



### In This Issue

[TCP Advocacy Efforts Pay Off on Defenders' Budget](#)

[President Obama Urged to Back Release of SSCI Report](#)

[Senate Judiciary Committee Approves Sentencing Reform Bill](#)

[NSA Surveillance Continues to Draw Criticism](#)

[TCP Condemns Execution of Mexican Citizen in Texas](#)

[Turberville Joins TCP Staff](#)

[TCP Newsmakers in Brief](#)

### Dear Friend of TCP,

As you will see in this newsletter, 2014 has started off with a bang - and it only promises to get busier. In the next several weeks, TCP will release a comprehensive new report on how the administration of capital punishment can be made fairer and more accurate. Following a couple of landmark Supreme Court decisions from last term, our Right-to-Counsel Committee will weigh in later this spring on the critical issue of pre-trial representation for people unable to afford a lawyer on their own. Our Liberty and Security Committee is heavily involved in efforts to rein in out-of-control surveillance programs conducted by the National Security Agency, the FBI and other government agencies. And our Task Force on Detainee Treatment continues to push policy reforms to ensure that America does not return to the abusive practices used against suspected terrorists in the aftermath of 9/11.



None of this would be possible without your ongoing support. Our major fundraising event of the year is our annual Constitutional Champions Gala, which will be held in Washington, DC on April 24. Now in its seventh year, this event will honor the head of the Associated Press, Gary B. Pruitt, for publicly challenging the government's unprecedented use of surveillance to intimidate journalists; Brendan V. Sullivan Jr., Robert M. Cary and other members of the late Senator Ted Stevens' legal team at Williams & Connolly LLP, for their insistence that federal prosecutors fulfill their constitutional obligation to disclose exculpatory evidence; and Henry F. Schuelke III along with William B. Shields, his colleague at Blank Rome LLP, for writing the report that highlighted the prosecutors' failure to hand over exculpatory evidence in the Stevens case. They join a long list of luminaries from across the ideological spectrum who have received the [Constitutional Champions Award](#) in years past. If you are interested in helping to sponsor the Gala, please contact Jenny Donley at [jdonley@constitutionproject.org](mailto:jdonley@constitutionproject.org) or (202)580-6942. Go to [our website](#) for more details.

Of course, you do not need to wait for the Gala to contribute. There is a button just to the left that will allow you to help out immediately. Your ongoing support is critical to our efforts to find and promote bipartisan solutions to some of the most important



**Donate Now**



constitutional challenges of our time.

Sincerely,



Virginia Sloan  
President, The Constitution Project

## TCP Advocacy Efforts Pay Off on Defenders' Budget

Right to Counsel

On January 13, House and Senate negotiators unveiled an [agreement](#) for funding the federal government for the remainder of FY 2014. As part of that agreement, the federal defender program, which faced devastating cuts in 2013 and expected even greater cuts this year, received a boost in funding well above the levels imposed by sequestration. This represents the successful culmination of months of advocacy led by TCP and federal defenders, with the help of private attorneys and a broad coalition of advocacy organizations.

The \$1.044 billion in funding provided to federal defenders should help prevent further furloughs, could allow some federal defender offices to hire staff, and should allow reimbursement rates for court-appointed counsel to return to 2013 levels. In the coming weeks, the Judicial Conference-which oversees the federal defender program-will make critical decisions about how this funding will be used. The precise impact of this funding depends on those decisions, including how the money will be divided among individual federal defender offices.

[Back to Top](#)

## President Obama Urged to Back Release of SSCI Report

Counter-Terrorism Policies & Practices

On January 22, a coalition of human rights and civil liberties groups [urged](#) President Obama to use the fifth anniversary of his executive order ending "enhanced interrogation" as an opportunity to publicly support the release of the Senate Select Committee on Intelligence's study of the CIA's treatment of suspected terrorists after 9/11. The Committee adopted the 6,300-page report in December, 2012, but so far none of it has been made available to the public.

Five years ago, the president signed Executive Order 13491 to ensure that the U.S. respects domestic and international laws that prohibit torture and "cruel, inhuman and degrading treatment." However, executive orders do not bind future presidents, and there is no guarantee that EO 13491 will survive in a future administration. This [blog post](#) has more information.

Joining TCP in asking the president to take a public position on releasing the SSCI report were the American Civil Liberties Union, Amnesty International USA, Center for Victims of Torture, Human Rights First, Human Rights Watch, National Religious Campaign Against Torture, Open Society Policy Center and Physicians for Human Rights.

In a [comprehensive report](#) issued last April, TCP's independent, blue-ribbon Task Force on Detainee Treatment called for the release of the full SSCI with only limited redactions.

[Back to Top](#)

# Senate Judiciary Committee Approves Sentencing Reform Bill

## Sentencing Reform

On January 30, the Senate Judiciary Committee [approved](#) the Smarter Sentencing Act of 2013 (S. 1410) with bipartisan support, paving the way for a vote of the full Senate later this year. The bill would amend federal mandatory minimum laws for certain non-violent drug offenses by increasing judicial discretion during sentencing. It would also reduce the mandatory minimum sentence for certain non-violent drug offenses and make retroactive the Fair Sentencing Act of 2010's reduction in sentencing disparities between crack and powder cocaine.

