

From the desk of Virginia Sloan

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Dear Friend,

In the Halls of Congress

Senate Committee Examines "Rule of Law"

On Wednesday, September 16, the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Property Rights held a hearing on "[Restoring the Rule of Law](#)." 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](#). Representative Edwards chastised Congress for its "fail[ure] to lived up to its assigned role as the principal representative of the people." He added, "Each year the presidency grows farther beyond the bounds the Constitution permits; each year the Congress fades farther into irrelevance. As it does, the voice of the people is silenced. This cannot be permitted to stand."

The State Secrets Protection Act Approved By Committee

On September 18, the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties voted 6-3 to favorably report the State Secrets Protection Act of 2008 (H.R. 5607). Last year, the Constitution Project's Liberty and Security Committee and Coalition to Defend Checks and Balances issued [Reforming the State Secrets Privilege](#), a statement calling for legislation to reform the privilege. We have been working closely with Hill staff to promote reform, and in connection with a legislative hearing on the House bill held in July 2008, the Constitution Project submitted a [statement](#) to the Subcommittee urging support for the legislation, as did [William S. Sessions](#), a member of our Liberty and Security Committee and former federal judge and FBI Director. In his statement, Judge Sessions told members of the Subcommittee that "granting executive branch officials unchecked discretion to determine whether evidence should be subject to the state secrets privilege provides too great a temptation for abuse." The Senate Judiciary Committee passed its version of the State Secrets Protection Act (S. 2533) in April. Although neither bill is expected to come to the floor in the current Congress, the progress on both bills gives us hope that the new Congress will enact reform legislation.

In the Courts

130th Death Row Exoneration

On September 16, a Texas court [dismissed](#) capital murder charges against Michael Blair, who had been sentenced to death for murder in 1994. Mr. Blair made repeated requests for testing over the past several years; finally, DNA analysis revealed that a hair found at the crime scene had been falsely identified as Mr. Blair's. The dismissal marks the fourth exoneration from death row in the United States in 2008 and the 130th since 1973.

Troy Davis Spared Execution (For Now) By U.S. Supreme Court

On Tuesday, less than two hours before his scheduled execution, the United States Supreme Court [stayed the execution](#) of Troy Anthony Davis pending a decision on whether to grant *certiorari*. Mr. Davis was convicted in 1991 of murdering an off-duty police officer in Georgia. The Georgia Board of Pardons and Paroles stayed his execution last year pending a review of evidence that suggested he may not have committed the crime for which he had been sentenced to death, and the Georgia Supreme Court then agreed to hear the case. Seven of the nine witnesses who originally testified against him recanted their testimony and one who didn't has been identified by others as the real perpetrator. In March, the Georgia Supreme Court declined to grant Mr. Davis a new hearing.

Judge William S. Sessions, who is also a member of our Death Penalty Committee, joined [Pope Benedict XVI](#), [Desmond Tutu](#), and other prominent individuals in [calling on Georgia officials](#) to commute Mr. Davis' sentence, citing the recantations and the lack of physical evidence against him. Judge Sessions also wrote an influential [op-ed](#) last year, just prior to the stay by the Georgia Board of Pardons and Paroles.

Above the Fold

Guardian: A Sept. 12th Mindset

The September 11 edition of the Comment is Free section featured an outstanding commentary by Liberty and Security Committee member Suzanne Spaulding. She [wrote](#) that "Our government is strongest when all three branches are fulfilling their constitutional roles. Still, there are those who would seek to limit the role of the courts and seem unwilling to call upon the president to follow the laws passed by Congress." Suzanne also rightly points out that, while some officials have accused lawmakers of being "stuck in a September 10th mindset," the real problem at this point is that too many Americans are stuck in a September 12th mindset.

With a Little Help from Our Friends

Brennan Center Issues Guidelines For Indigent Defense

The Brennan Center for Justice released a new report on [guidelines for appointing defense counsel](#) in criminal cases. The report makes six recommendations regarding best practices for determining financial eligibility for appointed counsel, with a specific focus on creating consistent standards for determining eligibility and ensuring that the person making the appointment not have a conflict of interest and thus has only the interest of the defendant in mind. The Constitution Project's [National Committee on the Right to Counsel](#) will publish an extensive report early next year to call attention to specific deficiencies in indigent defense systems around the country and to propose systematic reforms.

Welcome Aboard

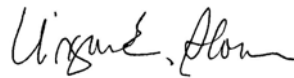
Constitution Project Welcomes Daniel Schuman

I am delighted to announce that Daniel Schuman has joined the Constitution Project's staff as Director of Communications and Counsel. Daniel replaces outgoing Director of Communications Corey Owens, who has accepted a position at the United Food and Commercial Workers International Union. Daniel joins the Constitution Project from the American Constitution Society for Law and Policy, where he was Assistant Director of Communications. Daniel is a graduate of Emory University and Emory University School of Law, and previously served as a legislative attorney at the Congressional Research Service and as Director of Publications and Public Relations at the Georgia Trial Lawyers Association. We're sorry that Corey is leaving us but delighted that Daniel has come aboard. I hope you will join me in welcoming him. You can reach him at dschuman@constitutionproject.org or 202-580-6922.

Verbatim

"As difficult as the last seven years have been, they loom far less important in the grand scheme of things than the next eight, which will determine whether the pendulum of U.S. policy swings back from the extreme place to which it has been pushed, or stays stuck in a 'new normal' position under which our policies toward national security, law and human rights remain wholly subsumed by the 'War on Terror.' To regain our global standing, the next President and Congress must unambiguously reassert our historic commitments to human rights and the rule of law as a major source of our moral authority." ~ Yale Law School Dean Harold Koh, who serves on the Constitution Project's Liberty and Security Committee, testifying before the U.S. Senate Judiciary Committee on restoring the rule of law.

Sincerely,



Virginia E. Sloan