

From the desk of Virginia Sloan

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All of us at the Constitution Project are constantly working to generate first-class reports and public education campaigns on timely and important constitutional issues. Now, we want to hear what you think of our work! Just go to [our profile](#) at GreatNonprofits and write a short review; you can choose to remain anonymous, so please be candid! We greatly appreciate you taking the time to give us your thoughts, and look forward to reviewing your feedback.

You're Invited!

Celebrate Constitution Day with the Constitution Project

Please join the Constitution Project and Georgetown University as we celebrate Constitution Day on September 17, 2008. Constitution Day was established by federal law in 2004 to recognize the signing of the United States Constitution in 1787. You are invited to the 2008 celebration of Constitution Day, hosted at the Georgetown University campus, where **Viet Dinh**, who served as **Assistant Attorney General in the George W. Bush administration**, **Judge Brett Kavanaugh** of the United States Court of Appeals for the D.C. Circuit, **Patricia Wald**, former Chief Judge of the United States Court of Appeals for the D.C. Circuit, and **Seth Waxman**, **Solicitor General** in the Clinton administration, will discuss the role of the courts in America's system of checks and balances.

There is no charge for attendance. Please [RSVP](#) at your earliest convenience, as seating is limited.

DATE: Wednesday, September 17, 2008

TIME: 3:00 pm - 5:00 pm

LOCATION: Gonda Theater
Georgetown University
37th St & O St, NW
Washington, DC

In the Executive Branch

CP Comments on Border Crossing Database

On August 22nd, the Constitution Project submitted [comments](#) on the new regulations proposed by the Department of Homeland Security (DHS) to govern the U.S. Customs and Border Protection's Border Crossing Information (BCI) database. The Notice published in the Federal Register on July 25, 2008, describes the BCI database as collecting border crossing information on "all individuals who are admitted or paroled into the United States . . . [and] for all individuals who depart the United States by air or sea and in certain circumstances by land," regardless of whether there is reasonable suspicion that a given person has violated immigration laws, engaged in terrorist activity, or otherwise poses a security risk. The Notice states that border crossing information will be retained for fifteen years if the person is a citizen or legal permanent resident, and for seventy-five years if the person is a "non-immigrant alien." As we noted in our comments: "Clearly, DHS has the authority and the responsibility to check travelers' biographical and traveling information as they cross the border. However, DHS has not demonstrated that after conducting such screenings, it needs to maintain a massive database containing these data for all travelers, nor that such data should be maintained for such lengthy time periods."

In the Courts

9th Circuit Rules in Watch List Case

On August 18, 2008, the U.S. Court of Appeals for the Ninth Circuit [held](#) in *Ibrahim v. Department of Homeland Security* that an airline passenger can sue to challenge her inclusion on the "No Fly" list maintained by DHS's Terrorist Screening Center (TSC). Rahinah Ibrahim sued various government officials and United Airlines after the airline found her name on the watch list, denied her permission to board her flight, and reported her to the police. The police in turn reported Ms. Ibrahim to federal officials who detained her for questioning and later released her. The Ninth Circuit held that the federal district court has jurisdiction to hear Ms. Ibrahim's challenge to the inclusion of her name on DHS's No Fly list. Among other points, the Court's opinion notes that there was no administrative proceeding at which Ms. Ibrahim could have challenged the agency's initial decision to include her name on the watch list. The Constitution Project's Liberty and Security Committee's report, [Promoting Accuracy and Fairness in the Use of Government Watch Lists](#), recommends that the government adopt critical safeguards to improve the accuracy of such lists and to protect the due process rights of individuals who challenge their inclusion on watch lists.

First Post-*Boumediene* Habeas Hearing Scheduled

More than 6 years after the U.S. started detaining people at Guantanamo Bay, U.S. District Judge Richard J. Leon will hold the first *habeas corpus* hearing for a Guantanamo detainee on October 6, 2008. Judge Leon has 24 *habeas* Guantanamo cases on his docket. According to SCOTUSblog, Judge Leon stated at a hearing on Thursday, August 23, that he "remains committed to conducting hearings in these cases - all 24 - between now and Christmas." Fourteen other District Court judges are sharing the more than 200 other Guantanamo *habeas* cases that have been filed. These *habeas* cases are now moving forward following the U.S. Supreme Court's June 12, 2008 decision in *Boumediene v. Bush* recognizing the constitutional right of Guantanamo detainees to pursue *habeas corpus* challenges to their detention. The Constitution Project organized two *amicus curiae* - or "friend of the court" - briefs urging the Court to find that the detainees are entitled to *habeas*: [one](#) on behalf of seventeen nongovernmental organizations, including Human Rights Watch, Human Rights First, the Rutherford Institute, and the Constitution Project, and [the other](#) on behalf of twenty former federal judges appointed by Presidents Johnson, Nixon, Ford, Carter, Reagan, George H.W. Bush, and Clinton.

In the States

Texas to Review Possible Innocence of Executed Man

On August 16, the Texas Forensic Science Commission announced that it would begin reviewing the case of Cameron Todd Willingham, who was executed in 2004. Mr. Willingham, who consistently maintained his innocence, was convicted of arson following a deadly fire in his home that killed his children. His conviction was based on evidence that an accelerant was used in the blaze; the Commission will now review evidence presented by the Innocence Project of Cardozo Law School that suggests that there was no crime committed - that no accelerant was used and that the fire was an accident.

Above the Fold

CSM: Not the President's Call

On August 20, the *Christian Science Monitor* published an [op-ed](#) by former members of Congress Mickey Edwards (R-OK) and David Skaggs (D-CO), who chair the Constitution Project's bipartisan War Powers Committee. In the piece, the former congressmen decry the consolidation of war powers in the executive branch, and call on members of Congress "to treat the power to go to war as theirs and theirs alone." The piece was prompted by a report released last month by a commission led by former Secretaries of State James Baker and Warren Christopher, which urges replacing the 1973 War Powers Resolution with a new law. As they note in the op-ed, the Baker-Christopher approach unfortunately "turns the Constitution on its head" by asking whether the President needs to consult with Congress before sending troops into war, rather than recognizing that "Congress has the exclusive authority to decide if and when we go to war."

With a Little Help from Our Friends

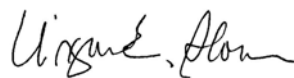
How to Close Guantanamo

One of the greatest challenges facing an Obama or McCain administration will be how to close the prison at Guantanamo Bay in a fashion that restores America's image abroad, ensures due process for those held there, and properly secures those suspected of terrorism. In recent months, both Human Rights First and the Center for American Progress have suggested plans for closing the detention facility. The Human Rights First report, "[How to Close Guantanamo: Blueprint for the Next Administration](#)," was released on August 19. "[How to Close Guantanamo](#)," by Ken Gude, was issued by the Center for American Progress on June 23.

Verbatim

"The question is in how many cases has there been wrong scientific testimony given and how much of a difference did that make in those cases." - [Barry Scheck](#), co-director of the Innocence Project, speaking about new evidence presented in the case of Cameron Todd Willingham.

Sincerely,



Virginia E. Sloan