



2018 ANNUAL REPORT

Institute for Constitutional Advocacy and Protection

GEORGETOWN LAW



EXECUTIVE DIRECTOR'S LETTER

It is my privilege to present the 2018 Annual Report of the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center. When I was a law student, my constitutional law professor liked to say that the phrase “first annual” reflects a distinctively—perhaps uniquely—American optimism. That’s what this report is: ICAP’s first annual report, and a statement of our optimism for protecting America’s constitutional system. We at ICAP are proud of where we’ve come in just twelve months, and we look forward to where we’re going in the next twelve—and beyond.

Sincerely,

Joshua A. Geltzer

*Executive Director and Visiting Professor of Law
Institute for Constitutional Advocacy and Protection
Georgetown University Law Center*

NO HUMAN
BEING
IS ILLEGAL

OUR MISSION

The mission of the Institute for Constitutional Advocacy and Protection is to use the power of the courts to defend American constitutional rights and values.

The Institute, based at Georgetown University Law Center, draws on expert litigators, savvy litigation strategy, and the constitutional scholarship of Georgetown law faculty to vindicate individuals' rights and protect America's constitutional way of life.

At the heart of the Institute is its litigation work. The courts remain a critical venue in which constitutional claims can be vindicated, and the Institute uses that venue by bringing its own litigation, working with partners to do so, filing amicus briefs, and supporting others' efforts to litigate in furtherance of constitutional rights and values. In an era when constitutional discourse, including in the context of litigation, tends to be politically polarized, the Institute offers vital understandings of the Constitution and its protections that draw on scholarship and a wide range of practical experience, including extensive service in the Federal Government.

Critical constitutional dialogue also occurs outside the courts and in the public square. The Institute uses public education to inform and elevate that dialogue so that more Americans can understand what the Constitution says, why it matters, and how today's political developments fit in. Through direct engagement with the public in sponsored events as well as through writing and speaking about the Constitution, the Institute heightens and grounds today's constitutional conversation.

The Institute also plays a key role within Georgetown University Law Center by involving law students in the Institute's work. Through a practicum seminar and additional research opportunities, law students offer key legal research and drafting to the Institute's litigation efforts. Additionally, the Institute provides litigation support to other centers and institutes within Georgetown University Law Center.

"There are lines that we worry about being crossed, that we think we see being crossed. And the fact that we have worked on these issues and, at times, tried to articulate where the line is from the other side gives us a real perspective and hopefully a credibility."
ICAP Executive Director Joshua Geltzer, NPR, 8/9/17



OUT
THE COURTS

OUR WORK: LITIGATION

In its first year, ICAP has concentrated its litigation efforts on six core issues:

1. Addressing the threat of violence posed by unlawful private paramilitary activity at rallies and protests;
2. Encouraging trust between law enforcement and immigrant communities;
3. Protecting voting rights;
4. Defending freedom of speech and religion;
5. Pursuing criminal justice reform; and
6. Sticking up for whistleblowers, transparency, and the Special Counsel.

Perhaps most notably, ICAP scored a major victory when the last two active defendants in a lawsuit filed after the August 2017 “Unite the Right” rally in Charlottesville, Virginia, agreed to be bound by court-enforceable consent decrees that permanently prohibit these rally organizers and militias, alt-right organizations, and their leaders from participating in Charlottesville protests and rallies as unauthorized organized armed groups using force or projecting the ability to do so. The case was brought on behalf of the City of Charlottesville and a number of small businesses and homeowners’ associations. A state court opinion accepting the plaintiffs’ legal theories advanced under the state constitution, state anti-paramilitary statutes, and common law established important precedent on which other jurisdictions can rely to prevent violence at public protests and rallies.

ICAP currently serves as counsel or co-counsel in a wide range of lawsuits fighting to defend key constitutional rights and values. For example:

- We have been part of the challenge to Texas’s anti-sanctuary city statute, “SB4,” with a focus on the First Amendment concerns raised by the statute.
- We are defending two cities in Indiana against challenges claiming that their welcoming city ordinances violate state law.
- We are challenging predatory schemes for collecting fines and fees from the indigent in Oklahoma.
- We are seeking citizenship for someone eligible for it through military service but for whom approval of her citizenship application was withdrawn by the government without explanation.
- We are seeking records from the State Department pertaining to the promotion of Mara-Lago on official websites and social media accounts.

