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From the President's Desk

As I look forward to our second annual dinner on April 2, I keep remembering how wonderful our first dinner last year was. I was thrilled to see all of the people who attended — judges, activists, scholars, advocates — and other friends from across the ideological divides and around the country. Many of you have told me that you're still thinking about the provocative discussions at last year's dinner, not to mention the hilarious performance by the Capitol Steps.

This year, with all the changes here in Washington, the Capitol Steps have a lot of new material. And we have two outstanding recipients of our Constitutional Champion Award. With the recent news stories about the International Red Cross's report, which found that prisoners at the CIA's "black sites" were being tortured, I'm more eager than ever to hear **Alberto Mora's** remarks. He has been such a hero — a Bush administration appointee who spoke out from the beginning to oppose the interrogation techniques that have brought our country into such disrepute. **Craig Watkins** is trying to make sure that his Texas prosecutors avoid the kinds of mistakes that have led to too many wrongful convictions across the country. The importance of this work is highlighted by the Supreme Court's pending decision about whether post-conviction DNA testing is constitutionally required if it could prove that the wrong man is imprisoned. Information about the dinner is below. I really hope I'll see you there. ~ Ginny

Upcoming Events

National Security Courts Panel Discussion on March 20

Tomorrow, the Constitution Project, Human Rights First, and the Georgetown Center on National Security and the Law will co-host a panel discussion that will explore the legal and constitutional issues raised by proposals to create national security courts and legalize a system of indefinite preventive detention. The panel discussion will examine some of the questions about detention and trials for accused terrorists that remain unanswered after the release of President Obama's executive orders addressing some of these issues. The discussion will take place from noon until 1:30 p.m. at Georgetown University Law Center's Hart Auditorium. Lunch will be served immediately after the event. RSVP to rsvp@constitutionproject.org with your name, the number of attendees, and the words "National Security Courts Panel Discussion." The Constitution Project has previously condemned proposals for national security courts and preventive detention in its report "[A Critique of National Security Courts](#)."

Panelists:

David Laufman, Attorney, Kelley Drye & Warren LLP; former Assistant United States Attorney for the Eastern District of Virginia who prosecuted terrorism cases

Deborah Pearlstein, Associate Research Scholar in Law and Public Affairs Program, Woodrow Wilson School, Princeton University

Gabor Rona, International Legal Director, Human Rights First

Matthew Waxman, Associate Professor of Law, Columbia Law School, former Deputy Assistant Secretary of Defense for Detainee Affairs under President George W. Bush

Moderator, **Stephen Vladeck**, Associate Professor of Law, American University Washington College of Law, who was the primary researcher and drafter of our report

Annual Constitutional Champions Awards Dinner on April 2

Our annual awards dinner will take place at the Renaissance Mayflower Hotel in Washington, D.C. on Thursday, April 2, 2009. Please join us in honoring **Alberto Mora**, former General Counsel, Department of the Navy, and **Craig Watkins**, District Attorney for Dallas County, Texas. Mr. Mora led a multi-year effort within the Department of Defense to oppose coercive interrogation techniques at Guantanamo Bay. Mr. Watkins created a "conviction integrity unit" within the District Attorney's office that uses DNA evidence to investigate claims of wrongful conviction. The unit's work resulted in six exonerations in the last two years. The Capitol Steps will provide entertainment following dinner. [RSVP here](#).

News

President Obama on Signing Statements

Last Monday, President Obama issued his [policy](#) on the use of presidential signing statements, followed two days later by a [signing statement](#) that identified multiple provisions in the Omnibus Appropriations Act that he declared “are subject to well-founded constitutional objections.” In 2006, the Constitution Project’s Liberty and Security Committee [criticized the use of signing statements](#) when they are used to “challenge or deny effect to legislation that [the President] considers unconstitutional.” On Tuesday, we published [a commentary in JURIST](#), which said: “We are troubled by the fact that [President Obama] left open the possibility that he will continue the practice of indicating through signing statements that he will not enforce duly-enacted laws because of his constitutional objections, rather than vetoing a bill and providing Congress with the opportunity to amend the legislation or override the veto.”

Al-Marri Case Update

On March 6, the U.S. Supreme Court issued an [order](#) directing the Fourth Circuit to vacate its decision holding that the president has the power to detain indefinitely Mr. Marri, a legal U.S. resident, without charge as an “enemy combatant.” The Court directed that the case be dismissed as moot, now that the Obama administration has charged Mr. Marri with criminal offenses and plans to prosecute him in a civilian court.

