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From the President's Desk

"Did they Mirandize him? I know he's an American citizen but still."

- Representative Peter King (R-NY) after the arrest of Faisal Shahzad, the man law enforcement officials say has admitted to attempting to detonate a bomb in New York City's Times Square.

But still what?

Since 9/11, our country has been engaged in a fundamental - and unfortunately often contentious - debate about what is required by our commitment to the rule of law and the values enshrined in our Constitution. The Constitution Project is an active participant in this debate, urging the defense of constitutional safeguards. Over the past several years, the debate has centered on the treatment of alleged terrorists who are foreigners - how they should be treated, whether they can be detained indefinitely, and whether they should be tried in civilian courts or by military tribunals.

One matter I thought was beyond debate was whether the Constitution applies to people legally present on U.S. soil - and especially U.S. citizens. The reaction by some to the arrest of Mr. Shahzad suggests that I was mistaken. Representative King is not alone. Upon learning of Mr. Shahzad's arrest, Senator John Cornyn (R-TX) stated, "If someone acts like a terrorist and cooperates with people intent on war against the United States, they should be treated as terrorists and not as a common criminal. And no, they should not be read their Miranda rights."

Over the past few years, some who promote military tribunals and indefinite detention have sought to discredit those of us committed to the rule of law by suggesting that our support for enforcing basic due process protections for everyone is inappropriate. But what the events of this past week have made clear is that too many people, sadly including some members of Congress, are not committed to enforcing basic due process protections for anyone, not even American citizens.

Employment Opportunity at the Constitution Project

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

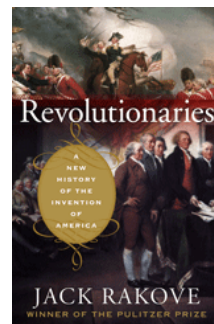
- Director of Communications and Outreach

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

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

Upcoming Event

Please join the Constitution Project and Bing Stanford in Washington in celebration of Pulitzer Prize-winning author Professor Jack Rakove and the publication of his new book.



Revolutionaries A New History of the Invention of America By Professor Jack Rakove

Wednesday, May 12, 2010

6:30 p.m. Reception

7:00 p.m. Discussion

The Robert M. and Anne T. Bass Center
Bing Stanford in Washington
2661 Connecticut Avenue, NW
Washington, DC 20008

RSVP to Meghvi Roig at meghvi@stanford.edu or (202) 332-6235

News

Constitution Project Joins Coalition Advocating for Updating Privacy Protections for Emerging Communications Technologies

On Wednesday, the Constitution Project [announced](#) that it has joined the [Digital Due Process](#) coalition calling for reform of the Electronic Communications Privacy Act (ECPA), a federal law that regulates the government's access to private electronic communications. As part of this broad coalition of over 30 different technology companies, privacy advocates, and think tanks, the Constitution Project will urge Congress to update ECPA to ensure that civil liberties protections and Fourth Amendment principles extend to current and emerging wireless and internet technologies.

Specifically, the Digital Due Process coalition has called for a series of reforms to modernize existing law, including requiring the government to obtain a search warrant in order to seek stored electronic communications such as email from a communications service provider, and obtain a search warrant in order to track the location of an individual's cell phone or other mobile communications device. These reforms are needed to update our nation's laws to catch up with the technology they cover.

Also on Wednesday, the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on reforming ECPA, at which panelists discussed the coalition's reform proposals. The witnesses and members of the Subcommittee at the hearing agreed that this is the beginning of a process to examine these issues, and actual legislation is not expected before next year.

Former Law Enforcement Officials Comment on the Arrest in the NYC Attempted Bombing

On May 4th, the Constitution Project reacted to claims by some members of Congress that Faisal Shahzad, the suspect in the attempted car bombing in New York City's Times Square, should not have been made aware of his *Miranda* rights. These claims are startling, not least in light of the fact that Mr. Shahzad is an American citizen and was arrested on U.S. soil.

To introduce both expertise and common sense into the debate over the *Miranda* issue, the Project [released statements](#) from two former federal law enforcement officials. James Robinson, former Criminal Division Assistant Attorney General in the Department of Justice, stated, "For members of Congress to criticize the arrest and subsequent 'mirandizing' of suspected bomber Faisal Shahzad, not only shows a glaring lack of understanding of the law, but also a lack of confidence in the law enforcement officials putting their lives on the line to keep our nation safe. Mr. Shahzad is an American citizen and he is entitled to the full rights afforded by the U.S. Constitution."

John Cloonan, former Special Agent in the New York Field Office of the

Federal Bureau of Investigation from 1976 to 2002, stated, "Reading Shahzad his *Miranda* rights in no way impeded the continuing investigation. And, approaching Shahzad in the manner described was effective, lawful and will stand up to scrutiny in a court of law. Shahzad was after all an American citizen and he will have his day in court. Due process in my view has been vindicated and this case illustrates how following the rule of law does not put U.S. citizens at risk or weaken our national security." Mr. Cloonan is a member of the Constitution Project's Liberty and Security Committee.

