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Groups Say White House Must Take Lead in Declassification of Senate Torture Report

Counter-Terrorism Policies & Practices

Citing the CIA's inherent conflict of interest, TCP has joined an alliance of civil liberties and human rights groups in telling President Obama that it is "imperative" that White House staff take the lead in declassifying the Senate Select Committee on Intelligence report on the agency's detention and interrogation of suspected terrorists in the aftermath of the attacks of September 11, 2001. On a bipartisan vote taken April 3, the Senate committee sent portions of the report to the executive branch for declassification.

In a [letter](#) delivered to the White House on March 24, the groups cited a recent pledge by President Obama that he is "absolutely committed to declassifying" the Senate report "so that the American people can understand what happened in the past, and that can help guide us as we move forward." The groups wrote that the committee's more than 6,000-page report "apparently documents that the CIA repeatedly lied to Congress, the Justice Department and the White House. It seems obviously inappropriate to permit the agency assessed in the report to decide what parts of it your administration believes the American people should see."

TCP is part of a large and growing [chorus of supporters](#) for declassifying the entire Senate report to the fullest extent possible and making it available to the public. Our support for declassification and release of the report is based on the [recommendations](#) of our Task Force on Detainee Treatment, a bipartisan group of experts that concluded that the U.S. government had engaged in torture of terrorism suspects and that the nation's then-most senior officials bear responsibility for those abuses.

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Senator Blumenthal Keynotes FISA Reform Discussion Co-hosted by TCP

Government Surveillance & Searches

On March 18, TCP co-hosted a panel discussion, "Lifting the Veil on the FISA Court," at the National Constitution Center in Philadelphia. Keynote speaker Senator Richard Blumenthal (D-Conn.) discussed his recently proposed bills to move the one-sided, secretive Foreign Intelligence Surveillance Court (FISC) towards greater accountability, and to ensure that the intelligence community operates within the rule of law. Drawing on his experience as a prosecutor, Senator Blumenthal explained the essential role of the adversarial process in judicial decision-making and provided details of his proposals to appoint a special advocate to represent the public interest.

Following Senator Blumenthal's remarks, a panel of experts gathered by TCP - M.E. "Spike" Bowman, former Deputy General Counsel for the Federal Bureau of Investigation; Angela Canterbury, Director of Public Policy for the Project on Government Oversight; Alexander Joel, Privacy and Civil Liberties Officer for the Office of the Director of National Intelligence; and Judge James Robertson, a

former FISA Court judge and member of The Constitution Project's Liberty and Security Committee - discussed ways to reform the FISC to make it more transparent and accountable. The National Constitution Center's Jeffrey Rosen moderated the discussion.

The event was covered by [C-SPAN](#) and reported in the [Philadelphia Examiner](#).

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Former Judges and Prosecutors Back Reduced Sentences for Low-Level Drug Crimes

Sentencing

More than 40 former judges and prosecutors are backing efforts to reduce sentences for people convicted of low-level drug crimes, while still reserving harsher penalties for more serious offenders.

In a [letter](#) organized by TCP and delivered to the United States Sentencing Commission on March 18, the former government officials endorsed a proposed change in federal sentencing guidelines that would lower the base offense associated with various drug quantities involved in drug possession and distribution crimes. The officials' support for the change stems, in part, from the fact that it "would reduce applicable sentences by an average of 11 months, would have no negative impact on public safety and is a positive step towards controlling costs that will otherwise drain [Department of Justice] resources from other critical law enforcement activities," their letter said.

The letter echoes sentiments U.S. Attorney General Eric Holder [expressed](#) during his testimony before the sentencing commission earlier in the month. The amendment, which the sentencing commission [proposed](#) in January, would reduce sentences for about 70 percent of all drug trafficking offenders, and cut the federal prison population by 6,550 inmates within five years.

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Experts Oppose Legislation Shifting More War Powers to Executive Branch

War Powers

In a [letter](#) sent to members of Congress on March 20, members of TCP's War Powers Committee raised serious constitutional concerns about legislation changing how presidents consult with Congress before sending the military into armed conflict. The signers of the letter - who include a bipartisan group of former members of Congress, constitutional scholars and foreign relations experts - said the proposal from Senators John McCain (R-Ariz.) and Tim Kaine (D-Va.) "would undermine core constitutional principles and strengthen the president and executive power at the expense of Congress and representative government."

