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## Task forces could help end shell game

*By Robert Blitt and Otis Stephens*

Throughout U.S. history, threats to national security have resulted in abridgment of various constitutional rights, including abolition of the habeas corpus privilege and major restrictions on due process and equal protection of the laws.

These encroachments on individual rights have generally been temporary. Constitutional values have for the most part been restored — even expanded once the perceived national security threat has ended.

After 9/11, President George W. Bush's advisers diligently crafted a reality designed to justify the administration's methods for combating an enemy that, in Bush's words, "lurks in parts around the world."

These government-sanctioned methods included indefinite detention, denial of due process, "enhanced" interrogation including waterboarding, use of military dogs and sensory deprivation, "extraordinary rendition" and an expansion of the state-secrets doctrine.

As a consequence, the nation was left with a stain on its legacy of jealously safeguarding rights and on its status as a beacon for the promotion of individual freedom and human dignity abroad.

Immediately after taking office, President Barack Obama issued three executive orders: one aimed at closing the detention facility at Guantanamo Bay; the other two to "review detention policy options" and to ensure "lawful interrogations."

For many, these orders held out the promise of reaffirming and restoring U.S. commitment to constitutional values and treaty obligations. After more than 100 days, however, Obama's commitment to rectify constitutional and treaty violations remains frustratingly inconclusive.

## Invoking state-secrets doctrine

Recent executive orders, for example, do not apply to detention facilities "used only to hold people on a short-term, transitory basis" and are silent regarding status of more than 600 detainees held in the U.S.-controlled "Bagram Theater Internment Facility" in Afghanistan. In addition, the Obama administration has already twice appealed court rulings permitting habeas petitions for Bagram detainees apprehended outside Afghanistan. These actions have turned the seeming policy reversal on indefinite detention into a street-corner shell game with detainees being shuttled from one venue to the next to avoid judicial oversight.

Obama has also chosen to adhere to the Bush administration's invocation of the state-secrets doctrine to block judicial review of the CIA's "extraordinary rendition" program. Significantly, this has not been an isolated position. The Justice Department has similarly invoked the doctrine to preclude a case concerning warrantless surveillance of a now-defunct Islamic charity. The courts have ordered both

cases to proceed.

Despite mixed signals, we see room for hope: Two task forces on detainee disposition and interrogation and transfer policies will report to the president by midsummer. These reports hold the promise of cementing a constitutional approach to combating al-Qaida and its ilk by affirming national security can be safeguarded without sacrificing recognized standards of due process and humane treatment.

In addition, Obama now has the opportunity to bring closure to this dark chapter in U.S. history. Above all else, whether by truth commission or criminal investigation, it is essential the mechanisms of federal government be unimpeded in reaching a comprehensive, transparent and nonpartisan accounting of past governmental actions, including but not limited to those of the Bush administration.

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