



April 8, 2010

Inside

- From the President's Desk
- Attorney General Holder to Keynote Our April 15 Dinner
- Employment Opportunity at the Constitution Project
- Constitution Project Calls for Transparency in Creation of Military Commissions Manual
- Constitution Project Welcomes Federal Court Ruling That Surveillance Program Violated Foreign Intelligence Surveillance Act
- Constitution Project Files Brief in Support of Claims of Inadequate Legal Representation in Michigan
- News in Brief

From the President's Desk

Our annual dinner is just one week away. As this newsletter might be the last communication you receive from me before then, I wanted to use this space to thank those of you who have already reserved a place and to encourage those of you who have not to do so today. More details can be found in the Events section below.

The dinner promises to be a great event. We are delighted that Attorney General Eric Holder will deliver the keynote address. I am also looking forward to seeing Ambassador Thomas Pickering and George Kendall recognized for their exceptional service to our nation and steadfast commitment to the Constitution.

The annual dinner is important for another reason: it helps support the Constitution Project's vital work. We are fortunate to have the support of some generous institutional donors that share our goals. But we also rely on the generosity of individual contributors like you. Your support for our annual dinner helps sustain the Project's continuing efforts to promote constitutional safeguards and the rule of law. RSVP today - and I look forward to seeing you next Thursday night.

Attorney General Holder to Keynote Our April 15 Constitutional Champion Awards Dinner

Constitution Project's Third Annual Constitutional Champion Awards Dinner

Honoring George Kendall and Ambassador Thomas Pickering
Introductions by Stephen Bright and Alberto Mora
Keynote Speaker Attorney General Eric Holder
With Emcee Dahlia Lithwick

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

Constitution Project Calls for Transparency in Creation of Military Commissions Manual

On Monday, the Constitution Project [joined with eight other organizations and prominent scholars](#) in [releasing a statement](#) calling for transparency and a public comment period as the Department of Defense develops its Manual for Military Commissions. The Manual, once approved by Congress, will spell out the rules governing the proceedings of the most recent version of military commissions, which were revised under the Military Commissions Act of 2009.

The military commissions created by Executive Order by President George W. Bush in 2001 were hastily adopted in secrecy, and then struck down by

the Supreme Court. The replacement commissions authorized by Congress under the Military Commissions Act of 2006 were also criticized for failing to provide appropriate due process protections or an opportunity for public review and comment. To avoid the mistakes of the past commissions and the resulting excessive delays from challenges to these earlier systems, the Obama administration should now provide an opportunity for public review and comment. Without such transparency, the new commissions will remain under a cloud of secrecy that will generate public skepticism and a lack of legitimacy.

Constitution Project Welcomes Federal Court Ruling That Surveillance Program Violated Foreign Intelligence Surveillance Act

The Constitution Project [welcomed the ruling](#) by Judge Vaughn Walker of the U.S. District Court for the Northern District of California in *Al-Haramain Islamic Foundation v. Obama* that the plaintiffs had been subject to illegal electronic surveillance in violation of the Foreign Intelligence Surveillance Act (FISA). The opinion grants the plaintiffs' motion for summary judgment.

In the course of this new ruling, Judge Walker reaffirmed his earlier holding that FISA preempts the state secrets privilege in cases within FISA's scope. The judge based the March 31st ruling, however, entirely on non-classified evidence that Judge Walker found sufficient to demonstrate that the plaintiffs had been subjected to wiretapping without a warrant under the so-called "Terrorist Surveillance Program" or TSP.

Judge Walker's opinion notes an [amicus brief](#) filed by the Constitution Project, together with the Center for National Security Studies, in *ACLU v. NSA* in the U.S. Court of Appeals for the Sixth Circuit, in support of their summary judgment motion in *Al-Haramain*. In that brief, the Project and CNSS argued that the NSA wiretapping program violated FISA, and that the Constitution did not authorize the president to ignore the requirements of FISA. In *Al-Haramain*, after deciding that the plaintiffs have standing, Judge Walker then ruled consistently with our earlier brief that the warrantless surveillance of the plaintiffs violated FISA.

Constitution Project Files Brief in Support of Claims of Inadequate Legal Representation in Michigan

On March 31st, the Constitution Project, along with the National Association of Criminal Defense Lawyers, Brennan Center for Justice, and NAACP Legal Defense & Educational Fund, filed an [amicus brief](#) in the Michigan Supreme Court, [urging the court](#) to decide that those bringing the case have a sufficient claim for relief based on the State's failure to provide them with constitutionally adequate representation in their respective criminal cases. The plaintiffs in the case of *Duncan v. Michigan* are eight indigent defendants who request, on behalf of themselves and a class of indigent defendants in three Michigan counties, that the court declare the current public defense system unconstitutional and order the State to provide constitutionally adequate representation in the future.

