



August 20, 2009

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From the President's Desk

The Supreme Court's surprising decision on Monday, in the case of Troy Anthony Davis, granted the first original *habeas corpus* petition in nearly 50 years. The Court sent the case back to a federal district court in Georgia for a rehearing, citing significant new evidence of innocence that no court has ever considered. Details are below.

The decision was notable for a vigorous debate between Justice Stevens, who wrote the majority opinion, and Justice Scalia, who dissented, about how to interpret the 1996 Anti-Terrorism and Effective Death Penalty Act (AEDPA), which imposed stringent limits on *habeas* petitions like Mr. Davis'. According to Justice Stevens, "[Justice Scalia] concludes that Congress chose to foreclose relief and that the Constitution permits this. But imagine a petitioner ... who possesses new evidence conclusively and definitively proving, beyond any scintilla of doubt, that he is an innocent man. The dissent's reasoning would allow such a petitioner to be put to death nonetheless. The Court correctly refuses to endorse such reasoning."

The Constitution Project has organized [several statements](#) and [amicus briefs](#) in support of an evidentiary hearing for Mr. Davis. Notable signers of those documents, from a wide array of former prosecutors and judges, include former FBI director and judge William S. Sessions and Bob Barr, a former U.S. Attorney in Georgia who, as a member of Congress in 1996, was a key sponsor of AEDPA and rejects Justice Scalia's interpretation of the law.

Upcoming Events

The Constitution Project, the American Society of International Law, and the Georgetown Center on National Security and the Law invite you to attend a special event on

Constitution Day, September 17, 2009

9:30 am - 12:30 pm

Georgetown University Law Center
McDonough Hall - Hart Auditorium
600 New Jersey Avenue, NW, Washington, DC

RSVP to rsvp@constitutionproject.org

Constitution Project's 2009 Constitutional Commentary Award

Honoring **Michael Kirk** for his production of *Frontline's* "Bush's War;" award to be presented by 2007 honoree and Pulitzer Prize-winner **Charlie Savage** of the *New York Times*

"Defining Human Rights: What Role does International Law Play in our Constitutional System?" A panel discussion featuring:

John Bellinger, Partner at Arnold & Porter LLP; Legal Adviser to the Department of State, 2005-2009

Neal Katyal, Principal Deputy Solicitor General of the U.S.; lead counsel in *Hamdan v. Rumsfeld*

Judge Patricia Wald, former Chief Judge for the U.S. Court of Appeals for the D.C. Circuit; former judge on the International Criminal Tribunal for the former Yugoslavia

Moderator **David Cole**, Professor at Georgetown University Law Center

Please join us for a light lunch following the event.

News

Constitution Project Applauds Supreme Court Order That Troy Davis Case Be Reheard

As mentioned above, in a surprising announcement on Monday, the United States Supreme Court ordered a rehearing in the Troy Davis case in the District Court for the Southern District of Georgia, where evidence never heard by a judge that could prove his innocence will finally be presented. The Supreme Court's order was the first of its kind in nearly fifty years. At the end of its last Term, the Court announced it was putting the case over to the upcoming term, making the August order unexpected.

Mr. Davis, who has been on death row in Georgia since 1991, was found guilty of killing an off-duty police officer based on the testimony of nine eyewitnesses, with no physical evidence directly linking him to the crime. But since his conviction, seven of those nine witnesses have recanted their original statements, another man has boasted of having committed the crime, and new witnesses have come forward to identify that man as the real perpetrator. Some of the original witnesses claim that the police pressured them into identifying Davis as the perpetrator.

The Constitution Project [issued a release](#) praising the Court's order. Earlier this year, the Project helped to organize an [amicus brief](#) in support of Mr. Davis's appeal, signed by 27 former judges and prosecutors and submitted to the Supreme Court on May 20.

