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From the President's Desk

Last week, we were reminded yet again that this country's death penalty system is fallible, and that there the risks of executing the wrong person are very real. [A recently released report](#) by a nationally-recognized fire science expert casts significant doubt on the forensic evidence used by the state of Texas to convict and execute Cameron Todd Willingham in 2004.

In his report, Craig Beyler finds that the investigation into a fire that killed Mr. Willingham's three daughters used a "poor understanding of fire science" and that the state's determination that the fire was caused by arson, as opposed to an accident, cannot be supported by the facts. To cast further doubt on the conviction, a recent [investigative report by the *New Yorker*](#) debunks nearly all other evidence used against Mr. Willingham. The Texas Forensic Science Commission has been investigating this case since 2007 and is expected to issue a report early next year.

Regrettably, Cameron Willingham wasn't given the chance to prove what he proclaimed until the day he was executed – that he was innocent of the crime for which he was convicted and that, in fact, no crime was even committed. His case demonstrates that, whether it is faulty forensics, post-conviction procedural barriers to any examination of the merits, as in the Troy Davis case, ineffective assistance of counsel, or a host of other problems, the system is badly broken and the need for reforms is urgent. The need for these reforms, and many others, is addressed in [Mandatory Justice: The Death Penalty Revisited](#), the report of the Constitution Project's Death Penalty Committee.

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.

SAVE THE DATE FOR:

A Discussion of *In Confidence* by Ronald Goldfarb

Also in late September, the Constitution Project and the George Washington University Law School will co-host a panel discussion around Ronald Goldfarb's recent book *In Confidence*, a work that examines the issues of secrecy and confidentiality, as they apply to various disciplines, and considers whether protection of that relationship is warranted. Taking place at lunchtime on September 30 at the law school, the discussion will focus on issues of government secrecy and the confidentiality of reporters' sources. Panelists will include Mr. Goldfarb, as well as Meredith Fuchs, General Counsel to the National Security

Archive, and Professors Jeffrey Rosen and Orin Kerr, both of the George Washington University Law School and leading experts on privacy and related concerns.

We will provide further details in our next newsletter, but please mark your calendars and RSVP to rsvp@constitutionproject.org if you would like to attend.

News

Interrogation Reports Further Demonstrate the Need for a Comprehensive Nonpartisan Commission of Inquiry

Last Monday, in compliance with a Freedom of Information Act request, the Obama administration made public more portions of the 2004 CIA Inspector General report that examined the agency's interrogation program used for suspected terrorists in the aftermath of the September 11th attacks. The newly-released information provides additional details on the practices actually adopted under the now widely-discredited legal rationale used to justify harsh interrogation tactics – tactics that have since been prohibited by President Obama.

Also in the news on the same day was a yet-to-be released report from the Department of Justice's Office of Professional Responsibility that recommends reopening nearly a dozen cases of alleged prisoner abuse at the hands of CIA personnel and contractors. Both reports likely contributed to Attorney General Holder's decision, also announced that day, that he has appointed a special prosecutor to conduct a preliminary investigation into nearly a dozen cases in which CIA interrogators and contractors may have violated anti-torture laws and other statutes when they allegedly relied on "enhanced" interrogation techniques. The Constitution Project issued a [press release](#) on the day's news, and CP President **Virginia Sloan** was quoted in articles by [NPR](#) and [McClatchy](#). She noted that we still need a bipartisan commission to investigate and bring the full scope of U.S. policies to light.

News in Brief

- Former congressman **Bob Barr** (R-GA), a member of the Constitution Project's Death Penalty Committee, wrote an [OpEd published in today's *Washington Times*](#) that rebuts Justice Antonin Scalia's interpretation of the Antiterrorism and Effective Death

Penalty Act of 1996, passed with Mr. Barr's support when he was in Congress, and addressed in the Supreme Court's recent order that Troy Davis' case be reheard. "I can state unequivocally that this legislation was not intended to preclude a claim of actual innocence based on post-sentence evidence from being considered in a habeas petition," Mr. Barr states. "Employing such a pinched and erroneous reading of the law to deny a condemned man the opportunity to present substantial evidence of innocence would constitute a major travesty of justice in America."

- On Tuesday, the Constitution Project joined nine other advocacy organizations in calling on the leadership of the [House](#) and [Senate](#) Intelligence Committees to remove a provision from the Intelligence Reauthorization Act of 2010 that would exempt terrorist identity information from the Freedom of Information Act. The organizations view the provision to be unnecessary, overbroad, and unwise, especially because it would make it even more difficult for people mistakenly included on terrorist watch lists to seek to clear their names. The dangers of government watch lists were examined in the Constitution Project's 2007 report [Promoting Accuracy and Fairness in the Use of Government Watch Lists](#).
- It was reported the weekend before last that the state of Georgia cannot fund the capital defense of Khan Dinh Phan, a Vietnamese immigrant accused of murder four years ago. As [Bill Rankin of the Atlanta Journal-Constitution notes](#), "Now before the Georgia Supreme Court are these pressing questions: Can the state seek to put a man to death if the state can't afford to defend him? Can the trial judge strike the prosecution's motion to seek the death penalty or, even more extreme, dismiss all charges because the state doesn't have the money to represent the accused?" The Constitution Project's Right to Counsel and Death Penalty Committees examined the crisis in legal representation for the poor in [Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel](#), released last April, and in [Mandatory Justice: The Death Penalty Revisited](#), released in 2005.
- Last Friday, Judge John Koeltl, of the U.S. District Court for the Southern District of New York, [dismissed a challenge to the FISA Amendments Act of 2008](#) brought by human rights organizations and journalists. Finding that they lacked the necessary standing to bring suit, Judge Koeltl said, "[the plaintiffs] make no claim that their communications have yet been monitored, and they make no allegation or showing that the surveillance of their communications has been authorized or that the government has sought approval for such surveillance."
- Last [Wednesday](#), U.S. District Court Judge Royce Lamberth [ruled](#) that the Obama administration must grant private lawyers in a civil suit the security clearances needed to access classified information, in a case in which a former DEA agent alleges that he was illegally wiretapped by the government while serving overseas. Judge Lamberth said, "[t]he deference generally granted the Executive

Branch in matters of classification and national security must yield when the Executive attempts to exert control over the courtroom.” Judge Lamberth had previously rejected the executive branch’s claim under the state secrets privilege. The Constitution Project’s Liberty and Security Committee addressed the issue of abuse of the privilege in [Reforming the State Secrets Privilege](#) in 2007.

- Last week, the National Security Archive [announced](#) the release of the [Torture Archive](#), an online searchable database of over 83,000 pages of documents related to the treatment and detention of suspected terrorists, with thousands more pages to come.
- Northwestern University Press recently released [True Stories of False Confessions](#), an anthology of articles that show why and how people confess to crimes they did not commit. The book was edited by Rob Warden and Steve Drizin of the [Center on Wrongful Convictions](#).
- The *Washington Post* has dedicated a [page on its website](#) to compiling the latest documents released by the Department of Justice, including many of the Office of Legal Counsel memos that have been hotly debated.