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## From the President's Desk

We need your help. Earlier this year, we launched the **Clearinghouse of New Voices for Criminal Justice Reform**. Our Clearinghouse is a group of individuals who favor criminal justice reforms on a variety of different issues, but who have traditionally been seen as "unlikely allies" for reform—and thus as particularly persuasive. These unlikely allies include former judges, prosecutors, police officers, corrections officers, and those who have positioned themselves as "tough on crime," a group that often includes conservatives.

Since the launch of the Clearinghouse, we have undertaken numerous projects to promote these individuals' voices in criminal justice reform campaigns throughout the country—including: a letter to the Governor of Ohio successfully seeking clemency for Kevin Keith, a potentially innocent death row inmate; an *amicus* brief to the United States Supreme Court calling for the reversal of a death sentence when the prosecutor and judge had been romantically involved; and a letter to the Senate Judiciary Committee calling for reform of the crack-powder sentencing disparity.

For the Clearinghouse to succeed, it must continue to grow, adding names of new "unlikely allies" who are willing to speak out in favor of reforms. That is where you come in. If you fit the description of an "unlikely ally," please join the Clearinghouse by emailing [mschmid@constitutionproject.org](mailto:mschmid@constitutionproject.org). If you know of other unlikely allies, please suggest them to us. And if you know of reform campaigns where the Clearinghouse might be helpful, please let us know. All contact information will be kept confidential by the Constitution Project. We appreciate your help in forging a new path forward in criminal justice reform.

## CP News

### Constitution Project Hails Enactment of Intelligence Policy Reforms

The Constitution Project hails passage of the first intelligence authorization bill in five

years. The legislation, which was signed into law by President Obama on October 7th, contains a number of significant reforms endorsed by the Project and other open government organizations.

The new intelligence law promotes checks and balances and will enhance accountability within the intelligence community. In particular, the law: (1) requires the White House to expand notification of presidential covert action “findings,” or directives, from just the “Gang of Eight” (the congressional leadership and leaders of the House and Senate intelligence committees) to the entire membership of both intelligence committees, and (2) creates an Inspector General for the intelligence community. The Constitution Project previously called for expansion of the notification of Congress on intelligence matters in our 2009 report, [\*When Congress Comes Calling\*](#).

The final legislation is also notable for what it does not contain. The House version of the bill included language that would have exempted “terrorist identity information” from the reach of the Freedom of Information Act (FOIA). Such an exemption would have made it harder for people seeking to challenge their inclusion on a watch list. In April, the Constitution Project joined a coalition of two dozen nongovernmental organizations in writing to Congress saying this provision should be struck from the bill. We are grateful that our coalition advocacy was successful on this point. Our 2007 report, [\*Promoting Accuracy and Fairness in the Use of Government Watch Lists\*](#), calls for reforms to make it *easier* to challenge one’s inclusion on a watch list.

### News in Brief

- As reported in *The Washington Post*, a federal judge in New York last week barred a key prosecution witness from testifying in the trial of a suspect in the 1998 U.S. embassy bombings in East Africa after ruling that the government learned of the man through coercive CIA interrogations at a secret prison overseas. The *Post*’s online coverage of the breaking news included a quote from **Constitution Project Counsel Mason Clutter**. Responding to an assertion that the judge’s ruling demonstrates the danger of trying terrorists in federal courts, Ms. Clutter said, “The Obama administration has said this kind of evidence is not permissible in commissions, either. We don't see a larger implication.”
- On October 8th, the *Atlantic Journal-Constitution* published [an op-ed](#) by former Georgia Supreme Court Chief Justice **Norman S. Fletcher** and former Bush Administration Deputy Attorney General **Larry D. Thompson**. The authors, both members of our National Right to Counsel Committee, called attention to the case of Khanh Dinh Phan, an indigent defendant awaiting trial on murder charges *for more than five years*, because the state of Georgia claims there is no money to pay defense counsel or their expenses. Yet, as Fletcher and Thompson point out, “Since Georgia’s new indigent defense system was created in 2005, more than \$20 million raised from court fines and fees that was originally intended to fund defense counsel has been siphoned off and used for other purposes.” The authors conclude that the trial delay jeopardizes the reliability of any conviction that may be obtained in the case, and, thus, the prosecutor should take the death penalty off the table.
- Amid growing concerns that Congress is creating broad new criminal statutes without including meaningful intent requirements and imposing vicarious liability for the acts of others without evidence of culpability, the House Judiciary’s Subcommittee on Crime, Terrorism, and Homeland Security held its second

bipartisan hearing on the issue of overcriminalization on September 28th, entitled, “Reining in Overcriminalization: Assessing the Problems, Proposing Solutions.” The Constitution Project has been active in a coalition organized by the Heritage Foundation that has worked to highlight the danger of overcriminalization and vague criminal statutes. A commentary on the hearing authored by Subcommittee Chairman Robert C. “Bobby” Scott (D-VA), which includes a list of the diverse organizations working with the coalition, is [available here](#). As Representative Scott states, “More and more . . . modern criminal law has forsaken the guilty-mind requirement. . . . Without its safeguards, honest citizens are at risk for falling into traps and being victimized and criminalized by poorly crafted legislation and overzealous prosecutors.”

- Last Friday, the National Association of Former United States Attorneys (NAFUSA), convened for their annual meeting in New York City and heard a panel discussion on the use of military commissions and federal civilian courts in trying terrorist suspects. Eugene Fidell, the president of the National Institute of Military Justice and a member of the Project’s Liberty and Security Committee, participated in the balanced and informative panel discussion. The panelists discussed the pros and cons of trying terrorist suspects in the military commissions system and traditional federal criminal courts. For more information on this panel discussion and the NAFUSA conference, click [here](#).

More information is available on the [Constitution Project's website](#), including how to [subscribe to our newsletter](#) and a way for you to [show your financial support](#).

The Constitution Project (TCP) is a national, bipartisan think tank that develops consensus-based solutions to some of the most difficult constitutional challenges of our time. Established in 1997, TCP is renowned for its ability to bring together *unlikely allies*—experts and practitioners from across the political and ideological spectrum—in order to promote and safeguard America’s founding charter. TCP works on criminal justice and rule of law issues by undertaking scholarship, policy reform and public education initiatives. The Constitution Project was born out the belief that we must cast aside the labels that divide us, in order to keep our Constitution and our democracy strong.

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