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From the President's Desk

A couple of weeks ago, a new McClatchy-IPSOS poll found that a majority of Americans said they were willing to give up personal liberties in order to make the country safer from terrorism. Some might think these numbers were skewed upward by the proximity of the poll to the botched Christmas Day terror attack, and that a delay in the survey would have yielded lower numbers. Others might find the seeming willingness of so many fellow citizens to forfeit personal freedoms a bit discouraging regardless of when they were asked.

Whatever impact the poll's timing might have had, the question remains: has our government abused our trust by violating personal freedoms clandestinely and by unnecessarily stoking fears about safety, thus convincing us to forfeit our freedoms? From illegal wiretapping to illegitimate uses of terrorist watch lists, from limiting the role of independent courts to preventing the release of information about actions the government has taken in our names, these questions persist. The Constitution Project works hard to expose these abuses, to challenge fear-mongering by the government and private entities, and to analyze the public benefits, if any, claimed for government security programs.

The Constitution Project exists to protect the rights enshrined in our founding charter (and the structure of government it establishes) from the changing tides of public opinion. Our work is never more difficult - nor more vital - than in times like now, when both political passions and fears about public safety are high. We will continue to remind our fellow citizens that constitutional freedoms are not negotiable.

Upcoming Events

On February 17, the Constitution Project will join with the Charity and Security Network to cosponsor a briefing at the National Press Club on *Holder v. Humanitarian Law Project*, which will be argued in the Supreme Court on February 23. 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 Constitution Project and The Rutherford Institute filed a joint *amicus* brief in the case arguing that this application of the law to "pure speech" violates the First Amendment rights to free speech and freedom of association. Speakers at the February 17 program will include Stephen Vladeck, professor of law at American University's Washington College of Law, and Lisa Schirch, professor of peacebuilding at Eastern Mennonite University, with others to be announced in the coming days. The event will be held at noon.

Later in the month, on February 24, the Constitution Project will cosponsor the Texas Indigent Defense Summit, to be held at the Texas Capitol Auditorium in Austin. Other sponsoring organizations include the Office of Texas State Senator Rodney Ellis, the National Association of Criminal Defense Lawyers, and the Texas Criminal Defense Lawyers Association.

Robert Spangenberg, coauthor of the report of the Constitution Project's National Right to Counsel Committee, [*Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*](#), will participate on one of the panels, while Tony Fabelo, a Committee member, will give closing remarks. We will provide more details as the event date approaches.

News

Constitution Project Decries Obama Administration Decision to Indefinitely Detain Some Guantanamo Detainees Without Charge

Last Friday, we awoke to news reports that the Obama administration is planning to indefinitely detain without charge approximately 50 detainees now held at the Guantanamo Bay detention facility. These reports surfaced as the Constitution Project was in New York City preparing to host a panel discussion marking the one-year anniversary of the president's pledge to close Guantanamo within one year.

The Constitution Project criticized the proposed plan in a [statement](#), acknowledging the Obama administration's commitment to continuing to work to close Guantanamo, but noting that by pursuing a policy of indefinite detention without charge, the damaging policies that embody the detention facility will continue, as will the negative impact on American values, the rule of law, and our nation's reputation abroad. The statement concluded by pointing out that the constitutional way to fulfill the president's commitment to closing Guantanamo is to prosecute suspected

terrorists in federal court, and to oppose the use of military commissions and indefinite detention without charge.

That afternoon, the Project joined with the Rockefeller Brothers Fund and the Open Society Institute to host "One Year and Counting: When and How Will Guantanamo Close?," a panel discussion that featured an array of voices, including current and former government and military officials, a sitting federal judge, a former federal prosecutor in New York City, advocates, and litigators. Two of the participants are signatories to [Beyond Guantanamo: A Bipartisan Declaration](#), which calls on the Obama administration and Congress to support a policy for closing Guantanamo that is consistent with our constitutional principles and also ensures our country's security.

[Photos of the event are available](#) on the Constitution Project's website, and an online video of the event will soon be posted as well. C-SPAN also plans to air the program in the near future; we will let you know when that will be.

***Ordinary Injustice* Book Event at Busboys and Poets**

On Tuesday, the Constitution Project cosponsored a book event at Busboys and Poets in Washington, D.C. for Amy Bach, author of *Ordinary Injustice: How America Holds Court*. Bach's book exposes courts across the country that administer assembly-line justice in the name of efficiency and strip poor people of their most basic constitutional protections in the process. In discussing her research for the book, Ms. Bach described how officials responsible for upholding justice have failed to see the injustice in their own actions. [Photos from the book event are available](#) on the Constitution Project website.

