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## **Inside**

- From the President's Desk
- Constitution Day Event at Georgetown Law Center
- Constitution Project Welcomes Possible Transfer of Guantanamo Detainees to U.S. for Prosecution in Federal Courts
- Congress Continues to Debate Military Commissions
- More Hill Briefings on Congressional Oversight and the Constitution Project's New Handbook, "When Congress Comes Calling"
- News in Brief

## **From the President's Desk**

More than six months ago, on President Obama's second day in office, he signed an executive order pledging to close the Guantanamo Bay detention facility within one year. With more than 225 individuals still being detained, we have seen little progress toward closing the prison by January 2010. What we have seen instead is an intense fear campaign being waged by some in Congress and others who would prefer that Guantanamo remain open, despite the tainted prison's implications for our national security and international reputation.

Just this week, we have seen two proposals floated by the Obama administration for handling the detainees at Guantanamo. The first would create a prison (or modify an existing one) in the United States with a courtroom built into the facility, for either criminal prosecutions or military commission proceedings, with indefinite detention without charge still a possibility. At the same time, word is that the Department of Justice may refer a significant number of detainee cases to federal prosecutors in Washington, D.C., Virginia, and New York City.

Both proposals include the welcome development that detainees would be transferred out of Guantanamo and into our traditional legal system – the best venue for detainee prosecutions. Our federal courts have handled the most difficult terrorism cases in our nation's history, and have done so without compromising national security or the defendants' due process rights. What is troubling is the continued talk

of reviving the discredited military commissions and of indefinite detention without charge for some detainees. These paths would accomplish nothing more than transfer the unlawful policies of Guantanamo into the United States.

President Obama pledged not only close to Guantanamo, but to end the shameful policies the prison has come to represent. To achieve these ends, military commissions and indefinite detention without charge should be taken off the table.

## Upcoming Events

The Constitution Project, the American Society of International Law, and the Georgetown Center on National Security and the Law invite you to attend a special event on

# Constitution Day, September 17, 2009

9:30 am - 12:30 pm

Georgetown University Law Center  
McDonough Hall - Hart Auditorium  
600 New Jersey Avenue, NW, Washington, DC

RSVP to [rsvp@constitutionproject.org](mailto:rsvp@constitutionproject.org)

## Constitution Project's 2009 Constitutional Commentary Award

Honoring **Michael Kirk** for his production of *Frontline*'s "Bush's War;" award to be presented by 2007 honoree and Pulitzer Prize-winner **Charlie Savage** of the *New York Times*

**"Defining Human Rights: What Role does International Law Play in our Constitutional System?"** A panel discussion featuring:

**John Bellinger**, Partner at Arnold & Porter LLP; Legal Adviser to the Department of State, 2005-2009

**Neal Katyal**, Principal Deputy Solicitor General of the U.S.; lead counsel in *Hamdan v. Rumsfeld*

**Judge Patricia Wald**, former Chief Judge for the U.S. Court of Appeals for the D.C. Circuit; former judge on the International Criminal Tribunal for the former Yugoslavia

Moderator **David Cole**, Professor at Georgetown University Law Center

*Please join us for a light lunch following the event.*

## News

### **Constitution Project Welcomes Possible Transfer of Guantanamo Detainees to U.S. for Prosecution by Federal Courts**

Over the weekend, it was reported that the Obama administration is considering whether to modify a detention facility in the United States that will contain courtrooms to hold both federal criminal trials and military commission proceedings for some suspected terrorists currently held at Guantanamo Bay. Conflicting news accounts on Monday reported administration officials saying that the Justice Department is referring detainee cases to federal prosecutors in New York City, Virginia, and Washington, D.C.

The [Constitution Project welcomed](#) the possible transfer of detainees into federal detention facilities and courts, and denounced the potential use of military commissions and/or indefinite detention without charge. The Project said use of commissions or indefinite detention circumvents our constitutional values and ignores the ability of our traditional federal court and prison systems to successfully handle those held at Guantanamo. Constitution Project President Virginia Sloan was [interviewed by Press TV](#) on the development.

