

From the desk of Virginia Sloan

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Dear Friend,

In the Halls of Congress

Mukasey Threatens Veto of State Secrets Bill

On April 2, in a [letter](#) delivered to Senators Patrick Leahy (D-VT) and Arlen Specter (R-PA), the Constitution Project urged Congress to reject Attorney General Mukasey's opposition to the State Secrets Protection Act. The Attorney General's March 31 [letter](#) included a claim that he would urge President Bush to veto the Act. The bipartisan [legislation](#), introduced by Senator Edward Kennedy and cosponsored by Leahy and Specter (the Chairman and Ranking Member of the Senate Judiciary Committee, respectively), would guard sensitive national security information while simultaneously preserving the right to a day in court. Louis Fisher, a specialist in constitutional law at the Library of Congress and member of the Constitution Project's bipartisan Coalition to Defend Checks and Balances, also refuted Mukasey's arguments in a [memorandum](#) prepared for Senator Kennedy.

The Liberty and Security Committee and Coalition to Defend Checks and Balances previously issued a [report](#) calling for legislative reform of the privilege along the lines of the State Secrets Protection Act. The statement recognized that the executive branch must have some ability to restrict the disclosure of sensitive information, but criticized the breadth of the assertions of the privilege, as well as the executive branch's opposition to any review of disputed evidence by a neutral judge.

Senate Hears of Ineffective Counsel in Capital Cases

On April 8, the Senate Judiciary Committee Subcommittee on the Constitution heard testimony on "[The Adequacy of Representation in Capital Cases](#)." Three panelists from the Constitution Project's 2007 conference on effective assistance of counsel - [Bryan Stevenson](#) of the Equal Justice Initiative in Alabama, Judge [Carolyn Engel Temin](#) of the Court of Common Pleas of the First Judicial District of Pennsylvania, and [Donald Verrilli](#) of Jenner & Block - testified, as did Michael Greco, a former president of the American Bar Association. Judge William S. Sessions, former Director of the FBI and federal judge and member of the Constitution Project's Death Penalty Committee, submitted a written statement at the Subcommittee's request. In his statement, Judge Sessions stated that "While the appointment of adequate, well-resourced, and experienced counsel in capital cases is primarily the responsibility of the states and localities, Congress has the ability and, I believe, the obligation, to ensure that the states fulfill this responsibility." The Death Penalty Committee previously highlighted the need for effective counsel in capital cases in its report, "[Mandatory Justice: The Death Penalty Revisited](#)."

In the Courts

Smith and Miller-EI Take Plea Deals

Just recently, Thomas Joe Miller-EI and LaRoyce Smith each agreed to plead guilty to murder and serve life sentences after Dallas County, TX prosecutors agreed not to seek the death penalty in their cases. The Supreme Court twice reviewed Mr. Smith's case, each time overturning the Texas courts' actions and ruling that the state courts had improperly precluded him from introducing mitigating evidence. The Court also reviewed Mr. Miller-EI's case twice, each time overturning the Fifth Circuit's rejection of his claims of racial bias in jury selection.

The Constitution Project filed an [amicus brief](#) supporting Mr. Smith's request that the Supreme Court review his case and, once the Court agreed, filed another on the merits. Similarly, we organized an [amicus brief](#) on behalf of former prosecutors and judges in support of Mr. Miller-EI's request for Supreme Court review, and then [another one](#) after the court accepted the case. Our Death Penalty Committee, in [Mandatory Justice: The Death Penalty Revisited](#), [LINK](#) urged that the capital trial process be safeguarded from racial bias, and that capital defendants be able to present all relevant mitigating evidence to the jury and have the jury consider that evidence. The Committee also noted that judges must properly and fully explain mitigating evidence to the jurors.

Above the Fold

The American Lawyer: The Way to War

The April 2008 edition of *The American Lawyer* featured the [commentary](#) of former Members of Congress Mickey Edwards (R-OK) and David Skaggs (D-CO), co-chairs of the Constitution Project's War Powers Committee. The authors focus on the authority, and obligation, of *Congress* to decide whether and when the United States should send its armed forces into military conflicts abroad. They contend that the process by which American troops are deployed abroad is as important as whether they should be deployed at all. Noting that "It is central to the American republic ... that the chief executive is explicitly denied" the prerogative to send soldiers to war whenever it suits his or her purposes, Edwards and Skaggs urge Congress to reclaim its exclusive constitutional authority to declare war.

With a Little Help from Our Friends

Germ Warfare, Contagious Disease, and the Constitution

Tomorrow, the Constitution Project, together with the Stanford Constitutional Law Center, will host a conference on [Germ Warfare, Contagious Disease, and the Constitution](#). Government officials, legal scholars, scientists, and disaster response experts will explore the plethora of responses available to federal officials in the aftermath of a biological attack or pandemic, focusing particularly on the legal implications of those responses. Panelists will explore ways to reform federal law to enable agencies to respond to a biosecurity threat in a manner that protects constitutional rights. The conference begins at 1:30pm, will be held in Dirksen Senate Office Building 50, is open and free to the public, and will feature Secretary of Homeland Security Michael Chertoff as the keynote speaker. We hope you will join us at this important and engaging event.

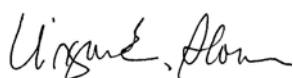
ACLU and NACDL Lend a Legal Hand at Gitmo

Last week the ACLU and the National Association of Criminal Defense Lawyers [announced](#) that the organizations are launching an \$8 million legal defense effort in support of the military attorneys defending several Guantanamo detainees; many military law experts had previously argued that the government was not providing enough resources to the military defense teams. Both groups will be representing “high-value” detainees at the detention camp who are facing the death penalty. The project has received the support of former Attorney General [Janet Reno](#), former Navy Judge Advocate General [Adm. John Hutson](#), and former FBI and CIA Director [William Webster](#), among others.

Verbatim

“The authors of the Constitution declared that the president should be the commander in chief of the U.S. military, but they also provided for a system of shared authority in the area of war powers. The power to declare war is explicitly vested in Congress. Giving Congress this authority was a deliberate and strategic choice: The framers of the Constitution, fearful of the royal European tradition they fled, thought it essential that those who would do the fighting and dying should have some say—through their representatives—in the decision to go to war.” - Mickey Edwards and David Skaggs, in [“The Way to War.”](#)

Sincerely,



Virginia E. Sloan