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THE CONSTITUTION PROJECT

 Safeguarding Liberty, Justice & the Rule of Law

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Dear Friend of TCP,

For nearly a decade, The Constitution Project has been in the vanguard of criminal sentencing reform. As we reported last month, the Senate Judiciary Committee approved legislation that would amend federal mandatory minimum laws for certain non-violent drug offenses by increasing judicial discretion during sentencing. Prior to the committee's bipartisan vote sending the Smarter Sentencing Act of 2013 to the full Senate for consideration, Senator Dick Durbin (D-IL), one of the bill's original sponsors, referred to a [letter](#) organized by TCP from more than 100 former prosecutors and judges expressing support for the legislation. And Congressman Raul Labrador (R-ID), a cosponsor of companion legislation in the House, touted our support for reform on [Meet the Press](#).



Others are taking notice of our commitment as well. Recently, the New York Times' Room for Debate asked TCP to participate in a discussion of judicial discretion in criminal sentencing. Working closely with our staff, former Third Circuit Court of Appeals Judge Timothy K. Lewis (a TCP board member) [responded on our behalf](#). The reaction to his article has been overwhelmingly positive. For example, former NAACP President Benjamin Jealous forwarded it to more than 30,000 Twitter followers.

TCP will keep pressure on Congress and state legislatures to increase judicial discretion in sentencing decisions and to improve procedural fairness and improve due process in the sentencing of convicted criminals. Your [ongoing support](#) makes our success possible.

Sincerely,

Virginia Sloan
 President, The Constitution Project

Supreme Court Decision Important Victory for Right to Counsel

Right to Counsel

On February 24, the U.S. Supreme Court agreed to return the case of Alabama death row inmate Anthony Ray Hinton to state court to determine whether or not his lawyer's failure to hire a competent expert witness unfairly prejudiced the case against him.

Hinton was arrested in 1985 and charged with two separate shooting murders that occurred during robberies at two fast food restaurants near Birmingham, Alabama. He was convicted of murder based solely on ballistic tests, which both the National Academies of Sciences and the FBI have determined to be scientifically unreliable. Hinton's court-appointed lawyer recognized prior to trial that the expert he had retained to challenge the prosecution's critical forensic evidence was not competent to do so (he had virtually no experience in the field, and had only one eye, which limited his ability to closely examine the evidence), but wrongly believed he could not obtain the funds necessary to hire a better one.

Bryan Stevenson, head of the Equal Justice Initiative in Alabama, represents Hinton and asked TCP to file a "[friend of the court](#)" brief on Hinton's behalf. In our brief, filed last October, TCP argued that the failure to hire a qualified expert violated Hinton's Sixth Amendment right-to-counsel, which may have "led to a miscarriage of justice, and caused an innocent man to be sentenced to death." The Supreme Court [agreed](#) with TCP's position without a hearing and without dissent. It returned the case to the state court for a determination of prejudice. A [blog post](#) from Senior Counsel Sarah Turberville has more details.

TCP prepared its brief with generous pro bono assistance from the law firm of Sidley Austin.

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Judicial Conference Reverses Rate Cut for Federal Defenders

Right to Counsel

On February 10, a month after Congress passed a spending bill that spared federal public defenders from further devastating budget cuts, the Executive Committee of the U.S. Judicial Conference, which oversees the program, announced that it was restoring the hourly rates for court-appointed indigent defense counsel, also known as panel attorneys. Last year, the executive committee had reduced the panel attorneys' hourly rates by \$15 in order to prevent steeper cuts to federal public defenders, offices which in many cases had already suffered from furloughs and layoffs as the result of sequestration.

For TCP and other supporters of the constitutionally guaranteed right-to-counsel, the situation was simply unacceptable – and we went to work to restore these resources. After years of working to obtain competitive rates for panel attorneys, we were concerned a permanent reduction would have made it far more difficult to attract and retain qualified and competent counsel in those situations when a federal public defender was unable to represent an indigent defendant.

TCP led a concerted effort of a dedicated group of federal defenders, private attorneys, and a broad coalition of advocacy organizations to educate members of the judiciary and Congress about the need for adequately funded federal indigent defense. In the end, our efforts paid off. That is good news for federal defenders, for the panel attorneys, and especially good news for the clients they represent.