### **Congress Continues to Debate Military Commissions**

As noted above, as the Obama administration weighs its options for handling suspected terrorists held by the United States, it is considering restarting military commissions. During debate on the [Defense Authorization bill for 2010](#), senators discussed revisions to the commission proceedings. Both chambers of Congress recently held [multiple hearings](#) to further examine the legal implications of revising and restarting the military commissions as well as other options available to prosecute suspected terrorists held at Guantanamo. The Constitution Project [issued a press release](#) in connection with the most recent hearing held by the Senate Judiciary Subcommittee on Terrorism and Homeland Security, welcoming further debate on the issue, but denouncing the use of commissions.

### **More Hill Briefings on Congressional Oversight and the Constitution Project's New Handbook, "When Congress Comes Calling"**

The Constitution Project held two more briefings for Capitol Hill staff around its recently released handbook on congressional oversight. [When Congress Comes Calling: A Primer on the Principles, Practices, and Pragmatics of Legislative Inquiry](#) was authored by **Morton Rosenberg**, a Constitution Project fellow and leading expert on the issue. Mr Rosenberg and Constitution Project Senior Counsel **Sharon Bradford Franklin** led the briefings, one of which was for House Judiciary Committee staff and the other for House Oversight and Government Reform Committee staff.

Both briefings were well attended and productive sessions focused on the particular work of these committees, as well as how the handbook can be a helpful tool to them.

## News in Brief

- On Monday, Attorney General Eric Holder [addressed](#) the American Bar Association House of Delegates at its 2009 Annual Meeting in Chicago. In his remarks, the attorney general spoke of the indigent defense crisis in America. “This growing crisis is troubling not just because of the government’s constitutional duty to ensure the right to counsel,” said Mr. Holder. “When defendants fail to receive competent legal representation, their cases are vulnerable to costly, and time-consuming, mistakes. Lawyers on both sides can spend years dealing with appeals arising from technical infractions and procedural errors. When that happens, no one wins.”
- Also on Monday, the public defender’s office in Alameda County, California [announced](#) that it needs to stop taking new misdemeanor and probation cases, citing the impending loss of 14 attorneys due to layoffs set for early September. The public defenders have cited conflicts of interest due to the massive caseloads they carry. Similarly, in San Francisco, the public defender said his office started declining complex, time-intensive cases in March. He has referred about 20 defendants to private counsel so far, and anticipates additional refusals of representation. The Constitution Project’s National Right to Counsel Committee examined the indigent defense crisis in its recent report, [\*Justice Denied: America’s Continuing Neglect of our Constitutional Right to Counsel\*](#).
- Last Thursday, U.S. District Judge Ellen Segal Huvelle [ruled](#) that the federal government must release Mohammed Jawad, an Afghani thought to be still a minor when detained by the United States, by August 22. The Justice Department is said to be considering whether to pursue criminal charges against Jawad that would prevent his release. Judge Huvelle said she hoped Attorney General Holder would “give serious thought” before pursuing charges, because such a prosecution would raise “some serious issues.”
- Last Wednesday, Liberty and Security Committee member **Deborah Pearlstein** posted an [OpEd on \*Opinio Juris\*](#) about military commission amendments to the defense authorization bill. She advocated using federal courts to try suspected terrorists. The previous day, Ms. Pearlstein [testified before the Senate Judiciary Committee](#) on these issues.
- Texas recently [announced](#) the creation of the state’s first capital defense office for death penalty appeals. The Office of Capital Writs will have nine attorneys to manage post-conviction appeals.

- Two weeks ago, the *Wall Street Journal* published a letter-to-the-editor by Judge **William S. Sessions**, a member of the Constitution Project's Liberty and Security Committee. The letter was in response to an [OpEd by David Rivkin and Lee Casey](#) questioning the recently-decided case, *Maqaleh v. Gates*, that provided *habeas* rights for some detainees held at the Bagram military compound in Afghanistan. Judge Sessions argued that "the piece fails to recognize that the *Gates* case is entirely consistent with the proper role of the courts in our constitutional system of government."
- The American Bar Association's Standing Committee on Law and National Security recently released its report on principles for the detention and trial of terror suspects, "[Trying Terrorists in Article III Courts](#)."