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### Greetings!

April was an incredibly busy and exciting month at The Constitution Project (TCP). First, on April 16, our Task Force on Detainee Treatment released its highly-acclaimed, two-years-in-the-making report. The most significant conclusion that Task Force members reached was that, in the wake of 9/11, our government indisputably authorized and tolerated the use of torture against numerous detained suspects. The report is already being cited - nationally and internationally - as the most definitive study on this issue yet published. I am so impressed by the hard work that our Task Force members and staff put into this project, and I was delighted to see the incredible reception the report received, which is discussed in more detail below.



Two days later, on April 18, TCP held its [6th Annual Constitutional Champions Gala](#) and used the occasion to mark the 50th anniversary of the Supreme Court's landmark right-to-counsel decision in *Gideon v. Wainwright*. TCP presented its Constitutional Champion award to four luminaries connected to the historic case: Abe Krash, Bruce Jacob, Walter Mondale, and Anthony Lewis. The first three recipients personally accepted their awards, while the award for Mr. Lewis, who passed away in March, was accepted by his wife, former Massachusetts Supreme Judicial Court Chief Justice Margaret H. Marshall.

Following the award presentation, we paid special tribute to Mr. Lewis, the acclaimed author of *Gideon's Trumpet* and former New York Times journalist, with remarks from Professor Charles Ogletree of Harvard Law School, Jack MacKenzie, Mr. Lewis's colleague at *The New York Times*, and E.J. Dionne, syndicated columnist at *The Washington Post*. Stephen Bright, president and senior counsel at the Southern Center for Human Rights, served as master of ceremonies for the event, which also featured excerpts from TCP's short film, [Defending Gideon](#).

I was very glad to see so many longtime friends and allies at the Gala, and I want to extend my sincere thanks to everyone who sponsored, attended or otherwise supported this amazing event.



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Sincerely,

Virginia Sloan  
President, The Constitution Project

## TCP's Task Force on Detainee Treatment Issues Report

Counter-Terrorism Policies & Practices

On April 16, TCP's blue-ribbon Task Force on Detainee Treatment released the most comprehensive, bipartisan investigation into the detention and treatment of suspected terrorists yet published. The product of more than two years of research, analysis and deliberation by the Task Force members and staff, [the report](#) provides the American people with a broad understanding of what is known -- and what is still unknown -- about the past and current treatment of suspected terrorists detained by the U.S. government during the Clinton, Bush and Obama administrations, and across multiple geographic theatres, including Iraq, Afghanistan, Guantánamo and the so-called "black sites." In addition to finding that individuals at the highest levels of the U.S. government authorized torture of terrorist suspects in violation of the Constitution, federal law, and international treaties, the report also contains numerous recommendations to improve U.S. detainee treatment practices and policies and to prevent our government from repeating the same mistakes in the future.

To release the report, we held a [press conference](#) at the National Press Club, which featured presentations from eight of the eleven members of the Task Force, including its co-chairs, Asa Hutchinson and James R. Jones. The press conference was covered live by C-SPAN, and the media reported extensively on the report, including a [front-page story](#) and [editorial](#) in *The New York Times* and stories by the [Associated Press](#), [Bloomberg News](#), [The Guardian](#), [The American Conservative](#), NBC Nightly News, [PBS Newshour](#), Al-Jazeera, MSNBC, and even The Daily Show with Jon Stewart. [An op-ed](#) written by Task Force member Thomas Pickering was published in *The Washington Post*. The report also drew praise from elected officials, including [Senate Intelligence Committee chair Dianne Feinstein](#) and Conservative MP Andrew Tyrie, who chairs the All-Party Parliamentary Group in the British House of Commons.

To download a copy of the report, learn more about the Task Force, or find additional coverage of these issues, visit the Task Force's new website at [www.detaineeetaskforce.org](http://www.detaineeetaskforce.org). You can also continue to follow these issues on Twitter, @ConPro, or join the conversation using the hashtags #ItWasTorture and #NotInMyName.

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## Coalition Urges President to End Indefinite Detention and Begin Closing the Prison at Guantánamo

Counter-Terrorism Policies & Practices

On April 11, TCP [joined a coalition](#) of 25 groups in writing to President Obama to express serious concern about an ongoing hunger strike at Guantánamo Bay that to date involves nearly two-thirds of the detainee population, approximately 20 of whom are being force fed. The strike appears rooted in a sense of hopelessness among detainees about their fate.

The groups urged the president to take two immediate steps to end the policy of indefinite detention without charge and to begin closing the prison: 1) direct Secretary of Defense Charles Hagel to use his authority to issue the certifications or national security waivers required by the National Defense Authorization Act to effect transfers from Guantánamo; and, 2) appoint a high-ranking individual within the Obama administration to lead the effort to close the prison. Both steps are consistent with our Task Force on Detainee Treatment report, which includes specific recommendations on the abusive practice of force feeding and the need to swiftly begin transferring those Guantánamo detainees who have long been cleared.

