



**March 11, 2010**

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

I am deeply troubled by reports that the White House may retreat from its commitment to conduct civilian trials for the suspected 9/11 terrorists. The administration's initial decision to try the 9/11 conspirators in federal court was sound, both as a matter of principle and as a means to keep our nation safe. The decision demonstrated a renewed respect for the rule of law and the reality that military commissions, even as recently revised, are untested and subject to legal challenges in a way that our federal courts are not.

I fear that politics once again may infect important decision-making by the Justice Department. In difficult times, we should enhance our commitment to the Constitution and the rule of law, rather than descend into games of political bravado about who is "tougher" on national security.

Defending constitutional values is not a partisan endeavor. The Constitution Project's work over the past several months demonstrates that leaders from across the political spectrum support civilian trials for alleged terrorists and oppose indefinite detention without charge. They joined our [\*Beyond Guantanamo Declaration\*](#) to show their faith in the capacity of our

nation's criminal justice system to try suspected terrorists. I hope the president will demonstrate that he shares that faith.

## **Attorney General Holder to Keynote Our April 15 Dinner**

On Thursday, April 15, we will host our Third Annual Constitutional Champion Awards Dinner. Attorney General **Eric Holder** will be the keynote speaker. Our honorees this year include **George Kendall**, director of the Public Service Initiative at Squire, Sanders, & Dempsey, LLP, and the Honorable **Thomas Pickering**, former Undersecretary of State for Political Affairs and former U.S. Ambassador to the United Nations.

### **Constitution Project's Third Annual Constitutional Champion Awards Dinner**

Thursday, April 15, 2010  
6:00pm Reception  
7:00pm Dinner  
Renaissance Mayflower Hotel

We hope you will be able to attend. Please contact Kristen Carson-Owens at (202) 580-6924 or [kcarson@constitutionproject.org](mailto:kcarson@constitutionproject.org) to purchase tickets or for more information.

## **Employment Opportunity at the Constitution Project**

The Constitution Project is currently accepting applications for the following full-time position:

- Director of Communications and Outreach

If you are interested in applying, or know of anyone who may be, please visit:

<http://www.constitutionproject.org/newsdetail.asp?id=470>

## **News**

### **Constitution Project Urges Obama Administration To Stick With Federal Court Prosecutions of 9/11 Conspirators**

In response to multiple news stories that reported that President Obama was considering reversing Attorney General Holder's decision to try Khalid Sheik Mohammed and four other Guantanamo detainees in federal court, the Constitution Project [released a statement](#) urging him to stick to his original plan and to reject any proposed deal to shift their trials to military commissions. It stated that reversing the decision to prosecute the alleged 9/11 conspirators in federal court would be a grave error and a major retreat from the administration's pledge to restore the rule of law.

Constitution Project staff and committee members reiterated this message in the media. Retired Army Lt. Col. Stephen Abraham, a member of the Liberty and Security Committee who was formerly assigned to the Office for the Administrative Review of the Detention of Enemy Combatants, and is one of the nearly 140 signatories of [Beyond Guantanamo: A Bipartisan Declaration](#), published an [opinion piece](#) on March 5th in the Capitol Hill newspaper *Roll Call*. He wrote that "[t]rying KSM or any other accused terrorist according to the very laws that we would have apply to ourselves is not a sign of weakness nor an indulgence to our enemies but an affirmation of the confidence we have in the institutions by which we are governed."

Constitution Project President **Virginia Sloan** wrote an [opinion piece](#) for the *Huffington Post* in which she noted that the debate over use of federal civilian courts for alleged terrorist does not represent a partisan divide; thoughtful people of all political stripes have expressed faith in our traditional and time-tested criminal justice system. Constitution Project Senior Counsel **Laura Olson** was [interviewed](#) by FOX News and noted, "[t]here aren't even rules yet for [the new] military commissions. Why would we risk putting the most important criminal case in U.S. history in an untested system?"

