

September 2011

On My Mind: Monthly Message from TCP President Virginia Sloan

TCP's fifth annual Constitution Day event is coming up, and I hope you will join The Constitution Project, Georgetown University Law Center and the Mid-Atlantic Innocence Project on September 15th to celebrate Constitution Day and to recognize three distinguished authors who will receive The Constitution Project's annual *Constitutional Commentary Award*. Jim Petro, former Republican Attorney General of Ohio, and Nancy Petro, are being honored for their book, [*False Justice: Eight Myths that Convict the Innocent*](#), as is Brandon Garrett, professor of law at the University of Virginia School of Law for his book [*Convicting the Innocent: Where Criminal Prosecutions Go Wrong*](#). Our *Constitutional Commentary Award* is given annually to the author or producer of an outstanding work that has improved the quality of public discourse through insightful, articulate analysis of a constitutional issue. Following the award presentation, Jeffrey Rosen, professor of law at George Washington University School of Law and legal editor at *The New Republic* (who wrote a glowing [review](#) of *Convicting the Innocent* in *The New York Times Sunday Book Review*), will host a discussion with the three authors. A reception will follow. The event will take place from 3:30 to 6:30 p.m. at the Gewirtz Student Center at Georgetown University School of Law. Please [RSVP](#) today as space is limited. I hope to see you there.

President Obama Urged to Nominate the Remaining Individuals to Crucial Privacy and Civil Liberties Oversight Board

On August 25th, TCP, along with a coalition of 18 additional organizations and individuals, sent a letter to President Obama, Secretary of Homeland Security Janet Napolitano, Attorney General Eric Holder, and Director of National Intelligence James Clapper, urging the President to nominate individuals to the remaining three positions on the Privacy and Civil Liberties Oversight Board (PCLOB) without further delay. Congress created the original PCLOB seven years ago, and gave it new powers and independence in 2007, but today the PCLOB exists in name only. The coalition [letter](#) states, in part: "The purpose of the Board is to play a vital, independent role in oversight of privacy and civil liberties for national security programs and policies. In recent years, our nation has adopted a variety of new programs and policies designed to combat terrorism, and it is critical that we incorporate robust safeguards for privacy rights and civil liberties. Without the PCLOB, there is no built-in mechanism to ensure independent review of these programs, and we lack the necessary checks and balances to protect the privacy and liberty which are essential to Americans' lives." A *Washington Times* [story](#) and a CBS talk radio [show](#) featured commentary about this issue from TCP Senior Policy Counsel Sharon Bradford Franklin.

Flawed Cost-Cutting Proposals Threaten Indigent Defendants' Constitutional Rights

In an effort to cut costs, the Supreme Court of Tennessee and counties in Arizona and Nevada have each recently proposed changes to the provision of indigent defense services that involve versions of flat-fee contracts systems. As explained in comments submitted by TCP to the [Tennessee Supreme Court](#), [Cochise County, Arizona](#) and [Washoe County, Nevada](#), these proposals could also result in fewer attorneys accepting indigent clients, less experienced attorneys representing indigent defendants, overwhelming caseloads for appointed counsel, attorneys allocating insufficient time to each case, and excessive and unwarranted plea bargaining. TCP's 2009 report, [*Justice Denied: The Continuing Neglect of the Constitutional Right to Counsel*](#), a recent [news story](#) and an [Op-Ed](#) by Virginia Sloan published in *The Tennessean* further outline the dangers of these proposed reforms.

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Event to Examine Changing Terrorist Threat since 9/11

On September 8th, the American University Washington College of Law is hosting a speech and panel discussion on the evolving national security landscape ten years after the terrorist attacks of 9/11. TCP Supreme Court Fellow and AU Washington College of Law professor Steve Vladeck will participate in a panel that includes his colleagues, professors Daniel Marcus (general counsel for the 9/11 Commission) and Kenneth Anderson, as well as Ivan Fong, General Counsel of the Department of Homeland Security and Lisa Monaco, Assistant Attorney General for the National Security Division at the Department of Justice. Michael Leiter, the former director of the National Counterterrorism Center, will be the event's keynote speaker. The event will take place from noon to 2:30 pm at the American University Washington College of Law; 4801 Massachusetts Avenue, NW, room 603. [Register here](#).

