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Greetings!

Mark your calendars! The Constitution Project (TCP) will host its **6th Annual Constitutional Champions Gala** on Thursday, April 18, 2013 in Washington, DC. This year's gala promises to be our best ever. To observe the 50th anniversary of the Supreme Court's landmark right-to-counsel decision in *Gideon v. Wainwright*, TCP will honor four luminaries associated with the historic case. They are Abe Krash, an Arnold & Porter attorney who represented Mr. Gideon; Bruce Jacob, who represented Florida in the Supreme Court but now advocates for indigent defense reform; Walter Mondale, then-Minnesota Attorney General who organized an *amicus* brief by 22 other state AG's in Mr. Gideon's favor; and Anthony Lewis, Pulitzer Prize winning author of "Gideon's Trumpet." Steve Bright, president of the Southern Center for Human Rights, will present the awards.



To make the event more exciting, we have commissioned a pivotal video to highlight the electrified reaction to the Court's decision, the dashed hopes, and the crisis confronting the indigent defense system today. The film will be an indispensable tool for educating the public, the press, and policymakers about *Gideon's* unfulfilled promise and the crisis that court-appointed lawyers and their clients face today. We are making it available for free to our allies because we believe it will serve as a powerful vehicle for advocating for the justice we thought *Gideon* would bring, but ultimately did not. Special thanks to the Ford Foundation, Arnold & Porter, and so many other law firms and individuals who have underwritten the video, clips of which will be shown at the gala.

We will be in touch soon with information on how to RSVP. In the meantime, if you or your organization is interested in sponsoring this year's gala, please contact Messellech Abebe, TCP's Director of Development, at mabebe@constitutionproject.org or (202)580-6942.

Wishing you and yours a happy holiday season!

Sincerely,



Virginia Sloan
President, The Constitution Project

Event to Turn Spotlight on Executive Clemency Process

Upcoming Event

In the wake of a [recent news report](#) that found President Obama has granted clemency in fewer cases than any president in modern history, TCP is joining Families Against Mandatory Minimums, The Heritage Foundation, and the National Association of Criminal Defense Lawyers to host a discussion on whether the clemency process is broken, and, if so, how it can be repaired. The event, which will take place at noon on December 10 at The Heritage Foundation, will include a distinguished and bipartisan panel of experts: Albert Alschuler, Julius Kreeger Professor Emeritus of Law and Criminology, Northwestern University Law; Gregory Craig, former White House Counsel for President Barack Obama and Special Counsel for President Bill Clinton; Robert "Bob" Ehrlich, Jr., former Governor of Maryland; Margaret Love, former U.S. Pardon Attorney; and Paul Rosenzweig, Visiting Legal Fellow, Center for Legal and Judicial Studies, The Heritage Foundation. If you are interested in attending or watching the live webcast, [RSVP online](#) or call Heritage at (202) 675-1752.

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Indigent Defense Reform Advances in Michigan

Right to Counsel

The Constitution's guarantee of a right to counsel moved one step closer to reality in Michigan last month. Legislation implementing recommendations of the Governor's Advisory Commission on Indigent Defense to fix Michigan's broken indigent defense system passed the Michigan House of Representatives on November 8 with 71 "yea" votes and 36 "nays." Earlier this fall, TCP's National Right to Counsel co-chairs weighed in with [a letter](#) supporting the legislation and refuting concerns expressed by the state's attorney general. Judge Thomas Boyd, a member of the Governor's Advisory Commission, cited the TCP letter during his testimony before the Michigan House Judiciary Committee. TCP will continue working with allies in Michigan as the proposal moves to the state senate in December.

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TCP Urges Supreme Court to Hold State Accountable for Failure to Fund Indigent Defense

Right to Counsel

Jonathan Boyer languished in jail for five years awaiting trial on capital charges, without an attorney, because the state of Louisiana refused to provide adequate funding to its indigent defense system. Prosecutors finally dropped the capital charges and indicted Mr. Boyer for second degree murder, and two years later Mr. Boyer had his day in court. While a Louisiana appeals court acknowledged that the five year delay would implicate Mr. Boyer's constitutional right to a speedy trial, it refused to attribute the delay to the state, ruling that indigent defense funding failures were outside the control of the state. The decision essentially let the state off the hook for the logical consequences of its

refusal to adequately fund indigent defense.

On November 26, TCP filed an [amicus brief](#) in support of Mr. Boyer's petition asking the U.S. Supreme Court to hear the case, with the generous help of *pro bono* counsel at Skadden, Arps, Slate, Meagher & Flom LLP. The brief argues that a state must be held responsible for the failure to fund counsel for an indigent capital defendant when determining whether there has been a violation of the defendant's constitutional right to a speedy trial.