TCP's experts said the U.S. Constitution assigns the power to decide on war - at least on offensive military action - to the Congress. By shifting the decision largely to the president and a 20-person committee, the legislation (S. 1939) would undermine "the constitutional role of 515 other members of Congress and the duty they have to represent the interests of their constituents," they said. In addition, they charged that the new proposal could cause a president to downplay a military action in order to avoid consulting with Congress altogether.

The group of experts signing the letter included: former Congressman Mickey Edwards (R-Okla.), who served as chair of the House Republican Policy Committee; former Congressman David Skaggs (D-Colo.), who served on the House Permanent Select Committee on Intelligence; Dr. Louis Fisher, Scholar in Residence at The Constitution Project, who was a specialist in constitutional law and separation of powers at the Library of Congress for four decades, and who authored the 2013

book, Presidential War Power; and several law school professors.

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TCP Convenes Conversation with Evangelical Leaders on Death Penalty

Death Penalty

On March 27, TCP convened a "Conversation on the Death Penalty" with more than 20 evangelical leaders and Christian ethicists from across the country. Dr. David Gushee, the former head of Evangelicals for Human Rights and the Distinguished University Professor of Christian Ethics at Mercer University's McAfee School of Theology, led the meeting. TCP provided attendees with a preview copy of the soon-to-be released report by its bipartisan Death Penalty Committee (see story below); Dr. Gushee is a member of the committee.

The universal view among all leaders participating in the meeting, many of whom oppose capital punishment on moral grounds, was that TCP's work will be highly influential in their discussion among evangelical leaders and members of their congregations, many of whom are either supportive of or still developing their views on capital punishment, on the fairness of capital punishment as presently administered in our country. The attendees also offered their assistance to TCP's work in criminal justice reform campaigns around the country. If someone from the evangelical community can be helpful to you in your work, please let TCP Senior Counsel Sarah Turberville know at sturberville@constitutionproject.org. We are grateful to the law firm of Akin Gump for hosting and participating in the meeting.

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Prudential Law Department Screens "Defending Gideon"

Right to Counsel

On March 5, as part of the Prudential Law Department's Lunch-n-Learn series on landmark U.S. Supreme Court cases, TCP sponsored a program based on "Defending Gideon," the short film we produced last year to observe the 50th anniversary of *Gideon v. Wainwright*. The film presentation was followed by a panel discussion on the case and the need for continued vigilance and protections around the right to effective counsel - with a focus on New York and New Jersey. Philip Horton, a partner in the litigation practice group at Arnold & Porter and chair of the firm's Pro Bono Committee, and Corey Stoughton, senior staff attorney at the New York Civil Liberties Union, discussed modern-day challenges to fulfilling the promise of *Gideon* and answered participants' questions. Sarah Turberville, TCP senior counsel, moderated the 90-minute program. Continuing legal education credit was available to the more than 30 lawyers who attended the program at the company's offices in Newark, NJ, and the many more who participated through the webcast streamed to Prudential offices across the country.

"[Defending Gideon](#)" is available for viewing or downloading on TCP's website.

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TCP Files Amicus Brief in Ineffective Assistance of Counsel Case

Right to Counsel

On March 3, TCP submitted an [amicus brief](#) to the U.S. Supreme Court in support of the petitioner's application for certiorari in the case of *Ifenatuora v. United States*. The petitioner, Cals C. Ifenatuora, is a lawful permanent U.S. resident from Nigeria. Prior to immigrating to the U.S. in 1982, Mr. Ifenatuora and his family suffered extensive persecution by the Nigerian government. He and his wife have three children, all of whom are U.S. citizens.

In 1992, Mr. Ifenatuora was convicted of mail fraud in Maryland. His counsel suggested he plead guilty, but failed to advise him of the immigration consequences of his plea. As a result of his conviction, DHS detained Mr. Ifenatuora in 2009 and began deportation proceedings against of him. In 2010, he filed a writ to challenge his underlying fraud conviction, arguing that he received ineffective assistance of counsel under *Padilla v. Kentucky* because he was not advised of the immigration consequences of a guilty plea.

