

**OCTOBER 19, 2011**

Welcome to the *Clearinghouse of New Voices for Criminal Justice Reform Bulletin*. Through this newsletter, The Constitution Project (TCP) updates you on the "unlikely allies" speaking out in favor of criminal justice reforms like the right to counsel, revisions to criminal sentencing laws, and other issues. Those speaking out include current and former prosecutors, judges, police officers, victim advocates, conservatives, and Republicans. These individuals are particularly persuasive, as they are not the usual suspects calling for reform of the criminal justice system. TCP's Clearinghouse works to promote the voices of these unlikely allies to effect a variety of criminal justice reforms.

## **Upcoming Oct. 28th Event: The Politics of Sentencing**

On October 28, TCP Board members Asa Hutchinson, former Republican Congressman from Arkansas and Administrator of the DEA, and Judge William S. Sessions, former director of the FBI and federal judge, will participate in a panel discussion at the University of Pennsylvania Law Review Symposium *Sentencing Law: Rhetoric and Reality*. The panel discussion, *The Politics of Sentencing*, will cover new and innovative solutions to issues such as prison overcrowding, the war on drugs, and the challenges embedded in the current sentencing guidelines. For more information on this event, [click here](#).

## **Unlikely Allies Highlighted in Troy Davis Clemency Campaign**

Troy Davis was executed by the State of Georgia on September 21st despite serious doubts concerning his guilt. While the outcome was tragic, the case did raise public awareness of the flaws in our criminal justice system. This was in part due to the fact that so many prominent individuals—among them death penalty supporters and TCP Committee and Clearinghouse members—spoke out publicly for clemency in the case. Numerous media outlets, including [The New York Times](#), [Wall Street Journal](#), and [MSNBC](#), highlighted the calls for clemency from [Bob Barr](#), a TCP Death Penalty Committee member and former Republican congressman and U.S. Attorney from Georgia; [Judge William S. Sessions](#), a TCP Board member, former federal judge and director of the FBI; [Larry Thompson](#), former Deputy Attorney General under President George W. Bush and TCP Right to Counsel Committee member; [Justice Norman Fletcher](#), TCP Right to Counsel Committee member and former Chief Justice of the Georgia Supreme Court; [Mark White](#), co-chair of TCP's Death Penalty Committee and former Democratic Governor of Texas; [Tim Lewis](#), TCP Board member and former federal judge and prosecutor; and [John Whitehead](#), TCP Death Penalty Committee member and head of the Rutherford Institute. Read more about Judge Sessions' reflections after the execution [here](#).

## **David Keene Calls Attention to Haynesworth Wrongful Conviction**

In a compelling *Washington Times* [Op-Ed](#), TCP Board Member and former Chair of the American Conservative Union David Keene describes the case of Thomas Haynesworth, who spent 27 years in prison for crimes he did not commit. Mr. Haynesworth and conservative Virginia Attorney General Kenneth Cuccinelli—who pushed for post-conviction DNA testing and for Mr. Haynesworth's release—were honored this summer during a luncheon held in Washington by the Mid-Atlantic Innocence Project, which represented Mr. Haynesworth in his legal proceedings. General Cuccinelli, whose remarks are [described here](#), reflected on the obligation of prosecutors to do justice, not just seek convictions.

## **Alabama's Jury Override System Needs Reform, Says TCP Death Penalty Committee Member**

TCP Death Penalty Committee member Judge O.H. Eaton, Jr. authored [an Op-Ed](#) published in the *Birmingham News* calling on Alabama to reform its practice of judicial override. Judge Eaton served as a trial judge in the 18th Judicial Circuit of Florida for more than 20 years and is a nationally recognized expert on capital trials. Florida and Alabama are two of the only states in the country to allow a trial judge to override a jury's recommendation that a defendant be sentenced to life in prison, instead imposing a death sentence. Judge Eaton argued that, "judicial override creates a system in which (1) geography; (2) race; (3) timing of trial; and (4) the individual judge determine whether one will be sentenced to death, rather than the seriousness of the crime," citing a recent report by the Alabama-based Equal Justice Initiative, [The Death Penalty in Alabama: Judge Override](#).

## Event Recap: Constitution Day Panel Discussion Features Former Ohio Attorney General

Since the emergence of DNA testing in criminal cases, 273 individuals have been exonerated after DNA evidence proved their innocence. On September 15th, TCP, Georgetown University Law Center, and the Mid-Atlantic Innocence Project recognized three authors—Jim Petro (the former Republican Attorney General of Ohio), Nancy Petro, and Brandon Garrett (University of Virginia law professor)—for their significant contributions to the fight to remedy and prevent wrongful convictions and for their respective books, [False Justice: Eight Myths that Convict the Innocent](#) and [Convicting the Innocent: Where Criminal Prosecutions Go Wrong](#). The authors participated in a conversation led by Jeffrey Rosen, legal reporter for *The New Republic* and George Washington University Law School professor; that conversation is [available online](#). The event was also viewed by over 200 schools and individuals across the country via webcast.

