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From the President's Desk

All of us at the Constitution Project are honored to work with so many outstanding leaders, and to benefit - and learn - from their advice and expertise. Many members of our committees have volunteered their time to join a panel discussion, draft an opinion piece, help find the points of consensus for our reports and statements, and otherwise join an ongoing debate in which their voices can make a difference.

Last Thursday, signatories to *Beyond Guantanamo: A Bipartisan Declaration* took time out of their busy schedules to join us in a day of education and advocacy on Capitol Hill. These influential individuals included Theodore Sorenson, advisor to President John F. Kennedy (and so many others), retired diplomat Ambassador Thomas Pickering, former federal judge and FBI Director William S. Sessions, as well as additional former federal judges, prosecutors, and military leaders, and family members of the 9/11 victims, all of whom spoke with reporters, walked the halls of Congress, and briefed congressional staffers to voice their support for prosecutions of suspected terrorists in federal court, while opposing their indefinite detention without charge.

As recent headlines demonstrate, it is far from clear whether Attorney General Holder's decision last November to try five of the 9/11 suspects in federal courts will be overturned. Last week, however, the Constitution Project was proud to enable so many individuals with so much authority and expertise to make their voices in support of the Attorney General's original decision heard. We hope Congress and the White House will listen.

Attorney General Holder to Keynote Our April 15 Constitutional Champions Award 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
1127 Connecticut Avenue, NW
Washington, DC 20036

We hope you will be able to attend. Please contact Kristen Carson-Owens at (202) 580-6924 or 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

***Beyond Guantanamo* Signatories Meet with Legislators to Support Prosecution of Terrorism Suspects in Federal Court**

As noted above, on March 18th, the Constitution Project hosted more than a dozen signatories to [*Beyond Guantanamo: A Bipartisan Declaration*](#), who came to Washington to meet with members of Congress and brief Hill staffers. They urged that terrorism suspects be tried in traditional federal court, rather than by military commission, and also cautioned against using a system of indefinite detention to hold suspects without charge or trial. The group's efforts were particularly timely given recent debate about these issues, along with proposed legislation that could force the administration to pursue prosecutions of terrorism suspects only in military commissions.

The day of advocacy on Capitol Hill was previewed in a story published on March 14th in the *Washington Post*. In [an article](#) describing the risks of trying detainees in military tribunals, the *Post* reporter wrote, "[t]his week, in advance of [Attorney General Eric] Holder's next oversight appearance on Capitol Hill, human rights groups led by the Constitution Project are bringing more than a dozen former judges, prosecutors and diplomats to Washington to advocate for terrorism trials in the regular court system."

During Attorney General Holder's recent appearance before a House subcommittee, he insisted that the administration has not yet made a final decision regarding where to try Khalid Sheikh Mohammed and others accused of planning the 9/11 terrorist attacks. "I think that we are weeks away from making that determination. I don't think we're talking about months. I think we're talking about weeks away," said the attorney general, according to [a story](#) in the *National Law Journal*.

Constitution Project President **Virginia Sloan**, in [an interview](#) with International Relations and Security Network's *Security Watch*, argued in favor of leaving the decision to the attorney general. She said, "[t]here is a long tradition of keeping those decisions at arms' length from the White House. The decision about prosecuting should not be based on politics, but on what the law requires based on the judgment of the chief legal officer of the country."

Constitution Project Hosts Congressional Staff Briefing on State Secrets Legislation

On March 15th, the Constitution Project hosted "Safeguarding Secrets and Avoiding Abuse: A Briefing on the State Secrets Protection Act" at the Capitol Visitors Center. The briefing by a panel of experts provided congressional staff with an overview of the State Secrets Protection Act bills pending in both chambers of Congress. The briefing also included an examination of how the proposals would protect secrets vital to national security while restoring our nation's system of checks and balances. Panelists focused on two key themes in educating staffers about the pending bills: (1) that the legislation is designed to restore checks and balances and the role of our courts and would *not* permit public disclosure of all our nation's national security secrets, and (2) the Attorney General's new policy of September 2009 is a welcome first step in reforming the Executive Branch's invocation of the state secrets privilege, but it is only a small step and legislation is still needed to ensure independent judicial review.

Senior Counsel **Sharon Bradford Franklin** moderated a discussion by the panel that included Asa Hutchinson, former Member of Congress (R-AR), and former Under Secretary for Border and Transportation Security, U.S. Department of Homeland Security in the George W. Bush administration; Michael Isikoff, investigative journalist for *Newsweek*; Patricia Wald, former Chief Judge for the U.S. Court of Appeals for the D.C. Circuit and judge on the International Tribunal for the Former Yugoslavia; and Benjamin Wizner, Counsel for the National Security Project of the

American Civil Liberties Union, who has litigated several leading state secrets cases.