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## House Cybersecurity Bill Fails to Safeguard Privacy

Government Surveillance & Searches

On April 18, the U.S. House of Representatives approved the Cyber Intelligence Sharing and Protection Act (CISPA), HR 624, aimed at improving our nation's ability to prevent and respond to attacks on our nation's critical computer networks. The bill would allow the government to provide otherwise potentially restricted information about cyberthreats to private sector companies, and would in turn facilitate private companies -- such as Facebook, Google or internet service providers -- sharing information about their networks, possibly including sensitive personal information or the content of emails, with federal authorities. Unfortunately, the House-passed legislation fails to include necessary civil liberties protections to prevent companies from sharing vast quantities of personal information from private computer networks with the government. Although the final version of the bill incorporates some last-minute improvements in privacy safeguards, these provisions are not sufficient to safeguard individual privacy.

TCP has been working with a coalition of groups to promote privacy protections in cybersecurity legislation based on the proposals included in TCP 's Liberty and Security Committee's 2012 report, [Recommendations for the Implementation of a Comprehensive and Constitutional Cybersecurity Policy](#). The Obama administration has threatened to veto the House bill because of concerns about its lack of privacy safeguards. The U.S. Senate will now consider the issue.

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## TCP Promotes Privacy in Cybersecurity Executive Order Implementation

Government Surveillance & Searches

In a related story, the National Institute for Standards and Technology (NIST) recently sought input on developing a framework of voluntary standards and best practices to improve U.S. critical infrastructure cybersecurity. NIST is developing the framework to assist implementation of President Obama's 2013 executive order on cybersecurity.

On April 8, TCP [submitted comments](#) to NIST urging specific measures to incorporate privacy and civil liberties safeguards into government cybersecurity programs. TCP recommended that any framework for enhancing cybersecurity should promote overall data minimization and use limitations on private information, provide protections for data integrity, and require strict accountability and auditing.

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# Bipartisan Support for ECPA Reform in Senate

## Data Collection & Privacy

On April 25, the Senate Judiciary Committee approved a long-overdue update to the Electronic Communications Privacy Act (ECPA), a 1986 law that regulates government access to the content of private electronic communications. The committee-passed bill would require that government officials get a warrant based on probable cause before obtaining the content of electronic communications like email and documents stored "in the cloud." Law enforcement officers could still rely on existing exceptions to the warrant requirement. These changes would ensure that the same Fourth Amendment protections that cover our physical documents apply with equal force to our electronic communications in the digital age.

TCP is part of the [Digital Due Process Coalition](#), comprising technology companies and privacy groups from across the political spectrum. The Coalition strongly supports modernizing the law. Earlier, TCP joined a [coalition letter](#) to members of the Senate Judiciary Committee urging passage of the bill. In addition, Judge William S. Sessions, a former director of the FBI and a member of TCP's board of directors, wrote a letter to members of the Committee supporting the bill, saying that the reforms of ECPA necessary to preserve civil liberties could be achieved [without hampering law enforcement activities](#).

On April 3, TCP presented a panel discussion, hosted by Google, that examined the major issues related to ECPA reform. Participants provided a variety of perspectives on the issues before this Congress as it considers legislation designed to bring ECPA into the 21st century. [Watch the event](#), which was covered by C-SPAN.

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## TCP Submits Statement for Senate Judiciary Hearing on Targeted Killing

### Counter-Terrorism Policies & Practices

On April 23, 2013, the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights and Human Rights held a hearing titled "Drone Wars: The Constitutional and Counterterrorism Implications of Targeted Killing." TCP submitted a [statement](#) for the record urging Congress to continue to press the Obama administration for more transparency around U.S. targeted killing policies and practices. The statement argued that our constitutional system of checks and balances requires that such policies and practices be subject to careful oversight by Congress and consideration and debate by an informed public. Neither is possible when the rules and standards by which the executive branch operates remain secret.

The submission was based on [Lift the Veil of Secrecy on Targeted Killing](#), a February 23, 2013 statement joined by 24 members of our Liberty and Security Committee that called on the president to: 1) make public, with redactions only to protect properly classified information, the actual legal opinions regarding the scope of the president's targeted killing authority, and any other operative rules and legal guidance for the targeted killing program; and 2) provide comprehensive information on the targeted killing program to all congressional committees of jurisdiction.

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## TCP Comments on Privacy Implications of Drone Use for Surveillance Within U.S.

### Government Surveillance & Searches

TCP filed [comments](#) with the Federal Aviation Administration (FAA) on the privacy impact of its unmanned aircraft system (UAS) test site program. The test site program is being designed to integrate the use of aerial drones into U.S. airspace for a variety of domestic purposes, including surveillance. In its comments, TCP urged the FAA to safeguard First and Fourth Amendment rights by creating limits to the geographic scope that UAS surveillance can cover as well as strict rules for law enforcement use of UAS surveillance footage. The comment was based on TCP's Liberty and Security Committee's [Guidelines for Public Video Surveillance](#), which recommends a variety of safeguards for government use of surveillance cameras that are equally applicable to aerial cameras on drones.

