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### Greetings!

On behalf of everyone at The Constitution Project (TCP), I want to wish you a happy new year. This year promises to be busy and exciting for us. I am pleased to announce that our team has been strengthened recently with the addition of [Lawrence D. Rosenberg](#) and [Bradley D. Simon](#) to TCP's Board of Directors. Mr. Rosenberg is a partner at the Jones Day law firm, where he has tried cases and argued appeals on a great many issues, several of them before the Supreme Court. He spent several years at the Justice Department, and has significant experience working on cases involving the detention and prosecution of terrorism suspects. Mr. Simon is the founding partner of Simon & Partners, LLP, where he represents both corporations and individuals in the areas of white-collar criminal defense, complex civil litigation, and corporate compliance. Prior to founding the firm, Mr. Simon served as an Assistant U.S Attorney for the Eastern District of New York and as a trial attorney with the Criminal Division of the U.S. Department of Justice. I am confident that both Mr. Rosenberg's and Mr. Simon's experience and expertise will bring great value to our Board and our work.



In another exciting development, TCP is kicking off the new year with a new look on the web. We have redesigned and rebuilt our [website](#) to make it even easier to access important information about our core [issues](#) and projects. You will be able to search our many resources and publications with greater ease using our new [document library](#) and you'll never miss a TCP event when you visit our [events](#) page. We hope these improvements will make our site an even more valuable resource for you. Our webmaster would welcome your feedback and suggestions at [hwhite@constitutionproject.org](mailto:hwhite@constitutionproject.org).

Sincerely,

Virginia Sloan  
President, The Constitution Project

## Upcoming Event: TCP Gala in April

### Upcoming Event

Be sure to mark your calendars! The Constitution Project will host its [6th Annual Constitutional Champions Gala](#) on Thursday, April 18, 2013, in Washington, DC. Observing the 50th anniversary of the Supreme Court's landmark right-to-counsel decision in *Gideon v. Wainwright*, TCP will honor four luminaries associated with the historic case. Honorees will include Abe Krash, an Arnold & Porter attorney who represented Mr. Gideon; Bruce Jacob, who represented Florida in the Supreme Court; Walter Mondale, then-Minnesota Attorney General who organized an *amicus* brief in support of Mr. Gideon; and Anthony Lewis, Pulitzer Prize winning author of "Gideon's Trumpet." We will also show clips from our upcoming video - narrated by the noted actor Martin Sheen - on the heady days of the *Gideon* decision to today's indigent defense crisis. For sponsorship information, please contact Messellech Abebe, Director of Development, at 202.580.6942 or [mabebe@constitutionproject.org](mailto:mabebe@constitutionproject.org).

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## Senate Committee Report on CIA Interrogations Approved

### Counterterrorism Policies & Practices

On December 13, the Senate Select Committee on Intelligence adopted a roughly 6,000-page report that reviews the Central Intelligence Agency's detention and interrogation program as a part of U.S. counterterrorism efforts following the attacks of September 11, 2001. Republican Senator Olympia Snowe of Maine joined the committee's Democrats in voting to accept the report, and Senator John McCain (R-AZ) gave it a strong endorsement as a non-voting, ex officio member of the committee.

In a [statement](#) following the vote, TCP President Virginia Sloan lauded the committee's action as an important first step in informing the American people about the acts that were carried out in their name. She called for the declassification and release of the report, and also highlighted the upcoming release of TCP's Task Force's own [report on detainee treatment](#).

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## Tribble Exonerated After Wrongful Conviction Involving Faulty Forensic Evidence

### Criminal Discovery Reform

On December 14, seven months after his murder conviction was overturned because of faulty forensic evidence, a judge formally exonerated Santae Tribble. The ruling makes him the second DC man this year to be exonerated after serving a lengthy prison term because of unreliable FBI microscopic hair analysis. Last year, TCP's Board of Directors released a [statement](#) expressing their dismay over cases such as this and the untold number of people unjustly facing criminal prosecution, languishing in prison, and living under the cloud of a criminal conviction because of defective forensic evidence and *Brady* violations. The statement, and a concurrent [letter](#) to U.S. Attorney General Eric Holder, also outlined important reforms necessary to ensure the fairness and accuracy of our criminal justice system. On December 4, the Department of Justice responded to our letter to Attorney General Holder, citing efforts it is making to review cases involving flawed forensic analysis.

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# Senate Removes Broad Anti-Leak Provisions from Intelligence Authorization Act

Classification & Secrecy

On December 28, the Senate adopted the FY2013 intelligence authorization act after removing most of the controversial and overbroad provisions intended to combat "leaks." Arguing that the legitimate interest of protecting government secrets needed to be balanced against the public's right to know, TCP was part of a coalition that [earlier urged](#) the Congress "to address the leaks of highly classified information with the widest possible public input into any legislation and with the most open process possible." Among the provisions that the Senate removed from the final bill (S.3454) were restrictions on background briefings by government officials for the press and limits on media commentary by former government officials. Sen. Dianne Feinstein (D-CA), the chair of the Senate Intelligence Committee, said the anti-leak provisions were removed in order to expedite its passage.