News in Brief

- Yesterday, New York's Court of Appeals heard arguments in a case that charges New York State with failing in its constitutional duty to provide effective counsel to poor people accused of crimes. The class action lawsuit, filed in 2007 by the New York Civil Liberties Union and the law firm of Schulte Roth & Zabel LLP, charges that a lack of adequate funding, oversight and statewide standards deprives people charged with a crime of their right to competent and timely legal representation, in violation of the U.S. Constitution, the state constitution and the laws of New York. A March 24th article in the *New York Law Journal* discussed the lawsuit and recent legislative efforts in New York to address the indigent defense crisis. The [article](#) also mentions the Constitution Project's Right to Counsel Committee report, [*Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*](#).
- On Tuesday, Sharon Bradford Franklin participated in a panel discussion on video surveillance at the conference of the International Association of Chiefs of Police on video surveillance. Sharon appeared on a panel entitled "Surveillance Policy and Policing in the Community," and, based upon our Liberty and Security Committee's report, [*Guidelines for Public Video Surveillance: A Guide to Protecting Communities and Preserving Civil Liberties*](#), she advised law enforcement officials on developing policies to govern their surveillance systems that will protect residents' privacy rights. Other panelists and conference attendees also cited our Liberty and Security Committee's report as a valuable resource. The IACP conference took place in Las Vegas, NV.
- On Monday, the U.S. Supreme Court voted to leave in place a lower court ruling that took away almost all of the power of federal judges to stop the transfer of Guantanamo detainees to third countries, in circumstances in which the detainee objects on risk-of-torture grounds. The Court, in a brief order, denied review of the D.C. Circuit Court's April ruling in *Kiyemba v. Obama* ("*Kiyemba II*"). Although the specific case involves the Uighurs detained at Guantanamo, the underlying decision applies to all Guantanamo detainees, and the order -- which simply leaves that decision in place and does not address the legal issues raised by the Uighurs' case -- gives the government greater authority to decide when and where to send detainees who have been cleared for release.
- On March 17, the U.S. Senate unanimously approved a bill to reduce the sentencing disparity between federal crack and powder cocaine offenses from the current 100:1 ratio to approximately

18:1. The bill, sponsored by Senator Richard Durbin (D-IL), would also eliminate the mandatory minimum sentence for simple possession of crack and direct the U.S. Sentencing Commission to enhance penalties for aggravating factors such as violence or bribery of a law enforcement officer. Last July, the House Judiciary Committee approved legislation to eliminate, rather than merely reduce, the crack-powder disparity. Earlier this month, the Constitution Project organized a [letter from former federal judges and prosecutors](#), sent to the Senate Judiciary Committee leadership, in support of the Fair Sentencing Act of 2009. In 2006, the Constitution Project's Sentencing Committee issued [Recommendations for Federal Criminal Sentencing in a Post-Booker World](#), which states, "[t]he Committee is unanimously of the view that the 100-1 weight ratio upon which guideline and mandatory minimum sentences for powder and crack cocaine are based is unjustifiable as a matter of policy."

- On March 16, American University's Washington College of Law School Professor Stephen Vladeck, who is the Constitution Project's Supreme Court Fellow, presented a briefing on Capitol Hill covering highlights of the current U.S. Supreme Court term. Representatives Bobby Scott (D-VA) and Jerry Nadler (D-NY) co-sponsored the event, and Rep. Scott also participated on the panel.
- Later that day, Project Senior Counsel Sharon Bradford Franklin moderated a panel on "controlled unclassified information" (CUI) at the Washington College of Law's 3rd Annual Freedom of Information Day Celebration. The panel covered historical and ongoing efforts to regulate the category of government information that is not classified but which is sensitive in some way so that some amount of safeguarding may be needed. Panelists included experts from the National Archives and Records Administration, the American Civil Liberties Union, and the Department of Homeland Security. Last July, the Project's Liberty and Security Committee released its report [Reining in Excessive Secrecy: Recommendations for Reform of the Classification and Controlled Unclassified Information Systems](#).
- Also on March 16, the *Washington Post* published a [letter-to-the-editor](#) from Scott Wallace, co-chair of the Wallace Global Fund, in response to the *Post's* editorial supporting Attorney General Holder's determination to address the indigent defense crisis. Mr. Wallace agreed with the commendation for Holder but suggested that the federal government could be more aggressive than the *Post* suggested, by forcing states to uphold the constitutionally-guaranteed right to counsel. He also cited the Project's report, [Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel](#), saying, "[a]s detailed in the Constitution Project report to which the editorial referred (and which our foundation was proud to support), the problem is not just people getting inadequate legal services; it's often that they get no

legal services at all. Not only is this a blatant violation of the Sixth Amendment right to counsel, but it raises the risk of innocent people being imprisoned or executed."

- Eugene Fidell, a member of the Constitution Project's Liberty and Security Committee and a signatory to [*Beyond Guantanamo: A Bipartisan Declaration*](#), wrote [an opinion piece](#) that was published in *Politico* on March 15th. Mr. Fidell urged the Obama administration to try alleged terrorists in federal court in New York City. He wrote, "[t]he attorney general should stick with the decision he made and scotch, once and for all, the notion of sending Abdulmutallab's case to a commission. Federal court is where such cases belong."
- Also on March 15, the Constitution Project joined the National Immigrant Justice Center and more than two dozen other non-governmental organizations and individuals on petitions to the Departments of Justice and Homeland Security regarding aliens who enter the United States at a port of entry and seek asylum based upon a credible fear of persecution or torture in their home countries. Current law does not require mandatory detention of arriving aliens who have passed a credible fear interview, but immigration judges lack the authority to review the custody of this narrow class of arriving aliens. These petitions urge the two departments to put rules in place that will give immigration judges the authority to review these cases and prevent the unnecessary detention of those seeking freedom from persecution and torture. The Project's 2009 immigration report, [*Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings*](#), is cited in both petitions.

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](#).