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Greetings!

Hello. My name is Elizabeth (Liz) Fasse, and I am pleased to join The Constitution Project as its new Criminal Justice Program policy counsel, taking over from Mary Schmid, who moved to Texas to be nearer to her family. I come to TCP most recently from the Rocky Mountain Innocence Center, where my work focused on preventing and correcting wrongful convictions in Utah, Nevada and Wyoming.

Before that, I was an associate at the law firm of Fried Frank here in Washington, and was lucky to be chosen as the TCP Fried Frank Fellow. So I am already quite familiar with my new colleagues and the important issues we work on. One of my responsibilities will be managing TCP's Clearinghouse, so please feel free to contact me at efasse@constitutionproject.org. I look forward to working with all of you.

Below, you will read about the impact on justice that Clearinghouse members had in the first half of this year. Thank you for your support, and as always, please continue to help us identify new voices that support justice reform and new opportunities to use those voices.

Former Prosecutors Urge Governor to Grant Clemency to Mentally Ill Man

In May 2013, TCP's Clearinghouse helped to organize a group of prosecutors to send a [letter](#) to Colorado Governor John Hickenlooper recommending clemency for death row prisoner **Nathan Dunlap**, who was scheduled to be executed later this year. At the time of the crime, Mr. Dunlap suffered from bipolar disorder, and continues to suffer from it, though he is able to manage his illness with medication. Mr. Dunlap's trial attorney failed to investigate Mr. Dunlap's mental health. Thus the jury did not hear that he suffered from debilitating psychotic episodes because of his mental illness. On May 22nd, Governor Hickenlooper issued an executive order granting Mr. Dunlap an indefinite reprieve from execution.

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Clearinghouse Members File Two *Amicus* Briefs

In May 2013, a group of former prosecutors and judges who are members of TCP's Clearinghouse filed an [amicus brief](#) in the U.S. Court of Appeals for the District of Columbia in the case **Gathers v.**

United States. The appellants in this case are appealing their convictions for a 1993 homicide in Washington, DC. Their appeal is based on a claim that their due process rights were violated when the prosecution knowingly elicited false testimony from a government witness. This testimony was the basis of the State's theory of the motivation for the murder. The *amicus* brief, drafted by *pro bono* counsel at the law firm of Crowell & Moring LLP, argued in favor of the appellants and urged the court to overturn their convictions. We are awaiting the court's decision.

Also in May 2013, TCP's Clearinghouse members filed an [amicus brief](#) in **Turner, et al v. United States**, also in the District of Columbia Court of Appeals. The case involves the 1984 murder of Catherine Fuller, for which seven teenagers were convicted. All claim they are innocent and are now attempting to get relief on several post-conviction claims. A group of former judges and prosecutors, organized by TCP's Clearinghouse, filed an *amicus* brief drafted by *pro bono* counsel at the law firm of Sullivan & Cromwell LLP, arguing that the prosecution's suppression of eyewitness testimony of an alternative perpetrator violated the prosecutor's disclosure obligations under *Brady v. Maryland* and that the lower court erred in not properly considering the effect of the suppressed evidence and failing to conduct an independent materiality and cumulative analysis, as required by *Brady*.

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Decisions Issued in Cases in which Clearinghouse Members Filed *Amicus* Briefs

In May 2013, the Supreme Court issued a [ruling](#) in **Trevino v. Thaler**, holding that a death row inmate in Texas can raise claims of ineffective counsel for the first time in federal court if he was not able to raise the claim in an appeal in state court. Mr. Trevino, on death row in Texas, claims that his trial counsel failed to present mitigating evidence during sentencing that he was severely abused as a child and is cognitively impaired. Mr. Trevino also brought a *Brady* claim, but the Court did not grant *certiorari* on this issue. TCP's Clearinghouse organized a group of former federal judges to file an [amicus brief](#) on behalf of Mr. Trevino, arguing that the Fifth Circuit, in violation of established judicial norms, took on a role as both investigator and fact finder in its evaluation of Mr. Trevino's *Brady* claim. *Pro bono* counsel at Jones Day drafted the *amicus* brief.

There was also recently a [decision](#) in **Wolfe v. Clarke**, a case in which TCP also organized a group of former judges, prosecutors and law enforcement officers to file an [amicus brief](#) in support of the petitioner, drafted by *pro bono* counsel at Vinson & Elkins LLP. The State of Virginia appealed a ruling from the Federal District Court vacating Justin Wolfe's capital conviction and barring the State from retrying him because of flagrant prosecutorial misconduct. The Clearinghouse *amicus* brief argued that the prosecution committed at least two *Brady* violations by suppressing evidence that Mr. Wolfe's attorneys could have used to impeach the testimony of the prosecution's key witness. In May 2013, the U.S. Court of Appeals for the 4th Circuit, while upholding the district court's ruling that Mr. Wolfe's conviction should be vacated, held that the District Court abused its discretion by barring Mr. Wolfe's retrial.

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Defending Gideon Video

To commemorate the 50th anniversary of **Gideon v. Wainwright**, TCP produced a [documentary](#) about the landmark court case. The film weaves the story of the iconic landmark case, *Gideon v. Wainwright*, with contemporary portraits of legal injustice. *Defending Gideon* highlights the importance of a system that guarantees representation for all-and the dire consequences when that system fails. The film, narrated by actor Martin Sheen, will feature interviews with many who were there at the time: Retired Arnold & Porter LLP attorney **Abe Krash**, **Bruce Jacob** (who represented

Florida in the case and who is now a leading advocate for reform), **Walter Mondale** (who, as Minnesota Attorney General, organized an *amicus* brief in Gideon's favor), and **Anthony Lewis**, long-time New York Times columnist and author of Gideon's Trumpet. The video can be streamed on TCP's website and is available on DVD. If you would like a copy of the DVD or would like to arrange a viewing of the film at your organization, please visit www.defendinggideon.org or contact Liz Fasse.

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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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