

From the desk of Virginia Sloan

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Dear Friend,

In the Halls of Congress

Committee Members to Testify on Rule of Law

On September 16, 2008, the Senate Judiciary Committee's Subcommittee on the Constitution, Civil Rights, and Property Rights will hold a hearing on "[Restoring the Rule of Law](#)." The hearing, which will be held in Room 216 of the Hart Senate Office Building at 10:15 am, will include testimony from several Constitution Project committee members, including former member of Congress Mickey Edwards (R-OK) (who also serves on our Board of Directors), Dean of Yale Law School Harold Koh, former White House Chief of Staff John Podesta, and former general counsel to the Senate Select Committee on Intelligence Suzanne Spaulding.

In the Courts

Execution of Charles Hood Stayed

Judges, like referees, are often wrongly accused of secretly supporting the other team. On September 9, Verla Sue Holland, a Texas judge who presided over the capital trial of Charles Dean Hood, admitted that she was more than a fan of the prosecutor in the case. She was sleeping with him. Lawyers at the Texas Defender Service represent Mr. Hood, who was sentenced to death for murder and robbery; they had long maintained that Judge Holland was, at the time of trial, having a secret affair with the prosecutor, Thomas O'Connell, Jr., but they were unable to get any court to hear the matter. With Mr. Hood's execution scheduled for September 10, a civil court judge finally scheduled a review of the matter for September 12, two days *after* the scheduled execution, noting that the moving party in the case would be Mr. Hood's *estate*.

In the Courts (continued)

The Constitution Project organized a group of thirty former federal and state prosecutors and judges who, in a [letter to Governor Rick Perry](#), urged that the execution be delayed while the affair was investigated. Another group of 36 legal ethicists argued that an affair between a judge and prosecutor would render both the conviction and sentence "invalid *per se*." News articles and editorials about the case added to the pressure. The civil court judge then recused himself, suddenly noting that his friendship with Judge Holland's husband might be a conflict. The Texas Attorney General then agreed that a stay was in order, and another judge scheduled a hearing for September 8 and ordered depositions of Judge Holland and the prosecutor, which finally resulted in their admitting the affair. On Tuesday, the Texas Court of Criminal Appeals stayed the execution, but on a matter unrelated to the affair. Mr. Hood's attorneys continue to seek a new trial on the grounds that the affair violated Mr. Hood's right to a fair trial.

We will continue to follow this case and will provide updates as they are available.

Troy Davis Execution Rescheduled

On September 12, the Georgia Board of Pardons and Paroles will hear the final appeal of Troy Anthony Davis, who has been on Georgia's death row for more than 16 years after being convicted of the murder of an off-duty police officer. In March the Georgia Supreme Court announced its 4-3 [decision](#) to deny Davis' appeal for a new trial. The Georgia Supreme Court had agreed to review the case in August of 2007 after serious questions about his guilt were raised.

Of the nine witnesses who originally testified against Mr. Davis, seven have now recanted or changed their testimony. One of the remaining two is now accused by several new witnesses of being the actual shooter. There was no physical evidence linking him to the crime, and the murder weapon was never found. A lawyer for Mr. Davis has acknowledged that, because of severe budget cuts, he did not have the resources needed to properly defend his client. Because of state and federal procedural restrictions, no court had heard any of the evidence that suggested that Georgia may have been about to execute an innocent man

In an op-ed in *The Atlanta Journal-Constitution* last year, William S. Sessions, former federal judge and Director of the FBI and member of our Death Penalty Committee, [urged](#) the Board of Pardons and Parole to stay the execution, arguing that "[s]tate and federal courts should ensure that every capital defendant is provided an adequate mechanism for introducing newly discovered evidence that would otherwise be procedurally barred, where it would more likely than not produce a different outcome at trial, or where it would undermine confidence in the reliability of the sentence." According to Judge Sessions, it would be "intolerable to execute a man without his claims of innocence ever being considered by the courts or by the executive."

Shortly thereafter - the day before the scheduled execution, the Board of Pardons and Parole stayed the sentence and the Georgia Supreme Court agreed to review the case. Since the Court already denied his appeal, the Board of Pardons and Paroles proceedings may well be Mr. Davis's last resort.

At City Hall

Video Surveillance in Pittsburgh

On August 12, 2008, the City of Pittsburgh, Pennsylvania adopted an [ordinance](#) to govern operation of its new public video surveillance system. From last December through August, Constitution Project staff worked closely with members of Pittsburgh's law department to guide them in developing an ordinance to govern their newly planned video surveillance system. The final version of the ordinance includes a variety of safeguards designed to ensure that the new video camera system protects residents' constitutional rights in addition to their security, and it closely follows the model legislation contained in the Constitution Project's [Guidelines for Public Video Surveillance](#). Pittsburgh will now seek a vendor to design its camera system following the safeguards set forth in the ordinance.

Above the Fold

NYT: Too Soon and Too Many Questions

On September 8, the *New York Times* [editorial board examined](#) the case of Charles Dean Hood and took the State of Texas to task for "the cavalier way that it applies the death penalty." Calling specific attention to the "distinguished group of 22 [now 30] former judges and prosecutors" organized by the Constitution Project, the *Times* argued that "supporters of capital punishment should be appalled at the prospect of executing a man after a trial that — if Mr. Hood's charges are true — was so grossly unfair."

With a Little Help from Our Friends

NYCLU v. NYPD

On September 8, the New York Civil Liberties Union [sued](#) the New York Police Department to release a variety of information about New York's extensive public video surveillance network, known as the Lower Manhattan Security Initiative. Very little is known about how the police will use and store the vast amount of information captured by the system, which includes video cameras, license-plate readers and other security devices. The Constitution Project's Liberty and Security Committee has [cautioned](#) against the use of public video surveillance systems that do not include clear, public guidelines governing the use and retention of captured footage.

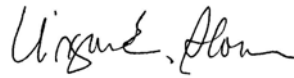
IBJ/JusticeMakers Competition

[International Bridges to Justice](#), a leading organization in the fair implementation of criminal laws in developing countries, has launched [JusticeMakers](#), an online competition to identify innovations that end torture, arbitrary detainment and abuse. A grand prize of \$5,000 will be given to the winner. Entries are due by September 14.

Verbatim

"We write because our long experience as jurists and law enforcement officials leads us to believe that justice cannot be served unless the courts are able to consider whether Mr. Hood's conviction and sentence are invalid. In our view, it is inexplicable that the court hearing to consider this vital matter is scheduled for two days *after* Mr. Hood is scheduled to be executed." ~ From the letter from former judges and prosecutors organized by the Constitution Project to Texas Governor Rick Perry regarding the case of Charles Dean Hood.

Sincerely,

A handwritten signature in blue ink that reads "Virginia E. Sloan". The signature is written in a cursive style with a large initial "V" and a long, sweeping underline.

Virginia E. Sloan