ICAP has also submitted 21 amicus briefs to all levels of the federal court system on issues ranging from whistleblower protections to DACA to the most fundamental criminal procedural rights to free expression on social media: three in the Supreme Court; seven in courts of appeals; and eleven in district courts.

OUR WORK: PUBLIC EDUCATION

ICAP has added its voice to public debates on the Constitution, with op-eds appearing in the *Washington Post*, the *Los Angeles Times*, *The Hill*, and elsewhere:

- We wrote an **op-ed** in the *Washington Post* explaining **how suppression of evidence by prosecutors leads to unfair trials.**
- We published an **op-ed** in *The Hill* urging **an end to the retaliatory enforcement of immigration law.**
- We wrote an **op-ed** in the *Los Angeles Times* and **another** on CNN.com explaining **a range of rationales for finding Trump's travel ban unlawful.**
- We published an **op-ed** in *The Hill* explaining why, from the perspective of on-the-ground public safety officials, **federal efforts to undermine community trust in policing make us all less safe.**
- We joined with an outside expert to publish an **op-ed** in the *Washington Post* **calling for greater transparency regarding cybersecurity preparations for the 2020 Census.**
- We published an **op-ed** in *The Hill* urging the Office of Special Counsel to **reaffirm protections against retaliation for senior civil servants.**

ICAP has also sent a number of letters to government officials raising legal and concerns on behalf of expert communities:

- We sent a **letter** to President Trump on behalf of 22 former U.S. Attorneys urging him **to allow Special Counsel Robert Mueller time and space to complete his work.**
- We filed a **letter** on behalf of 13 leading legal scholars in **support of a whistleblower alleging retaliatory reassignment by the Interior Department.**
- We sent a **letter** on behalf of cybersecurity experts urging **greater transparency regarding cybersecurity preparations for the 2020 Census.**
- We transmitted a **letter** to President Trump warning of **concerns under the First Amendment's Establishment Clause regarding his anti-Muslim retweets.**
- We sent a **letter** on behalf of an array of legal advocacy organizations raising legal **concerns regarding Census Bureau leadership.**

"One letter, signed by 22 former U.S. attorneys representing every administration dating back to President Nixon's, urges Trump to allow Mueller's team to conclude its investigation free from 'fear of reprisal.'"

The Hill, 12/22/17

OUR WORK: TEACHING

ICAP has begun offering at Georgetown University Law Center a spring practicum seminar, in which students explore the dynamics of impact litigation and receive credit for contributing to ICAP's litigation.

Starting in Fall 2018, ICAP's leadership will also teach a survey course on National Security Law, drawing on extensive experience working on national security legal and policy matters in the executive branch.

COURSES

CONSTITUTIONAL IMPACT LITIGATION PRACTICUM, LAW 1602

This project-based practicum course gives students the unique opportunity to be part of the constitutional litigation work of Georgetown Law's Institute for Constitutional Advocacy and Protection. Led by attorneys with deep experience in trial and appellate advocacy, national security law, and federal prosecution, ICAP works in close partnership with non-profit organizations, pro bono teams of law firms, and law school clinics to pursue strategic litigation to ensure clear recognition of constitutional rights in areas such as immigration restrictions, religious discrimination, free expression and privacy protection, national security, criminal justice reform, and whistleblower protection, among others. Students participate in a two hour/week seminar and carry out 10 hours/week of work with ICAP and its partners on strategic litigation.

Seminar: Drawing on experience from ICAP's cases as well as prominent historical and current examples of impact litigation, the seminar focuses on the history of public and social justice litigation and its uses, criticisms, and obstacles.

Project Work: Students work on constitutional litigation projects handled by ICAP, often in close partnership with law firms undertaking pro bono work, nonprofits, and/or law school clinics. Students' roles include providing litigators with memoranda conveying research on relevant legal issues; drafting portions of briefing materials for use in litigation; and mooted oral advocates preparing to argue these matters in court.

