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Dear Friend of TCP,

Mark your calendar for September 17 to join TCP in [commemorating Constitution Day](#). This year, we will present our annual Constitutional Commentary award to James Risen for his 2014 book, **Pay Any Price: Greed, Power, and Endless War**, and his body of work reporting on the post-9/11 national security state. In his new book, the Pulitzer Prize-winning *New York Times* reporter offers a disturbing account of the lack of government transparency and accountability in the post 9/11-era.



Following the award presentation, we will host a panel discussion exploring some of the critical questions Risen and others have raised. How can we achieve greater transparency and accountability in the seemingly never ending war on terrorism? What is the appropriate response for Congress and inspectors general in overseeing spending on counter-terrorism program? Are the trillions of dollars we are spending making us proportionately safer? What risks, legal and otherwise, do journalists face in covering national security issues? This popular event always fills fast, so click here for details and to [reserve your seat](#) today.



Sincerely,

Virginia Sloan
President, The Constitution Project

Senate Passes Bipartisan Amendment Strengthening Torture Ban

Detention and Prosecution of Suspected Terrorists

On June 16, the Senate voted 78 to 21 to adopt an amendment proposed by Senator John McCain (R-Ariz.) and cosponsored by Senators Dianne Feinstein (D-Calif.), Susan Collins (R-Maine) and Jack Reed (D-R.I.) to the FY 2016 National Defense Authorization Act strengthening the ban on torture. The amendment accomplishes a longtime goal of Senator McCain, and also implements a [key recommendation](#) of our [bipartisan, blue-ribbon Task Force on Detainee Treatment](#). With their votes, an overwhelming bipartisan majority of the Senate reaffirmed that respect for basic human dignity is a core constitutional principle, and TCP applauds them for it. I am so proud that Senator Feinstein commended the Task Force and TCP staff for their tireless work on the issue. Now, the amendment needs to be accepted by the House during negotiations on the final bill. We will keep up our efforts to see it enacted into law. [READ MORE](#)

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Former Judges and Prosecutors Back Federal Sentencing Reform

Sentencing Reform

Former judges and prosecutors from across the country are urging Congress to adopt the Smarter Sentencing Act, bipartisan legislation designed to relieve the nation's overcrowded prisons by giving federal judges more discretion in sentencing those convicted of nonviolent drug offenses.

"Maintaining the status quo in federal sentencing policy is both fiscally imprudent and a threat to public safety. We are deeply concerned that spending on incarceration has jeopardized funding for some of our most important law enforcement priorities," wrote the 130 former judges, prosecutors and law enforcement officials, in a [letter organized](#) by TCP and delivered to members of the House and Senate Judiciary Committees. The [legislation](#) (S. 502, H.R. 920) would authorize federal judges to impose a prison sentence below the statutory mandatory minimum for a broader category of non-violent drug offenses, lower the mandatory minimum sentences for certain drug offenses, and make retroactive the provisions in the Fair Sentencing Act of 2010 that reduced the disparity between sentences for crack and powder cocaine possession. [READ MORE](#)

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After Rejecting Weakening Amendments, Senate Passes USA Freedom Act Reining in the NSA

Government Surveillance & Searches

On June 2, the Senate voted 67 to 32 to adopt the [USA Freedom Act](#), legislation aimed at reforming the NSA's bulk telephone records program and providing greater transparency in the federal government's surveillance programs, and President Obama quickly signed it into law. Prior to passage, however, Senate Majority Leader Mitch McConnell (R-Ky.) attempted to weaken parts of the legislation that would require the secretive Foreign Intelligence Surveillance Court to appoint a [special advocate](#) from a panel of security-cleared lawyers to advise the court in cases involving novel or significant interpretations of law, including offering input on privacy and civil liberties concerns

when asked to do so. A group of national security experts organized by TCP [urged the Senate](#) to reject the McConnell amendment, which it did on a vote of 42 to 56. One of the bill's chief sponsors, Senator Patrick Leahy (D-Vt.), acknowledged the key role TCP played in passing the legislation. [READ MORE](#)