Prior to the Committee's vote, Senator Durbin (D-IL), one of the bill's original sponsors, referenced a [letter](#) organized by TCP from more than 100 former prosecutors and judges expressing support for the legislation. The bill passed with the support of all ten Democratic members of the Committee, as well as Republican Senators Mike Lee (UT), Ted Cruz (TX) and Jeff Flake (AZ).

[Back to Top](#)

# NSA Surveillance Continues to Draw Criticism

## Government Surveillance & Searches

In a speech at the Department of Justice on January 17, President Obama [outlined the principles](#) for a broad restructuring of surveillance programs, mostly conducted by the National Security Agency, that have swept up private data on millions of U.S. citizens. Most of the programs were unknown to the public until Edward Snowden, a former intelligence contractor, provided a trove of classified documents to the media.

While acknowledging that some of the president's proposals were "a positive first step," TCP was generally critical of the speech. "The president could have taken important steps to protect people's privacy against out-of-control government surveillance. Unfortunately, he largely let that opportunity go to waste," said TCP president Virginia Sloan in a [press release](#). Sloan said TCP was especially disappointed that President Obama chose not to end the NSA's bulk collection of Americans' phone call records, a program that "not only violates individuals' privacy rights, but has been shown to be ineffective in keeping us safe."

A week later, the independent Privacy and Civil Liberties Oversight Board issued its own report on the bulk collection of phone metadata, questioning both the legality and the efficacy of the program. [Sloan said](#) the group's conclusions reinforce the "growing consensus" that "Congress needs to end the unnecessary and illegal bulk collection."

TCP has [endorsed](#) a bipartisan reform bill introduced by Sen. Patrick Leahy (D-Vt.), Chair of the Senate Judiciary Committee, and Rep. Jim Sensenbrenner (R-Wis.), one of the original authors of the Patriot Act. Called the USA Freedom Act, the legislation would end bulk collection and increase the transparency and accountability of intelligence agencies.

TCP's Liberty and Security Committee has previously called for the [reform of Section 215](#) of the Patriot Act, the legal authority claimed by the NSA for bulk collection, and for [stronger review standards](#) in orders issued by the FISC.

[Back to Top](#)

# TCP Condemns Execution of Mexican Citizen in Texas

## Death Penalty

The Constitution Project condemned Texas' January 22 execution of a Mexican citizen, Edgar

Tamayo, despite the failure of any U.S. court to consider his claim that he was not notified of his right to contact his consulate after arrest, a clear violation of an international treaty called the Vienna Convention on Consular Relations.

"In light of the continued execution of foreign nationals without review of their consular access claims, it is more critical than ever that Congress create a remedy for these individuals to prevent further violations of our country's binding legal obligations and the erosion of our credibility on the international stage," TCP president Virginia Sloan said in a [press release](#).

Former Texas Governor Mark White, a co-chair of TCP's Death Penalty Committee, also weighed in on the issue in a [January 14 op-ed](#) in the Austin American-Statesman. White's position was noted in [The New York Times](#) and [The Los Angeles Times](#), as well as on [CNN](#) and [MSNBC](#) and other media outlets.

Tamayo, sentenced to death for killing a Houston police officer in 1994, is the third Mexican national to be executed in the United States without an opportunity to have a federal court review his Vienna Convention claim. In [Mandatory Justice: The Death Penalty Revisited](#), TCP's bipartisan Death Penalty Committee -- comprising both supporters and opponents of capital punishment -- concluded that consular access prior to trial is critical to the fair treatment of a foreign national in the course of the investigation, trial and sentencing.

[Back to Top](#)

## Turberville Joins TCP Staff

Current Events

TCP welcomes Sarah E. Turberville as its new Senior Counsel for the Criminal Justice Program. In this position, she will coordinate TCP's public education and advocacy efforts on a variety of matters relating to the criminal justice system - such as indigent defense, the death penalty, habeas corpus in state criminal cases, wrongful convictions, sentencing, and DNA collection upon arrest.

Prior to joining TCP, Sarah worked for more than five years as the Director of the American Bar Association's Death Penalty Due Process Review Project and has also served as an adjunct faculty member at the University of Maryland, teaching a course on the death penalty. She previously worked as an assistant public defender for the State of Maryland, representing indigent defendants at trial and on special dockets for clients raising issues of competency to stand trial and lack of criminal responsibility. Turberville is a graduate of Tulane Law School and is a member of the Maryland Bar.

[Back to Top](#)

## TCP Newsmakers in Brief

Current Events

- TCP Scholar-in-Residence, Dr. Louis Fisher, has released a new book, [The Law of the Executive Branch: Presidential Power](#), which explores the sources and limits of presidential power by focusing on the law of the executive branch in the context of constitutional language, the framers' intent, and more than two centuries of practice.
- On January 23, Ambassador Thomas R. Pickering, a member of TCP's bipartisan Task Force on Detainee Treatment, participated in a well-attended [panel discussion](#) on terrorism and

torture co-hosted by TCP and the Chicago Council on Global Affairs.

- On January 28, Senior Rule of Law Counsel Katherine Stern spoke on "Fortifying the Cyber Framework" at State of the Net 2014, one of the largest information technology policy conferences in the U.S., and one that is widely attended by Congressional staff and government policymakers.

[Back to Top](#)

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