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Dear Friend of TCP,

Constitution Day is September 17 - just a month away. This year, The Constitution Project will commemorate the adoption of our nation's Founding Charter with a panel discussion focusing on the unique circumstances facing incarcerated women. Our panelists are Piper Kerman, author of the riveting memoir, "Orange is the New Black: My Year in a Women's Prison;" Kathy Dennehy, former Superintendent of MCI Framingham, the oldest continuously operated women's prison in the U.S.; Vanessa Ruiz, Senior Judge, District of Columbia Court of Appeals; and Brenda Smith, professor at the Washington College of Law at American University. If you haven't already done so, now is a good time to [register](#). **This event is cosponsored by the Washington Times and the Robert H. Smith Center for the Constitution at James Madison's Montpelier.** It is sure to sell out!



At the same event, we will also be honoring the creators of the Emmy-nominated Netflix TV series based on Ms. Kerman's memoir with our Constitutional Commentary Award. We give the award each year to an author or producer of an outstanding work that has improved the quality of public discourse through insightful and articulate analysis of a constitutional issue of the day. **Ms. Kerman will be accepting the award on the show's behalf.**

Finally, on a personal note, I want to congratulate TCP Board member Mariano-Florentino Cuellar on his [recent nomination](#) to the California Supreme Court. Currently a professor at Stanford Law School, Tino has been a trusted voice on the Board and a stalwart advocate for the organization. Once he is confirmed (and I have no doubt that he will be!), we will hate to see him leave TCP. But I know our loss will be to the benefit of all the people of California.

Sincerely,

Virginia Sloan



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Groups Reiterate Need for Congressional Approval on Military Action in Iraq

Checks & Balances

The Constitution Project and the Center for National Security Studies urged President Obama to seek congressional authorization before using military force, outside his narrowly defined defensive war powers, to address the current conflict in Iraq.

"While we take no position on whether as a matter of policy the United States should use force in this or any situation, we believe that the Constitution vests the power to make this solemn decision in Congress," the two groups wrote in a [July 25 letter](#) to the president. Earlier in the month, the two groups [called on Congress](#) to exercise its constitutional responsibilities.

The letter noted that the Obama administration had requested authorization from Congress before using military force in Syria in 2013, and stated that the "reasons for coming to Congress before using force in Syria are equally applicable and persuasive with respect to any decision to use force in Iraq now." The groups said that neither the 2001 law that allowed President Bush to engage in military actions against al-Qaeda nor the 2002 law that permitted him to use military force to prevent Iraq from developing weapons of mass destruction should be viewed as authority to engage in extended offensive military action in the current conflict. Their message reinforces points made to the president and Congressional leaders in an [earlier letter](#) from a group of TCP war powers experts.

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TCP Renews Call for Drug Transparency after Botched Arizona Execution

Death Penalty

On July 23, Joseph Rudolph Wood III was pronounced dead after a nearly two-hour long execution by the State of Arizona. Media witnesses, some of whom have observed previous executions, reported that Wood gasped for air more than 600 times during the execution. Prior to the execution, the state refused to provide Wood's attorneys with any information concerning the source, safety, or efficacy of the drugs to be used in the execution, or the training and skill of the personnel involved in carrying out the execution.

"Our governments must not be permitted to conceal this ultimate act of government power from the light of day. Our courts, legislatures, and leaders should not allow another execution to be carried out until transparency can be assured," said former Texas Governor Mark White, co-chair of The Constitution Project's Death Penalty Committee, in a [press release](#).

White noted that at least four of the 26 executions performed this year have taken place under extraordinarily abnormal circumstances. In addition to Wood's, the earlier executions of Clayton Lockett and Michael Wilson in Oklahoma and Dennis McGuire in Ohio, all experienced similar problems. White's comments on the issue appeared in the [Arizona Republic](#), the [Columbus Dispatch](#) and [The Hill](#), and TCP senior counsel Sarah Turberville was quoted in a story from [Bloomberg News](#).

On May 7, TCP's [Death Penalty Committee](#), a bipartisan panel of criminal justice system experts, issued a comprehensive report on capital punishment. Entitled "[Irreversible Error](#)," the report addresses numerous systemic problems in the administration of the death penalty from the moment of arrest to the moment of death, including calling for jurisdictions that choose to use capital

punishment to act with transparency and use only drugs obtained in compliance with all laws and approved by the FDA in carrying out lethal injections.

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Coalition Backs Sen. Leahy's Compromise on USA FREEDOM Act

Government Surveillance & Searches

A broad and bipartisan coalition of civil liberties, human rights, open government and other public interest organizations joined The Constitution Project in backing a compromise version of the USA FREEDOM Act introduced by Sen. Patrick Leahy (D-Vt.) on July 29. The legislation is aimed at curbing bulk collection of Americans' telephone and internet records by the National Security Agency and providing greater transparency of policies underlying government surveillance programs.

In [two letters](#) addressed to Congressional leaders, the groups called the new bill (S. 2685) "a substantial improvement upon the House-passed bill," noting that "[w]hile it does not include all of the necessary reforms to the government's surveillance authorities, it is a good first step." The letters applaud the compromise Senate version for substantially narrowing the government's authority for the broad collection of electronic communication, and for strengthening transparency reporting requirements. The compromise legislation also includes some of the reforms to the Foreign Intelligence Surveillance Court that TCP's Liberty and Security Committee [recommended](#) in May.