## Event Recap: Panel Considers Strategies for Building Bipartisan Consensus

On August 4th, TCP Senior Counsel Mary Schmid Mergler moderated a panel discussion at the 10th annual National Association of Criminal Defense Lawyers State Criminal Justice Network meeting in Denver, Colorado. The panel discussion, *Crossing the Aisle: Strategies for Building Bipartisan Consensus*, provided criminal justice reform advocates with insight into how to work with and speak to unusual allies. Panelists included a number of individuals who bring a fresh perspective to criminal justice reform: Miriam Krinsky, former Assistant U.S. Attorney for the Central District of California and member of TCP's Sentencing Initiative; Marc Levin, a leader of the Right on Crime initiative; Mike Krause, the director of the Justice Policy Initiative at the Colorado Independence Institute; and Sen. Ellen Roberts, a Republican Colorado state senator.

## Group Calls Attention to Vienna Convention Violations in Criminal Cases

Humberto Leal Garcia, a Mexican national, was executed by the state of Texas on July 7th. After his arrest, Mr. Leal was never told that he had a right to contact the Mexican consulate for legal assistance as is required by the Vienna Convention on Consular Relations treaty. TCP, working with many allies, organized a diverse group of [former military officials, diplomats, judges and prosecutors](#) who urged Texas Governor Rick Perry to hold off on executing Mr. Leal until pending legislation, sponsored by Senate Judiciary Committee Chair Patrick Leahy (D-VT), that would provide Mr. Leal with grounds for appeal was considered. The letters from these individuals were widely cited in news stories and editorials about the Leal case, including in [The Washington Post](#), [The New York Times](#), and [Reuters](#). Unfortunately, the execution took place as scheduled. However, Senator Leahy's Consular Notification Compliance Act is still pending before Congress, and we are working for its passage. The legislation would give federal judges the jurisdiction to review cases where foreign nationals on death row claim that they did not receive fair trials or sentences because of violations of their right to contact their consulate, as the Vienna Convention on Consular Relations requires.

## Recent Supreme Court Cases

### *Turner v. Rogers*

On June 20th, the United States Supreme Court ruled in *Turner v. Rogers* that defendants do not enjoy a constitutional right to counsel in civil proceedings where their physical liberty is at stake, so long as alternative substitute procedures are provided to protect defendants' due process rights. TCP filed an [amicus brief](#) in the case based upon the 2010 [recommendation](#) of its

bipartisan National Right to Counsel Committee, advocating for the appointment of quality representation to all persons unable to afford counsel in proceedings that result in a loss of liberty, regardless of whether the proceedings are denominated "civil" or "criminal." In a [statement](#) released the day of the Court's decision, Committee co-chair Timothy K. Lewis, a former judge for the U.S. Court of Appeals for the Third Circuit and TCP Board member, lamented the Court's ruling, stating, "Today, the Supreme Court issued a decision contrary to both its own precedent and to due process requirements enshrined in the Constitution. All indigent defendants at risk of deprivation of physical liberty ought to be provided effective assistance of counsel, regardless of whether the case is a civil or criminal proceeding."

### ***Maples v. Thomas***

On October 4th, the Supreme Court heard oral argument in the case of death row inmate Cory Maples. Attorneys for Mr. Maples argued that because he had been completely abandoned by his *pro bono* post-conviction counsel, the fact that he missed an appeal deadline should not be grounds for default on his claims. TCP, along with the libertarian Cato Institute, filed [an amicus brief](#) in the case, urging the Court to excuse Mr. Maples' default due to his lawyers' errors. A decision is expected in the coming months. TCP's work on the case was discussed in two recent *Washington Post* articles by [Catherine Ho](#) and [Robert Barnes](#) and highlighted in a *Birmingham News* [editorial](#).

### ***Martinez v. Ryan***

Also on October 4th, the Supreme Court heard the case of *Martinez v. Ryan*, which presents the question of whether the right to counsel should extend to a first state *habeas* petition, if the defendant was prohibited from raising certain claims during his direct appeal. TCP helped to put together an *amicus* brief of former state supreme court justices, available [here](#), who argued that "state post-conviction remedies must provide a full opportunity for the development of federal constitutional claims that cannot be raised in earlier proceedings."

## ***Get Involved***

### **What is the Clearinghouse & How can you be involved?**

The goal of the Clearinghouse is to promote the voices of those traditionally viewed as unlikely allies to criminal justice reform, like judges, prosecutors, corrections officials, and conservatives, by matching them to criminal justice reform campaigns on the federal and state levels. Members of the Clearinghouse may be asked to sign an *amicus* brief or a letter to a legislature, author an op-ed piece or letter to the editor, or provide legislative testimony about various criminal justice issues. For more information, contact Mary Schmid Mergler, Senior Counsel for the Criminal Justice Program: 202-580-6938, [mschmid@constitutionproject.org](mailto:mschmid@constitutionproject.org).

### **Who else do you know who should be included in the Clearinghouse?**

If you have suggestions of unlikely allies The Constitution Project should contact—former prosecutors with whom you used to work, former judges who sat with you on the bench, prison officials, state and federal legislators, conservatives, and others who would lend particular influence to efforts to reform the criminal justice system, please pass their names along to us. We're also always eager to identify other issues on which reform efforts are taking place, and to hear about news stories highlighting unique voices in the criminal justice reform debate, so please forward those along as you come across them.

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