



### In This Issue

[Upcoming Event: Panel to Examine Whether Privacy is a Thing of the Past](#)

[Drone Program Secrecy Violates Constitutional Principles](#)

[FAA Seeks Input on Privacy Impact of Domestic Drones](#)

[House Cybersecurity Bill Lacks Privacy Safeguards](#)

[TCP Disappointed by Supreme Court Decision in Surveillance Case](#)

[Premiere of Defending Gideon](#)

[DOJ Seeks Members for Proposed "National Commission on Forensic Science"](#)

[TCP Supreme Court Fellow Briefs Capitol Hill on Major Cases](#)

[TCP Newsmakers](#)



[\*\*Donate Now\*\*](#)

### Greetings!

Last month I told you about a new documentary film we plan to premiere on March 18 about the historic U.S. Supreme Court decision in *Gideon v. Wainwright*. The court's decision affirmed an individual's constitutional right to counsel in felony criminal cases. You can read more about the film, called *Defending Gideon*, in the story below, and learn how you can obtain a free copy.



I want to make certain you know that our 6th Annual Constitutional Champions Gala will also celebrate the *Gideon* decision. At the gala, on Thursday, April 18, 2013 in Washington, D.C., TCP will honor four luminaries connected to the historic case: Abe Krash, who represented Mr. Gideon; Bruce Jacob, who represented the state of Florida; Walter Mondale, then-Minnesota Attorney General who organized an influential *amicus* brief from 22 other attorneys general in Mr. Gideon's favor; and Anthony Lewis, author of *Gideon's Trumpet*. We will also be showing excerpts from *Defending Gideon*. We would love to have you join us at what promises to be a very special event, so please [order your tickets](#) today.

If you or your organization would like to help sponsor the event, please contact Messellech Abebe, Director of Development, at [mabebe@constitutionproject.org](mailto:mabebe@constitutionproject.org) or call her at 202.580.6942.

Sincerely,

Virginia Sloan  
President, The Constitution Project

**Upcoming Event: Panel to Examine Whether Privacy is a Thing of the Past**

Data Collection and Privacy

Can the government lawfully read through your private email without you even knowing it? Can law enforcement track you wherever you and your cell phone go without any reason to suspect you of wrongdoing? What standards should apply before the government can have access to such personal information? Has the law kept up with the explosion in digital technology?

On March 6 at noon, TCP and other experts will provide an overview of the current debate surrounding efforts to reform the Electronic Communications Privacy Act (ECPA), one of the laws that regulate government access to electronic communications. The panel discussion will provide a variety of perspectives on the issues before this Congress as it considers legislation designed to bring ECPA into the 21st century. The event is open to the public, but an [RSVP is requested](#).

[Back to Top](#)

## Drone Program Secrecy Violates Constitutional Principles

### Checks and Balances

The Obama administration's refusal to make public the legal rationale for its targeted killing of suspected terrorists, including American citizens, violates constitutional principles of checks and balances, according to a statement released by TCP's Liberty and Security Committee on February 25. The committee called on the president to authorize public release of all opinions from the Justice Department's Office of Legal Counsel regarding the scope of the president's targeted killing authority along with "any other operative rules and legal guidance for the targeted killing program," redacted only to protect "properly classified information, such as the facts of a particular case or intelligence sources and methods." It also urged the executive branch to provide comprehensive information to all congressional committees of jurisdiction.

"Our constitutional system of checks and balances demands robust oversight by Congress and consideration and debate by an informed public. Neither is possible when the rules are hidden from Congress and from public view," reads the statement entitled "[Lift the Veil of Secrecy on Targeted Killing](#)," which was endorsed by 24 committee members, including former members of Congress, former high-ranking intelligence and military officials and legal scholars. The statement was entered into the record following a February 27 hearing of the House Judiciary Committee entitled: "Drones and the War On Terror: When Can the U.S. Target Alleged American Terrorists Overseas?" Also on February 27, Liberty and Security Committee members Eugene Fidell and Mary McCarthy participated in a telebriefing for Hill staff examining these issues.

[Back to Top](#)

## FAA Seeks Input on Privacy Impact of Domestic Drones

### Government Surveillance & Searches

In a related story, in response to [a petition](#) by the Electronic Privacy Information Center (EPIC) and signed by over 100 organizations, including TCP, the Federal Aviation Administration (FAA) has announced it will begin a public rulemaking on the privacy impact of aerial drones - the unarmed sort employed for a variety of domestic surveillance uses. One year ago, President Obama signed the FAA Modernization and Reform Act of 2012, which loosened restrictions on government and commercial drone flights in the United States. Concerns about the potential privacy implications of domestic drone use increased, as some feared that the machines could be used to spy on Americans. Consequently, many states have introduced legislation to limit the use of drones in their airspace. TCP's Liberty and Security committee's [Guidelines for Public Video Surveillance](#) recommends a variety of safeguards for government use of surveillance cameras that are equally applicable to aerial cameras on drones.

[Back to Top](#)

# House Cybersecurity Bill Lacks Privacy Safeguards

## Government Surveillance & Searches

TCP Senior Counsel Sharon Bradford Franklin dismissed as "woefully inadequate" the privacy and civil liberties protections in the newly reintroduced Cyber Intelligence Sharing and Protection Act (CISPA). The bill, introduced on February 13 by Congressmen Mike Rogers (R-MI) and Dutch Ruppersberger (D-MD), is nearly identical to the bill that was approved by the House last year.

