narrow this unconstitutionally overbroad interpretation of the law so that aid groups can provide desperately needed assistance without fear of criminal prosecution.” Last year, TCP also filed an [amicus brief](#) in the U.S. Supreme Court in *Holder v. Humanitarian Law Project*, another case involving an expansive application of the material support statute. Unfortunately, in that case, the Supreme Court upheld the application of the material support law to prohibit pure speech, such as training designated groups to pursue peaceful means to achieve their political goals.

Makeover for TCP Web Site and Newsletter

Last week, The Constitution Project (TCP) was pleased to announce the launch of its new Web site. Since the re-launch, many of you have expressed appreciation for the site’s new look, organization and features. Searching our extensive library of publications, testimony and statements has become much easier. Our latest work and news is also more accessible. And, we bring you videotaped commentary from some of the nation’s leading reform experts in a series of fascinating interviews. Please visit our [website](#) and let us know what you think!

Today, we are also pleased to publish the inaugural issue of *TCP Journal*, The Constitution Project’s newsletter. We will still bring you the latest news about our policy issues and work, but it will be presented to you in a more streamlined fashion, with links that will take you to more expansive information on a particular topic. You will receive your issue on a monthly basis, but it will be supplemented by periodic emails so that you don’t miss out on important news and events as they are happening. We think you will like this new approach, but again, we want to hear from you!

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