### **Constitution Project Joins Broad Coalition Urging President Obama to Nominate Members to Privacy and Civil Liberties Oversight Board**

On March 1st, the Constitution Project [joined with](#) 25 other non-governmental organizations in sending a [letter to President Obama](#) urging his immediate appointment of members to serve on the Privacy and Civil Liberties Oversight Board (PCLOB). Originally created in response to the recommendations of the 9/11 Commission, the PCLOB is tasked with reviewing the privacy and civil liberties issues raised by the government's national security policies and programs. Congress enacted legislation in 2007 to strengthen the Board's powers and make it independent from the White House, but President Obama has failed to nominate anyone to serve on the five-member Board, leaving it unable to fulfill its mandate or even begin operations.

The coalition letter states, in part, "[a]s a result of the attempted Christmas Day bombing, your Administration and Congress are considering numerous policy changes that impact the privacy and freedoms of Americans, including expanding watch lists and more intrusive searches at airports. It is crucial that you nominate qualified individuals to serve on the PCLOB, so that it may begin to provide guidance as new policies and procedures are developed."

Constitution Project Senior Counsel **Sharon Bradford Franklin** was interviewed about the PCLOB vacancies by Congressional Quarterly magazine and by *Newsweek* magazine's blog, "[Declassified](#)," where she told investigative reporter Michael Isikoff that she is "appalled" that the White House has yet to nominate a single board member or hire any staff.

Last week's letter was not the Project's first push for a strong and independent Board. In 2006, the two co-chairs of our Liberty and Security Committee, David Keene, chair of the American Conservative Union, and Professor David Cole of the Georgetown University Law Center, published an [opinion piece](#) in the *Miami Herald* calling on the president and Congress to pass legislation to make the Board independent and to provide it with the structure and tools it needs to conduct true oversight. And, after enactment of the 2007 legislation strengthening the Board, Sharon wrote a [June 2008 letter](#) to President Bush and the leadership of the Senate urging the prompt nomination and confirmation of members of the Board.

### **Constitution Project Welcomes Supreme Court Order Vacating Decision of Appeals Court in Uighurs Case**

On March 1st, the U.S. Supreme Court issued an order vacating the U.S. Court of Appeals for the District of Columbia Circuit's decision in February 2009, which had held that federal courts lack the power to order the release of the Uighur detainees at Guantanamo into the United States. The Constitution Project was [gratified by the order](#), but disappointed that the Court dismissed the case and will not consider the important legal question on the power of courts to order appropriate remedies in detention cases.

The Uighurs, Chinese Muslims who are still held at Guantanamo despite recognition by both the Obama and Bush administrations that they are not enemy combatants, had appealed the decision to the Supreme Court. The Court was scheduled to hear oral argument in the case on March 23rd. The Constitution Project, along with several other NGOs, had filed an [amicus brief](#) in support of the Uighurs, arguing that the courts have the power to order release as a remedy in a *habeas* case, and that failure to grant this power would undermine the Supreme Court's *Boumediene* decision, which recognized the rights of the Guantanamo detainees to challenge their detentions in federal court.

The Court's order was based on the fact that, as of last month, all of the seven Uighurs remaining at Guantanamo had received an offer of resettlement in another country. Five of them had rejected these offers of resettlement, and public accounts have not clarified the terms of the rejected offers. The order by the Supreme Court instructs the D.C. Circuit to determine, in light of these recent developments, what further proceedings in the D.C. Circuit or the district court are appropriate.

Sharon was quoted regarding the Uighurs' predicament by [McClatchy news service](#) and interviewed by [WBAI Pacifica radio](#) in New York City.

### **Constitution Project Applauds DOJ Initiative to Improve Indigent Defense**

On February 26th, the Constitution Project [praised](#) the Justice Department's appointment of Harvard law professor Laurence H. Tribe to lead an effort to improve access to lawyers for those unable to afford one. The DOJ

announcement came just one week after the Department held a two-day symposium on what Attorney General Eric Holder called the "crisis" facing the indigent defense system in the United States.

