



### In This Issue

[Expert Panel Discusses New TCP Report on Fusion Centers](#)

[Michigan Indigent Defense Act Deemed "Necessary Step" by National Right to Counsel Committee Chairs](#)

[Foreign Intelligence Surveillance Law Threatens Americans' Privacy Rights](#)

["Law & Disorder" Event Video Available](#)

[New Bill to Update Electronic Communications Privacy Act](#)



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### Greetings!

When you lead an organization called The Constitution Project, every day is Constitution Day. We have the good fortune of defending, promoting, and celebrating our nation's founding charter day in and day out through our work. But for everyone else, Constitution Day is September 17, which was the date in 1787 on which the delegates to the Constitutional Convention met for the last time to sign our nation's charter.



We commemorate Constitution Day every year by holding a public education event on a current constitutional issue and awarding our Constitutional Commentary award to an author or journalist. This year, we were very pleased to join Georgetown University's Center on National Security and Law and the Center for the Constitution at James Madison's Montpelier to co-host a timely and informative [discussion](#) of the issue of national security "leaks" and the First Amendment. More than 150 people attended the event in person, and our live [webcast](#) reached classrooms all across the country. If you missed it, you might want to take a look.

We also had the honor of presenting TCP's 2012 Constitutional Commentary Award to Dana Priest and William Arkin, the authors of *Top Secret America*. If you haven't yet read their account of the burgeoning top-secret world - with clandestine facilities in all 50 states, and a web of several thousand private security contractors - that the federal government has created since the terrorist attacks of 9/11, I highly recommend it.

Sincerely,

Virginia Sloan  
President, The Constitution Project

# Expert Panel Discusses New TCP Report on Fusion Centers

Privacy & Technology

Fusion centers, information-sharing hubs designed to pool the knowledge of state, local and federal law enforcement agencies, have expanded significantly in the last decade, both in number and in scope. Initially intended to better coordinate information about possible terrorist activities, the fusion centers now number 77 and many have expanded to focus on all crimes. These centers collect and share a wide array of information about individuals from sources ranging from law enforcement files to private sources of information such as financial records and medical histories.



Panelists (l-r): Mary McCarthy, James Trainum, Sharon Bradford Franklin, Sameera Hafiz, David Gersten

On September 11, a panel of experts -- **David Gersten**, Director of Programs, Office for Civil Rights and Civil Liberties, Department of Homeland Security; **Sameera Hafiz**, Policy Director, Rights Working Group; **Mary McCarthy**, former Special Assistant to the President and Senior Director for Intelligence Programs, National Security Council; and **Jim Trainum**, Detective (ret.), Washington, D.C. Metropolitan Police Department -- discussed various concerns and recommendations for fusion centers at an event held in conjunction with the release of TCP's new report "[Recommendations for Fusion Centers](#)." TCP's Senior Counsel **Sharon Bradford Franklin** moderated the event. (You can listen to the [audio](#) of the event.)

TCP's new report highlights how the collection, use and storage of such massive amounts of personal and potentially sensitive information can threaten constitutional rights to privacy, equal protection and freedom of expression, and recommends policy changes to better safeguard civil liberties. [Lawfare](#) and [The Crime Report](#) both covered the report's release.

[Back to Top](#)

## Michigan Indigent Defense Act Deemed "Necessary Step" by National Right to Counsel Committee Chairs

Right to Counsel

The co-chairs of TCP's National Right to Counsel Committee endorsed passage of the Michigan Indigent Defense Commission Act (HB 5804) by the Michigan Legislature. In a September 19 [letter](#), the three co-chairs - Judge Rhoda Billings, Judge Timothy K. Lewis and District Attorney Robert M.A. Johnson - called the bill a "necessary and proper step toward protecting the constitutional rights of indigent defendants" in Michigan. Their letter was featured as a part of the debate on the bill in the Michigan House Judiciary Committee.

The result of the work of Governor Rick Snyder's (R-MI) bipartisan blue-ribbon Advisory Commission on Indigent Defense, the legislation would bring more accountability and better structure to indigent defense services in the state. The Michigan House and Senate are expected to vote on the bill in November.

[Back to Top](#)

# Foreign Intelligence Surveillance Law Threatens Americans' Privacy Rights

## Federal Surveillance

TCP's Liberty and Security Committee released a [new report](#) on September 6, which concludes that a 2008 law permitting the federal government to gather foreign intelligence by monitoring international phone calls and emails without individualized judicial review is threatening the rights of Americans. The law, the Foreign Intelligence Surveillance Act (FISA) Amendments Act of 2008, allows intelligence agencies to conduct broad programmatic surveillance, enabling officials to intercept Americans' conversations without a warrant whenever they communicate with a foreign surveillance target. The report outlines how such "incidental" interceptions can threaten constitutionally guaranteed rights.

The law is set to expire at the end of the year. The report recommends that Congress amend the law to include: more robust judicial review of surveillance authorizations to ensure they are focused on foreign intelligence gathering; a requirement that the intelligence agencies obtain a warrant before searching the collected data for information on a specific U.S. citizen or anyone otherwise legally in the United States; and increased oversight and reporting of the intelligence community's use of the law. One week after release of the report, the House voted to extend the law by five years. The Senate is expected to take up the issue in November, after the election.

The report and its recommendations are endorsed by 22 policy experts, former government officials and legal practitioners from across the ideological spectrum, including former Foreign Intelligence Surveillance Court Judge James Robertson, former GOP Congressmen Asa Hutchinson and Bob Barr, and former high-ranking CIA officials Mary McCarthy and Paul Pillar. All endorsers are members of the Liberty and Security Committee. The report was discussed in [The Huffington Post](#).

[Back to Top](#)

## "Law & Disorder" Event Video Available

### Criminal Justice Reform

On September 18, TCP, the American Civil Liberties Union, and the National Association of Criminal Defense Lawyers co-hosted a live webcast featuring a short video and expert panel discussion on the myths and realities of American justice. If you weren't able to tune in for the live event, you can still watch the [video](#) and the discussion.

[Back to Top](#)



## New Bill to Update Electronic Communications Privacy Act

### Privacy and Technology

On September 20, the Senate Judiciary Committee adopted Chairman Leahy's amendment to update the Electronic Communications Privacy Act (ECPA), a 1986 law that governs law enforcement access to private electronic communications such as emails. The amendment would require law enforcement officials to obtain a warrant based on probable cause in order to gain access to the content of electronic communications such as emails and documents stored "in the cloud,"

regardless of their age. Under current law, the government can often access individuals' emails and documents stored in the cloud by simply issuing a subpoena to the internet service provider. The amendment would help bring Fourth Amendment safeguards into the digital age. Prior to the Judiciary Committee's consideration of this legislation, TCP, which is a member of the Digital Due Process coalition of privacy advocates and technology companies, joined a coalition [letter](#) supporting the bill.

[Back to Top](#)

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