

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

THE CONSTITUTION PROJECT'S 2011 CONSTITUTIONAL CHAMPION AWARD

REMARKS BY VIRGINIA SLOAN

APRIL 14, 2011

GOOD EVENING. WELCOME AND THANK YOU FOR COMING.

WE ARE HONORED TO BE JOINED TONIGHT BY SUCH A DISTINGUISHED AND DIVERSE GROUP, FROM CONGRESS, THE EXECUTIVE BRANCH, AND THE JUDICIARY, AS WELL AS FORMER DIPLOMATS, AND EMINENT LAWYERS AND JOURNALISTS.

BEFORE THE AWARDS PART OF OUR BRIEF CEREMONY, I WANTED TO REPORT TO YOU ON THE CONSTITUTION PROJECT'S PAST YEAR.

THE 2008 ELECTIONS LED MANY OF US TO HOPE THAT WE COULD MOVE BEYOND THE PAINFUL DEBATES THAT WERE DIVIDING US, AMERICAN FROM AMERICAN, AND OUR COUNTRY FROM THE WORLD. WE HAD NO IDEA HOW WRONG WE WERE.

2010 SADLY SAW NOT JUST A RENEWAL OF THOSE BATTLES, BUT BATTLES THAT WERE MORE PARTISAN AND VICIOUS. AND EVEN MORE THAN IN THE PAST, THE CONSTITUTION REPRESENTED A PARTISAN CLUB, USED TO HIT THE OTHER SIDE OVER THE HEAD.

IN OUR VERY FIRST REPORT, OUR COMMITTEE ON CONSTITUTIONAL AMENDMENTS NOTED THAT THE NATION'S FOUNDERS INTENDED

POLICYMAKERS TO EXERCISE RESTRAINT, RATHER THAN TO USE THAT PROCESS AS A SUBSTITUTE FOR ORDINARY POLICY-MAKING AND THUS AS A POLITICAL TOOL THAT Demeaned THE CONSTITUTION ITSELF. THE SAME KIND OF RESTRAINT SHOULD APPLY TO TODAY'S DEBATES. BUT TOO OFTEN IT DOES NOT.

WE ALL KNOW THAT THE DEBATES ABOUT WHAT THE CONSTITUTION SAYS WILL CONTINUE, AND THAT THEY ARE AN INTEGRAL PART OF OUR DEMOCRATIC PROCESS, IN THE TRADITION OF THE FOUNDING ITSELF.

BUT WE SHOULD NOT TURN SIMPLE POLICY DISAGREEMENTS INTO IMAGINED OR PSEUDO CONSTITUTIONAL CRISES, SIMPLY TO GAIN A PARTISAN ADVANTAGE. WE SHOULD NOT ASSERT WITHOUT BASIS THAT A SIMPLE POLICY OBJECTIVE IS A CONSTITUTIONAL IMPERATIVE.

WHILE WE SHOULD BE GLAD THAT AMERICANS WANT TO KNOW MORE ABOUT THE CONSTITUTION, WE SHOULD BE TROUBLED BY REPORTS LIKE THAT OF THE RETIRED AEROSPACE ENGINEER WITH NO CONSTITUTIONAL BACKGROUND WHATSOEVER WHO IS TEACHING THEM ABOUT THE CONSTITUTION. NO WONDER OUR DEBATES ARE BASED ON WILDLY INACCURATE ASSERTIONS, AND DESCRIPTIONS OF A CONSTITUTION THAT FEW OF US IN THIS ROOM WOULD RECOGNIZE.

WE HAVE AN OBLIGATION AS CITIZENS TO KNOW WHAT THE CONSTITUTION SAYS, WHAT IT DOESN'T SAY, AND TO AVOID USING IT AS A POLITICAL TOOL TO ACCOMPLISH PURELY POLITICAL OBJECTIVES.

