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From the President's Desk

During recent years, two troubling trends have emerged: an increase in executive branch power and a decline in effective oversight by Congress. Regardless of political party, presidents throughout history have attempted to enhance their power at the expense of the other two branches of government. Indeed, the actions of successive administrations have demonstrated that the need to restrain executive power and restore checks and balances are not partisan issues.

In furtherance of our goal of preserving checks and balances and the separation of powers, the Constitution Project is pleased to announce the release of "When Congress Comes Calling: A Primer on the Principles, Practices, and Pragmatics of Legislative Inquiry," a new handbook on the topics of congressional/executive relations and oversight. The handbook was written by Constitution Project Fellow Morton Rosenberg, a veteran of the Congressional Research Service and a leading expert on congressional/executive oversight. The handbook will be available at two upcoming events that we are co-hosting with the Project On Government Oversight (POGO), an organization that has developed a compatible handbook that provides a step-by-step assessment of conducting congressional oversight. We hope that you will be able to join us. (Registration information is below).

Events

The Constitution Project and POGO Team Up for Events on Congressional Oversight

As mentioned above, we are delighted to collaborate with POGO on two events to promote the release of the two handbooks:

“Asserting and Defending the Powers of Oversight: The Relative Powers of Congress and the Executive Branch”

This event will take place tomorrow, July 10, from noon to 1:30 at the Capitol Visitor Center and is **exclusive to congressional staff**. Conrad Martin, executive director of the Stewart R. Mott Charitable Trust, will serve as moderator. Panelists are:

- Zulima Espinel, Democratic Senior Counsel for National Security, Senate Committee on the Judiciary
- Beth Nolan, White House Counsel, Clinton administration
- Mark Paoletta, former Republican Chief Counsel for Oversight and Investigations, House Committee on Energy & Commerce
- Morton Rosenberg, author/contributor to the handbooks; former Specialist in American Law at the Congressional Research Service staffer; Constitution Project Fellow

“Congress vs. the President: The Scope and Limits of Congressional Oversight Powers”

This event is **open to the public** and will be held on July 16 at the National Press Club from noon to 1:30. Panelists are:

- Mickey Edwards; Member of Congress (R-OK), 1977-1993, and member of the Constitution Project’s Board of Directors
- Morton Rosenberg; author/contributor to the handbooks; former Specialist in American Law at the Congressional Research Service staffer; Constitution Project Fellow
- Christopher Shays; Member of Congress (R-CT), 1987-2009
- Ronald Weich; Assistant Attorney General for Legislative Affairs, Department of Justice; Chief Counsel to Senate Majority Leader Harry Reid (D-NV), 2005-2009

If you would like to RSVP for either event, please send an email to rsvp@constitutionproject.org and indicate which event you plan to attend.

News

Constitution Project Welcomes Newest Senior Counsel

Last week, the Constitution Project welcomed **Laura Olson** as the organization’s newest Senior Counsel. Laura will be working on a host of issues addressed by our Rule of Law Program. Prior to joining the Constitution Project, Laura was a legal advisor for the International Committee of the Red Cross, a fellow with the American Society of International Law, a visiting scholar at Notre Dame Law School, and, most recently, president of Blackletter Consulting. We are delighted to have her aboard.

Classification and Controlled Unclassified Information Update

On May 27, President Obama issued a [memorandum](#) that established a 90-day review of the federal government's systems of classification and designation of sensitive information outside the classification sphere. As part of this review, the government is seeking input from non-governmental organizations. The Constitution Project's Liberty and Security Committee is in the process of finalizing a report that will include recommendations for reducing over-classification of government information and reforming the system for "controlled unclassified information" (CUI).

Constitution Project Senior Counsel **Sharon Bradford Franklin** has been participating in meetings with the officials charged with these reviews, working to ensure that the policy reforms are consistent with core constitutional principles, including checks and balances and accountability to the public. This past Tuesday, she participated in the "independent open government advocates" meeting with the Interagency Task Force on Controlled Unclassified Information. Sharon spoke at the Public Interest Declassification Board meeting on Wednesday. Also yesterday, [OMB Watch released a report on CUI](#). Sharon was asked for feedback on this report and was listed in the acknowledgements.

Constitution Project Warns Against Revival of Failed Military Commissions

In June, the Constitution Project joined a [coalition letter](#) requesting full public hearings before any vote on legislation to revise the military commissions proceedings. The Senate Armed Services Committee recognized the importance of this call and [held a hearing](#) on Tuesday to examine the legal issues surrounding the use of commissions to conduct the trials of suspected terrorists already in United States custody. On Wednesday, the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties did the same, [hearing testimony](#) from a panel of experts. **Deborah Pearlstein**, Constitution Project Liberty and Security Committee member and Princeton professor, testified before the House Subcommittee and raised concerns about reinstating the military commissions.