While pleased that the appellate decision will no longer stand as precedent, the Constitution Project’s Senior Counsel **Sharon Bradford Franklin** [said](#), “[w]e had hoped that the Supreme Court would have taken this opportunity to resoundingly reject the executive branch’s overbroad claims of detention power.” Along with other organizations, the Constitution Project had filed an *amicus* brief on the [merits](#) of the case as well as one requesting that the Court grant [certiorari](#). Now that the civilian prosecution of Mr. Marri is proceeding, Liberty and Security Committee Member **Louis Fisher** [writes](#) in the *Legal Times* that “executive officials have an obligation in the al-Marri case to disclose to the judiciary the evidence used to justify his detention.”

New Mexico Death Penalty Repeal

Earlier today, New Mexico Governor Bill Richard signed legislation to [abolish that state's death penalty](#). New Mexico is the fifteenth state to abandon capital punishment. The new law establishing life in prison without parole as the maximum criminal penalty will take effect on July 1, and only applies to crimes committed after that date. In 2005, the Constitution Project released "[Mandatory Justice: The Death Penalty Revisited](#)," which contains recommendations on reforming the capital punishment system.

Eyewitness Misidentification

The TV newsmagazine *60 Minutes* ran a superb [story](#) entitled "Eyewitness: How Accurate Is Visual Memory? – Leslie Stahl Reports On Flaws In Eyewitness Testimony That Lead To Wrongful Convictions." The Constitution Project's report "[Mandatory Justice: The Death Penalty Revisited](#)" provides additional background and resources on many of the issues raised in the *60 Minutes* story.

Detainee Treatment

Mark Danner [reports](#) in the *New York Review on Books* on a leaked International Committee of the Red Cross report that condemns as "torture" the CIA's treatment of 14 high value detainees. The CP has [called](#) for a presidential commission to investigate U.S. policies and actions regarding the detention, treatment, and transfer of detainees. **Thomas R. Pickering**, former Undersecretary of State for Political Affairs and a member of the CP's Liberty and Security Committee, testified in support of a presidential commission at a Senate Judiciary Committee hearing on March 4. The Constitution Project submitted [written testimony](#), as did former FBI Director and current Liberty and Security Committee member **William S. Sessions**.

In an [article](#) in *Politico*, Liberty and Security Committee Member and former Representative **Mickey Edwards** (R-OK.) acknowledged the hearing as "an important step in ensuring that the federal government acts in accordance with the rule of law." He also expressed his view that the hearing was not enough and he called for "the House and Senate to create a joint bipartisan select committee to investigate the behavior of the past to determine how to avoid abuses in the future." The CP joins Edwards in his call for an investigation as a critical part of the process of restoring the separation of powers; as Edwards explains, "[w]e cannot begin to repair the damage to our constitutional system until we have a clear understanding of how and why we've strayed so far off course."

End Ideological Exclusion For Visa Applicants

The Constitution Project joined with a coalition of over seventy different organizations in sending a [letter](#) urging the Obama administration to end the practice of “ideological exclusion,” under which foreign scholars, artists, and activists have been denied visas not on the basis of their actions but on the basis of their ideas, political views, and associations. The March 18th letter to Attorney General Holder, Secretary of State Clinton, and Secretary of Homeland Security Napolitano, also urges the officials to revisit seven specific cases of exclusion. The Constitution Project has previously called on the United States to end the practice of “deportation and exclusion based on speech and association,” in the Liberty and Security Committee’s report “[The Use and Abuse of Immigration Authority as a Counterterrorism Tool.](#)”

News In Brief

- **Stephen Abraham**, a former Lieutenant Colonel in the U.S. Army who condemned the Combatant Status Review Tribunals in an affidavit filed before the U.S. Supreme Court, [condemned](#) proposals to create national security courts in a recent commentary in the *National Law Journal*. He is a member of the Constitution Project’s Liberty and Security Committee.
- Lt. Col. **Abraham** [was quoted extensively](#) in news stories on the administration’s decision to no longer use the term “enemy combatant.”
- The Constitution Project submitted [testimony](#) to the City Council of Cambridge, Massachusetts, regarding a proposal to implement video surveillance cameras in that city.

The Constitution Project’s unique mission is to promote and defend constitutional safeguards. We create coalitions of respected leaders from across the political spectrum, advancing their consensus recommendations for policy reforms. Since the Constitution Project’s founding in 1997, our advocacy and public education efforts, influential *amicus curiae* briefs, and respected scholarship have helped to create public support for those reforms.