SINCE 1997, THE CONSTITUTION PROJECT HAS LED THE WAY IN DEMONSTRATING HOW VITAL IT IS TO WORK WITH UNLIKELY ALLIES. WE KNOW THAT TO CARRY OUT OUR MISSION OF PROMOTING CONSTITUTIONAL SAFEGUARDS, IT IS THOSE UNLIKELY ALLIES – SUCH AS NATIONAL SECURITY EXPERTS, FORMER JUDGES, PROSECUTORS, AND DIPLOMATS, MILITARY LEADERS, PRISON AND OTHER LAW

ENFORCEMENT OFFICIALS, AND CONSERVATIVES, WHO PROVIDE US WITH EXPERTISE AS WELL AS AUTHORITY, ACCESS, AND INFLUENCE.

IN THE PAST YEAR, WE HAVE INCREASED OUR WORK WITH RESPECTED LEADERS FROM ACROSS THE IDEOLOGICAL SPECTRUM. RETIRED FEDERAL DISTRICT COURT JUDGE JAMES ROBERTSON, FOR EXAMPLE, HAS JUST JOINED OUR LIBERTY AND SECURITY COMMITTEE TO PROVIDE THE BENEFIT OF HIS EXPERTISE ON *HABEAS* CASES FOR GTMO DETAINEES. WE ARE WORKING WITH HARRY SHORSTEIN, A 20-YEAR STATE'S ATTORNEY WHO PROSECUTED SCORES OF CAPITAL CASES IN FLORIDA. AND WE HAVE CREATED A CLEARINGHOUSE FOR NEW VOICES ON CRIMINAL JUSTICE REFORMS, TO FORMALIZE THE IDENTIFICATION OF AN ARRAY OF FORMER LAW ENFORCEMENT OFFICIALS, JUDGES, PROSECUTORS, AND OTHER "UNLIKELY ALLIES," MATCHING THEM WITH OUR EFFORTS AND OTHERS NATIONWIDE TO ACHIEVE LONG-NEEDED CRIMINAL JUSTICE REFORMS.

WE GUIDE THESE INDIVIDUALS TO CONSENSUS SOLUTIONS TO OUR COUNTRY'S TOUGHEST CONSTITUTIONAL CHALLENGES. WE DEMONSTRATE THAT, WITH KNOWLEDGE OF THE CONSTITUTION AND A GOOD FAITH WILLINGNESS TO LISTEN TO THOSE WHO THINK DIFFERENTLY, BIPARTISANSHIP IS ACHIEVABLE.

NO ONE CAN POSSIBLY CHALLENGE THE COMMITMENT OF THESE PEOPLE TO LAW ENFORCEMENT, NATIONAL SECURITY, AND JUSTICE. ALL OF US AT THE CONSTITUTION PROJECT COUNT OURSELVES AS LUCKY TO WORK WITH THEM TO CREATE CONSENSUS BIPARTISAN REPORTS AND RECOMMENDATIONS THAT ARE CREDIBLE AND EFFECTIVE, AND THEN ON PRACTICAL, STRATEGIC AND ACTION-ORIENTED STEPS TO MAKE SURE THOSE REPORTS REACH THE RIGHT PEOPLE.

THROUGH OUR CRIMINAL JUSTICE AND RULE OF LAW PROGRAMS, OUR WORK CONTINUES TO TAKE US FROM THE HALLS OF CONGRESS TO THE

CELLS OF DEATH ROW INMATES, TO STATE LEGISLATURES, AND TO THE CHAMBERS OF OUR COUNTRY'S HIGHEST COURTS.

ON A WIDE ARRAY OF ISSUES, WE HAVE PROMOTED THE VIEWS OF THESE UNLIKELY ALLIES NOT ONLY THROUGH OUR REPORTS AND RECOMMENDATIONS, BUT ALSO THROUGH PUBLIC EDUCATION EVENTS, STATEMENTS, LETTERS, OP-EDS, AND TESTIMONY. THESE ARE JUST SOME EXAMPLES.