"The group offers a legal SWAT team of sorts 'to protect people at a moment of great instability and peril.'"
Bloomberg News, 10/25/17



NATIONAL SECURITY LAW, LAW 972

This survey course explores national security law as developed from the U.S. Constitution, relevant federal statutes, case law, and historical experience, as well as from principles and influences of international law and foreign relations. It covers key components of, and debates over, the Federal Government's exercise of national security authorities, including: decisions to use force and how to employ it; detention and interrogation of combatants; collection, protection, and sharing of intelligence; military and civilian prosecutions for national security-related criminal charges, including terrorism, espionage, export control, and state-sponsored cybercrimes; civil litigation involving national security interests and concerns; protection of homeland security; and economic aspects of national security policy. Themes of the course include: (1) the separation of powers among the three branches of the Federal Government, and appropriate roles for these branches in the conduct of national security activities; (2) the interplay between international law and domestic law; (3) textual, historical, and functional modes of legal argument as applied to national security issues; and (4) the evolution of modern warfare and its implications for relevant legal regimes.

Course Goals/Student Learning Outcomes:

This course provides students with exposure to the broad reach of modern national security law in the United States, and the many as-yet unresolved and knotty legal, policy, practical, and moral issues that arise as the Government strives to protect national security, while preserving the generally free and open society that most U.S. persons expect. Students examine with a critical eye the justifications offered for, and scope of, security-based governmental actions, while considering practical alternatives and results.

"That's why a murderer's row of national security experts wrote to Commerce Department Secretary Wilbur Ross and Census Bureau Acting Director Ron Jarmin this week to ask for details about the bureau's strategy for protecting its data." *CityLab*, 7/20/18

OUR COVERAGE

Leading media outlets around the country have recognized ICAP's work. Here is just a small sample:

- August 9, 2017 – [NPR](#) Covers ICAP's Launch
- October 12, 2017 – [CNN](#) covers ICAP's Suit to Prevent the Return of Unlawful Private Paramilitaries to Charlottesville, Virginia
- October 26, 2017 – [Bloomberg](#) Covers ICAP's Emergence as a "Legal SWAT Team"
- November 21, 2017 – [The Hill](#) Covers ICAP's Brief on Behalf of Law Enforcement Officials Urging Bail Reform
- December 23, 2017 – [Associated Press](#) Covers ICAP's Letter to the President on Behalf of Former Prosecutors Urging Him to Leave the Special Counsel Alone
- April 15, 2018 – [National Law Journal](#) Covers ICAP's Emergence and Work on Sanctuary Cities Litigation
- May 23, 2018 – [The Washington Post](#) Covers ICAP's Role in Obtaining Federal Court Decision Finding Unconstitutional President Trump's Blocking of Critics on Twitter
- June 4, 2018 – [The Nation](#) Covers ICAP's Role in Securing Release of Prisoner from Whom Evidence Was Wrongly Withheld
- June 14, 2018 – [American Bar Association's](#) Standing Committee on Law and National Security Covers Mary McCord's Work at ICAP
- July 12, 2018 – [The New York Times](#) Covers the Successful Resolution of ICAP's Suit to Prevent the Return of Unlawful Paramilitaries to Charlottesville, Virginia
- July 19, 2018 – [TIME](#) Covers ICAP's Letter to the Commerce Secretary Raising Cybersecurity Concerns About the 2020 Census

"We think this [consent decree] is very significant, not only for Charlottesville, but nationwide. This was all about using legal tools to prevent violence in the future."

ICAP Senior Litigator Mary McCord, *New York Times*, 7/12/18

OUR TEAM

Professor Neal Katyal

Faculty Chair

Paul and Patricia Saunders Professor of National Security Law

Professor Joshua A. Geltzer

Executive Director and Visiting Professor of Law

Professor Mary B. McCord

Senior Litigator and Visiting Professor of Law

Professor Douglas N. Letter

Senior Litigator and Visiting Professor of Law

Amy Marshak

Litigator

Nicolas Riley

Litigator

Seth Wayne

Litigator

Robert Friedman

Associate

Daniel Rice

Associate

Jonathan de Jong

Administrative Assistant

**“A group of experts this week from Georgetown University’s Law Center has issued a report suggesting legal ways of stopping weapons from being brought to white supremacist events through the United States.” *Rewire News*
2/8/18**

INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION

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