



December 17, 2009

Inside

- From the President's Desk
- Employment Opportunities at the Constitution Project
- Constitution Project Welcomes Enhanced Transparency Recommendations from Obama Administration
- Constitution Project Welcomes Thomson Prison Acquisition if Used Only for Pre-Trial and Post-Conviction Detention
- Constitution Project Committee Member Briefs Michigan on Urgently Needed Indigent Defense Reforms
- Constitution Project Files Supreme Court *Amicus* Brief in Support of Uighurs' Court-Ordered Release from Guantanamo
- *Beyond Guantanamo* Signatories Meet with Attorney General Holder
- Constitution Project Representatives Urge Congress to Restore *Habeas Corpus* for Death Penalty Cases
- News in Brief

From the President's Desk

At the beginning of the year, many wondered whether, with the election of a former constitutional law professor as president, there would still be a need for the Constitution Project's work.

The answer to this question has been a resounding yes. We have been busier than ever before, bringing together voices from across the political spectrum to advocate for a broad range of constitutional safeguards. In the past year, we released six hard-hitting reports and recommendations that have been cited by the Attorney General, members of Congress, local government officials, and opinion leaders around the country. Our staff and committee members have testified before Congress and state and local policymaking bodies, placed commentaries in the nation's leading newspapers, worked in alliance with expert organizations and individuals from across the country, and advised and counseled numerous government officials. We have also sponsored numerous public education events, including our annual Constitution Day gathering in honor of our nation's founding document.

We are keenly aware that these accomplishments would not have been

possible without the generous contributions of our supporters. As you consider which of the many worthwhile organizations to support this year, we hope that you will remember how much we squeeze out of every dollar we receive and that we leverage your contributions with the valuable *pro bono* support of the many experts who volunteer their time to further our goals, including lawyers at some of the nation's leading law firms.

We appreciate any support you can give, even if it is simply mentioning our organization and work to a friend who may not yet know of us. If you would like to financially support the Constitution Project, please visit our website:

<http://www.constitutionproject.org/detail.asp?id=52>

If you have made a contribution or are planning to, we sincerely thank you for your help.

From everyone at the Constitution Project, have a great holiday season, and a safe and joyous new year.

Employment Opportunities at the Constitution Project

The Constitution Project is currently accepting applications for two full-time positions:

- Policy Counsel, Criminal Justice Program
- Coordinator for Death Penalty Reform

If interested in applying, please visit:

<http://www.constitutionproject.org/detail.asp?id=67>

Upcoming Events

The Constitution Project will join with the Rockefeller Brothers Fund and the Open Society Institute to host a panel discussion in New York City on January 22, the anniversary of President Obama's executive order to close the Guantanamo detention facility within one year. Our event will examine why the administration was unable to meet its deadline, what progress has been made and the hurdles that remain. Panelists will also discuss why Guantanamo should be closed and how the United States should handle the cases of the remaining detainees.

Participants will include a former Assistant U.S. Attorney for the Southern District of New York, where five "high value" terrorism suspects will be tried, a member of September Eleventh Families for Peaceful Tomorrows, which represents family members of those killed in the September 11 terrorist attacks, a defense attorney who represents Guantanamo detainees, and signatories to *Beyond Guantanamo: A Bipartisan Declaration*, an accord of over 135 Americans in support of federal trials for suspected terrorists and in opposition to indefinite detention. Jeffrey Toobin, of CNN

and the *New Yorker*, will moderate the discussion.

More details will come in later newsletters, but be sure to mark your calendars:

January 22, 2010
11:30 - 2:00 p.m.
The Rockefeller Brothers Fund
475 Riverside Drive, Suite 900
(enter at 61 Claremont Avenue and obtain a guest pass)
New York, NY 10115

Please RSVP to: rsvp@constitutionproject.org

News

Constitution Project Welcomes Enhanced Transparency Recommendations from Obama Administration

On Tuesday, the Obama administration released its recommendations for federal government agencies' handling of "controlled-unclassified information" (CUI), namely information that the government finds sensitive but does not meet the standards for designation as "classified." The report includes 40 specific recommendations to standardize the CUI system, facilitate information sharing within government and promote government transparency.

The Constitution Project [applauded the recommendations](#) for promoting openness by limiting the use of CUI markings and ensuring that information is controlled only when there is a "compelling requirement" to do so. However, the Project urged the administration to clarify that this system should be governed by a presumption of openness, and to develop additional oversight tools and enforcement mechanisms to ensure that these policy recommendations are effective. The Presidential Task Force report is the result of a 90-day review ordered by President Obama last May.

In July 2009, the Constitution Project's Liberty and Security Committee released [Reining in Excessive Secrecy: Recommendations for Reform of the Classification and Controlled Unclassified Information Systems](#). The Presidential Task Force considered the Constitution Project's report and specifically relied upon it in crafting its recommendations that CUI markings expire after a specified time period.

Constitution Project Welcomes Thomson Prison Acquisition if Used Only for Pre-Trial and Post-Conviction Detention

The Obama administration has announced that the federal government will acquire the Thomson Correctional Center in northwest Illinois to hold a limited number of suspected terrorists currently being held at Guantanamo Bay. The Constitution Project [welcomed the Thomson acquisition, but only](#)

[if it is to be used for pre-trial detention and post-conviction incarceration](#), and cautioned that using Thomson or any other facility for "indefinite" or "prolonged detention" would be met with strong resistance. Unfortunately, it appears that the prison will be used for military commission proceedings and also for prolonged detention, which President Obama proposed last May for those the government is unable to charge.

