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### Greetings!

TCP Board Member and former Congressman Mickey Edwards (R-OK) has a new book coming out later this month, [\*The Parties Versus the People: How to Turn Republicans and Democrats into Americans\*](#). The book has been called "a penetrating analysis of American democracy's most urgent threat: a political system so paralyzed by partisanship it is almost incapable of placing national interest ahead of the blind pursuit of political advantage." Friends of TCP will no doubt agree with Mickey's diagnosis.



Many will also be inspired by his prescription for reform, which includes eliminating closed primaries and partisan redistricting, and passing institutional reforms that reduce political gamesmanship in Congress itself. Mickey served 16 years in the U.S. House of Representatives, and, through his work at TCP, and at Harvard, Princeton, and the Aspen Institute, remains committed to protecting the authority granted to Congress in the Constitution.

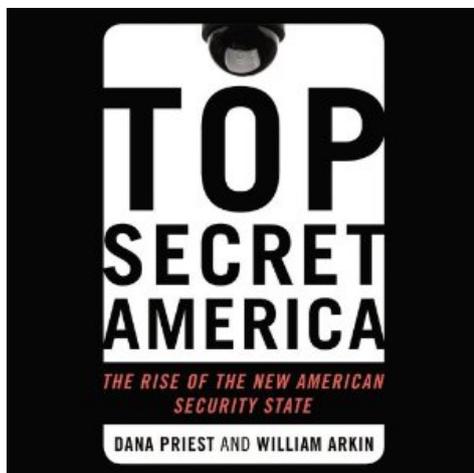
We at TCP have benefited tremendously from Mickey's willingness to work with others to find common ground on contentious constitutional issues. He has strong principles, but is open to reasonable discussion and knows how to disagree agreeably. His new book demonstrates once again why we are so grateful to have Mickey's thoughtful leadership at TCP.

Sincerely,

Virginia Sloan  
President, The Constitution Project

## Constitution Day Event to Focus on National Security Leaks

First Amendment



Recent disclosures of information the government maintains is classified have generated harsh criticism from some policymakers and commentators of both the "leakers" and of the media outlets that made the information public. Congressional and Department of Justice inquiries are underway, and it is possible that criminal charges could follow. In addition, the Senate Select Committee on Intelligence recently added provisions aimed at plugging these kinds of "leaks" to the 2013 intelligence authorization legislation. With the number of "leak"-related cases on the rise, such investigations and prosecutions highlight important questions about the relationship between investigative journalism and national security disclosures, and the role of the First Amendment.

Join TCP, Georgetown's Center on National Security and Law, and the Center for the Constitution at James Madison's Montpelier on the morning of September 20, 2012 for what promises to be a lively and informative panel discussion on the topic. Additionally, TCP will honor the authors of [Top Secret America](#), Dana Priest and William Arkin, with its annual Constitutional Commentary Award. [RSVP](#) today.

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## Senate to Consider Cybersecurity Bill with Strong Privacy Protections

Privacy and Technology

On July 20, Senators Lieberman, Collins, Rockefeller, Feinstein, and Carper introduced a new version of the [Cybersecurity Act of 2012](#) (S. 3414), designed to protect America's computer networks from hackers and other cyber-attacks. TCP worked with the bill sponsors and with Senators Durbin and Franken, along with a coalition of advocacy organizations from across the political spectrum, to ensure that the new bill incorporates robust safeguards for privacy and civil liberties.

The new provisions include the requirement that cybersecurity information from the private sector go to civilian and not military agencies. They strictly limit the information companies can share with the federal government to what is necessary to describe cybersecurity threat indicators. They mandate independent and recurrent oversight. Additionally, any cybersecurity information shared is not to be used for unrelated national security or law enforcement purposes.

After these improvements were made, TCP's President Virginia Sloan and Senior Counsel Sharon Bradford Franklin penned [an op-ed](#) that was published in The Huffington Post on July 23, in which they urged bipartisan support for these changes and encouraged lawmakers to resist any efforts to water down these essential privacy protections. Asa Hutchinson, former undersecretary for the Department of Homeland Security in the George W. Bush administration and a member of TCP's Liberty & Security Committee, authored [a blog](#) for *The Hill* reinforcing this call. The Senate is expected to act on the legislation in the next several days.

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## High Court to Decide Whether to Apply New Right to Counsel Rule Retroactively

Right to Counsel

In the upcoming term, the U.S. Supreme Court will hear *Chaidez v. United States*, which presents the question of whether the Court's 2010 decision in *Padilla v. Kentucky* applies retroactively. *Padilla* held that defense counsel's failure to advise a client of the immigration consequences of a guilty plea constituted ineffective assistance of counsel. The practical impact of *Chaidez* will be whether those who pled guilty before 2010 without being advised of the immigration consequences of those guilty pleas -- and may now face serious immigration consequences such as deportation -- may assert claims of ineffective assistance of counsel based on *Padilla*.

Because of the important impact that this case will have on the scope of the right to counsel, TCP recently worked with attorneys from Georgetown Law School and Orrick Herrington & Sutcliffe LLP to organize an *amicus* brief from former state and federal prosecutors in support of petitioner Roselva Chaidez. *Amici* argued that retroactive application of *Padilla* is necessary to preserve the discretion of prosecutors to pursue justice in individual cases, which may require reconsideration of guilty pleas to relatively minor crimes accompanied by disproportionately severe immigration consequences. The scope and impact of ineffective assistance of counsel is discussed extensively in TCP's National Right to Counsel Committee report, [Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel](#).