In addition to TCP, advocacy organizations joining the letters include the ACLU, American Library Coalition, Center for Democracy and Technology, Competitive Enterprise Institute, FreedomWorks, Liberty Coalition, New America Foundation's Open Technology Institute, Republican Liberty Caucus and The Rutherford Institute.

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Sentencing Commission Adopts Retroactive Application of Drug Sentencing Guidelines

Sentencing Reform

TCP organized a July 7 [letter](#) from 35 former judges, prosecutors, and law enforcement officials to the United States Sentencing Commission supporting the retroactive application of an amendment to the drug sentencing guidelines that the commission unanimously approved in April. The letter asked the commission to apply the amendment to currently incarcerated inmates sentenced under the previous guidelines, which would allow more than 50,000 federal prisoners serving time for nonviolent drug offenses to petition judges assigned to their cases for a sentence reduction of as much as two years.

The amended guidelines [adopted](#) by the commission in April will reduce sentences for many drug-related crimes so that they are in line with existing mandatory minimums, by reducing the base offenses across all drug types by two levels. Three weeks prior to the April vote, TCP organized a [letter](#) from many of the same former judges and prosecutors urging the sentencing commission to adopt the amendment. At the time, TCP President Virginia Sloan called adoption of the new guidelines a "small but important step in the right direction."

On July 18, the commission voted unanimously in favor of allowing retroactive application. However, it delayed implementation, with the first prisoners affected by the change not likely to be released until early in November 2015.

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European Court Rules Poland Complicit in CIA "Black Site" Torture

Counter-Terrorism Policies & Practices

On July 24, the European Court of Human Rights ruled that Poland had violated the rights of two terrorism suspects by allowing their transfer to a secret CIA prison in northeast Poland, where they were subjected to "torture and inhuman or degrading treatment." The court ordered the Polish government to pay monetary damages to Abu Zubaydah and Abd al-Rahim al-Nashiri. Both men are currently being held at the detention facility at Guantanamo Bay.

In April 2013, TCP's bipartisan, blue-ribbon Task Force on Detainee Treat released a comprehensive 600-page [report](#) that examined the role that Poland and nine other countries played in the CIA's extraordinary rendition program, in which terrorism suspects were sent to "black sites" for detention and interrogation. The still-secret report on post-9/11 interrogations by the CIA, adopted by the Senate Select Intelligence Committee more than 18 months ago, may contain more information on the treatment of the two men. This is the first time that the European court has ruled that an EU country was complicit in the program. The ruling is expected to trigger additional cases by other individuals subjected to rendition and torture in a European country.

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Retired Judges Ask Supreme Court to Consider Role of Appeals Court in Death Penalty Case

Death Penalty

On July 21, a group of retired federal and state trial and appellate judges filed a "friend of the court" [brief](#), organized by TCP, supporting Texas death row inmate Rodney Reed's petition for certiorari before the U.S. Supreme Court. Reed was found guilty of a 1996 rape and murder of a 19-year-old woman in Bastrop County, Texas, and sentenced to death. In January, 2014, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit denied Reed's appeal based on its own analysis of complicated scientific issues, making a "detailed merits determinations on the basis of a cold record."

The brief argues that "[i]t is a fundamental precept of our judicial system that questions of fact are addressed by trial courts in the first instance." The judges asked the Supreme Court to determine whether the Fifth Circuit panel overstepped its constitutional bounds by engaging in fact-finding itself, asking and answering the question of whether Reed's ineffective assistance of counsel claims were substantial ones - and doing so in the absence of whatever factual development Reed could have presented through cross-examination - rather than remanding the case to the trial court for a determination of the facts. An [Austin American-Statesman article](#) noted the filing of the brief.

The case is *Reed v. Stephens*. TCP is grateful for the pro bono assistance of the law firm Hogan Lovells in the preparation of the brief.

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Rita Siemion Joins TCP Staff

Current Events

The Constitution Project is pleased to welcome Rita Siemion as Policy Counsel to work on bipartisan policy recommendations that enhance government transparency and accountability and

that secure privacy and other constitutional rights threatened by new technologies. Prior to joining TCP, Rita served as Advocacy Counsel at Human Rights First, where she promoted counterterrorism and national security policies that are consistent with human rights and the rule of law. Before that, Rita spent several years litigating civil rights and human rights matters, including representing The Constitution Project as amicus curiae in *Latif et al. v. Holder*, a successful due process challenge to the "No Fly List."

Rita holds an LL.M. in National Security Law, with a certificate in International Human Rights Law, from the Georgetown University Law Center, where she was also an editor for the *Journal of National Security Law & Policy*. Rita received her J.D. from the George Washington University School of Law.

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Newsmakers in Brief

Current Events

- On July 8, TCP Supreme Court Fellow Steve Vladeck and senior counsel Sarah Turberville conducted a briefing for Congress on the implications of key cases from the Court's recently concluded term. Rep. Robert Scott (D-Va.) also spoke at the briefing.
- An [article](#) in the July issue of the *New England Journal of Medicine* entitled "Clinicians' Role in Capital Punishment-Constitutional Implications" featured TCP's recently released report on the administration of the death penalty in America.
- Former Department of Justice Inspector General Michael Bromwich was [quoted](#) in the *Washington Post* regarding the failures of the DOJ and the FBI to review thousands of cases affected by faulty and unreliable forensic testimony. Bromwich is co-chair of TCP's Committee on DNA Collection.

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