



April 16, 2009

Inside

- From the President's Desk
- Constitution Project Releases Right to Counsel Report
- Constitution Project Welcomes New Director of Communications and Outreach
- District Court Judge Rules *Habeas* Extends to Bagram
- Constitution Project Coordinates Filing of Brief in Important Right to Counsel Case
- Video Surveillance Update
- News in Brief

From the President's Desk

Two weeks ago today, the Constitution Project held its second annual Constitutional Champion Awards Dinner. All of us at the Constitution Project were honored that so many of our friends and supporters attended. The packed room heard from two remarkable defenders of the Constitution whom we were privileged to honor: **Alberto Mora**, former General Counsel for the Navy, and **Craig Watkins**, the District Attorney of Dallas County, Texas. Mr. Mora told of his efforts within the Department of Defense to object to, and eliminate, the harsh interrogation tactics used against detainees, even while being misled about the fact that those tactics were ongoing. Mr. Watkins recounted his astonishment when he first took office and learned about the exoneration of a man his office had prosecuted. This reaction led him to create his office's "conviction integrity unit" to protect against wrongful convictions. The Constitution Project thanks both men for the inspirational work they have done.

The dinner was a celebration not just of the Constitution Project, but of all our supporters' work and commitment to the Constitution. We look forward to working with all of you in the future.

News

Constitution Project Releases Right to Counsel Report

The Constitution Project's [National Right to Counsel Committee](#) released its much-anticipated report, "[Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel](#)," at an event held on April 14 at Arnold & Porter LLP. The report details the endemic and systemic failures of our country's indigent defense system and recommends twenty-two specific and urgently needed reforms to fix them. After opening remarks from Constitution Project President **Virginia E. Sloan**, the large audience heard remarks from the Committee's three co-chairs. **Timothy K. Lewis**, a former state and federal prosecutor and federal judge, **Rhoda Billings**, former North Carolina trial judge and then Chief Justice of the North Carolina Supreme Court, and **Robert M. A. Johnson**, the District Attorney for Anoka County, Minnesota, and former president of the National District Attorneys Association, all detailed how the promise of free legal counsel for criminal defendants set forth in *Gideon v. Wainwright* remains unfulfilled. Committee members **Abe Krash**, a member of the team representing Clarence Earl Gideon in 1963, and **Alan Crotzer**, an exonoree who spent over 24 years in prison before being released based on DNA evidence, shared their diverse experiences with the indigent defense system and their views about the need for systemic reform. Committee reporters **Norman Lefstein**, Professor at Indiana University School of Law, and **Robert L. Spangenberg**, founder of the Spangenberg Project at George Mason University, provided an overview of the comprehensive 213 page report, detailing research on the pressing indigent crisis and the path to reform. The full report and other relevant materials are available online [here](#). National Public Radio covered the report's release in a comprehensive segment on April 15. You can read and listen to the NPR piece [here](#).

Constitution Project Welcomes New Director of Communications and Outreach

This week, the Constitution Project welcomed **Matthew Allee** as the organization's new Director of Communications and Outreach. Prior to joining the Constitution Project, Matthew served as a Communications Assistant at the Washington Legislative Office of the American Civil Liberties Union. He is a graduate of University of Illinois at Urbana-Champaign. We're delighted to have him aboard.

District Court Judge Rules *Habeas* Extends to Bagram

The first case to consider whether the Supreme Court's 2008 decision in *Boumediene v. Bush*, upholding the right of Guantánamo detainees to challenge their detentions through *habeas corpus* petitions, extends beyond the Cuban naval base was decided by District Court Judge **John D. Bates**. Judge Bates ruled that "a limited group" of detainees being held at an air base in Bagram, Afghanistan are entitled to *habeas* relief. Judge Bates' [holding](#) applies to three detainees who were captured outside of Afghanistan before being brought to Bagram, stating they were "virtually identical to the detainees in *Boumediene*." Judge Bates ordered further briefing on the case of a fourth detainee, who is an Afghan citizen. In response to the decision, the Justice Department quickly [filed an appeal](#), and asked Judge Bates to stay his ruling until the circuit court considers the matter. Prior to the ruling, the Obama administration publicly stated that it wished to put off policy decisions regarding Bagram for at least six months. The Constitution Project organized briefs on behalf of a [coalition of NGOs](#) and [former federal judges](#) in the *Boumediene* case in support of the Guantánamo detainees' rights to *habeas* review.

