

THE CLEARINGHOUSE

OF NEW VOICES FOR CRIMINAL JUSTICE REFORM BULLETIN

AN INITIATIVE OF THE CONSTITUTION PROJECT

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November 2013

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Dear TCP Clearinghouse Member,

It has been a busy few months for TCP's Clearinghouse, and I write to give you an update on all of the projects that Clearinghouse members have been involved with recently.

We have had several advocacy successes in the last quarter. We have organized letters signed by Clearinghouse members in support of mandatory minimum reforms, as well as arranged for Clearinghouse members to speak out in a variety of formats in support of adequate funding for the Federal Public Defenders program, which has faced devastating cuts due to sequestration and other budget cuts.

None of this important work would have been possible without you, and I thank you for your continued support of Clearinghouse initiatives. We are always looking to expand Clearinghouse membership, so if you know of anyone who would like to join, please contact me at efasse@constitutionproject.com.

Sincerely,



Liz Fasse
Counsel, Criminal Justice Program

Major Reforms Proposed for Federal Mandatory Minimums

In July, The Constitution Project's Clearinghouse of New Voices for Criminal Justice Reform organized [a letter](#) from more than 50 former federal judges, prosecutors and other law enforcement

officials in support of the Justice Safety Valve Act of 2013 (S. 619), co-sponsored by Senators Rand Paul (R-Ky.) and Patrick Leahy (D-Vt.), the Chair of the Senate Judiciary Committee. The Paul-Leahy bill would authorize federal judges to impose a prison sentence below the statutory mandatory minimum in cases in which a lower sentence would not jeopardize public safety, the judge determines the defendant is unlikely to become a repeat offender, and other circumstances which render the minimum sentence unwarranted, such as an offender's limited role in a crime or other mitigating factors. The Clearinghouse letter in support of the bill was mentioned by numerous news outlets, including an op-ed by Senators Paul and Leahy in [US News and World Report](#).

In advance of a Senate Judiciary Committee hearing on federal mandatory minimums, TCP also organized a Clearinghouse letter in support of a bill introduced by Senators Dick Durbin (D-Ill.) and Mike Lee (R-Utah), the Smarter Sentencing Act of 2013 (S. 1410). The bill would allow federal judges more discretion in sentencing those convicted of non-violent, drug related offenses. [The letter](#) was signed by more than 50 former federal judges and prosecutors and Senator Durbin entered it into the Congressional Record.

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Efforts to Save the Federal Public Defender Program

In July, TCP organized [a statement](#) from more than 40 former federal judges and prosecutors objecting to the devastating impact that sequestration cuts are having on federal public defender offices across the nation. As the letter states, "[c]uts to the Federal Defender program will not only affect the Federal Defenders and their clients. Because Federal Defenders are an integral piece of the criminal justice system, these budget cuts will affect the operation of the American justice system as a whole. In our experience, qualified, adequately resourced defense counsel are a vital component of the federal criminal justice system. Federal Defenders serve, along with prosecutors and judges, as an essential 'leg' of the three-legged criminal justice stool." In the agreement reached on October 17 to reopen the government, the continuing resolution included enough money to prevent further funding cuts to the Federal Defender program, at least temporarily. Specifically, the bill provided an extra \$26 million over the fiscal year 2013 funding level for attorneys who represent indigent defendants charged with a federal crime. However, much of that extra money will be needed just to cover delayed payments for legal services already performed by court-appointed contract attorneys. Lawmakers from the House and Senate are currently in negotiations to end the sequester. Regardless of whether this bears fruit, Congress will have to make critical funding decisions before January 15, 2014, including the size of the budget for the Federal Defender program.

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TCP Clearinghouse Members File *Amicus* Brief in North Carolina Death Penalty Case

TCP filed an [amicus brief](#) in the North Carolina Supreme Court in the case of *North Carolina v. Robinson* on behalf of former senior military officials regarding their involvement in training to combat racial bias. Mr. Robinson prevailed in district court on his claim under the state's Racial Justice Act (RJA) that prosecutors impermissibly used peremptory challenges to exclude African Americans from the jury. The RJA prohibits the application of the death penalty on the basis of race. Mr. Robinson was convicted of murder and sentenced to death. Under the RJA, the prosecution can rebut evidence of racial bias in the implementation of the death penalty with evidence that its office has participated in programs to redress racial bias. The prosecutor's office in Mr. Robinson's case did not participate in such a program, which became a key issue at the hearing on Mr. Robinson's claim under the RJA.

Mr. Robinson's attorneys introduced testimony from several experts on the benefits of educational programs on racial bias. The prosecution, in response, did not offer any expert testimony, but, rather, the lead prosecutor in his closing argued that he himself had participated in such training when he was in the military, and that those programs were not effective, making several comments denigrating the programs. The district court ruled in Mr. Robinson's favor, and the state appealed. The Clearinghouse brief rebutted the prosecutor's comments and, as in the affirmative action case decided by the Supreme Court several years ago, made clear that racial diversity is vital to the military's mission, that training programs are critical to ensuring it, and that the same principles apply to the criminal justice system. (Since Mr. Robinson's case, the RJA was repealed by the state; efforts to reinstate it are ongoing.) The brief was made possible by the generous *pro bono* services of Skadden Arps, LLP.

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Clearinghouse Members in the Media

We have helped make the voices of Clearinghouse members heard around the country. These are some examples:

- Rebecca Betts, former U.S. Attorney for the Southern District of West Virginia, authored an [op-ed](#) supporting reforms to federal mandatory minimums that was published in the *Charleston Daily Mail*.
- Former federal judges Paul Cassell and Nancy Gertner co-authored an [op-ed](#) in *The Wall Street Journal* in support of adequate funding for the Federal Defender program.
- Robert Cary, part of the Williams & Connolly team that represented former Senator Ted Stevens (R-Ark.), and former FBI Director and Judge William Sessions penned an [op-ed](#) supporting *Brady* reform for the *Washington Times*.
- Seth Waxman, Solicitor General in the Clinton administration, contributed an [op-ed](#) on the plight of the Federal Public Defenders to the *Baltimore Sun*.
- Michael Bromwich, former DOJ Inspector General; former federal prosecutor Zachary Carter; and Larry Thompson, former U.S. Attorney and Deputy Attorney General in the G.W. Bush administration, co-authored an [op-ed](#) in the *Washington Times* about the devastating impact of sequestration on the Federal Defender program.
- Mark Osler, former Assistant U.S. Attorney for the Eastern District of Michigan, authored an [op-ed](#) for MSNBC on the case of *U.S. v. Blewett*, urging that the Fair Sentencing Act, which alleviated the crack/powder cocaine disparity in sentencing, be applied retroactively.

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How can you be involved in the Clearinghouse?

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 join an *amicus* brief or sign a letter to policymakers, author an op-ed piece, or provide legislative testimony about various criminal justice issues. For more information, contact Liz Fasse, Counsel for the Criminal Justice Program: 202-580-6938 or efasse@constitutionproject.org.

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Do you have suggestions for new Clearinghouse members?

If you have suggestions of other individuals whom TCP 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.

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