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## Coalition Urges President to Create Security Classification Reform Panel

Classification & Secrecy

TCP joined a coalition of more than thirty organizations in writing to urge President Obama to appoint a Security Classification Reform Steering Committee to address the problem of "over-classification." The [letter](#) sent to the White House on April 23 notes that, "A presidentially-appointed Steering Committee would provide a mechanism for identifying and coordinating needed changes and for overcoming internal agency obstacles to change. It would also reflect the urgency of reining in a classification system that is largely unchecked."

The Public Interest Declassification Board, an advisory committee established by Congress to promote public access to national security decision making, recommended creation of the steering committee. TCP has been working to promote reforms to our classification system based upon the Liberty and Security Committee's 2009 report, [Reining in Excessive Secrecy: Recommendations for Reform of the Classification and Controlled Unclassified Information Systems](#).

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## TCP Files *Amicus* Brief Arguing for Improvements in 'No Fly List'

Government Surveillance & Searches

On March 29, The Constitution Project filed an [amicus brief](#) in the case of *Latif et al. v. Holder*, in the U.S. District Court for the District of Oregon. In that case, Ayman Latif and other individuals allege that they have been prevented from flying and advised by officials that they are included on the No Fly List. They argue that the Due Process Clause requires the federal government to provide them with official notice and a meaningful opportunity to seek removal from the list.

TCP's brief urges that the government provide information to travelers who have already been informally advised of their watch list status about the reasons for placement on the list and give them a meaningful opportunity to challenge their inclusion. The brief also notes that the current procedure to seek removal from the List, the DHS Traveler Redress Inquiry Program, is inadequate to provide due process. TCP asserts that a more meaningful redress process will help make the No Fly List more accurate and thereby improve national security.

TCP's brief is based on our Liberty and Security Committee's report [Promoting Accuracy and Fairness in the Use of Government Watch Lists](#). We are grateful to Rita Siemion for representing us.

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## Bipartisan Justice for All Reauthorization Act Reintroduced

### Criminal Justice

On April 25, Senate Judiciary Chairman Patrick Leahy (D-VT) and Senator John Cornyn (R-TX) introduced the Justice for All Reauthorization Act (JFAA) of 2013. The bill is substantially similar to the version of the JFAA that passed the Senate Judiciary Committee last summer. Among its provisions, the legislation requires states seeking Byrne JAG grants to submit strategic plans, developed in conjunction with all segments of the criminal justice system (including indigent defense), and it provides technical assistance to states seeking to improve their indigent defense systems. The bill also contains improvements to the Kirk Bloodsworth post-conviction DNA grant program, providing states with technical assistance in developing evidence preservation protocols, and increases the authorization for Coverdell forensic improvement grants.

Unfortunately, like last year's committee approved bill, this reintroduced version omits a cause of action provision—originally included in the 2012 version of the bill—that would authorize the DOJ to hold states accountable for their failure to provide constitutionally adequate representation for indigent defendants. TCP believes such a provision provides an important and effective tool for encouraging states to address shortcomings in their indigent defense systems. In March, Senator Leahy introduced a stand-alone bill, called the "Gideon's Promise Act" (S. 597), authorizing such a cause of action.

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## TCP Urges Senator Leahy to Hold Hearings on Justice Safety Valve Act

### Criminal Justice

TCP has joined with 48 other organizations in an April 24 [letter](#) to Senator Leahy requesting a hearing in the Senate Judiciary Committee on S. 619, the Justice Safety Valve Act. The legislation, which Senator Leahy introduced with cosponsor Senator Rand Paul (R-KY) in March, addresses federal mandatory minimum sentencing laws, which the Congressional Research Service has cited as a leading driver of the unsustainable population and cost growth of the federal prison system. The legislation gives judges authority to sentence offenders below the minimums based on such factors as whether the mandatory minimum sentence would protect the public, create an unwarranted sentencing disparity among similarly culpable offenders, provide a just punishment, and deter others from committing similar crimes.

Also last week, Representatives Robert C. "Bobby" Scott (D-VA) and Thomas Massie (R-KY) introduced a House companion bill, HR 1695. TCP's report [Principles for Design and Reform of Sentencing Systems](#) addresses the problems with mandatory minimum sentences.

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## Newsmakers in Brief

### Current Events

- One of the policy debates prompted by the Boston Marathon bombing was the role of public video surveillance. TCP senior counsel Sharon Bradford Franklin was quoted in a [story on the investigation](#) in *USA Today*, and she was also quoted, and TCP's [report on the issue](#) was cited, in this [April 22 story](#) on Chicago NPR.

- Franklin was also quoted in this [Canton Repository story](#) on the challenges of protecting Fourth Amendment rights in the digital age.
- On April 4, TCP President Ginny Sloan was quoted in a [Baltimore Sun article](#) titled, "Furloughs begin for federal public defenders." Noting the impact that the budget sequestration was having on federal public defenders' offices, Ms. Sloan said, "The courts are trying to do the best they can, but when it comes to constitutional rights, you can't just say, 'We don't have the money, so sorry.'"

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