

From the desk of Virginia Sloan

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In the Courts

Guantanamo prosecutors seek resentencing

As I previously reported, in the United States' first war crimes prosecution since the close of World War II, Salim Hamdan, a former driver for Osama Bin Laden, was convicted by a military commission last August of providing military support for terrorism and acquitted of more serious charges. He was sentenced to 66 months, with 61 months credit for time served; his sentence will end in December. On September 24, Justice Department prosecutors requested a new sentencing hearing for Mr. Hamdan, making the surprising argument that the military tribunal judge lacked the legal authority to give him credit for time already served. Independent of that argument, the Pentagon has asserted the right to indefinitely hold all "enemy combatants," including Mr. Hamdan, regardless of whether they are acquitted or complete their sentences. If the administration's arguments for a new hearing are successful, it will be the next administration that decides whether to release Mr. Hamdan after his sentence ends.

Uighurs still in limbo

The Justice Department recently urged the U.S. Court of Appeals for the District of Columbia to uphold its stay preventing the immediate release into the United States of 17 Guantanamo detainees. U.S. District Court judge Ricardo Urbina had ordered the detainees be released into the United States, and brought to his courtroom by the end of last week. The detainees, who belong to the Uighur Muslim minority in China, have maintained for seven years that they were erroneously detained in Afghanistan. Recently, the government admitted that the Uighurs are not enemy combatants, although it is resisting their release into the United States. Lawyers for the Uighurs argue that it is too dangerous for the men to return to China, where they are considered terrorists, and that their continued detention at Guantanamo is unjust.

Judge Urbina's release order initially led the government to step up its efforts to repatriate the men to another country. However, the State Department's ambassador-at-large for war crimes was recently forced to cancel a planned trip for international negotiations because the Justice Department's legal strategy in the litigation seriously undermined the State Department's negotiating position. In seeking to extend the stay of Judge Urbina's release order, the Justice Department asserted in its brief that the Uighurs are "a danger to the public" and men who had been trained in insurrection. The State Department concluded that this filing would make it impossible to conduct negotiations for another country to agree to accept the men as residents.

Above the Fold

U.S. Supreme Court refuses to hear Troy Davis case

On Tuesday, the U.S. Supreme Court refused to hear the case of Troy Davis, electing not to consider whether it is constitutional to execute someone who may well be innocent. Georgia then issued an execution warrant for Mr. Davis that starts on October 27; an actual execution date may be set soon afterwards. Yesterday on [NPR](#), I explained that the Davis case is a troubling illustration of systemic problems with the criminal justice system. In this case, as in so many others, procedural barriers prevent courts from considering the merits of claims, including claims of actual innocence. William S. Sessions, former FBI Director and federal judge, and member of the Constitution Project's Death Penalty Committee, wrote a [commentary](#) on the (at the time) pending *certiorari* petition. He referred to a Committee [report](#) that set forth recommendations to improve the fairness and reliability of capital punishment. Among many other problems with the conviction, seven witnesses recanted their testimony and six identified another person as the perpetrator.

Jessica Knight on the rule of law

Constitution Project intern Jessica Knight analyzed the Senate Judiciary Committee's [recent hearing on the rule of law](#) for JURIST, an online news service. She explained that the crux of the [testimony before the committee](#) was the need for Congress to vigorously assert its prerogatives in order to maintain the Constitution's separation of powers. As I reported in the last issue of the newsletter, among those testifying were members of the Constitution Project's Liberty and Security Committee, including former member of Congress [Mickey Edwards](#) (R-OK), former Executive Director of the National Commission on Terrorism [Suzanne Spaulding](#), Yale Law School Dean [Harold Koh](#), and former Clinton White House Chief of Staff [John Podesta](#).

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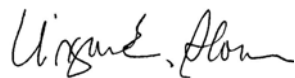
Reducing sentencing disparities

The Sentencing Project released a revised edition of its report "[Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers](#)." The document provides strategies for addressing and reducing sentencing disparities, including 17 "best practices." The Constitution Project's Sentencing Committee also addressed some of these issues in its two reports, [Principles for the Design and Reform of Sentencing Opinions](#) and [Recommendations for Federal Criminal Sentencing in a Post-Booker World](#).

Verbatim

"I hope the Court will grant certiorari to avoid a miscarriage of justice. At the very least, Mr. Davis' substantive claims must be examined. The political process has failed Mr. Davis. Let us hope that the court of last resort rises to the challenge." ~ Judge William S. Sessions calling on the Supreme Court to grant *certiorari* to hear Troy Davis' death penalty appeal.

Sincerely,



Virginia E. Sloan