In a [Washington Post article](#) announcing Professor Tribe's appointment, the reporter cited [Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel](#), the report of the Constitution Project's National Right to Counsel Committee, and its call for urgent reforms. This past Tuesday, the *Post* praised the DOJ indigent defense initiative in an [editorial](#) and again highlighted *Justice Denied*. The editors wrote of Professor Tribe's new challenge: "Mr. Tribe need not start from scratch. The National Right to Counsel Committee, which is part of the nonprofit Constitution Project, produced an excellent report in 2009 detailing the failings of the indigent defense system. The group offered some 20 recommendations on how legal services for the poor could be improved."

On March 3rd, Ginny [appeared](#) on Federal News Tonight to discuss the crisis in indigent defense and how the federal government should help address it.

### **Constitution Project Disappointed by Missed Opportunity to Reform Patriot Act, But Optimistic for Next Year's Reevaluation**

On February 25th, the U.S. House of Representatives joined the Senate in approving a one-year extension for the three sunseting sections of the Patriot Act: the business/library records, lone wolf, and roving wiretaps provisions. These provisions were originally set to expire at the end of the 2009 calendar year, but Congress passed a two-month extension late last year. The provisions are now scheduled to sunset at the end of February 2011.

In the 2009 [Statement on Reforming the Patriot Act](#), the Project's Liberty and Security Committee argued that the expiring provisions of the Patriot Act and its national security letter authority are overly broad and lack the necessary safeguards to preserve and protect individual liberties and freedoms. Our [statement](#) issued after the House vote said, "Congress missed a prime opportunity, with the December 2009 sunsets, to reevaluate and correct those authorities of the Patriot Act that have proven to authorize violations of Americans' rights. Despite our disappointment with an additional extension, we are looking forward to Congress revisiting these important issues next fall, in advance of the new deadline."

### **News in Brief**

- Providing a clear reminder that our traditional criminal justice system can effectively prosecute suspected terrorists, the Associated Press [reported](#) last week that the U.S. Court of Appeals for the Fourth Circuit denied a rehearing for convicted 9/11 conspirator Zacarias Moussaoui. Moussaoui is serving a life prison term after pleading guilty to helping plan the attacks.

- An ad produced by Liz Cheney's organization, Keep America Safe, called on the Department of Justice to release the names of current DOJ attorneys who once represented Guantanamo detainees. The ad stirred up controversy by referring to the attorneys as the "Al Qaeda Seven" and questioning their loyalty. A group of [former Republican DOJ officials](#), including George W. Bush administration's Deputy Attorney General Larry Thompson, Civil Division Chief Peter Keisler, and State Department Legal Advisor William H. Taft, IV joined a statement criticizing the ad. Larry Thompson is a member of the Constitution Project's Right to Counsel Committee, Peter Keisler is a member of our Death Penalty Committee, and William Taft is a member of our Liberty and Security Committee.
- Former Georgia Supreme Court Justice Norman Fletcher, a member of the Constitution Project's National Right to Counsel Committee, wrote an [opinion piece](#) that was published in the *Atlanta Journal-Constitution* on March 4th. Justice Fletcher expressed concerns about divisive, partisan rhetoric contained in a recently-released report of the Legislative Oversight Committee of the Georgia Public Defenders Standards Council. Citing the bipartisan National Right to Counsel Committee that was able to agree upon the indigent defense reforms contained in *Justice Denied*, Justice Fletcher wrote, "[w]e must reject partisan and groundless attacks. We must recognize that we have no choice but to move forward - not as Republicans or Democrats, not as prosecutors or defense counsel, not as lawyers or non-lawyers, and not as judges or legislators, but as citizens of Georgia. We must find real solutions to our state's indigent defense crisis, because those rights protecting citizens from big government apply equally to the poor as they do to the rich."

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](#).