

## From the desk of Virginia Sloan

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Dear Friend,

### In the Halls of Congress

#### Senate Hearing on Detainee Policy

On June 4, the Senate Committee on the Judiciary held a hearing on "[Improving Detainee Policy: Handling Terrorism Detainees within the American Justice System](#)." Several witnesses at the hearing - including [Tom Malinowski](#) of Human Rights Watch and Judge [John C. Coughenour](#) of the U.S. District Court for the Western District of Washington - testified that the civilian justice system was more than capable of handling most if not all trials of detainees. Judge Coughenour went so far as to say that "I believe it would be a grave error with lasting consequences for Congress, even with the best of intentions, to create a parallel system of terrorism courts unmoored from the constitutional values that have served us so well for so long." The Constitution Project's Liberty and Security Committee and Coalition to Defend Checks and Balances have [urged](#) the Supreme Court and Congress to restore the *habeas corpus* rights of detainees stripped by the Military Commissions Act.

### At City Hall

#### DC City Council Hears Testimony on Video Surveillance

On June 2<sup>nd</sup>, the Council's Committee on Public Safety and the Judiciary held a public hearing on the proposed Video Interoperability for Public Safety (VIPS) program, which will centralize monitoring of more than 5200 public video surveillance cameras in the District of Columbia, including those in and around schools, public housing, and residential neighborhoods. Constitution Project Senior Counsel Sharon Bradford Franklin [testified](#) that the Homeland Security and Emergency Management Agency (HSEMA) has adopted a "cart before the horse approach" in implementing the VIPS program and that its plans raise two fundamental concerns that the Council should examine and resolve: First, that HSEMA should think through and demonstrate to the Council whether such a centralized surveillance network is needed at all, and if so, to what extent; and second, that if the Council approves HSEMA's plans to proceed with some type of centralized network, HSEMA should be required to develop guidelines for operation of the system, including a robust privacy policy, and have those guidelines approved by the Council *before* any implementation of the program begins. Also testifying and expressing concern about VIPS were representatives of the ACLU of the National Capital Area and the Electronic Privacy Information Center.

## At City Hall (Cont'd.)

Sharon also urged the Committee to consider the consensus recommendations of the Constitution Project Liberty and Security Committee's report, [\*Guidelines for Public Video Surveillance: A Guide to Protecting Communities and Preserving Civil Liberties\*](#), to ensure that privacy safeguards are firmly in place before the execution of the proposed system. Sharon commended the Metropolitan Police Department's reliance on the *Guidelines* in developing its policies and regulations for operation of its ninety one video surveillance cameras, but stressed that the District's experience with the MPD system shows that continued oversight and more analysis of the cameras' impact are still needed, and that the new VIPS network requires even greater oversight.

Councilmembers Phil Mendelson and Mary Cheh both rightly expressed serious concerns about the VIPS program proceeding without safeguards in place. While unable to attend, former federal judge and Director of the FBI [William S. Sessions](#), who endorsed the *Guidelines* as a Member of our Liberty and Security Committee,, and current Chief of Police of Upper Moreland Township, Pennsylvania, [Thomas Nestel III](#) echoed the concerns of the Constitution Project in prepared statements. Both Sessions and Nestel urged the members of the Committee to rely on the Constitution Project's *Guidelines* and require that HSEMA develop a Council-approved set of written guidelines, including a privacy policy, before proceeding with the development of the proposed network.

