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Greetings!

Last month, President Obama delivered an important speech at the National Defense University in which he announced changes in his administration's counterterrorism policy. I was [pleased to hear](#) the president reaffirm his commitment to make America's counterterrorism policy more transparent, more accountable, and more consistent with the rule of law. While this represents a step in the right direction, it is not enough. For example, if the president is truly serious about fulfilling his promise to close Guantánamo, he needs to immediately use the authority he already has, but has failed to use in the past, and now begin transferring cleared detainees out of the prison. As for the president's reliance on drones and targeted killing, it is critical that his administration provide Congress the information it needs to conduct careful oversight, and be more forthcoming with the American people with respect to the specific laws, standards and processes under which the program operates.



In addition, if the president is truly committed to a more transparent counterterrorism policy, he should declassify the CIA's post 9/11 rendition, detention and interrogation program, and support a Senate Select Intelligence Committee (SSCI) vote to release to the public its comprehensive report evaluating that program. The Senate report is currently with the CIA for its comments, which are months overdue. On May 6, The Constitution Project (TCP) joined a number of other leading civil liberties and human rights organizations in [urging](#) President Obama to take personal responsibility for the administration's response to the report. We believe the Senate report is a perfect complement to the [report](#) released in April by TCP's [Task Force on Detainee Treatment](#). That report also encouraged the administration to review the SSCI report. We will continue to keep the pressure up until the American people have a better understanding of what happened to suspected terrorists in U.S. custody and why.

Sincerely,

IRS Scandal Warrants Independent Review, Clearer Laws

Transparency & Accountability

At the behest of TCP, advocacy organizations from across the political spectrum joined together to condemn the Internal Revenue Service's (IRS) practice of discriminating against applications for tax-exempt status based solely on the perceived political leanings of the applicants, and urged Congress to conduct vigorous oversight to determine the full scope of the misconduct. In a [statement](#) released May 16, the groups -- which, in addition to TCP, included the ACLU, Americans for Tax Reform and the Tea Party Express -- said, "It is difficult to conceive of a more serious threat to the First Amendment of the Constitution of the United States than the federal government using its awesome power to target individuals and organizations solely because of their political beliefs."

According to a recently released report by the Treasury Department's Inspector General for Tax Administration (TIGTA), beginning around March 2010, the IRS applied special scrutiny to applications from politically conservative groups with "Tea Party" or "Patriot" in their names. For example, these groups were asked to provide lists of donors or answer burdensome, intrusive, and inappropriate questions about their work. Some progressive groups were also targeted but the majority of the targeted organizations seem to have been conservative.

The groups joining the statement said they were "encouraged that several congressional leaders from both political parties have already announced their intention to hold hearings to investigate the IRS's actions." The groups also commended President Obama's commitment to act promptly to adopt the TIGTA recommendations, but noted the report "should be considered only a first step to understanding how and why such condemnable political considerations seeped into the deliberative process." They called for an independent review by the Secretary of the Treasury and the IRS Oversight Board, a nine-member independent body charged with overseeing the IRS. They applauded the Department of Justice for launching a probe into possible criminal violations. In addition, they said that Congress and the Obama administration need to develop content-neutral standards for reviewing applications for tax-exempt status that the IRS can fairly and effectively administer. Since then, there have been several personnel changes at the IRS, and high-level officials have testified before Congress. The investigations continue.

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Detainee Treatment Report Continues to Attract Attention

Counter-Terrorism Policies & Practices

TCP's Task Force on Detainee Treatment's report continues to attract interest from policymakers, the media, and the public. The report earned praise in editorials and op-eds appearing in [The Buffalo News](#) and [The Tennessean](#). On May 9, *The Detroit News* published an op-ed by Task Force members Judge William Sessions and David Gushee titled "[Torture is torture - it is illegal and always wrong.](#)" *The San Diego Union-Tribune* published Task Force member Gen. David Irvine's op-ed, "[The Case Against Torture,](#)" on May 10. That same day, Task Force member Dr. Gerry Thomson participated in a panel discussion at Fordham University entitled "[Crisis at Guantánamo: Will the Prison Ever Close?](#)" The panel moderator lauded the Task Force's report, and copies of the abridged version of the report were distributed to participants.