Michigan Supreme Court Allows Indigent Defense Case to Proceed

On April 30th, the Michigan Supreme Court unanimously affirmed the Michigan Court of Appeals' ruling in *Duncan v. Michigan*, rejecting the State of Michigan's request to dismiss a lawsuit brought by eight indigent defendants on behalf of themselves and a putative class of indigent defendants in three Michigan counties. Plaintiffs seek a declaration that the state has violated their constitutional right to counsel by delegating the duty to provide defense counsel to the counties without providing sufficient funding or oversight to ensure that the counties fulfill that obligation. The Michigan Supreme Court's decision comes just [one month after 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 case, urging the court to decide that those bringing the case had stated a sufficient claim for relief.

News in Brief

- A date has been set for the evidentiary hearing ordered by the United States Supreme Court in the case of death row inmate Troy Davis. Mr. Davis has been on death row in Georgia since 1989 after a jury convicted him of shooting an off-duty police officer based primarily on eyewitness testimony. Since his conviction, seven of the nine eyewitnesses who testified against him have recanted their original statements. After the recantations, Davis made numerous attempts to obtain a hearing based on this new evidence, but each was denied. Lacking another legal remedy, Mr. David finally filed a petition for an original writ of *habeas corpus* in the United States Supreme Court. In May 2009, the Constitution Project organized an [amicus brief](#) in support of Mr. Davis's *habeas* petition signed by 27 former judges and prosecutors. On August 17, 2009, less than three months after the brief was filed, the Supreme Court issued an order directing the District Court for the Southern District of Georgia to hear Davis's new evidence. That hearing has been set for June 23, 2010. The Supreme Court's decision marked the first time it had instructed a district court to consider a state prisoner's petition for an original writ of *habeas corpus* in nearly 50 years.

- On May 3rd, the *Detroit Free Press* published [an op-ed](#) written by Michael German and retired Colonel Lawrence Wilkerson on how the federal government should improve its terrorist watch lists. Following the failed attempt to bomb Flight 253 on Christmas Day, Congress and the President have called for review of our watch list system. German and Wilkerson, both members of the Constitution Project's Liberty and Security Committee, recommended that rather than simply expanding the lists, the government should improve the accuracy of the lists by giving intelligence and law enforcement officers clear guidance on when to add an individual to the list; implement a process for fixing mistakes, e.g., when an innocent person discovers he or she is on the list; and prevent the data from watch lists from being used to deny employment, licenses or contracts. Their recommendations are consistent with those found in the Liberty and Security Committee's 2006 report, [Promoting Accuracy and Fairness in the Use of Government Watch Lists](#).
- Under a process known as the Universal Periodic Review, the United Nations Human Rights Council asks all UN member states to review their human rights records every four years. In preparation for its report, the U.S. Government consults with various non-government organizations, including those working on counterterrorism and national security issues, to present their views on the human rights implications of U.S. policies in these various areas. This year, the Constitution Project was asked to participate. On April 28th, Senior Counsel Laura Olson appeared on a panel entitled "Detainee Treatment, Transfer, and Accountability." Laura's remarks focused on accountability; specifically, the Constitution Project's call for a commission to investigate detainee treatment in the wake of 9/11 and our support for legislative reform of the state secrets privilege.
- On April 5th, 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 developed its Manual for Military Commissions. The Manual spells out the rules governing the proceedings of the most recent version of military commissions, which were revised under the Military Commissions Act of 2009. Unfortunately, on April 27th, Secretary of Defense Robert Gates approved the [Manual](#), which was completed without any opportunity for public comment.
- The ABA just released its 2010 *The State of Criminal Justice* report, which contains comprehensive summaries on the recent developments related to a wide range of criminal justice issues from juvenile justice to white collar crime. For example, experienced death penalty attorney Ronald Tabak authored a chapter regarding capital punishment that details the trends and significant legal developments in capital punishment in 2009 and 2010. An executive summary of the report is [available here](#) and more information is [available here](#).

- Flex Your Rights, an educational nonprofit, recently released a video aimed at educating the public on how to handle police encounters, entitled "10 Rules for Dealing with Police." Information about the new video and the Flex Your Rights organization can be found [here](#).

More information is available on the [Constitution Project's website](#), including how to [subscribe to our newsletter](#) and a way for you to [show your financial support](#).

The Constitution Project's mission is to promote and defend constitutional safeguards. Since our founding in 1997, we have created coalitions of respected leaders from across the political spectrum, advancing their consensus recommendations for policy reforms. Our advocacy and public education efforts, influential *amicus curiae* briefs, and respected scholarship have helped to create public support for those reforms.