## In The Courts

### **GA Executes Man Despite Claims of Ineffective Counsel**

Yesterday, on June 4, Georgia prison officials executed Curtis Osborne by lethal injection. When a Georgia jury convicted Mr. Osborne of two counts of murder in 1991 and sentenced him to death, it was in the shadow of claims that Johnny Mostiler, his court-appointed defense lawyer, told another client that Osborne was "a little n\*\*\*\*r" who "deserves to die." When the justices of the Georgia Supreme Court upheld the death sentence, it was in the face of evidence that Mostiler was handling more than 600 cases at the time he represented Mr. Osborne, more than four times the limit recommended by the American Bar Association. Mr. Mostiler also failed to investigate the facts of the case, and possible mitigating evidence, including that his client was mentally ill, and there is persistent doubt that he ever told his client that the government would agree to a life sentence in exchange for Mr. Osborne's guilty plea. Norman Fletcher, the former Chief Justice of the Georgia Supreme Court who voted to affirm the death sentence while in that post, [pleaded](#) with the Georgia Board of Pardons and Paroles to consider Mr. Osborne's ineffective representation and grant clemency. Justice Fletcher noted that procedural barriers prevented the court from addressing the various deficiencies in Mr. Osborne's trial. The Board unfortunately rejected Osborne's final appeal on Monday.

Sadly, Mr. Osborne's case is one among many in which ineffective assistance of counsel has resulted in wrongful convictions, left a defendant with an unduly harsh prison sentence, or worse. The Constitution Project's Death Penalty Committee has long [maintained](#) that an essential element of any capital trial is a well-resourced and well-trained defense team. Our National Committee on the Right to Counsel, on which Justice Fletcher serves, is currently preparing a nationwide study of indigent defense systems, and we will continue to update newsletter readers on the progress of that report.

## Above the Fold

### ***Viewsdays*: This Time We Really Mean It**

On May 27, the opinion staff of *Newsday* [explored](#) the issue of presidential signing statements on their Viewsdays blog. Citing the work of the Constitution Project's Coalition to Defend Checks and Balances and of Charlie Savage (the then-Boston Globe reporter who received a Pulitzer Prize for his coverage of this issue as well as the Constitution Project's first Award for Constitutional Commentary), the author argued that "It's unfortunate that the current presidency is so relentless in its pursuit of more power than the Framers had in mind."

### ***Atlanta Journal-Constitution*: A Stain on Justice**

On June 3, Judge Sessions, a member of the Constitution Project's Death Penalty Committee and an honorary co-chair of our National Committee on the Right to Counsel, authored an [op-ed](#) for the *Atlanta Journal-Constitution* on the case of Curtis Osborne (see our In the Courts section above). In the commentary, Judge Sessions says that "It is impossible to overstate the importance of competent, zealous representation of those accused of capital crimes; procedural barriers like Georgia's often prevent judges from correcting the injustices emerging from lower court decisions."

## With a Little Help from Our Friends

### HRF Report on Prosecution of Suspected Terrorists

On May 28, Human Rights First released an important [white paper](#) on the prosecution of terrorism-related cases. The report's authors reviewed more than 100 terrorism-related prosecutions, almost all of which occurred after September 11, 2001, and found that civilian courts were able to handle the complexities of the cases using existing law and without jeopardizing sensitive national security information.

### ACS National Convention

On June 12, the American Constitution Society for Law and Policy will open its [Sixth Annual ACS National Convention](#). The program - which includes Constitution Project committee members John Podesta, Beth Wilkinson, and Alberto Mora, among others - begins with a welcome reception at 6 p.m. on the 12th and concludes with a banquet at 7 p.m. on the 14<sup>th</sup>. The banquet celebrates the career of Patricia Wald for, among other things, her devotion to the public interest, including her service as the Chief Judge of the United States Court of Appeals for the D.C. Circuit and a judge on the International Tribunal for the Former Yugoslavia. Judge Wald is also a member of our Liberty and Security Committee and our Coalition to Defend Checks and Balances. [Registration](#) is required, and a special rate is available for students and those employed in government or the public sector.

## Verbatim

"The separation of powers has always been vital to our national security because it augments accountability and promotes wise choices. Checks and balances are not a historical curiosity. They are imperative today." - Aziz Huq, in [12 Steps to Restore Checks and Balances](#).

Sincerely,



Virginia E. Sloan