

The Constitution Project



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Inside

- From the President's Desk
- Panel Discussion of Ronald Goldfarb's *In Confidence* at George Washington University Law School
- The Constitution Project Celebrates Constitution Day
- Charles Hood Appeal Dismissed By Texas Criminal Court
- News in Brief

From the President's Desk

Today, our nation celebrates Constitution Day, in recognition of the adoption of the U.S. Constitution two hundred and twenty two years ago. Constitution Day became a national holiday pursuant to legislation offered in 2004 by Senator Robert Byrd. The law making September 17 Constitution Day requires that all publicly-funded educational institutions provide programming on the history of the American Constitution. When introducing his proposal, Senator Byrd had this to say:

“One will not protect what one does not value. And one cannot value what one does not understand. Through our schools, we can help to ensure that each new generation of Americans understands what is at stake.”

More on how the Constitution Project observed Constitution Day still to come in this newsletter.

Upcoming Events

The Constitution Project and the George Washington University Law School invite you to attend a special event:

A Panel Discussion of *In Confidence* By Ronald Goldfarb

September 30, 2009 at 12:00PM

George Washington University Law School
Michael K. Young Faculty Conference Center
Burns Building 505
2000 H Street, NW Washington, DC 20052

RSVP to rsvp@constitutionproject.org

The discussion will focus on the book's examination of government secrecy and the confidentiality of reporters' sources.

Panelists Include:

Ronald Goldfarb, Author, *In Confidence*

Meredith Fuchs, General Counsel to the National Security Archive

Orin Kerr, Professor of Law at George Washington University

Jeffrey Rosen, Professor of Law at George Washington University

In Confidence explores the provocative issues of secrecy and confidentiality across a spectrum of disciplines and considers whether the protection of that information is warranted in some cases.

James Srodes of the *Washington Times* hails *In Confidence* as a "must-read" for those seeking to build consensus on these controversial and ever-evolving issues.

News

The Constitution Project Celebrates Constitution Day

Today, in celebration of Constitution Day, the Constitution Project co-hosted an event with the Georgetown Center on National Security and the Law and the American Society of International Law, held at the Georgetown University Law Center. If you were unable to attend today's event, you can watch the program online by clicking this [link](#).

As part of the day's festivities, the Constitution Project awarded its 2009 Constitutional Commentary Award to Michael Kirk for his production of

Frontline's "Bush's War." In his fascinating acceptance remarks, Mr. Kirk described his view of the proper role of television journalism: to show the big picture in a compelling way. He said, "I just try to tell the audience what happened – my duty is to inform, not argue." The Constitution Project is honored to present this award to Mr. Kirk.

The second part of the event was a panel discussion on the role of international law in our constitutional system. Moderator David Cole, professor at Georgetown University Law Center and co-chair of the Constitution Project's Liberty and Security Committee, spoke of the evolution of international law and how it is viewed within the United States. Reminding us that the Constitution established international treaties as the law of the land, Professor Cole noted that the framers of our nation would not recognize international law as it has come to be.

David Stewart, visiting professor at the Georgetown University Law Center, asked whether the Constitution permits U.S. judges to rely on international law in their decisions, and whether and in what ways international law could be helpful to our domestic notions of human and individual rights. His own view, he said, was that there was no reason for U.S. judges not to consider the decisions of foreign courts and that merely considering such decisions was not the same as giving them binding effect.

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, and a member of the Liberty and Security Committee, noted that no human rights have been recognized in the United States based solely on international customary law. She went on to say that all branches of the U.S. government have been parsimonious of late in acknowledging the role of international law in our court system.

Lastly, John Bellinger, Legal Adviser to the State Department in the George W. Bush administration, spoke of the tension between international law and domestic politics, given congressional concern with promoting their constituents' concerns. He noted that in the past 20 to 30 years, policymakers and judges have expressed increased ignorance and even hostility towards international law. He contrasted this with other countries, notably in Europe, where international law is put on a pedestal without a full assessment of the impact for the nation.

Charles Hood Appeal Dismissed by Texas Criminal Court

Yesterday, the Texas Court of Criminal Appeals dismissed the *habeas* application of Charles Dean Hood, denying him the opportunity to present evidence that his conviction and death sentence were improperly

influenced by a romantic relationship between the prosecutor and the judge presiding over his trial. The Court of Criminal Appeals used a procedural objection to block further exploration of the relationship and its impact on the fairness of Mr. Hood's trial.

The Constitution Project organized a [letter to Texas Governor Rick Perry](#) in September 2008, signed by 30 former federal and state judges and prosecutors from across the country, urging the governor to grant a reprieve for Mr. Hood, who was then slated for execution within days. The letter was widely cited across the country, and was credited with influencing the Texas Attorney General to support delaying the execution. A stay was finally granted to allow the courts to consider the merits of Mr. Hood's claim. The Court of Criminal Appeals decision is the result of that process. The letter continues to be cited in press reports on the court's decision, including the [AP's wire story](#) and in the [New York Times](#). You can view the Constitution Project press release on the court's action [here](#).

News in Brief

- On Tuesday, in a letter to members of the Senate Judiciary Committee, the Obama administration laid out its view on the Patriot Act provisions set to expire at the end of the year unless Congress reauthorizes them. The administration stated its support for their renewal, but indicated it would be open to reform to enhance privacy protections. Constitution Project Senior Counsel **Sharon Bradford Franklin** was quoted in a [Washington Post article](#) on the upcoming Patriot Act debate, explaining that national security letters, although not set to sunset, "are really the most glaring problem" with the Patriot Act.
- It was [reported](#) last weekend that the Obama administration is close to announcing a shift in policy regarding those suspected terrorists held at the detention facility at Bagram Air Base in Afghanistan. The reported new guidelines would provide a military official to represent each of the approximately 600 detainees being held there, although the officials would not be lawyers. Then on [Monday](#), the Obama administration argued in a [brief](#) submitted to the U.S. Court of Appeals for the D.C. Circuit that the Supreme Court's 2008 decision recognizing the *habeas* rights of detainees held by the United States in Guantanamo Bay do not apply to those at Bagram, because Afghanistan, the brief asserted, is an official war zone.
- Last Friday, Constitution Project Senior Counsel **Laura Olson** participated in a panel discussion at Case Western Reserve University School of Law for an event titled "After Guantanamo: The Way Forward."
- Last Wednesday, the Senate Judiciary Committee held a hearing on "[Strengthening Forensic Science in the United States](#)." The senators [appeared](#) supportive of providing additional funding for research into the reliability of such evidence, as well as creating national standards for its testing and admissibility in court. The Constitution

Project submitted a statement in support of reforms, based on the consensus recommendations of its Death Penalty Committee in its report, [*Mandatory Justice: The Death Penalty Revisited*](#).

- Two weeks ago, the Obama administration announced that it would seek legislation that would exempt “terrorist identify information” from Freedom of Information Act (FOIA) requests. Such a provision would increase the barriers facing people erroneously added to terrorist watch lists who seek to verify their inclusion, and remove their names. The Constitution Project joined a coalition of open government and civil liberties advocates in opposing this legislation. In its coverage of the issue, the [*Washington Post*](#) quoted the [coalition letters](#) sent to Capitol Hill: “We consider this provision unnecessary, overbroad and unwise,” said the letters sent to both House and Senate Intelligence Leadership. Today, Senator Leahy announced that the Senate Judiciary Committee was able to reach an agreement to delete this overly broad and unnecessary exemption. The Constitution Project’s Liberty and Security Committee addressed the problems with the accuracy of watch lists in its report, [*Promoting Accuracy and Fairness in the Use of Government Watch Lists*](#).