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Senate Committee Votes to Strengthen Digital Privacy Law

Privacy & Technology

On November 29, the Senate Judiciary Committee approved a bill to update the Electronic Communications Privacy Act (ECPA), a 1986 law that regulates government access to the content of private electronic communications such as emails and documents stored "in the cloud." The bill would require the government to obtain a warrant based on probable cause in order to gain access to the content of such electronic communications.

"Rapid changes in technology should not mean that when we communicate by email or store records in the cloud we have less legal protection than when we send a letter by snail mail or store it in a desk drawer at home," said Sharon Bradford Franklin, senior policy counsel at TCP. The bill passed by the Senate Judiciary Committee would "help bring Fourth Amendment safeguards into the digital age, and Senator Leahy and committee members should be commended for their effort," she said.

TCP is part of the [Digital Due Process Coalition](#), which strongly supports modernizing ECPA to keep pace with changing technology. More than a year ago, two members of the Liberty and Security Committee, former Congressmen Asa Hutchinson and Mickey Edwards, authored [an op-ed](#) in The Hill on the importance of ECPA reform.

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TCP Counsel Addresses DHS Fusion Center Conference

Privacy & Technology

TCP Senior Counsel Sharon Bradford Franklin was invited to speak at the Department of Homeland Security's recent "National Fusion Center Privacy, Civil Rights and Civil Liberties Workshop." Privacy and civil liberties officers from the nation's 77 information-sharing hubs for federal, state, and local law enforcement, known as fusion centers, attended the two-day November conference. In September, TCP's Liberty and Security Committee released a [timely and comprehensive report](#) on the threats fusion centers pose to fundamental constitutional rights, including the free exercise of religion, equal protection, and association.

Ms. Franklin and Mike German of the American Civil Liberties Union gave the keynote presentation at the conference, which was described as a step toward addressing the concerns raised in TCP's report and by others. Ms. Franklin spoke about the report's specific recommendations and about the important role that privacy and civil liberties officers must play in ensuring the implementation of privacy policies and protection of Americans' rights. Copies of TCP's [fusion center report](#) were distributed to the more than one-hundred attendees at the event.

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DHS Data Privacy and Integrity Advisory Committee Adopts Cybersecurity Privacy Recommendations

Privacy & Technology

At its meeting on November 7, the Department of Homeland Security's Data Privacy and Integrity Advisory Committee (DPIAC) adopted a report recommending privacy safeguards to be incorporated in any cybersecurity pilot program that DHS develops or in which DHS participates. The report, developed by the DPIAC's Cybersecurity Subcommittee, makes recommendations both for safeguarding privacy when information is shared - within government and between government and private companies - as part of a cybersecurity pilot program, and for what privacy considerations DHS should include in evaluating the effectiveness of cybersecurity pilots. TCP Senior Counsel Sharon Bradford Franklin serves on the Cybersecurity Subcommittee and helped to develop this report.

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TCP Submits Brief in NDAA Indefinite Detention Case

Detention and Prosecution of Suspected Terrorists

TCP and the Center for National Security Studies have asked the U.S. Court of Appeals for the Second Circuit for permission to file an [amicus brief](#) in *Hedges et al v. Obama*. Earlier this year, the district court issued an injunction in the case prohibiting the government from enforcing Section 1021 of the National Defense Authorization Act (NDAA) of 2012, which provides for military detention of certain individuals. The brief raises an argument overlooked by the district court and not addressed by the parties, namely that neither the NDAA nor the Authorization for the Use of Military Force (AUMF) adopted in the aftermath of the 9/11 attacks provides the executive with the authority to place individuals in military detention without charge or trial if the individuals are arrested in the United States.

As TCP's Liberty and Security Committee explained in its [Report on Post 9/11 Detentions](#), "[a]ny detention of a citizen or non-citizen in the United States must be expressly authorized by congressional statute or by the law of war." Because nothing in the NDAA or AUMF satisfies that clear statement requirement, the district court should not have construed either to authorize military detention of such individuals, the two groups asserted in their brief submitted on November 13.

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TCP Counsel Provides Post-Election Assessment of Criminal Justice Reform Opportunities

Criminal Justice Reform

On November 17, TCP Government Affairs Counsel Christopher Durocher provided analysis of this year's presidential and congressional elections for leaders of death penalty reform efforts from across the nation. Speaking on a panel entitled "Unpacking the Elections" during the Abolitionist Leadership Training Institute's annual conference, Mr. Durocher discussed the opportunities and challenges criminal justice reform efforts will face during the 113th Congress and President Obama's second term. The panel, moderated by Michael Macleod-Ball of the American Civil Liberties Union, also included Rick Johnson of Lake Research, Jeanne Woodford of Death Penalty Focus, and Arturo Vargas of the National Association of Latino Elected Officials.

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