Other May activities included the following: *The New York Times* mentioned the report in [an editorial](#)

on the hunger strikes at Guantanamo; syndicated columnist Nat Hentoff authored two [separate articles](#) focused on the report; Georgetown law professor David Cole suggested in [an article](#) in the *New York Review of Books* that Vice President Biden's call for public disclosure of the Senate Select Intelligence Committee investigation into the CIA interrogation program "may have been prompted by a report issued by a bipartisan task force organized by the nonprofit Constitution Project;" and, in coordination with the National Religious Campaign Against Torture, religious leaders around the country are using the report as the basis for [op-eds](#), which have appeared in nearly two dozen papers, with more to come.

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TCP Hill Briefing Keeps Focus on Guantánamo

Counter-Terrorism Policies & Practices

TCP co-sponsored a Capitol Hill panel discussion titled, "Guantánamo: From Crisis to Solution," on Friday, May 10. Rep. Jim Moran (D-VA) hosted the event. Panelists were: General David Irvine, a member of TCP's Task Force on Detainee Treatment; TCP Liberty and Security Committee member and former chief of staff to Secretary of State Colin Powell, Colonel Larry Wilkerson; the founder of the National Religious Campaign Against Torture, Dr. George Hunsinger; and a senior staff attorney for the Center for Constitutional Rights, Pardiss Kebraei. The discussion was moderated by Kristine Huskey, an Adjunct Professor of National Security at Georgetown University Law Center and a member of TCP's Board of Directors.

The panel discussed the current human rights situation at the detention center at Guantánamo Bay and President Obama's options for transferring detainees out of Guantánamo, including the feasibility of permanently closing the prison. The National Religious Campaign Against Torture and the New America Foundation joined TCP in co-sponsoring the event, which was [broadcast](#) live on C-SPAN and [covered](#) by MSNBC.

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Civil Liberties Board Finally at Full Strength

Transparency & Accountability

On May 7, the Senate confirmed David Medine as chair of the Privacy and Civil Liberties Oversight Board (PCLOB). The PCLOB, which was designed to oversee the privacy and civil liberties implications of national security programs and policies, is finally operating at full strength. Establishing and staffing the PCLOB has been a [TCP priority](#) since the 9/11 Commission first recommended formation of such a board. In 2007, Congress enacted legislation to strengthen the PCLOB, including making it an independent agency and giving it subpoena power. Thereafter, TCP continued to press the President to nominate, and the Senate to confirm, members to the board, and the PCLOB finally came into existence when the first four members were confirmed in 2012.

In one of her many interviews about PCLOB, Federal News Radio [interviewed](#) TCP Senior Counsel Sharon Bradford Franklin about the importance of the Medine confirmation on May 14. In a May 9 story, Law360 [quoted](#) Ms. Franklin on the critical role the PCLOB can play in assessing national security programs.

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House Judiciary Committee Gets Active on Criminal Justice Reform

Criminal Justice

On May 7, the House Judiciary Committee unanimously passed a resolution entitled "Supporting the Sixth Amendment to the United States Constitution, The Right to Counsel." TCP worked closely with Congressman Ted Deutch (D-FL) in developing the language of this resolution, which honors the 50th Anniversary of *Gideon v. Wainwright* and calls for "strategies to improve the criminal justice system to ensure that indigent defendants in all felony cases are adequately represented by counsel."

Also on May 7, the Committee announced the formation of a new bipartisan task force to address the issue of overcriminalization. TCP was asked, and has agreed, to provide advice and information, as have our working group allies, as this task force investigates the causes and possible ways to address the proliferation of criminal laws at the federal level, both within the United States Code and the Code of Federal Regulations. Overcriminalization affects the criminal justice system in many ways, including unfairly targeting people for criminal prosecutions, and overloading an already taxed system with conduct that should be treated administratively if it should be addressed at all.