In an attempt to dismiss the litigation, the State of Michigan has argued that the United States Supreme Court's decision in *Strickland v. Washington* prevents any person from suing for ineffective assistance of counsel until after he or she is convicted. However, the plaintiffs counter that *Strickland* is inapplicable in a case such as *Duncan*, which seeks prospective, class-wide relief. The Constitution Project and other *amici* support the plaintiffs' argument that *Strickland* does not apply in this situation.

The Constitution Project's National Right to Counsel Committee, in its seminal report released last year, [Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel](#), urged states to provide constitutionally adequate funding and oversight to public defense systems. The Committee endorsed litigation seeking prospective relief on behalf of a class of indigent defendants when states fail to comply with those requirements.

News in Brief

- On April 2nd, Constitution Project President **Virginia Sloan's** [op-ed](#) in support of prosecuting terrorism suspects in federal court was featured on the online legal news outlet, *Jurist*. In the piece, Ginny summarized last month's advocacy and education day on Capitol Hill, during which more than a dozen signatories to [Beyond Guantanamo: A Bipartisan Declaration](#) came to Washington to meet with members of Congress and their staffers to advocate for the trial of terrorism suspects in traditional federal court, rather than military commissions. The piece also contains quotes from some of the participating signatories, providing their reactions to the day's activities in Washington.
- The Constitution Project's Right to Counsel Committee co-chair Rhoda Billings, former chief justice of the North Carolina Supreme Court, and Committee member Susan Herman, former executive director of the National Center for Victims of Crime, wrote an [opinion piece](#) that was published in the *Albany Times Union* on April 1st. The piece called on the New York State legislature to provide adequate oversight and funding for indigent defense. The authors commended Governor David Paterson for proposing a new office to oversee public defense services, but said bolder action was necessary to protect the constitutional guarantee of adequate counsel and to protect crime victims. They wrote, "it is time for the Legislature to demonstrate its commitment to ensuring accurate and fair verdicts by fully funding a public defense system governed by an independent statewide oversight commission with the power to set enforceable performance standards."
- On March 31st, *Jurist* ran an [opinion piece](#) by two members of the Constitution Project's Liberty and Security Committee, Azizah al-Hibri, professor at the T.C. Williams School of Law at the

University of Richmond, and William H. Taft, IV, former Legal Advisor for the Department of State during the George W. Bush administration and Deputy Secretary of Defense during the Reagan administration, in which they urged the federal government to expand access to counsel and decrease the use of detention for people in immigration proceedings. These and other recommendations for reform were included in the Committee's report released last December, [*Recommendations for Reforming our Immigration Detention System and Promoting Access to Counsel in Immigration Proceedings*](#). Also on March 31st, the Supreme Court decided a case involving immigrant rights, the right to counsel, and collateral consequences. In *Padilla v. Kentucky*, the U.S. Supreme Court ruled that before allowing them to plead guilty to a crime, lawyers must advise their clients who are not citizens about the possibility that they will be deported. The majority ruled that the Constitution guarantees competent legal advice on at least some collateral consequences of guilty pleas.

- On March 29th, the *National Law Journal* published [an op-ed](#) by former Texas Governor Mark White, in which he urged the U.S. Supreme Court to order a new trial for Charles Dean Hood. Governor White, who is a new co-chair of the Constitution Project's Death Penalty Committee, approved 19 executions during his term as governor. He joined 20 other former judges, government officials, and prosecutors in an [amicus brief](#) filed last month in support of Mr. Hood's petition to the U.S. Supreme Court asking the Court to hear the case. Mr. Hood was sentenced to death in 1990 in Texas for a double murder, but has long protested that his constitutional right to a fair trial was violated due to the romantic relationship between the prosecutor in his case and the judge presiding over his trial.
- Constitution Project Senior Counsel **Laura Olson** recently participated in a panel of experts on the subject of trials for terrorism suspects. The April 6th panel concluded a multi-day symposium hosted by Emory University School of Law entitled "Who Should Prosecute?: The Challenge of International Terrorism, The Response of International Law." Laura urged caution when seeking to define terrorism or labeling someone a terrorist because such terms can often become politicized and used improperly. She also spoke about the ability and experience of traditional civilian courts to handle trials involving terrorism offenses.
- The *Miami Herald* recently provided a concise [summary of information](#) about the detainees held at Guantanamo since 9/11. The "By the Numbers" feature lists, among other things, the current number of detainees, the number of detainees who have won their *habeas corpus* petitions, and the last known detainee arrival and departure.