Staying Smart on Crime

"Even in these hyper-partisan times, *Smart on Crime's* approach of eschewing ideology in favor of sensible solutions that are fair, accurate, effective, proven, and cost-efficient, has piqued the interest of Democrats and Republicans alike," wrote TCP Criminal Justice Program Counsel Christopher Durocher and Associate Adrienne Lee Benson in the feature story of [Judicature](#), the journal of the American Judicature Society. The two were highlighting recommendations from the comprehensive report issued earlier this year by over three dozen of the nation's leading criminal justice policy organizations. The report, [Smart on Crime: Recommendations for the Administration and Congress](#), reviewed virtually every major criminal justice issue—from the creation of new criminal laws to the reentry of ex-offenders into their communities, from helping to restore and empower victims to identifying ways to protect the rights of the accused—and proposed reforms for action by the administration and Congress.

GTMO since 9/11

The history of the Guantanamo detention facility since 9/11 is the subject of TCP Counsel's Mason Clutter article in the upcoming winter edition of the American Bar Association's [Human Rights Magazine](#). As we approach the ten year anniversary of 9/11, Ms. Clutter's timely article traces how a proposed solution for dealing with alleged terrorists eventually began a crucial debate "about the proper role of each branch of government during a time of armed conflict" that has not yet been resolved.

TCP Submits Comments to U.S. Sentencing Commission

On August 26th, TCP President Ginny Sloan [replied](#) to a request for comments from the U.S. Sentencing Commission (USSC) about its priorities for the coming guideline amendment cycle. TCP's comments focused on the failure of the USSC to include a review of the guidelines for economic fraud. Ms. Sloan wrote, "The current guidelines for fraud offenses rely too heavily on quantifiable factors, such as monetary loss, the unintended consequence of which results in disparate sentencing outcomes for first-time fraud offenders as compared to violent offenders. Moreover, the rigid fraud offense sentencing guidelines do not account for different degrees of moral culpability among fraud offenders." The comments filed were based on the recommendations included in TCP's Sentencing Committee's report, [Principles for the Design and Reform of Sentencing Systems](#).

TCP Files Comments Opposing DOD Proposed Rule on Unclassified Information

On August 4th, TCP filed [comments](#) with the Department of Defense (DOD) in connection with its proposed rule on the safeguarding of unclassified DOD information. TCP's comments argued that the proposed rule is inconsistent with the President's Executive Order 13556 (EO) on controlled unclassified information (CUI), which was issued in November 2010. TCP had worked with the executive branch in the development of this EO, and has praised the order for promoting greater transparency and information sharing. Unfortunately, as TCP explained in the comments, DOD's proposed rule would undermine implementation of the EO by seeking to grandfather in the earlier system. TCP's comments were based on our Liberty and Security Committee's 2009 report, [Reining in Excessive Secrecy](#), which urged the executive branch to reform the use of CUI to promote information sharing and to reinforce core constitutional principles including checks and balances and public accountability.

Powerful Story Recalls Martin Luther King's Final Days

We invite you to read a recent [article](#) written by W.J. Michael Cody, a TCP Death Penalty Committee Member and an attorney with Burch, Porter and Johnson, the law firm representing Dr. Martin Luther King during the final days of his life. Entitled "King at the Mountaintop: The Representation of Dr. Martin Luther King Jr., Memphis April 3-4, 1968," the story powerfully captures the memories of Mr. Cody and other members of the firm, who were witnesses to one of the most "sad and exciting" periods in American history.



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