Attorney General May Be Close to Appointing Special Prosecutor

News accounts two weeks ago indicated that Attorney General Eric Holder is close to appointing a special prosecutor to investigate the treatment of suspected terrorists held by the United States. The Constitution Project [issued a press release](#) saying a special prosecutor should be appointed but that the scope of the inquiry is of paramount concern. We also stressed that an independent commission to investigate the detention, treatment, and transfer of people detained since September 11, 2001 remains essential to attaining a full understanding of our nation's past actions and certainty that we are honoring our principles, and to prevent any future deviations. Constitution Project president **Virginia Sloan** was quoted in a [Mother Jones article](#) saying, "an investigation limited to examining the conduct of low-level officials will not provide the comprehensive picture we need to fully understand what has been done in the past, and what may continue to be done in the future."

News in Brief

- Sonia Sotomayor was [recently sworn in](#) as the nation's 111th justice to the U.S. Supreme Court, becoming the third woman and the first Hispanic to serve on the bench. On Monday, Justice Sotomayor [cast her first vote](#) on the Court, dissenting in a 5 to 4 decision on a lethal injection challenge. The Court allowed Ohio to proceed in executing Jason Getsy. Sotomayor joined Justices John Paul Stevens, Ruth Bader Ginsburg, and Stephen Breyer in dissent.
- Texas Judge Sharon Keller, the highest-ranking criminal judge in the state, is [on trial this week](#) for the charge of intentionally denying access to the legal system for a man on death row, who was later

executed. Attorneys for Michael Richard, responding to a Supreme Court decision earlier in the day that it would hear a major challenge to the lethal injection process, prepared an urgent request for an execution stay. Citing computer problems, Mr. Richard's lawyers asked for the opportunity to file the request after the clerk's office was scheduled to close. Judge Keller denied the request to keep the office open. An assigned duty judge was available to accept last-minute appeals but was never notified of the emergency request. Mr. Richard was put to death only hours later. The next day, the Supreme Court granted stays in every pending capital case in states using lethal injection.

- Last Thursday, the *Washington Post* published a [letter to the editor](#) from Constitution Project Senior Counsel **Sharon Bradford Franklin**, refuting the *Post's* editorial supporting the creation of a national security court to review the cases of suspected terrorists held by the U.S. Her letter stated that “[a]n alternate court would undermine fundamental principles of American constitutional law,” and that “[c]reating a national security court would do nothing more than compromise our values, established traditions and the rule of law.”
- Last Tuesday, North Carolina Governor Beverly Perdue [signed into law](#) the Racial Justice Act, which seeks to address racial prejudice in death penalty cases. The law will allow defendants and inmates on death row to use statistical studies to challenge racial bias in the state's administration of the death penalty.
- Also last week, the *New York Times's* John Schwartz wrote [an article](#) examining the increasing trend of federal appeals court judges issuing long and stinging dissents to decisions upholding convictions in death penalty cases. The article found that judges have become frustrated by barriers for death penalty appeals erected by Congress—notably the [Antiterrorism and Effective Death Penalty Act of 1996](#)—and the courts.
- Federal officials representing the Defense, Homeland Security, and Justice Departments toured the maximum-security prison in [Standish, Michigan](#) last Thursday, assessing the facility for its capacity to house suspected terrorists now held at Guantanamo. The mention of [Fort Leavenworth](#) as another possible facility to hold Guantanamo detainees was met with opposition by both Kansas senators, leading them to block nominees to senior posts at Defense and Justice in protest.
- Two weeks ago, Virginia Governor Tim Kaine [ordered the release](#) from prison of the three remaining sailors, who, with another sailor earlier released, were known as the “Norfolk Four.” The three men who were released had confessed to the crimes, but immediately cited police pressure in recanting their confessions. They were convicted of murder and rape in 1997. Even after someone else confessed to committing the crimes, and his DNA, but not that of the Norfolk Four, was identified, the men remained incarcerated.

Governor Kaine issued a conditional commutation, rather than completely pardoning them. Their case will remain a striking example of wrongful convictions under coerced confessions.

- Also two weeks ago today, the Obama administration [announced its plan](#) to redesign the nation's immigrant detention operations. The administration seeks to enhance its oversight capacities, as well as standardize the conditions for detention.
- The National Institute of Military Justice recently released its first installment of *Military Commission Reporter, Volume 2*, which is available [online](#) in periodic pamphlets as decisions are released. *Volume 1* is available [here](#).