Constitution Project Committee Member Briefs Michigan on Urgently Needed Indigent Defense Reforms

On Monday, the U.S. House Judiciary Committee held a briefing at Wayne State University in Detroit, Michigan on our country's indigent defense crisis. Professor Norman Lefstein, a member of the Constitution Project's National Right to Counsel Committee, [participated in the briefing](#), urging the state to adopt the reforms outlined in [Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel](#), the Committee's bipartisan report and recommendations released earlier this year. Professor Lefstein also appeared before a committee of the state legislature that heard testimony about a bill that has been introduced to address the indigent defense crisis in the state. Professor Lefstein, of Indiana University School of Law (Indianapolis), helped author *Justice Denied*.

Constitution Project Files Supreme Court *Amicus Brief* in Support of Uighurs' Court-Ordered Release from Guantanamo

Last Friday, the Constitution Project, along with five other non-governmental organizations, [filed a friend-of-the-court brief](#) in the U.S. Supreme Court in *Kiyemba v. Obama*, in support of the seven Chinese Muslims, or Uighurs, still detained at Guantanamo. The [Constitution Project's brief](#) argues that the courts must have the power to order release as a remedy, given the Supreme Court's 2008 ruling in *Boumediene v. Bush* recognizing the Guantanamo detainees' *habeas* rights. The George W. Bush and Obama administrations have recognized that the Uighur detainees do not pose a threat to the United States, therefore leaving no legal basis for their continued detention. The five other organizations joining the brief are the Association of the Bar of the City of New York, the Brennan Center for Justice, the National Association of Criminal Defense Lawyers, People for the American Way, and The Rutherford Institute.

***Beyond Guantanamo* Signatories Meet With Attorney General Holder**

Eleven of the signatories to [Beyond Guantanamo: A Bipartisan Declaration](#) met with Attorney General Eric Holder last Thursday to urge him to continue to use federal courts to try suspected terrorists now held at Guantanamo and to oppose indefinite detention without charge. The substance of the meeting will remain confidential, but all participants were very pleased to have the opportunity to share their views with the attorney general. *Beyond Guantanamo*, with over 135 signatories, was released in early November by the Constitution Project and Human Rights First.

In related news, on December 6, Judge Edward N. Cahn, former chief judge of the U.S. District Court for the Eastern District of Pennsylvania, and James J. West, former U.S. Attorney for the Middle District of Pennsylvania, coauthored an [opinion piece in the *Philadelphia Inquirer*](#) supporting the trial of suspected terrorists in federal courts. Both authors are signatories to [Beyond Guantanamo](#).

Constitution Project Representatives Urge Congress to Restore *Habeas Corpus* for Death Penalty Cases

Last Tuesday, two [Constitution Project representatives testified](#) before the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties at a hearing to consider the impact of limits on federal *habeas corpus* in death penalty cases. Stephen F. Hanlon, Chair of the Constitution Project's Board of Directors, Chair of the American Bar Association's Death Penalty Moratorium Implementation Project Steering Committee, and partner at Holland and Knight, [testified on behalf of the ABA](#). The Honorable Gerald Kogan, Co-Chair of the Constitution Project's Death Penalty Committee and former Chief Justice of the Florida Supreme Court, [testified on behalf of the Constitution Project](#). Both provided testimony on the urgent need to restore *habeas corpus* for death penalty cases, consistent with the Constitution Project's report, [Mandatory Justice: The Death Penalty Revisited](#).

News in Brief

- On Tuesday, the [U.S. Court of Appeals for the Ninth Circuit, sitting en banc, heard arguments](#) in *Mohamed v. Jeppesen*, a case in which the Obama administration argues that the very subject matter of the lawsuit is a state secret, and that therefore the privilege prevents the case from moving forward. Mr. Mohamed and four other plaintiffs claim that they were kidnapped by the CIA and tortured as part of the extraordinary rendition program. Last April, a three judge panel of the 9th Circuit had ruled in favor of the plaintiffs, ordering that the case move forward and rejecting the notion that the "very subject matter" of a case alleging torture is a state secret. The panel's decision reflected the approach advocated by the Constitution Project's Liberty and Security Committee, which would require the trial judge to review the evidence asserted to be secret and make an independent assessment of whether the privilege applies. Thereafter, the Obama administration sought rehearing of the case, and Tuesday's hearing was an *en banc* review, before eleven of the judges on the 9th Circuit.
- Last Tuesday, Ohio became the first state in the nation to [use a new one-drug intravenous lethal injection](#), for the execution of Kenneth Biros. This new procedure is the result of a botched execution attempt in September, where the state tried for over two hours to find a suitable vein to administer a three-drug lethal dosage to Romell Broom. Critics of this new method claim the state did not

allow enough time for scrutiny before using it to execute Mr. Biros.

- Two weeks ago, military commissions resumed at Guantanamo Bay. President Obama initially shut down the proceedings upon assuming the presidency, but then, during his national security speech in May, he indicated that his administration would seek legislation to reform the commissions. Congress passed the Military Commissions Act of 2009 in October. The [Constitution Project remains concerned](#) that the revised process continues to fail to provide critical safeguards for the accused that are available in our traditional justice system.

More information is available on the [Constitution Project's web site](#), including how to [subscribe to our newsletter](#) and a way for you to [show your financial support](#).