

From the desk of Virginia Sloan

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Resources

Dear Friend,

In the Halls of Congress

Senate Judiciary Approves State Secrets Bill

On April 24, the US Senate Judiciary Committee approved the [State Secrets Protection Act](#) by an 11-8 vote. The legislation would ensure that whenever the executive branch asserts the state secrets privilege, a judge will review the evidence and make an independent determination as to whether it should be kept secret and the privilege should apply. The Constitution Project has been a strong supporter of this legislation, and was [credited](#) by the bill's sponsor - Senator Edward Kennedy - as the organization that had articulated the "need for congressional guidance on this issue." Before the proposal was introduced, the Constitution Project's Liberty and Security Committee and Coalition to Defend Checks and Balances had issued a [statement](#) calling for substantive reform of the privilege. In addition, on April 3, as the Committee began its consideration of the legislation, the Constitution Project sent the Committee a letter refuting Attorney General Mukasey's arguments against the bill. In his March 31 [letter](#), the Attorney General stated that he would urge President Bush to veto the legislation. We will continue to track the bill's progress and will provide updates in this space.

At City Hall

DC Video Surveillance Network Hits Roadblock

In our last newsletter I reported the disheartening news that the District of Columbia had announced plans to consolidate control and monitoring functions of more than 4,000 video surveillance cameras around the city. The Constitution Project's [letter](#) to Mayor Adrian Fenty, which urged him to reconsider scrapping the Metropolitan Police Department's policies and procedures - some of the best in the nation for protecting privacy and civil liberties - was circulated to members of the DC Council. Since that time, the Council's Public Safety and Judiciary Committee - chaired by Councilmember Phil Mendelson - voted to [strip funding for the program](#) from the city's annual budget. Members unanimously rejected the request for nearly \$900,000 because "there has been no thought on what, if any, restrictions will govern the expanded system." The full Council retains the authority to restore the funding, and will vote on the budget on May 13th. The Public Safety and the Judiciary Committee has scheduled a public oversight hearing for May 30th on this program, called the "Video Interoperability for Public Safety" (VIPS) program. The Constitution Project will present testimony at the hearing and continue to urge public input and reasonable guidelines for the new system.

In the Courts

Former GTMO Prosecutor Testifies in *Hamdan* Hearing

I hesitate to include this story in our "In the Courts" section, but do so because I hope that cases like this one will finally be heard by an independent judge in a traditional federal court - as they should be. On April 28, the colonel who served - until his resignation in protest last October - as chief prosecutor in the military commissions system at the detention facility at Guantanamo Bay took the stand during a hearing in the case of Salim Ahmed Hamdan, allegedly once a driver for Osama bin Laden. (In an earlier proceeding, Mr. Hamdan challenged the military commission system and in 2006, in [Hamdan v. Rumsfeld](#), the Supreme Court struck down the system and held that the government had to comply with US laws and the laws of war.) Remarkably, Colonel Morris Davis was testifying *on behalf* of Mr. Hamdan, stating under oath that the military commissions system has been corrupted by undue political influence. Colonel Davis [told the military judge](#) presiding over the hearing that political appointees had urged him to focus on and expedite "sexy cases" and had pronounced that "we can't have acquittals." Colonel Davis' damning testimony is yet further evidence of the need for full restoration of the detainees' *habeas corpus* rights, as was called for last year in a [statement](#) of the Constitution Project's Liberty and Security Committee and Coalition to Defend Checks and Balances. The Supreme Court is currently considering the question of a constitutional right to *habeas corpus* for so-called "enemy combatants" in the case of [Boumediene v. Bush/al Odah v. United States](#).

State Secrets Claim Rejected in Watch List Case

On April 24, a federal magistrate judge [rejected](#) an assertion of the state secrets privilege by the Department of Homeland Security (DHS) in a case involving the government's consolidated counter-terrorist watch list, called the Terrorist Screening Database (TSDB). The lead plaintiff, Akif Rahman, is an American-born software executive who frequently travels internationally for business and to visit family. Mr. Rahman and the other plaintiffs in the class-action lawsuit are often detained for several hours when they attempt to reenter the country; on one occasion, Mr. Rahman was detained for nearly six hours and, for much of the time, was handcuffed to a chair and interrogated. The class was organized by the American Civil Liberties Union of Illinois, which claims that its clients are either victims of mistaken identity being confused with people actually listed or that they have been wrongly placed on the government watch list despite posing no actual threat to national security. DHS had claimed that it could not even reveal to the plaintiffs whether or not they are indeed listed in the TSDB, because this would jeopardize the security of state secrets. U.S. Magistrate Judge Sidney Schenkier rejected that assertion, noting that "in this case where the plaintiffs have alleged they have been stopped at border entries on numerous occasions each (38 in all for the eight plaintiffs), there is little force to the argument that revealing their TSDB status will alert these plaintiffs for the first time that they have been under government scrutiny." He therefore ordered the Department to disclose whether the plaintiffs are on the TSDB watch list, and also ordered that DHS produce certain investigative files to the court for an *in camera* review and determination of whether the state secrets privilege applies to that evidence. In addition to the Constitution Project's [statement](#) on the state secrets privilege (described above), our Liberty and Security Committee has issued a [report](#) on the need for significant reform of government watch lists, expressing specific concern with the frequency of mistaken identifications and the difficulty innocent individuals have in removing their names from the lists.

Above the Fold

Washington Post: Watching How We Are Watched

The April 27, 2008, edition of *The Washington Post* featured a [commentary](#) by Liberty and Security Committee members John Podesta and Judge William S. Sessions expressing their deep concerns about the proposal to network more than 4,000 public video surveillance cameras in Washington, DC. Podesta, president and CEO of the [Center for American Progress](#) and White House Chief of Staff in the Clinton administration, and Sessions, a partner at [Holland & Knight LLP](#) and former US attorney, federal judge, and Director of the FBI, urged Mayor Adrian Fenty to “seize this opportunity to demonstrate his commitment to both the liberty and security of Washington and his constituents.”

Huffington Post: Killing in Secret

John Whitehead, president of [The Rutherford Institute](#) and member of the Constitution Project’s Death Penalty Committee, authored an April 29, 2008, article for *The Huffington Post* on the shroud of secrecy surrounding the use of lethal injection protocols. Whitehead specifically noted that, in the aftermath of the Supreme Court’s decision in *Baze v. Rees* (which rejected a challenge to the generally-used three-drug protocol), “we are in need of a nationwide moratorium on executions until these matters are sorted out and opened up to public review.”

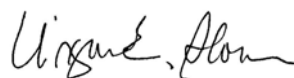
Washington Times: Air Marshals Grounded in List Mix-Up

We made need to create a new category of newsletter story for “things that would be funny if they weren’t true.” On April 30, *The Washington Times* [reported](#) that some air marshals have for years been prevented from boarding the flights they were ordered to protect because their names appeared on government watch lists. We will continue our work with federal legislators to [reform government watch lists](#) and will update this story as it develops.

Verbatim

“This administration continues to show unprecedented deference to secrecy rather than transparency. The State Secrets Protection Act clarifies that no one, not even a president, is above the law. We can have security while preserving the Constitution’s system of checks and balances and the important role of the courts. This legislation is a step to ensure that our laws protect both.” - [Senator Patrick Leahy](#), on the Senate Judiciary Committee’s approval of the State Secrets Protection Act.

Sincerely,



Virginia E. Sloan