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Mentally Ill Coloradan Facing Death Penalty Wins Reprieve

Criminal Justice

On May 3, 2013, in a [letter](#) organized by TCP's *Clearinghouse of New Voices for Criminal Justice Reform*, former prosecutors urged Colorado governor John Hickenlooper (D) to commute Nathan Dunlap's death sentence to life in prison without the possibility of parole. This letter was presented to Gov. Hickenlooper as part of a clemency package, calling for the governor to act in light of the fact that his jury was not informed that he suffers from a serious mental illness, and was given no opportunity to consider the effects of that illness on Mr. Dunlap's moral culpability. On May 22, the governor announced an indefinite stay of execution.

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TCP Organizes *Amicus* Brief on Material False Evidence

Clearinghouse

On May 1, a TCP-organized [amicus brief](#) was filed in the U.S. Court of Appeals for the DC Circuit in the case of *Gathers v. United States*. The defendants, Gathers and Mitchell, were convicted of first-degree murder (among other crimes) and each was given a sentence of 36 years to life in prison. The government's case largely relied on evidence suggesting that Gathers and Mitchell had a motive to kill the victim because he was the sole government witness in the murder prosecution of Gathers' brother. It is alleged that the government elicited, failed to correct, and then, in closing argument, exploited material (false testimony from a Metropolitan Police Department detective), in order to obtain the convictions - namely that the detective identified the victim by name in a preliminary hearing in Gathers' brother's prosecution, revealing the victim's identity to Gathers and Mitchell.

The brief, organized by TCP's *Clearinghouse of New Voices for Criminal Justice Reform*, argues that the trial court committed an error by placing the burden of proof on Gathers and Mitchell, rather than on the government, to prove that there was no reasonable likelihood that the false testimony affected the verdict. It also argues that the defendants did not waive their claims, even though their defense counsel may have been aware of the false evidence, since federal courts are in agreement that when a prosecutor exploits false testimony, a defendant may raise the claim on appeal even if defense counsel was aware of the false evidence and could have objected during trial. Eight former prosecutors and judges signed the brief.

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Ongoing Debate Over Public Video Surveillance Programs

Government Surveillance & Searches

On May 30, Ms. Franklin participated in a public forum on government video surveillance organized by the ACLU of North Carolina. At the forum in Charlotte, NC, an attorney for the Charlotte Police Department discussed the city's video camera system and its development of rules to govern the process. Ms. Franklin explained the [recommendations](#) of TCP's Liberty and Security Committee for incorporating privacy safeguards into such surveillance systems, and an attorney for the ACLU of North Carolina outlined several bills pending in the state legislature on surveillance issues. The forum was widely covered by [local press](#).

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Defending Gideon Available for Public Showing

Criminal Justice

This year marks the 50th anniversary of the Supreme Court's decision in *Gideon v. Wainwright*, a landmark ruling declaring that the Constitution required the government to appoint a lawyer for defendants in criminal cases who could not otherwise afford one. To commemorate the occasion, TCP produced a short documentary, [Defending Gideon](#), which takes viewers on a fascinating journey from the heady days of the *Gideon* decision 50 years ago through the present day, and examines the crisis now facing indigent defense systems across the country.

Narrated by the noted actor Martin Sheen, the film features interviews with many who were involved in the case at the time, including Abe Krash, Bruce Jacob, Walter Mondale, and Anthony Lewis. Interwoven in this historical context are the present day stories of the country's failure to fulfill *Gideon's* promise, such as burdening public defenders with overwhelming caseloads and failing to provide them with sufficient resources, and the heart-wrenching stories of people the system continues to leave behind.

We encourage people to use the film as a public education tool. Anyone is welcome to screen or stream the film for public showings. To make a screening easier, TCP has also developed an [event toolkit](#) and a [lesson plan](#). For more information or to order a DVD, contact Brian Yourish at byourish@constitutionproject.org.

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Newsmakers in Brief

Current Events

- On May 27, Cato Institute Senior Fellow Doug Bandow discussed TCP's report, *Suspicionless Border Searches of Electronic Devices: Legal and Privacy Concerns with the Department of Homeland Security's Policy*, in a [Forbes column](#) titled "For International Travelers, Reviving the Fourth Amendment."
- *The Christian Science Monitor* quoted Ms. Franklin about the effectiveness of terror watch lists in [a May 22 story](#) about terror watch lists and the Boston Marathon bombing.

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