OUR NEW TASK FORCE ON DETAINEE TREATMENT IS EVALUATING OUR COUNTRY'S ACTIONS FROM AT LEAST THE CLINTON THROUGH THE OBAMA ADMINISTRATIONS. IT WILL REPORT ON HOW THE GOVERNMENT MUST PROTECT OUR SECURITY WHILE AT THE SAME TIME FOLLOWING OUR LAWS AND HONORING OUR VALUES.

WE HAVE OPPOSED THE TERRORIST EXPATRIATION ACT, INVESTIGATIONS OF LAWYERS FOR TERRORIST SUSPECTS, AND FIRST AMENDMENT VIOLATIONS IN OUR MATERIAL SUPPORT LAWS. CONSTITUTION PROJECT FELLOW MORT ROSENBERG, ONE OF THE COUNTRY'S LEADING EXPERTS, IS UPDATING OUR UNIQUE HANDBOOK ON CONGRESSIONAL INVESTIGATIONS.

MICKEY EDWARDS AND DAVID SKAGGS, THE FORMER REPUBLICAN AND DEMOCRATIC MEMBERS OF CONGRESS, WHO CO-CHAIR OUR WAR POWERS COMMITTEE, ARGUE THAT THE PRESIDENT INTRUDED ON CONGRESS'S POWER TO DECLARE WAR BY OUR MILITARY ACTIONS IN LIBYA AND ARE CONCERNED ABOUT PROPOSALS FOR A BROAD AND BROADLY DEFINED NEW WAR AUTHORITY.

WE FACILITATED THE UPDATE OF *SMART ON CRIME*, OUR 2008 TRANSITION DOCUMENT, WORKING WITH OVER 40 ORGANIZATIONS OF ALL POLITICAL STRIPES. WE SUCCESSFULLY SUPPORTED CLEMENCY FOR KEVIN KEITH,

AN OHIO DEATH ROW INMATE WHOSE CASE PRESENTED SIGNIFICANT DOUBTS ABOUT HIS GUILT.

GEORGIA'S FORMER CHIEF JUSTICE, NORMAN FLETCHER, AND LARRY THOMPSON, DEPUTY ATTORNEY GENERAL IN THE GEORGE W. BUSH ADMINISTRATION, WROTE AN OP-ED DECRYING A 5-YEAR DELAY IN TRYING A MURDER SUSPECT BECAUSE GEORGIA HAS NO MONEY TO PAY FOR HIS LAWYER. BOB BARR, FORMER GEORGIA REPUBLICAN CONGRESSMAN AND U.S. ATTORNEY, WROTE A COLUMN CALLING FOR "WHAT TRUE CONSTITUTIONALISTS REMAIN IN THE CONGRESS" TO SPEAK UP AGAINST ENCROACHMENTS UPON *MIRANDA* RIGHTS.

WE ARE TRAINING ADVOCATES ON HOW TO USE UNLIKELY ALLIES, HELPED ORGANIZE A HOUSE JUDICIARY COMMITTEE SUMMIT ON INDIGENT DEFENSE, WITH JUDGES, PROSECUTORS, DEFENDERS, DOJ REPRESENTATIVES, AND ACADEMICS PARTICIPATING, AND HELD SEVERAL SIMILAR EVENTS AROUND THE COUNTRY. WE HOSTED CONGRESSIONAL STAFF BRIEFINGS AND – HERE AND IN NY - DISCUSSIONS ON TRIALS FOR THE GUANTANAMO DETAINEES AND THE UNCONSTITUTIONALITY OF INDEFINITE DETENTION WITHOUT TRIAL OR EVEN CHARGE.

WORKING WITH SENATOR LEAHY'S STAFF AND THE JUSTICE DEPARTMENT ON THE JUSTICE FOR ALL ACT, WE SUCCESSFULLY URGED THAT THE BILL REQUIRE TRANSPARENCY IN HOW STATE CRIMINAL JUSTICE SYSTEMS SPEND FEDERAL FUNDS, THAT STATES BE ENCOURAGED TO USE THOSE FUNDS FOR INDIGENT DEFENSE, AND THAT DOJ BE ABLE TO SUE STATES WITHOUT ADEQUATE INDIGENT DEFENSE SYSTEMS.