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# Public Interest Declassification Board Releases Report

Classification & Secrecy

At a public meeting on December 6, the Public Interest Declassification Board (PIDB), a congressionally created advisory board, released its [report](#) to the President on transforming the national security classification system. The report includes a series of recommendations to reform and modernize our nation's system for classifying national security secrets, which dates back to World War II and results in significant over-classification of government information. These include a recommendation to facilitate prompt declassification of information when the reason for classification was short-lived. TCP, along with a coalition of open government advocacy organizations, has been working with the PIDB to promote reforms that will improve government accountability and transparency, based on the report of TCP's Liberty and Security Committee on [\*Reining in Excessive Secrecy: Recommendations for Reform of the Classification and Controlled Unclassified Information Systems.\*](#)

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# Boston Fusion Center Urged to Cease Intrusive Surveillance

Data Collection & Privacy

The Boston Police Department (BPD) and a regional fusion center known as BRIC surveilled citizens and groups engaged in First Amendment protected activity, and subsequently created criminal intelligence reports on these political groups and leaders, according to a recent report by the ACLU of Massachusetts and National Lawyers Guild of Massachusetts. TCP [wrote](#) to Boston Police Commissioner Edward Davis to urge BPD and BRIC to end these intrusive surveillance practices and create comprehensive policies that provide for accountability, transparency, and respect for constitutional liberties. These recommendations were based on TCP's recent report, [\*Recommendations for Fusion Centers: Preserving Privacy and Civil Liberties While Protecting Against Crime and Terrorism.\*](#) Some of the recommendations made by TCP mirrored earlier calls for reform from the local ACLU and National Lawyers Guild.

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# Congress Extends Warrantless Wiretapping Program Without

## Amendment

### Government Surveillance & Searches

In the waning days of the 112th Congress, the Senate voted to extend for five years the controversial FISA Amendments Act (FAA) of 2008. This law was initially passed to legalize a form of the National Security Agency's warrantless wiretapping program. Under the FAA, the government may legally conduct broad scale foreign intelligence surveillance without obtaining any warrant. As long as the *target* is not a U.S. person (citizen or legal resident) or someone known to be located within the United States, nothing in the law prevents the collection of communications in which such a person is on the other end of the conversation. The government maintains that so long as the data are collected legally under the FAA authority, government agents may later use any communications involving Americans for any lawful purpose, in effect creating an end run around the Fourth Amendment warrant requirement.

Last September, The Constitution Project's Liberty and Security Committee released a [Report on the FISA Amendments Act of 2008](#), urging a variety of reforms to the law to avoid intrusions on Fourth Amendment rights. The report also explained that little has been made public about the actual operation of the FAA surveillance program. In fact, the government has refused to estimate the number of Americans whose communications have been intercepted under the program or to disclose the opinions of the FISA court interpreting the law. TCP worked with a [coalition](#) of other privacy and civil liberties groups to promote greater transparency and further safeguards for Americans' constitutional rights but, as TCP President Virginia Sloan and Senior Counsel Sharon Bradford Franklin warned in a [column](#) in the Huffington Post, delay in considering the legislation until the final days of the session worked against responsible changes.

Several senators, including Wyden, Merkley, and Leahy, fought hard for amendments that would have increased transparency and accountability, but the Senate followed earlier action by the House and voted for a clean extension of the law. Even though President Obama has signed the five-year extension into law, TCP will continue to work with its coalition partners to find ways to promote greater transparency and accountability regarding the operation of this law in the next Congress.

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## Judge Orders Release of Wrongfully Convicted Capital Defendant

### Criminal Discovery Reform

As reported in *The Washington Post*, Prince William County (Virginia) Circuit Court Judge Mary Grace O'Brien has ordered the release of Justin Wolfe, whose 2002 capital conviction was vacated by a federal court earlier this year. Through its [Clearinghouse of New Voices](#), earlier this year TCP submitted an [amicus brief](#) in the *Wolfe* case, as well as coordinated writing and gathering signatories for a [letter](#) calling on Judge O'Brien to replace the special prosecutor in the case.

Judge O'Brien's order follows a federal district court judge's December 24, 2012, order that Virginia release Wolfe, citing prosecutor misconduct that irrevocably tainted the case, including the coercion of a key witness in the case and the withholding of exculpatory evidence in violation of the Constitution. Most recently, Wolfe's defense team cited a September 2012 visit Prince William County prosecutors made to a key witness shortly before recusing themselves from the case. Wolfe's attorneys alleged that the prosecutors threatened the witness with capital murder charges if he did not testify against Wolfe in a new trial. Late on January 3, the federal appeals court issued a ruling that it would hear additional arguments in the case, and Wolfe remains in jail.

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