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## **Inside**

- From the President's Desk
- Upcoming Events
- Constitution Project Applauds Obama Administration's Commitment to Federal Court Prosecution of 9/11 Conspirators
- Constitution Project Rejects Governor McDonnell's Assessment of Intelligence Gathering through Traditional Federal Prosecution
- News in Brief

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

I am delighted to announce that Attorney General Eric Holder has agreed to be the featured speaker at our third annual Constitutional Champion Awards Dinner. The reception and dinner will take place on Thursday, April 15th at the Renaissance Mayflower Hotel. This year we are presenting awards to George Kendall, Director of the Public Service Initiative at Squire, Sanders, & Dempsey, and the Honorable Thomas Pickering, former United States Ambassador to the United Nations and Undersecretary of State for Political Affairs. Invitations with more details will be sent out shortly, but for now, please save the date. I hope you will be able to join us.

## **Upcoming Events**

- Next Wednesday, February 17th, at noon, 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 U.S. Supreme Court on February 23rd. 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 17th program will include Shayana

Kadidal, co-counsel for the Humanitarian Law Project and senior managing attorney at the Center for Constitutional Rights, Lisa Schirch, professor of peace building at Eastern Mennonite University, and Stephen Vladeck, professor of law at American University's Washington College of Law. The event is free and a light lunch will be served. To register, please email [rsvp@constitutionproject.org](mailto:rsvp@constitutionproject.org).

- On February 24th, 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, and Tony Fabelo, a committee member, will give closing remarks.

## News

### **Constitution Project Applauds Obama Administration's Commitment to Federal Court Prosecution of 9/11 Conspirators**

Press reports indicating that the Obama administration has decided not to try alleged 9/11 mastermind Khalid Sheikh Mohammed and four others in New York City gave the misleading impression that the president had wavered in his commitment to try the terrorist suspects in federal court rather than in a military tribunal. In a [news release](#), Project President **Virginia Sloan** stated, "[t]he administration has made its decision in favor of federal courts - a decision that has widespread bipartisan support. The public must know that the current debate is about *which* federal court is the most appropriate location for these trials." The mere proposal to change the trials' location led some opponents of federal trials to step up their criticism of the administration's plan and to demand trials before military commissions instead. Constitution Project Senior Counsel **Laura Olson** was interviewed by FOX News (video [here](#)) and McClatchy Newswire (story [here](#)) explaining that federal courts have proven themselves tougher and more reliable in trying terrorism suspects than have military tribunals.

### **Constitution Project Rejects Governor McDonnell's Assessment of Intelligence Gathering through Traditional Federal Prosecution**

In his response to President Obama's State of the Union address, Virginia Governor Bob McDonnell suggested that federal authorities erred in choosing to prosecute Umar Farouk Abdulmutallab for the Christmas Day bombing attempt in traditional federal court. Governor McDonnell argued that the government would have obtained additional intelligence had it kept Mr. Abdulmutallab outside the jurisdiction of our traditional legal system. The Constitution Project responded with a [news release](#) the same night,

noting the signatories to [\*Beyond Guantanamo: A Bipartisan Declaration\*](#) who have supported the administration's decision to prosecute Mr. Abdulmutallab in federal court. The release cited an [opinion piece written by two Declaration signatories](#), former Michigan U.S. Attorneys James Brady and Richard Rossman, who expressed concern with the suggestion that transfer to military custody permitted use of "alternative interrogation techniques," which are inconsistent with our nation's values. The former prosecutors also noted that traditional interrogation techniques have repeatedly been shown to elicit more, and more accurate, information than the "enhanced" methods used at Guantanamo and elsewhere. This view was vindicated just last week when the administration reported that Mr. Abdulmutallab is continuing to cooperate extensively with investigators and is providing useful, actionable intelligence.

### News in Brief

- The *Washington Independent* quoted Constitution Project President Virginia Sloan in a February 5th [story](#) about closing the detention facility at Guantanamo. She expressed concern about any planned transfer of detainees from Guantanamo to a facility in Thomson, Illinois if the administration intends to detain them indefinitely. "If all we're doing is exporting Guantanamo to Thomson for purposes of military commissions and indefinite detention, we're very strongly opposed to that."
- On February 4th, *The Hill* newspaper published an [op-ed](#) written by former FBI agent John Cloonan and former U.S. Attorney James Robinson. The two former law enforcement officers, both signatories to [\*Beyond Guantanamo: A Bipartisan Declaration\*](#), wrote, "[t]he president's commitment to close Guantanamo should be applauded and supported, not for closure's sake but for what closure achieves - an end to the policies that have made America less safe, weakened our international alliances, harmed our hard-earned international reputation as a country committed to the rule of law, and undermined our American values." Mr. Cloonan, citing his extensive counterterrorism experience with the FBI, also defended the decision to prosecute Umar Farouk Abdulmutallab in federal court in an [interview](#) with the *Washington Independent* for an article that was published on February 3rd.
- On February 4th, the *Los Angeles Times* printed an [op-ed](#) by Michael Traynor, president of the American Law Institute, in which he explains why the ALI took the momentous step of withdrawing support for its model death penalty statute. He wrote, "...after searching analysis by our country's top legal minds, the institute has concluded that the system it created does not work and cannot be fixed. It concluded that we cannot devise a death penalty system that will ensure fairness in process or outcome, or even that innocent people will not be executed."

- The Associated Press quoted Constitution Project Senior Counsel **Sharon Bradford Franklin** in a February 3rd [story](#) about the Uighurs, Chinese Muslims being held at Guantanamo who cannot be returned to China because of political persecution. The story discussed the offer by the Swiss government to take two brothers, one of whom was the only one of the seven Uighurs remaining at Guantanamo who had not been offered resettlement in Palau. She expressed concern that the administration would move to dismiss the Supreme Court case challenging the Uighurs' continued detention at Guantanamo on the grounds that all those remaining have now been offered refuge in other countries. Her fear was well-grounded. Last Friday, the Justice Department filed its [brief in the case](#), in which it asked the United States Supreme Court to dismiss the case for this very reason.
- Former Judge Bruce Einhorn, a signatory to the [Beyond Guantanamo declaration](#), wrote a [letter-to-the-editor](#) of the *New York Post* that was printed on January 29th. Judge Einhorn defended the Justice Department's commitment to try terrorism suspects in federal court. "By transferring the trials of the 9/11 co-conspirators to federal court," he wrote, "the Justice Department has reestablished its commitment to our Constitution and the rule of law."

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](#).