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From the President's Desk

Yesterday, the Constitution Project's Liberty and Security Committee released [*Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings*](#). The report makes bipartisan recommendations for much-needed reforms to limit the use of immigration detention and improve access to legal representation in immigration proceedings.

To release our report, we cosponsored a panel discussion at the National Press Club with Human Rights Watch, which released its own report, *Locked Up Far Away: The Transfer of Immigrants to Remote Detention Centers in the United States*. The discussion featured Liberty and Security Committee member Asa Hutchinson, former member of Congress (R-AR) and Undersecretary for Border & Transportation Security at the Department of Homeland Security, Bruce Einhorn, former immigration judge, Alison Parker, the author of Human Rights Watch's report, and Megan Mack, Director of the American Bar Association Commission on Immigration, who served as moderator.

The event drew a diverse audience to the National Press Club's First Amendment Lounge, including attendees from various print and radio news outlets, congressional staff, government officials, and immigration advocates, and the [*New York Times*](#) published an [article](#) on the release of the two reports in today's paper. We are pleased to have joined with Human Rights Watch for what was a great event to release

our reports and recommendations. More on the Constitution Project's report is below.

News

Constitution Project Proposes Much-Needed Reforms to Limit Immigration Detention and Improve Access to Counsel

As mentioned above, the Constitution Project yesterday issued bipartisan recommendations for much-needed reforms to limit the use of immigration detention and improve access to legal representation in immigration proceedings. Titled [*Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings*](#), the report is a product of the Project's Liberty and Security Committee, made up of policy experts from across the political spectrum. [Photos and a summary](#) of the panel discussion are available.

Prominent Former Illinois Prosecutors and Judge Declare U.S. Prisons Fit to House Guantanamo Detainees

On Monday, in an effort coordinated by the Constitution Project, [three prominent Illinoisans sent an open letter](#) to the Illinois congressional delegation and the state's public officials supporting the use of our country's prisons, including the facility in Thomson, Illinois, to house Guantanamo detainees pre-trial and post-conviction. [The letter](#) was signed by Abner J. Mikva, former member of Congress from Illinois and former federal judge, Thomas P. Sullivan, former U.S. Attorney for the Northern District of Illinois, and Dan K. Webb, also a former U.S. Attorney for the Northern District of Illinois. The letter was then published in the [Chicago Tribune](#) on Tuesday.

The three signatories have also joined with 133 other prominent Americans in issuing [Beyond Guantanamo: A Bipartisan Declaration](#), supporting trials in federal courts for the detainees and future terrorism suspects and opposing preventive detention. The *Declaration* has been signed by former federal prosecutors, judges, diplomats, members of Congress, and other government officials from the Kennedy to the George W. Bush administrations, as well as foreign policy and national security experts, military and bar leaders, and family members of victims of the 9/11 attacks.

National Right to Counsel Committee Co-Chair Robert M.A. Johnson Pushes for Reform in Michigan

On November 30 and December 1, National Right to Counsel Committee Co-chair **Robert M.A. Johnson** participated in two days of activities to promote indigent defense reform in the state of Michigan. To begin the public education efforts, he spoke on a panel discussion, "Justice Denied: Michigan and the Constitutional Right to Counsel," co-sponsored by the Constitution Project, the Michigan Campaign for Justice, the Prison

Fellowship, the State Bar of Michigan, the Grand Rapids Lawyers Chapter of the Federalist Society, and the ACLU of Michigan. The event was hosted by Cooley Law School in Grand Rapids. The audience included prominent members of the state's legal and governmental community, including several current and former state legislators, judges, bar and party leaders, and advocates.

The following day, Mr. Johnson, the current district attorney for Anoka County, Minnesota, who has been a prosecutor for 40 years, traveled to Lansing, Michigan's capital, where he met with state senators and representatives to encourage them to act upon the recommendations put forth in the Constitution Project's report [*Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*](#) as the legislature considers reforming the system from its current county-based model to a "practical and principled" state-wide system. The conversations continued in a closed-door breakfast with conservative state senators and a lunch where Mr. Johnson was the keynote speaker.