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SAFE Justice Act Incorporates Several "Common Sense" Reforms Advocated by TCP

Sentencing Reform

On June 25, Reps. Jim Sensenbrenner (R-Wisc.) and Bobby Scott (D-Va.) introduced the Safe, Accountable, Fair, and Effective [\(SAFE\) Justice Act of 2015](#), legislation aimed at improving the federal sentencing and corrections system, from front-end sentencing reform to back-end release and supervision policies. This comprehensive new proposal incorporates many of the common sense, consensus-based criminal justice system reforms that TCP's bipartisan policy committees have recommended over the years, including: the guarantee of competent counsel in capital cases; the use of best practices to reduce the risk of inaccurate and unreliable evidence in criminal cases, and notification and remedies for individuals whose cases were tainted by forensic, prosecutorial, or law enforcement error or misconduct; federal criminal discovery reform; and stronger government oversight and accountability throughout the criminal justice system. We look forward to working with the sponsors on this important legislation in the months ahead. [READ MORE](#)

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U.S. Supreme Court Allows Oklahoma to Use Flawed Execution Drug

Death Penalty

On June 29, the Supreme Court ruled on a 5 to 4 vote that Oklahoma's use of the sedative midazolam as part of a three-drug cocktail in carrying out death sentences by lethal injection does not violate the Eighth Amendment prohibition against cruel and unusual punishment. The case is *Glossip v. Gross* (14-7955). Earlier, TCP organized a [friend-of-the-court brief](#) signed by more than a dozen former state attorneys general from across the ideological spectrum, all of whom oversaw

capital cases in their states, [arguing](#) that Oklahoma's use of midazolam as a part of its lethal injection protocol fails to properly induce unconsciousness and could, therefore, result in an extremely painful death. The officials also argued that the state had failed to engage in an appropriate review prior to choosing the drug. The brief noted that Oklahoma used the contested drug last year in the execution of Clayton Lockett, who seemed to writhe in pain for 43 minutes after the injection of midazolam, before eventually succumbing to a heart attack after the execution process had been stopped. The chemical was also used in problematic executions in Ohio and Arizona. Unfortunately, the court's decision ignored the growing sentiment in the country that the death penalty is badly broken and cannot be fixed. Jenner & Block provided pro bono assistance in writing the brief. [READ MORE](#)

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TCP Files Friend-of-the-Court Brief Challenging Admission of Illegally Obtained Evidence

Transparency & Accountability

TCP has asked the United States Supreme Court to consider the case of *Anderson v. United States*, challenging the admission of illegally obtained evidence in the prosecution of a third party. In this case, the third party was the husband of the person upon whom a flagrantly unconstitutional body cavity search was conducted. Without a reversal of the Second Circuit's opinion, TCP's [friend-of-the-court brief](#) argues that defendants will be left "without recourse when government officials intentionally use egregious means to obtain evidence against them, simply because those egregious, indeed unconstitutional, methods are focused on other individuals (often, as here, those closely related to the actual target). More fundamentally, it sanctions the intentional subversion of constitutional protections in furtherance of law enforcement. This result is inconsistent with a long line of this Court's decisions reaffirming the importance of constitutional protections to the entire judicial process." The brief was prepared with generous pro bono assistance from the Schnader law firm.

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TCP Hosts Hill Briefing on Supreme Court Cases

Current Events

On Thursday, July 9, The Constitution Project will host a Hill Briefing examining major cases decided by or pending before the U.S. Supreme Court during its most recent term. Another in the semi-annual analyses of Court decisions, the discussion will be led by Steve Vladeck, an American University law professor and TCP Supreme Court Fellow. The discussion will also include Rep. Bobby Scott (D-Va.) and TCP Senior Counsel Rita Siemion. The briefing is open to the public. [RSVP TODAY!](#)

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