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From the President's Desk

A New Year's Message

As the Obama administration prepares to take office, Washington is awash with news of appointments to high office, new policies, and angst about Inauguration Day traffic jams. The Constitution Project has sponsored or participated in meetings with the transition teams on a variety of rule of law and criminal justice matters. With new allies and old ones, we are continuing our work of creating bipartisan consensus on safeguarding our Constitution.

While there is much to be optimistic about, the need for our work is as great as ever. Supreme Court Justice Robert Jackson warned long ago that an assertion of executive power "lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes."

As Pulitzer-Prize winning journalist Charlie Savage summed it up in his book, *Takeover: The Return of the Imperial Presidency*: “Sooner or later, there will always be another urgent need.” In defense of the separation of powers, we will continue to work to make sure that Congress performs its constitutionally mandated legislative and oversight role and that the executive and legislative branches do not prevent the courts from performing their duty to provide an independent check on the actions of the other two branches.

These are tough times for non-profits — and for all of us — as the economic crisis forces foundations to close their doors and individuals to curtail their spending. We are so grateful to all of you who support the Constitution Project, and promise in this new year to work to convert [your support](#) into meaningful protections for constitutional safeguards.

Upcoming Events

“The Abuse of Immigration Law In Counterterrorism Efforts” Panel Discussion on Wednesday, January 14, 2009

The Constitution Project and Georgetown University Law Center will co-host a panel discussion on how immigration laws have been abused as counterterrorism tools and how such abuse can be prevented in the future. At the event, scheduled for 12-2 p.m. on January 14, 2009, at Georgetown Law Center, [McDonough Hall](#), Room 164, we will officially release a new report ([available here](#)) on the issue.

Panelists:

- * **Jim Harper**, Director of Information Policy Studies, the Cato Institute
- * **Ali Noorani**, Executive Director, National Immigration Forum
- * **Wendy Patten**, Senior Policy Analyst, Open Society Policy Center
- * **Shoba Wadhia**, Director, Center for Immigrants’ Rights, Penn State Dickinson School of Law
- * *Moderator*, **Becky Monroe**, Policy Counsel at the Constitution Project

RSVP to rsvp@constitutionproject.org with your name, the number of attendees, and the event name.

Please enter Georgetown Law Center through the 2nd Street entrance of McDonough Hall, and proceed downstairs one floor. Visitors will need to obtain a guest pass from the security desk. Be

Annual Constitutional Champions Awards Dinner on April 2

Our annual awards dinner will take place at the Renaissance Mayflower Hotel in Washington, D.C. on Thursday, April 2, 2009. Please join us in honoring **Alberto Mora**, former General Counsel, Department of the Navy, and **Craig Watkins**, District Attorney for Dallas County, Texas. Mr. Mora led a multi-year effort within the Department of Defense to [oppose coercive interrogation techniques](#) at Guantanamo Bay. Mr. Watkins created a “conviction integrity unit” within the District Attorney’s office that uses DNA evidence to [investigate claims of wrongful conviction](#), resulting in six exonerations in the last two years. The Capitol Steps will provide entertainment. [RSVP HERE](#).

News

Seventeen Additional Former Federal Judges and Prosecutors Endorse “A Critique of National Security Courts”

Seventeen additional former federal judges and prosecutors recently endorsed the Constitution Project’s white paper, “[A Critique of National Security Courts](#),” first released in June 2008. They join more than thirty members of our bipartisan Liberty and Security Committee, a coalition of political leaders, national security experts, former judges, and legal scholars in rejecting proposals to create specialized hybrid tribunals that would review the preventive detention of suspected terrorists, conduct detainees’ criminal trials, or both.

According to the report, proponents of national security courts “neglect basic and fundamental principles of American constitutional law, and they assume incorrectly that the traditional processes have proven ineffective We believe that the government can accomplish its legitimate goals using existing laws and legal procedures without resorting to such sweeping and radical departures from an American constitutional tradition that has served us effectively for over two centuries.”

Challenge to Legality of Warrantless Surveillance To Proceed

A federal judge’s [ruling](#) on Monday in *Al-Haramain Islamic Foundation v. Bush* permits a challenge to the National Security Agency’s warrantless domestic surveillance program to proceed. This is the latest development in the case in which the plaintiffs seek to establish their legal standing to challenge to the NSA program based upon a document inadvertently provided to them by the government. That document allegedly demonstrates that the plaintiffs were subject to surveillance by the NSA. Plaintiffs filed the document under seal with the court.

Judge Vaughn Walker denied the government's motion to dismiss the case, holding that "the court will review the Sealed Document *ex parte* and *in camera*. The court will then issue an order regarding whether . . . the Sealed Document establishes that plaintiffs were subject to electronic surveillance not authorized by [the Foreign Intelligence Surveillance Act]."

The Constitution Project's Liberty and Security Committee filed [amicus briefs](#) in earlier litigation on the issue and issued several statements [condemning warrantless domestic surveillance](#) and outlining the how the NSA program violates FISA.

State Court Justices Urge Obama to Reform State and Federal Sentencing Practices

Oregon Supreme Court Chief Justice Paul J. De Muniz and Missouri Supreme Court Justice Michael A. Wolff wrote a remarkable [letter](#) to President-elect Obama to "[urge major change in state and federal sentencing practices](#)." They offer a number of guiding principles for reform, including: punishment should be no harsher than warranted, mandatory minimum sentences should be avoided, "judicial discretion" should be replaced with "evidence based sentencing," and sentences should minimize recidivism (except to the extent demonstrably necessary to serve other purposes). Many of these recommendations are similar to those included in two criminal sentencing reports released by the Constitution Project in 2006, "[Recommendations for Federal Criminal Sentencing in a Post-Booker World](#)" and "[Principles for the Design and Reform of Sentencing Systems: A Background Report](#)."

Does *Habeas Corpus* Extend Beyond Guantanamo to Bagram?

For the last six months, federal courts have been exploring the scope and reach of a U.S. Supreme Court decision upholding Guantanamo detainees' constitutional right to challenge their detentions through *habeas corpus* petitions. Whether the decision in that case, *Boumediene v. Bush*, reaches detainees held in a U.S. military prison in Bagram, Afghanistan, was the subject of a [hearing yesterday](#).

The four petitioners who were the focus of yesterday's hearing have been held for six years without charge, access to counsel, or access to any court. U.S. District Court Judge John Bates ordered the government to provide additional information about the detainee population at Bagram, although he did not issue a ruling on the merits.

The Constitution Project's Liberty and Security Committee previously stated (in a related context) that, in accordance with First Amendment principles, [the government should disclose the names of all persons it detains](#). In *Boumediene*, the Constitution Project filed an *amicus* brief along with sixteen other NGOs [urging the Court to uphold the constitutional right of habeas corpus](#) for the Guantanamo detainees.

News in Brief

- The Cato Institute will host a conference entitled [Shaping the Obama Administration's Counterterrorism Strategy](#) on January 12-13, 2009. Although registration is closed, the event will be webcast live.
- The Rutherford Institute founder and president John W. Whitehead writes about "enemy combatant" Ali Saleh Kahlah al-Marri in his recent commentary "[The Forgotten Man in the War on Terror](#)."

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