In his May national security speech, President Obama announced his intention to revive the military commissions and his support for legislation to reform the existing system. Although the Constitution Project welcomes Congress' efforts to evaluate this crucial policy matter carefully and agrees that the proposed reforms are a step in the right direction, [the Project urges](#) members of Congress to ultimately reject this fundamentally flawed proposal to use commissions.

Constitution Project Decries Consideration of Preventive Detention by the Obama Administration

On June 26, news accounts indicated that the Obama administration was considering issuing an executive order that would establish a policy of indefinite detention without charge for some of the suspected terrorists being held at the Guantanamo Bay detention facility. Since that time, President Obama has [seemingly ruled out](#) an executive order to establish a preventive detention scheme, though he has left open the possibility that he would support legislation to do so. In his speech on national security matters in May, President Obama spoke of the need to create a system of “prolonged detention” for a category of detainees who cannot be tried and are too dangerous to release. The Constitution Project [rejects this premise](#) and urges the administration not to follow this course. Last June, the Constitution Project’s Liberty and Security Committee released a report, “[A Critique of ‘National Security Courts’](#)” objecting to the policy of indefinite or preventive detention without charge as inconsistent with our Constitution and our nation’s values.

News in Brief

- In the state secrets case *Mohammed v. Jeppesen*, attorneys for victims of the extraordinary rendition program filed a [brief](#) with the United States Court of Appeals for the Ninth Circuit Court on Monday. The brief urged the Court to reject the Obama administration’s attempt to have the entire lawsuit dismissed on state secrets grounds. The Court is currently considering whether to grant a full bench, or *en banc*, review of the Ninth Circuit’s April [decision](#). Before the original oral argument in this case in February, the Constitution Project [wrote to Attorney General Holder](#) urging him to narrow the Justice Department’s assertion of the state secrets privilege.
- On July 2, the Central Intelligence Agency announced that it would seek further delay of a highly anticipated report on the Agency’s role in the interrogation and detention of suspected terrorists until at least August 31. The 2004 Inspector General report is the subject of a Freedom of Information Act lawsuit filed by the American Civil Liberties Union.
- Also on July 2, Constitution Project President **Virginia Sloan**, as part of the annual [Aspen Ideas Festival](#), spoke on a panel titled “The Death Penalty in the United States: A Debate.” Constitution Project Board Member **Mickey Edwards** moderated the discussion.

- On June 29, D.C. District Judge John Bates dismissed the *habeas* petition of Haji Wazir, an Afghan civilian being held indefinitely without charge at Bagram air base in Afghanistan. In his [ruling](#), he rejected Wazir's argument that Section 7 of the Military Commissions Act (MCA) constituted an unconstitutional usurpation of the court's Article III powers. In a [prior April decision](#), Judge Bates delayed ruling on Wazir's petition and ordered further briefing to resolve the MCA issue. In his April opinion, Judge Bates had refused to grant Wazir's *habeas* petition, based upon his Afghan citizenship, finding that it could potentially cause friction with the Afghan government if his case was to be heard in the United States. In that same decision, Judge Bates used this citizenship factor to distinguish the cases of three other detainees—two Yemenis and one Tunisian citizen captured outside of Afghanistan and brought to Bagram—and held that these three could proceed with their *habeas* cases in federal court because they were virtually identical to the detainees being held at Guantanamo. This decision was [appealed](#) by the Obama administration and is currently pending before the U.S. Court of Appeals for the District of Columbia Circuit.
- The United States Supreme Court finished the 2008-2009 term without taking action on *Kiyemba v. Obama*, a case involving the claims of 13 Uighurs still detained at Guantanamo who assert that the courts have the power to order their release. The Constitution Project has filed a [friend-of-the-court brief](#) urging the Court to accept review of the case. In response to this unexpected move by the Court, Constitution Project President Virginia Sloan wrote a [blog post](#) for *Huffington Post* on the urgent need to end the unlawful detention of the remaining Uighurs.
- The Supreme Court also put off until the fall deciding whether to hear a case involving Troy Davis, a death row inmate who has been barred from presenting new evidence of his innocence. The Constitution Project has organized an [amicus brief](#) in support of Mr. Davis as well as several public statements urging the courts to hear his claims.
- In the June 25 edition of the *San Francisco Examiner*, the Constitution Project's [National Right to Counsel Committee](#) Co-Chairs, **Rhoda Billings**, former Chief Justice of the North Carolina Supreme Court, **Robert M.A. Johnson**, District Attorney for Anoka County, Minnesota, and **Timothy Lewis**, former judge on the U.S. Court of Appeals for the Third Circuit, published an [OpEd](#) arguing against budgetary cuts to San Francisco's Public Defender's Office. The Budget and Finance Subcommittee of the city's Board of Supervisors subsequently decided to decrease the proposed cut. The matter now goes to the full Board, which could further reduce the amount of the cut.

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.