While the bill would facilitate arrangements for the government and private companies - such as Facebook or Google - to provide information about cyberthreats to one another, the bill would also open the door for private companies potentially sharing sensitive personal information, including possibly the content of emails, with the government. In a [press statement](#) released on the day the bill was introduced, TCP urged the House to amend the legislation in several specific ways to better protect personal privacy and civil liberties. The recommendations are based on TCP's Liberty and Security Committee report, [Recommendations for the Implementation of a Comprehensive and Constitutional Cybersecurity Policy](#), which was released in 2012. TCP's criticisms of the new CISPA legislation were mentioned in stories in [The Washington Post](#) and [Computerworld](#).

[Back to Top](#)

# TCP Disappointed by Supreme Court Decision in Surveillance Case

## Classification & Secrecy

On February 26, the U.S. Supreme Court ruled in *Clapper v. Amnesty International USA* (Case No. 11-1025) that the groups and individuals challenging a federal law that authorizes intercepting foreign electronic communications, even if they involve an American on one end of the conversation, could not proceed with their lawsuit because they did not have sufficient proof that their communications had been, or were likely to be, intercepted.

In a statement released to the media, TCP President Virginia Sloan said the Court's decision creates a "true Catch-22" because neither the Congress nor the president will direct the government to disclose the opinions of the secret Foreign Intelligence Surveillance Court, making it nearly impossible to identify individuals actually subject to this monitoring. "Americans cannot guard their constitutionally-protected rights if even the legal rules and standards under which our government operates are kept secret," she said.

TCP's Liberty and Security Committee explained in its [Report on the FISA Amendments Act of 2008](#) that the law authorizing the surveillance program lacks adequate privacy safeguards to avoid intrusions on Fourth Amendment rights. The Committee also urged that the opinions of the Foreign Intelligence Surveillance Court be released. Because the Court decided on jurisdictional grounds that the case cannot proceed, the courts will not address the underlying, larger issue raised in this case of the constitutionality of the federal government's electronic monitoring of targeted foreigners when one party to the conversation is protected under the Fourth Amendment.

[Back to Top](#)

# Premiere of *Defending Gideon*

## Right to Counsel

March 18, 2013 marks the 50th anniversary of the Supreme Court's landmark decision in *Gideon v.*

*Wainwright*. To commemorate the occasion, TCP will premiere a new documentary, *Defending Gideon*. The film takes viewers on a fascinating journey, from the heady days of the *Gideon* decision 50 years ago through the present day, and examines the challenges still facing indigent defense systems across the country.

*Defending Gideon*, narrated by noted actor Martin Sheen, will feature interviews with many who were involved in the case at the time, including Abe Krash, Bruce Jacob, Walter Mondale, and Anthony Lewis. Interwoven in this historical context are the present day stories of the country's failure to live up to *Gideon*'s promise, like overwhelming public defender caseloads and insufficient resources, and the heart-rending stories of people the system continues to leave behind. You can view the film at TCP's website beginning March 19. If you are interested in a free copy of the film, or in hosting an event to screen it, please contact Mary Schmid Mergler at [mschmid@constitutionproject.org](mailto:mschmid@constitutionproject.org).

[Back to Top](#)

## DOJ Seeks Members for Proposed "National Commission on Forensic Science"

Criminal Justice

In February, the Department of Justice [announced](#) the creation of a National Commission on Forensic Science, to be co-chaired by the Department of Justice and the National Institute of Standards and Technology. Among the Commission's mandates will be to promote standards in forensic science, provide guidance for its use in courtrooms, and develop minimum requirements for training, accreditation and certification for forensic laboratories and technicians. The Department is seeking applications for those interested in serving on the Commission, including "forensic science service providers; research scientists and academicians; Federal, State, Local prosecutors, defense attorneys and judges; law enforcement; and other relevant stakeholders." Applications are due by March 25, 2013.

TCP has worked with Members of Congress, including Senators Leahy and Rockefeller, who last year both introduced forensic reform packages, in response to a 2009 National Academy of Sciences report on the unreliability of many forensic techniques. This Commission is an important first step in addressing these concerns, and will only be effective if it is sufficiently independent from the DOJ and comprises a balance of interests, including representatives from public defender offices, private defense counsel, and academics who recognize the critical need for all forensic disciplines to be rigorously tested and peer reviewed, before being allowed in the courtroom.

[Back to Top](#)

## TCP Supreme Court Fellow Briefs Capitol Hill on Major Cases

Supreme Court

On February 13, TCP Supreme Court Fellow and American University law professor Stephen Vladeck briefed members of Congress and their staffs on the important criminal justice, civil liberties, and other constitutional cases currently in front of the U.S. Supreme Court. The briefing was the latest in a series of the popular Supreme Court briefings that TCP has hosted at the request of members of the House Judiciary Committee.

[Back to Top](#)

**TCP Newsmakers**

## Current Events

- TCP President **Ginny Sloan** was quoted in a February 20 [New York Times story](#) about the Obama administration's refusal to share the legal memos the president is relying on to justify targeted drone killings.
- Former FBI director, and current TCP Board member, Judge **William S. Sessions** had an op-ed in the [Louisville Courier-Journal](#) urging Kentucky to improve access to post-conviction DNA testing for people convicted of non-capital crimes.
- **Tara Beech**, TCP's former Office Manager, co-authored an article entitled "Unpacking the First Prong of the Strickland Standard: How to Identify Controlling Precedent and Determine Prevailing Professional Norms in Ineffective Assistance of Counsel Cases," in the *Florida Journal of Law and Public Policy*. The article was cited in an *amicus* brief filed by the state bar of Texas in *Trevino v. Thaler*, involving the 6th Amendment right to counsel.

[Back to Top](#)

The Constitution Project | 1200 18th Street, N.W. | Suite 1000 | Washington | D.C. | 20036

T: 202.580.6920 | F: 202.580.6929

[www.constitutionproject.org](http://www.constitutionproject.org)

 Join Our Mailing List



Try it FREE today.