News in Brief

- Constitution Project President Virginia Sloan and retired Brigadier General David Irvine co-authored an OpEd for *JURIST* in which they cautioned policymakers against using the Christmas Day terrorist attempt to slow or stop the Obama administration from closing the Guantanamo Bay detention center in a responsible manner. They [wrote](#), "[t]he policies employed at Guantanamo have resulted in protracted litigation and delayed justice, weakened our alliances, and undermined constitutional principles at home, and for these reasons such policies must not be transferred to the US. They must end."
- A disturbing [front-page story](#) in the *Washington Post* on January 19 revealed that the FBI had illegally collected more than 2,000 U.S. telephone call records between 2002 and 2006 by invoking terrorism emergencies that did not exist or by simply persuading phone companies to provide records without sufficient authority. FBI officials issued approvals after the fact to justify their actions,

according to the story. Aside from the chilling facts of these particular revelations, the story serves as a reminder that the full extent of abuses that took place in the wake of 9/11 are still not completely known. It also reminds us of the importance of enacting reforms to the Patriot Act as Congress reconsiders the three expiring provisions of the Act that have now been extended until the end of February, 2010. The Constitution Project's Liberty and Security Committee recommended these reforms in its September 2009 [*Statement on Reforming the Patriot Act*](#).

- On January 21, the Senate Judiciary Committee passed a bill to create a blue-ribbon commission to conduct a review of key parts of the criminal justice system, with a focus on sentencing and incarceration policies, and to offer concrete recommendations for reform within 18 months. The legislation, authored by Senator Jim Webb (D-VA.), was approved unanimously by the committee and now moves to the full Senate for consideration. The Constitution Project's Sentencing Committee, co-chaired by former Reagan Administration Attorney General Ed Meese and Clinton Administration Deputy Attorney General Philip Heymann, has issued two reports on the appropriate objectives for sentencing reform: [*Principles for the Design and Reform of Sentencing Systems*](#) (2005) and [*Recommendations for Federal Sentencing in a Post-Booker World*](#) (2006).
- Over the past two weeks, numerous congressional committees, including the Senate Homeland Security and Governmental Affairs Committee, the House Committee on Homeland Security, the Senate Judiciary Committee, and the Senate Committee on Commerce, Science and Transportation, have held hearings to address the Christmas Day bombing attempt on Northwest Flight 253. During these hearings, the concerns and recommendations outlined in the Constitution Project's report, [*Promoting Accuracy and Fairness in the Use of Government Watch Lists*](#), were front and center. The report calls on the government to reform how individuals are included on terrorist watch lists and to improve the inter-agency sharing of watch list information. The Constitution Project made the report available at these hearings and will continue working with members of Congress to implement the report's recommendations.
- In an unsigned opinion issued January 19, a majority of the Supreme Court stated, "[f]rom beginning to end, judicial proceedings conducted for the purpose of deciding whether a defendant shall be put to death must be conducted with dignity and respect." This seemingly uncontroversial sentiment led the majority to order a review of a trial in which jurors presented the judge with an edible chocolate penis and the bailiff with a pair of chocolate breasts. The justices told the U.S. Court of Appeals for the 11th Circuit to examine whether Marcus Wellons got a fair trial before he was sentenced to the death penalty for raping and murdering a

15-year-old girl in Atlanta, according to an [article](#) in the *Washington Post*.

- In other Supreme Court news, Justice Sonia Sotomayor issued her first opinion on capital punishment last week. In *Wood v. Allen*, Justice Sotomayor wrote the majority opinion upholding an Alabama man's death sentence despite the fact that his inexperienced attorney failed to investigate and present mitigating evidence about Wood's borderline IQ. Sotomayor's opinion dismissed the attorney's omission as a "strategic decision" rather than "inattention and neglect."
- Finally, this past Monday, the Supreme Court declined to overrule its recent ruling in *Melendez-Diaz v. Massachusetts*, requiring laboratory technicians and other forensic experts to be available to testify at trial. By issuing a one-line order remanding the case to Virginia state court for an additional hearing, the Court's Sixth Amendment ruling remains in full force and effect.

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](#).