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## Video: TCP Examines *Boumediene's* Legacy and the Fate of the Guantanamo Detainees

Detention and Prosecution of Terrorism Suspects

Four years ago, the U.S. Supreme Court ruled in *Boumediene v. Bush* that Guantanamo detainees have a constitutional right to meaningful judicial review of their detention. At the time, *Boumediene* was widely regarded as a "landmark" decision. Many now see it as a promise unfulfilled. They cite the Supreme Court's refusal of every opportunity to review a series of decisions by the D.C. Circuit Court of Appeals that have fashioned rules making it difficult -- if not impossible -- for detainees to effectively challenge their continued confinement. On July 17, TCP and Covington & Burling LLP hosted [an event](#) with a distinguished panel of experts to discuss the fate of remaining Guantanamo detainees, the future of counterterrorism detention policy and practice, and other aspects of *Boumediene's* legacy. [SCOTUSblog](#) covered the event.



Video: *Boumediene's* Legacy & the Fate of the Gitmo Detainees

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## TCP Board Chair Represents Public Defenders in Landmark Missouri Supreme Court Case

Indigent Defense

On July 31, the Missouri Supreme Court issued a long-awaited ruling in the litigation over that state's overloaded public defender system. In a landmark decision, the state high court ruled in the case of *State ex rel. Missouri Public Defender Commission v. Waters* that a trial court judge had erred by forcing the public defender to represent a defendant despite the fact that the public defender's office had notified the court that, due to crushing caseloads, it did



not have the resources to provide effective representation. The Court's 4 - 3 decision reaffirmed that "[e]ffective, not just pro forma, representation is required by the Missouri and federal constitutions." In situations where the public defender is unavailable, the Court encouraged trial judges to "triage" cases on their dockets -- prioritizing the most serious cases, while continuing or delaying less serious matters -- before assigning counsel. TCP Board Chair Stephen F. Hanlon, a partner at Holland & Knight, represented the Commission in the caseload litigation.



**Stephen F. Hanlon**

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## Georgia Supreme Court Grants Stay of Execution

Death Penalty

The Georgia Supreme Court unanimously granted a stay of execution to Warren Hill, a death-row inmate who was scheduled to be put to death on July 23, in order to give the court time to decide whether the Department of Corrections' recent decision to switch its lethal injection process from three drugs to one violates the state Administrative Procedure Act. Hill had also sought clemency due to his intellectual disability, claiming he was ineligible for execution based on the U.S. Supreme Court's 2002 decision in *Atkins v. Virginia* banning the execution of individuals with mental retardation. While a Georgia state court judge found him to have mental retardation by a preponderance of the evidence, the court held that Hill had not met the state's legal requirement that capital defendants prove mental retardation beyond a reasonable doubt. Georgia is the only state in the country to impose such a stringent standard on the defendant for proving mental retardation. TCP was part of a coalition of advocacy groups advocating for clemency on the basis of Hill's mental retardation and welcomed the stay of execution.

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## Non-Profit Leaders Urge Action on Terrorism Designations

Material Support

On July 16, TCP, the Charity and Security Network, and KARAMAH sent a joint [letter](#) to U.S. Treasury Secretary Timothy Geithner urging him to revise the Department's regulations for designating U.S. organizations, including charities, as supporters of terrorism. The three organizations made clear that U.S. charities and the non-profits that support them condemn terrorism and often work to combat the conditions that breed violent extremism. The groups contend that, without new rules from the Treasury Department, law-abiding U.S. charities might have their assets frozen without adequate notice or ability to appeal.

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## TCP Newsmakers in Brief

Current Events

- On July 19, The Huffington Post published [an article](#) by TCP's President **Virginia Sloan** and Policy Counsel **Scott Roehm** on the implications of the U.S. Supreme Court's recent decision in *Arizona v. United States*, a closely watched case in which the federal government challenged Arizona's controversial immigration law.
- Also on July 19 -- at the invitation of Congressmen John Conyers, Robert C. "Bobby" Scott,

and Jerrold Nadler -- law professor and TCP Supreme Court Fellow **Steve Vladeck**, a respected constitutional law and national security expert who teaches at the Washington College of Law, briefed House members and staff on the implications of decisions handed down by the Supreme Court in the 2011 term. Policy Counsel **Scott Roehm** also participated in the briefing.

- On July 12, Senator Jay Rockefeller (D-WV) introduced The Forensic Science and Standards Act of 2012 (S. 3378), legislation developed with input from **TCP staff**, which would, among other things, empower the National Institute of Standards and Technology to develop federal forensic science standards to help increase the reliability of forensic evidence.
- On July 9, **TCP** responded to a Department of Defense (DoD) solicitation for comments regarding a cybersecurity pilot program that provides for voluntary information sharing between DoD and defense contractors. Our comments focused on the need to protect personally identifiable information and the content of private communications, as well as to ensure effective application of President Obama's Executive Order on Controlled Unclassified Information.
- The Naval Postgraduate School's Center for Homeland Defense and Security has downloaded a number of **TCP's** reports and documents to its [Homeland Security Digital Library](#) in support of future homeland security researchers.
- **TCP welcomed** an announcement from the DoJ that they would undertake a national review of convictions based upon hair and fiber evidence; current science strongly indicates such evidence is inherently unreliable. In April, TCP had [criticized the Department's plans](#) to examine only cases involving hair evidence in the District of Columbia, and instead had [urged the Attorney General](#) to undertake a review of all such cases nationwide.

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