Constitution Project Files *Amicus* Brief on First Amendment issue in U.S. Supreme Court

Last Monday, the Constitution Project, along with The Rutherford Institute, [filed a friend of the court brief](#) in the U.S. Supreme Court in *Holder v. Humanitarian Law Project*. The case involves federal laws prohibiting "material support" of terrorist groups and challenges the application of these laws to organizations and individuals who seek to provide human rights training to a designated group. The [amicus brief argues](#) that it is unconstitutionally overbroad to apply the material support statutes to punish pure speech that seeks to further lawful, non-violent ends. The brief explains that the challenged provisions of the material support laws conflict with First Amendment protections for free speech and freedom of association, and urges the Court to strike them down. The Supreme Court has scheduled oral argument in the case for February 23, 2010.

Earlier in November, the Constitution Project's Liberty and Security Committee released a report, [Reforming the Material Support Laws: Constitutional Concerns Presented by Prohibitions on Material Support to "Terrorist Organizations,"](#) that proposes eight reforms to remedy serious First, Fourth and Fifth Amendment concerns created by existing material support laws.

News in Brief

- Earlier today, the Constitution Project joined with the law firms Mayer Brown and Shearman & Sterling to co-host a discussion of [The Guantanamo Lawyers: Inside a Prison Outside the Law](#). The book, edited by Mark P. Denbeaux and Jonathan Hafetz, compiles the stories of many of the Guantanamo detainees as told to their lawyers. The event featured several of the book's contributors, including Mr. Hafetz, Agnieszka Fryszman of Cohen Milstein

Sellers & Toll PLLC, Gary Isaac of Mayer Brown LLP, Allison Lefrak of Reed Smith LLP, and Thomas Wilner of Shearman & Sterling LLP. A summary and photos of today's event will be available on the [Constitution Project website](#) shortly.

- On Tuesday, **Laura Olson**, Constitution Project Senior Counsel, participated as a panelist in a briefing for advocates and other experts on legal developments concerning the scope of detention authority under the Authorization for Use of Military Force, the Constitution, and the laws of war. The briefing was sponsored by Yale Law School's National Litigation Project and the Open Society Institute's National Security and Human Rights Campaign.
- On Monday, the U.S. Supreme Court [vacated a lower court's ruling](#) that would have required the federal government to publicly release photos of detainee abuse at the hands of U.S. personnel in Iraq and Afghanistan. In light of a recently enacted law in October that allows the Secretary of Defense to block the photos' release, the Court sent the case, brought by the American Civil Liberties Union, back to the U.S. Court of Appeals for the Second Circuit, which originally ordered their release, for reconsideration.
- Also on Monday, the Supreme Court [unanimously ruled](#) that the failure by a lawyer for a death row inmate to present evidence of trauma that his client suffered as a result of service in the Korean War warrants resentencing. George Porter, Jr. was convicted of murdering his former girlfriend and her new boyfriend in 1987. His court-appointed lawyer had never argued a capital case before, and failed to examine any of Mr. Porter's family or medical records. In 2005, the Constitution Project's Death Penalty Committee released [Mandatory Justice: The Death Penalty Revisited](#), which recommends a variety of reforms to the death penalty to reduce the risk of wrongful convictions and executions.
- In a similar vein, the American Law Institute voted overwhelmingly last October to withdraw a section of the Model Penal Code (MPC) due to the "current intractable institutional and structural obstacles to ensuring a minimally adequate system for administering capital punishment." From 1962 to October of this year, the MPC expressed no formal position on whether the death penalty should be an available sentencing option.
- On November 20, two former high-ranking Justice Department officials who served during the George W. Bush administration, James Comey and Jack Goldsmith, published an [opinion piece in the Washington Post](#) on the recent announcement that the Justice Department will try five Guantanamo detainees, including Khalid Sheik Mohammed, in federal court in New York. Titled "Holder's reasonable decision," the authors make clear that "there is no question about the legitimacy of U.S. federal courts to incapacitate terrorists. Many of Holder's critics appear to have forgotten that the Bush administration used civilian courts to put away dozens of

terrorists, including 'shoe bomber' Richard Reid; al-Qaeda agent Jose Padilla; 'American Taliban' John Walker Lindh; the Lackawanna Six; and Zacarias Moussaoui, who was prosecuted for the same conspiracy for which Mohammed is likely to be charged. Many of these terrorists are locked in a supermax prison in Colorado, never to be seen again."

- In our last newsletter, we mentioned that **Sharon Bradford Franklin** participated in a conference examining "The State of the State Secrets Privilege," hosted by American University Washington College of Law's Collaboration on Government Secrecy. A webcast of that event is [now available](#).