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From the President's Desk

All around the country, we continue to see troubling flaws in the administration of the death penalty. Supporters as well as opponents of capital punishment are expressing concerns about a variety of cases, including last month's attempted execution in Ohio that lasted for over two hours, as corrections officials searched for a usable vein to administer lethal drugs to Romell Broom (described in further detail below). Just today, the *Wall Street Journal* [examined](#) the constitutional questions now being raised by lethal injection protocols across the country.

Cameron Todd Willingham was executed by the state of Texas in 2004 for setting a fire that killed his three children - a fire that experts now think was accidental. Mr. Willingham claimed his innocence until the last moment. His case demonstrates what happens when criminal defendants are not provided with dedicated and well-resourced lawyers to investigate the charges against them. It also bolsters the [blistering report issued earlier this year by the National Academy of Sciences](#) about the deficiencies in our forensic sciences. There has been bipartisan criticism of Texas Governor Rick Perry's last-minute decision to replace forensic science commissioners who were just about to review the problems in the Willingham case.

The Constitution Project, through its bipartisan committees of experts, has long advocated for a wide array of reforms that would address these widespread systemic deficiencies. [Mandatory Justice: Eighteen Reforms to the Death Penalty](#), issued in 2001, and [Mandatory Justice: The Death Penalty Revisited](#), in 2005, address the specific problems of our capital punishment system. [Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel](#), issued last April, examines the crisis in our country's indigent defense system.

Can the system correct itself? The case of Troy Davis may provide a clue. Mr. Davis has been on death row in Georgia for nearly twenty years for murder. Despite the complete lack of physical evidence against him, and the recantations of the majority of witnesses against him, no court has ever examined the strong evidence that Mr. Davis is innocent. Just recently, however, the U.S. Supreme Court ordered a federal district court to review Mr. Davis's case. In another example of widespread concerns, the Constitution Project organized a statement from former prosecutors and judges – capital punishment supporters and opponents alike - urging the courts to hear Mr. Davis's claims.

News

Alberto Mora Joins the Constitution Project's Policy Advisory Committee

The Constitution Project is pleased to announce that Alberto Mora has joined the Project's Policy Advisory Committee, which advises us on policy positions, including new issues for the Project to address. Mr. Mora, General Counsel of the U.S. Navy in the George W. Bush administration, and now the Vice President, Secretary, and General Counsel at Mars, is also a member of the Constitution Project's Liberty and Security Committee. Last April, Mr. Mora received one of the Constitution Project's Constitutional Champion awards for his work to uphold the rule of law, including speaking out from the beginning against the Bush administration's treatment of detainees.

News in Brief

- Constitution Project President **Virginia Sloan** submitted a [blog post to the Huffington Post](#) this afternoon on the need for the president to nominate, and the Senate to confirm, nominees to the Privacy and Civil Liberties Oversight Board. The piece documents the Board's origins, its transfer out of the Executive Office of the President and the enhancement of its authority. But, for over a year now, the Board has remained without members. According to the post, "[t]he president should nominate and the Senate should confirm members of the Privacy and Civil Liberties Oversight Board, and allow the Board to begin the vital work it was assigned five years ago: to protect our privacy rights and civil liberties as our government pursues policies and programs designed to defend our national security."
- Last Thursday, the [Senate Judiciary Committee approved legislation](#) to reauthorize the three provisions of the USA Patriot Act that will otherwise sunset at the end of the calendar year. The [USA Patriot Act Sunset Extension Act](#) would extend the sunset dates for the three expiring provisions to December 31, 2013, allowing for continued Congressional oversight on their use. The legislation would also establish a sunset of December 31, 2013

for the expanded authority to use national security letters (NSLs) – demand letters for documents that contain a gag order, preventing the recipient from disclosing the request for information. The legislation includes other reforms, but the Committee also passed [several amendments](#) that, if enacted, would water down the safeguards contained in the original version of the bill. The final version of the bill approved by the Committee includes some, but not all, of the reforms recommended in the Constitution Project’s [Statement of Reforming the Patriot Act](#), released by our Liberty and Security Committee last month.

- On October 7, the conference committee that was created to iron out the differences between the House and Senate’s versions of the Homeland Security Department’s spending bill for next year [reported agreed-upon legislation](#) that will now be voted on in each chamber. The conference report removed restrictions that would prevent detainees now being held at Guantanamo from being transferred into the United States for prosecution. It also allows for detainee transfers to face charges, but forbids their release into the United States and requires advance notice to Congress before transfer to another country. This legislation was passed by the House this afternoon, by a vote of 307 to 114. The conference report now goes to the Senate for consideration – the time of which is not yet known.
- Last week, the [Department of Homeland Security announced](#) a policy review for the federal government’s system of immigration detention, seeking to create a tiered system based on the risk posed by each individual detainee. By next October, Immigration and Customs Enforcement (ICE) plans to assess each immigrant’s flight risk and public danger, establish detention requirements based on those findings, and then go about creating new detention facilities. In early December the Constitution Project will release a new report evaluating the country’s system of immigration detention and the lack of access to counsel for immigration detainees. The report by our Liberty and Security Committee will include a series of recommendations for reform.
- Last Monday, Ohio Governor Ted Strickland [halted two already-scheduled executions](#) to allow corrections officials more time to revise the state’s lethal injection process. This was the result of last month’s botched execution, where the state attempted for over two hours to find a suitable vein to administer lethal drugs to Romell Broom. A hearing is now scheduled for November 30 to determine whether it is constitutional for the state to try again to execute Mr.

Broom.

- Last Monday, in his weekly [column for *The Hill*](#), Liberty and Security Committee co-chair **David Keene**, the chairman of the American Conservative Union, urged “reasonable procedural safeguards that will allow U.S. forces in the future to determine with a greater degree of certainty that the people we imprison as ‘enemy combatants’ have, in fact, earned the label.”
- On October 2, Liberty and Security Committee members **Thomas B. Evans Jr.**, former Republican member of Congress from Delaware and head of the Republican National Committee, and **Michael German**, policy counsel with the ACLU, co-authored an [OpEd published in the *Washington Times*](#) on the need to reform the Patriot Act. They focused particularly on the need to create additional safeguards for the use of national security letters (NSLs), as mentioned above. Evans and German both recently testified before the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties on the same topic.
- Two weeks ago, [Texas Governor Rick Perry](#) replaced the head of the [Texas Forensic Science Commission](#), along with two other members, just days before the Commission was scheduled to hear testimony from a fire expert who recently examined the evidence against Cameron Todd Willingham. Willingham was put to death by the state of Texas in 2004 for killing his three children in a fire that now appears to have been accidental. The newly appointed chairman of the Commission canceled the hearing; it is not known if it will be rescheduled.
- The American Bar Association’s Standing Committee on Law and National Security recently released its latest report in the Due Process and Terrorism Series titled [Exploring Counterterrorism Detention Alternatives](#).