WE ARE FREQUENTLY ASKED TO FILE OUR OWN *AMICUS* BRIEFS AND TO COORDINATE BRIEFS FROM UNLIKELY ALLIES ON SOME OF THE MOST IMPORTANT CONSTITUTIONAL CHALLENGES OF THE DAY. IN 18 BRIEFS, WRITTEN BY SOME OF THE COUNTRY'S TOP SUPREME COURT

ADVOCATES, WE WEIGHED IN ON ISSUES SUCH AS MATERIAL SUPPORT FOR TERRORISTS, FISA, STANDING AND THE FIRST AMENDMENT, THE STATE SECRETS PRIVILEGE, AND OPPOSITION TO PREVENTIVE DETENTION.

WE ARGUED THAT FLORIDA MUST UPLOAD A DNA SAMPLE INTO A NATIONAL DATABASE THAT COULD EXONERATE AN INNOCENT PERSON AND IDENTIFY THE TRUE KILLER.

IN ONE OF MY PERSONAL FAVORITES, NOW PENDING IN THE SUPREME COURT, A MAJOR LAW FIRM'S MAILROOM MISTAKENLY RETURNED TO THE STATE COURT A LETTER DENYING THE CLIENT'S APPEAL. THE STATUTE OF LIMITATIONS THEN EXPIRED WITHOUT THE CLIENT OR HIS LAWYER EVER KNOWING IT, BARRING HIM FROM FILING HIS FEDERAL *HABEAS* PETITION. ALABAMA WANTS TO EXECUTE HIM ANYWAY.

OUR REPORT ON DATA MINING ACKNOWLEDGES THAT IT MAY BE A USEFUL TOOL TO IDENTIFY WRONGDOING, BUT WHILE THE GOVERNMENT SIFTS THROUGH MASSES OF PERSONAL AND OTHER DATA, WE ARE PRESSING FOR PROTECTING PRIVACY RIGHTS AND BALANCING NATIONAL SECURITY NEEDS WITH CIVIL LIBERTIES. WE ADVOCATE FOR SIMILAR GOALS IN A BADLY NEEDED UPDATE OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT.

THE ADMINISTRATION'S EXECUTIVE ORDER ON "CONTROLLED UNCLASSIFIED INFORMATION" INCORPORATES MANY OF OUR RECOMMENDATIONS; WE ARE NOW WORKING WITH THEM ON IMPLEMENTATION. BEFORE THE ORDER, THERE WERE OVER 100 DIFFERENT DEFINITIONS THAT PREVENTED SHARING THIS UNCLASSIFIED BUT STILL SENSITIVE INFORMATION WITHIN GOVERNMENT AND WITH THE PUBLIC.

HILL STAFFERS TOLD US THAT THE CONSTITUTIONAL ISSUES REGARDING IMMIGRATION REFORM HAVE BEEN NEGLECTED, SO WE ARE WORKING TO

REFORM LAWS ON IMMIGRATION DETENTION AND ACCESS TO COUNSEL AND WILL SOON BE ISSUING A REPORT ON STATES' ROLES IN ENFORCING FEDERAL IMMIGRATION LAWS.

JUST LAST WEEK, ATTORNEY GENERAL HOLDER ANNOUNCED THAT THE ALLEGED 9/11 CO-CONSPIRATORS WILL BE TRIED BY MILITARY TRIBUNALS RATHER THAN THE FEDERAL COURTS WE HAVE SUPPORTED. WE WILL WORK TO MAKE SURE THAT THESE TRIBUNALS HAVE CONSTITUTIONAL PROTECTIONS EQUAL TO THOSE IN THE FEDERAL COURTS, AND WILL CONTINUE TO OPPOSE LEGISLATION THAT ESSENTIALLY TIES THE PRESIDENT'S HANDS IN THIS AREA.