***Amicus Curiae* Brief in *Miranda* Rule Case**

On April 14, a group of former federal and state prosecutors and judges filed an [amicus brief](#) in *Montejo v. Louisiana*, supporting petitioner and capital defendant **Jesse Montejo**, who has asked the Supreme Court to hear his case. On March 27, 2009, the Supreme Court asked the parties to brief a supplemental question: whether the Court's decision in *Michigan v. Jackson* should be overruled. In *Jackson*, the Court held that "if police initiate interrogation after a defendant's assertion, at an arraignment or similar proceedings, of his right to counsel, any waiver of the defendant's right to counsel for that police-initiated interrogation is invalid." The Constitution Project helped organize the brief in the case, in which two bedrock criminal procedural rights intersect--the right to counsel under *Gideon v. Wainwright* and the custodial interrogation rights of a person in custody, described in *Miranda v. Arizona*. The brief argues in favor of the *Jackson* rule to prevent questionable interrogation techniques.

Video Surveillance Update

On April 2, Senior Policy Counsel **Sharon Bradford Franklin** advised the Camera Review Committee of the Brookline, Massachusetts Board of Selectman on their proposed guidelines for a new video surveillance system. The town has recently activated surveillance cameras as part of a 12-month evaluation period. The Constitution Project also submitted [written comments](#) on the proposed *Public Security Privacy Guidelines* for the New York City Police Department's "Domain Awareness System." The statement acknowledged the NYPD's important first steps, but pointed out that "several critical improvements are still needed to ensure the surveillance system is designed narrowly" to protect civil liberties and constitutional rights. The Constitution Project provides ongoing guidance to state and local governments based on its [report](#), "Guidelines for Public Video Surveillance."

News in Brief

- The *New York Times* [reported](#) this morning that the National Security Agency went beyond the legal authority granted in the FISA Amendments Act, passed last year, to intercept American's private phone calls and email. Both House and Senate intelligence committees, who have been briefed on the matter, have expressed concern that the privacy and civil liberties of American citizens may have been violated. The extent of such violations is still being examined. As Congress was considering the FISA amendments, the Constitution Project's Liberty and Security Committee [cautioned](#) against broadening the standard for which communications could be intercepted without a court order, noting that this increased the "possibility that purely domestic calls could be inadvertently intercepted without any court oversight." This appears to be exactly what happened. The *New York Times* article cites an official as noting that technical problems in applying the new standards "led the agency to inadvertently 'target' groups of Americans and collect their domestic communications without proper court authority."
- **Harold Koh**, a member of the Constitution Project's Liberty and Security Committee, has been nominated to the position of Legal Adviser of the Department of State. Yale Law School, where he currently serves as Dean, has compiled [statements of support](#), including letters from seven former State Department Legal Advisers and former Bush Administration Solicitor General Ted Olsen.

- In an April 9 *Washington Independent* [article](#), **Daphne Eviatar** describes the Obama administration’s continuing use of the states secrets privilege and references the Constitution Project’s [2007 statement](#) “Reforming the State Secrets Privilege.”
- Lawyers on behalf of seventeen Chinese Muslims, or Uighurs, who are still detained at Guantánamo Bay, filed a [certiorari petition](#) with the Supreme Court on April 3 seeking review of the D.C. Circuit’s decision reversing a trial court order that the men should be released. The Constitution Project previously filed an [amicus brief](#) urging the U.S. Court of Appeals for the D.C. Circuit to uphold the District Court’s [release order](#).
- In an April 1 *San Francisco Chronicle* [article](#), **Patricia Wald**, former chief judge of the U.S. Court of Appeals for the D.C. Circuit, and **William H. Taft IV**, former deputy secretary of Defense, called for the United States to work more closely with the International Criminal Court. The authors urged our government to “help shape the court into an effective, accountable body” and then to “consider whether to join” the court. Both authors are members of the Constitution Project’s Liberty and Security Committee.

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.