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Group Continues to Pressure Senate Intel Committee to Release Report on CIA Interrogations

Counter-Terrorism Policies & Practices

A coalition of [civil liberties](#) and [open government](#) groups joined TCP in urging the Senate Select Committee on Intelligence to declassify and release its report on the CIA's treatment of suspected terrorists after 9/11. In separate letters sent to committee members on February 25, the groups called for the declassification and release of the full report with as few redactions as possible, as well as release of the agency's response to it. The committee adopted the 6,300-page report in December, 2012, on a bipartisan vote, but so far none of it has been made available to the public.

Last April, TCP's bipartisan Task Force on Detainee Treatment released the most [comprehensive examination](#) to date of the treatment of suspected terrorists across multiple administrations and multiple geographic theatres. However, that blue-ribbon panel did not have access to classified documents, and the Senate Intelligence Committee's staff did. As a result, The Task Force unanimously called for the declassification and release of a number of government reports, beginning with the SSCI report.

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TCP Calls Voluntary Cyber Plan a "Significant First Step"

Government Surveillance & Searches

On February 12, the National Institute of Standards and Technology released its Cybersecurity Framework, a set of voluntary minimum guidelines intended to help companies better protect themselves against cyberthreats. NIST developed the plan at the direction of Executive Order 13636, which President Obama signed in February 2013.

"Effective cybersecurity is not possible without robust privacy protections," said TCP President Virginia Sloan in a [press release](#) responding to the new plan. "While we believe that the Fair Information Practice Principles will need to play a larger role in future versions of the Framework, we recognize that setting out a process for considering privacy measures is a significant first step," she said.

The Fair Information Practice Principles are a set of broad benchmarks for protecting privacy and civil liberties when companies collect, retain, use, share, or sell their customers' personal information. Although NIST developed the new cybersecurity standards in close consultation with industry experts and privacy advocates, companies are under no obligation to adopt them.

TCP's Liberty and Security Committee offered its advice on privacy protections in its 2012 report, [Recommendations for the Implementation of a Comprehensive and Constitutional Cybersecurity Policy](#).

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Cameron Willingham: More Evidence of Innocence

Criminal Discovery

In breaking news this past week, we learned that prosecutors in the case against Cameron Todd Willingham -- who was executed by the state of Texas in 2004 -- failed to provide significant information to the defense that might have led the jury to doubt the testimony of a key trial witness. Willingham was convicted and sentenced to death for setting fire to his house, which killed his three children inside. Even before his execution, arson experts debunked the theory that the fire was set deliberately, calling it an accidental fire caused by a mechanical problem. Texas proceeded to

execute Willingham despite this new evidence.

The New York Times [reported](#) that a jailhouse informant who claimed that Willingham confessed to him was promised a deal in exchange for his testimony, and that the charges against him and his sentence were lower than they otherwise would have been. This evidence of a deal was clearly exculpatory and could have led the jury to doubt the informant's testimony. The prosecutors' failure to provide the evidence to the defense despite their requests for it violated the constitutional rule set forth by the Supreme Court in *Brady v. Maryland*.

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Still Time to Sponsor Constitutional Champions Gala

Current Events

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 or (202)580-6942. Go to [our website](#) for more details.

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TCP Newsmakers in Brief

Current Events

- The January/February issue of *The Federal Lawyer* published an article by TCP Scholar-in-Residence Louis Fisher entitled "[Judicial Errors That Magnify Presidential Power](#)."
- A February 18 [article](#) in *The New York Times* noted the groundbreaking work of Stephen Hanlon, former chair of the TCP Board of Directors, to reduce indigent defense caseloads in Missouri.
- An [editorial](#) in *The Crime Report* by University of Maryland law professor Sheldon Krantz quoted extensively - and approvingly - from an earlier [opinion piece](#) on the indigent defense crisis that TCP President Virginia Sloan coauthored with Stephen B. Bright of the Southern Center for Human Rights and Sherrilyn Ifill of the NAACP Legal Defense and Educational Fund Inc.
- Government Affairs Counsel Christopher Durocher moderated a [panel discussion](#) at Stetson University School of Law on February 11 that featured a showing of TCP's short documentary,

[Defending Gideon.](#)

- On February 22, Senior Counsel Sarah Turberville appeared on a panel at the annual conference of the [Texas Coalition to Abolish the Death Penalty](#).

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