GIVEN THIS DECISION, AND THE PRESIDENT'S ANNOUNCEMENT THAT HE WILL INDEFINITELY DETAIN SOME OF THOSE AT GITMO WITHOUT TRIAL OR EVEN CHARGE, WE HAVE CONTINUED TO WORK WITH THE SIGNERS OF OUR *BEYOND GUANTANAMO DECLARATION* TO LOBBY FOR CIVILIAN COURTS AND TO OPPOSE INDEFINITE DETENTION.

I AM PROUD OF THE SHEER VOLUME OF SUBSTANTIVE AND TIMELY ANALYSIS, INFORMATION, AND ADVOCACY THAT OUR TEAM PRODUCES, AND THE INCREASING ATTENTION AND INFLUENCE OUR WORK RECEIVES FROM POLICYMAKERS, THE MEDIA, AND THE PUBLIC.

WE AMPLIFY OUR IMPACT BY LEVERAGING OUR LIMITED RESOURCES, RELYING ON THE INVALUABLE PRO BONO CONTRIBUTIONS OF LAW FIRMS, OUR COMMITTEE MEMBERS, AND OTHER EXPERTS, SUCH AS STEVE VLADECK, THE PROMINENT CONSTITUTIONAL LAW SCHOLAR AT THE WASHINGTON COLLEGE OF LAW - AND CONSTITUTION PROJECT SUPREME COURT FELLOW - WHO BRIEFS CONGRESS ON THE COURT'S ACTIONS, AND ADVISES THEM ON NEEDED RESPONSES. MANY OF THEM ARE HERE TONIGHT.

I ALSO WANT TO THANK THE VARIOUS FOUNDATIONS AND INDIVIDUALS WHO HAVE RECOGNIZED THE IMPORTANCE OF OUR WORK AND SUPPORTED OUR ABILITY TO GROW, TO UPDATE OUR WEBSITE, TO INCREASE AND DIVERSIFY OUR BOARD, AND TO EXPAND OUR STAFF AND COMMUNICATIONS OUTREACH AND THE SCOPE AND INFLUENCE OF OUR WORK. WE'VE EVEN CREATED OUR FIRST ANNUAL REPORT, AND I HOPE YOU'LL TAKE A COPY WHEN YOU LEAVE.

AND I WANT TO PARTICULARLY ACKNOWLEDGE THE EXCEPTIONAL WORK OF THE CONSTITUTION PROJECT STAFF, WHICH HAS NOW GROWN TOO BIG FOR ME TO INTRODUCE INDIVIDUALLY. I DO WANT TO SINGLE OUT BRIDGET WARREN AND FRANCINE WARGO FOR THEIR HARD WORK IN MAKING THIS EVENT A SUCCESS AND CONVEY OUR APPRECIATION TO JONES DAY FOR MAKING THIS BEAUTIFUL ROOM AND THEIR GASTRONOMIC TALENTS AVAILABLE TO US.

WE ARE, WITH ALL OF YOU IN THIS ROOM AND SO MANY OTHERS, MAKING A REAL DIFFERENCE. BUT WE CANNOT DO IT WITHOUT YOU. IN YOUR PROGRAM, YOU WILL SEE A CONTRIBUTION CARD, AND I HOPE YOU WILL USE IT TO GIVE AS GENEROUSLY AS YOU CAN. YOUR SUPPORT IS ESSENTIAL TO OUR ABILITY TO DEFEND THE CONSTITUTION AND WE ARE ENORMOUSLY GRATEFUL FOR IT.

AND NOW, THANKS TO SHELDON KRANTZ, WE'RE GOING TO SEE A WONDERFUL VIDEO ON JUDGE WALD, FOLLOWED BY REMARKS BY LARRY MARSHALL FROM STANFORD LAW SCHOOL, WHOSE WORK ON WRONGFUL CONVICTIONS HAS SERVED AS AN INSPIRATION FOR SO MANY AROUND THE COUNTRY, AND WHO IS REPRESENTING JUDGE WALD'S FORMER CLERKS, MANY OF WHOM HAVE GATHERED HERE TONIGHT TO HONOR HER.