TCP's brief raised two important questions relating to the Court's post-*Padilla* jurisprudence: 1) the non-retroactivity principle announced in *Teague v. Lane* should not apply to ineffective assistance of counsel claims raised in a federal defendant's first post-conviction challenge; and 2) the rule established in *Padilla v. Kentucky* -- that the 6th Amendment requires counsel to inform his or her client of the immigration consequences of conviction -- is a "watershed" rule of criminal procedure exempt from *Teague*. TCP's brief explains that "[j]ust as Gideon revolutionized the way that the criminal justice system dealt with indigents, so too does *Padilla* revolutionize the way in which the system deals with aliens." Unfortunately, the Supreme Court subsequently denied certiorari.

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Don't Miss Out on TCP's Constitutional Champions Gala, April 24

Current Events

Our major fundraising event of the year is our annual Constitutional Champions Gala, which will be held in Washington, DC on April 24. Now in its seventh year, this event will honor the head of the Associated Press, Gary B. Pruitt, for publicly challenging the government's unprecedented use of surveillance to intimidate journalists; Brendan V. Sullivan Jr., Robert M. Cary and other members of the late Senator Ted Stevens' legal team at Williams & Connolly LLP, for their insistence that federal prosecutors fulfill their constitutional obligation to disclose exculpatory evidence; and Henry F. Schuelke III along with William B. Shields, his colleague at Blank Rome LLP, for writing the report that highlighted the prosecutors' failure to hand over exculpatory evidence in the Stevens case. They join a long list of luminaries from across the ideological spectrum who have received the [Constitutional Champions Award](#) in years past. If you are interested in attending or helping to sponsor the Gala, please contact Jenny Donley at jdonley@constitutionproject.org or (202) 580-6942. Go to [our website](#) for more details.

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Coming in May: A Groundbreaking New Report on the Death Penalty

Death Penalty

TCP's Death Penalty Committee, chaired by former Texas Governor Mark White, Oklahoma City bombing prosecutor Beth Wilkinson, and former Chief Justice of the Florida Supreme Court Gerald Kogan, will release its new report on capital punishment on May 7, 2014, in Washington, DC. Governor White and former Virginia Attorney General Mark Earley will present the committee's findings and recommendations, which relate to a number of persistent areas of concern regarding administration of the death penalty in the United States - including wrongful execution, the right to

counsel, and the disproportionate application of capital punishment, as well as some new areas of concern that have developed, such as the secret procurement of drugs for use in lethal injection. TCP's committee includes both supporters and opponents of capital punishment. It last released a [report](#) on the death penalty in 2005.

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Newsmakers in Brief

Current Events

- An editorial in the [Baltimore Sun](#) urging declassification and release of the report about the CIA's treatment of suspected terrorists prepared by the Senate Select Committee on Intelligence mentioned the comprehensive examination of the issue by TCP's blue-ribbon Task Force on Detainee Treatment. An [op-ed](#) in al Jazeera America by two former Task Force staff members also highlighted the report.
- Allegations by Senator Dianne Feinstein (D-Calif.), chair of the Senate Intelligence Committee, that the CIA was interfering with the committee's investigation into the agency's interrogation of suspected terrorists drew a [strong statement](#) from TCP President Virginia Sloan. TCP's position was noted in the [San Francisco Chronicle](#), by [TechNewsWorld](#) and [elsewhere](#).
- TCP expert Morton Rosenberg was quoted in a [Washington Times](#) story on Department of Justice efforts to thwart congressional oversight by Senator Charles Grassley (R-La.).
- The National Law Journal ran an [article](#) by Dr. Louis Fisher, TCP's Scholar-in-Residence, focused on the government's over-reliance on the state secrets privilege, using as an example the case of Rahinah Ibrahim, a Muslim graduate student at Stanford University who tried for seven years to clear her name after being erroneously placed on the "No Fly" watch list before finally succeeding.
- Huffington Post ran [two columns](#) from TCP's Virginia Sloan on the individuals receiving recognition as Constitutional Champions at the April 24 fundraising gala.

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