

# THE STATE OF THE STATE SECRETS PRIVILEGE

Presented by WCL's Collaboration on Government Secrecy

November 18, 2009

9:00 a.m. – 6:00 p.m.

(Registration at 8:15 a.m.)

American University Washington College of Law  
4801 Massachusetts Avenue, NW, Washington, DC  
Room 603

One of the most controversial parts of the last presidential administration's secrecy regime was its highly aggressive use of the state secrets privilege to achieve virtual immunity from suit on national security grounds. This academic conference gathers the leading thinkers and practitioners in the field to explore the privilege's further development as we enter the next decade of its use. With participation by both Bush Administration and Obama Administration officials, it focuses on the current state of the law, new state secrets litigation policies, the prospects for remedial legislative attention to the subject, and the conceptual contours that the privilege ought to take going forward.

8:15 a.m.     **Registration**

9:00 a.m.     **Welcome and Introduction** -- *Daniel J. Metcalfe*, Executive Director, Collaboration on Government Secrecy, Washington College of Law

9:10 a.m.     **Keynote Speech** -- *Congressman Jerrold Nadler*, Chairman, House Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Civil Liberties

9:55 a.m.     **Break**

10:00 a.m.    **Panel One: *Background of the Privilege*** -- a foundation discussion of the state secrets privilege's origin, its development, and its current status in the courts.

*Robert M. Chesney*, Charles I. Francis Professor of Law, University of Texas; *Laura K. Donohue*, Associate Professor, Georgetown Law, and affiliated faculty member, Georgetown Law's Center on National Security and the Law; *Douglas N. Letter*, Terrorism Litigation Counsel, Appellate Staff, Civil Division, Department of Justice; and *Amanda Frost*, Professor, Washington College of Law (moderator)

**11:30 a.m. Panel Two: *Obama Administration Policy and Practice* -- a critical examination of the Obama Administration's emerging positions on the privilege and how they differ from positions advanced in litigation during the Bush Administration.**

*Sharon Bradford Franklin*, Senior Counsel, The Constitution Project; *Donald B. Verrilli, Jr.*, Associate Deputy Attorney General, Department of Justice; *Benjamin E. Wizner*, Counsel, National Security Project, American Civil Liberties Union; and *Daniel Marcus*, Faculty Fellow in Law and Government, Washington College of Law, and former Associate Attorney General (moderator)

**1:00 p.m. Luncheon** -- *Louis Fisher*, Specialist in Constitutional Law, Library of Congress, and author of *The Politics of Executive Privilege* (Carolina Academic Press 2004)

**2:15 p.m. Panel Three: *Legislative Perspective* -- an up-to-date view from Capitol Hill of the prospects for state secrets privilege reform by Congress.**

*Danielle Brian*, Executive Director, Project on Government Oversight; *Sean Moulton*, Director of Information Policy, OMB Watch; *Heather C. Sawyer*, Majority Counsel, House Subcommittee on the Constitution, Civil Rights, and Civil Liberties; and *William R. Yeomans*, Fellow in Law and Government, Washington College of Law, and former Chief Counsel for Senator Edward M. Kennedy, Senate Judiciary Committee (moderator)

**3:30 p.m. Panel Four: *Idealized View of the Privilege* -- a wide-ranging assessment of what, all things considered, the nature and scope of the privilege ought to be.**

*Elizabeth Goitein*, Director, Liberty and National Security Project, Brennan Center for Justice, New York University School of Law; *Kenneth Gude*, Associate Director, Center for American Progress; *Carl J. Nichols*, former Principal Deputy Associate Attorney General, Department of Justice (Bush Administration); *Kent Roach*, Prichard-Wilson Chair of Law and Public Policy, Faculty of Law, University of Toronto; and *Stephen I. Vladeck*, Professor, Washington College of Law (moderator)

**5:00 p.m. Reception**

*General Registration* – no charge.

CLE Accreditation (5 credits) will be applied for -- *CLE Registration* - \$75.

To register, please go to [www.wcl.american.edu/secle/registration](http://www.wcl.american.edu/secle/registration).

For further information, please contact: Office of Special Events & Continuing Legal Education, 202.274.4075 or [secle@wcl.american.edu](mailto:secle@wcl.american.edu).

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