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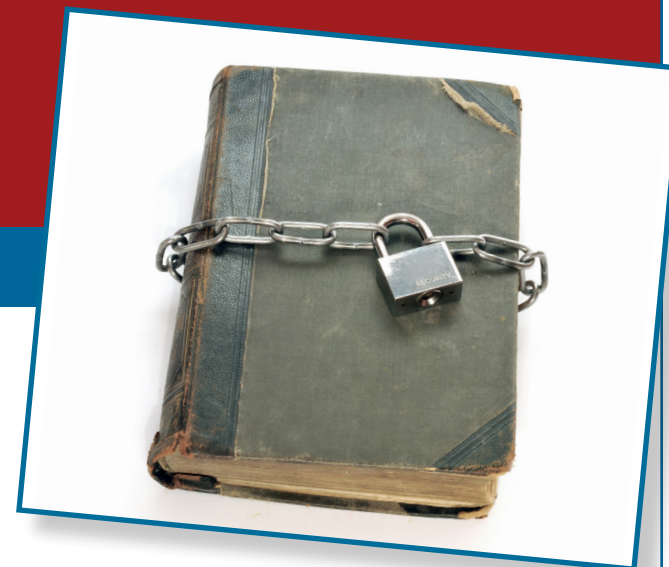
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Court of Appeals for the District of Columbia Circuit, and our individual members for their
continuing support of the Society.

The Historical Society of the D.C. Circuit is a 501(c)(3)
non-profit organization independent of the Courts.

The Historical Society of the District of
Columbia Circuit presents:

In re Judith Miller – National Security and the Reporter's Privilege



February 14, 2017
4:30 p.m.

*Ceremonial Courtroom, 6th Floor
E. Barrett Prettyman U.S. Courthouse
3rd & Constitution Avenue, N.W.
Washington, D.C.*

Historical Society Mission

To record, preserve and publicize the life and history of the Courts of the District of Columbia Circuit

What Lies Ahead

Presenting reenactments and panel discussions of cases and legal issues of historic interest litigated in the Courts of the D.C. Circuit

Encouraging and publishing research and writings about the colorful history and judges of the D.C. Circuit Courts

Initiating and publishing oral histories of judges, lawyers, and others who have played key roles in the D.C. Circuit Courts

Conducting the Annual Mock Court Program for D.C. high school students, mentored by volunteer attorneys, to argue cases before judges of the Courts of the Circuit.

Assisting judges of the D.C. Circuit Courts in preserving their chambers papers and electronic transmissions

Involving law clerks of the D.C. Circuit Courts – both current and past – in Society activities

Recent Activities

Sponsoring the writing of a biography of District Judge William B. Bryant by award-winning author Tonya Bolden

Building an online library of articles about the D.C. Circuit Courts and the judges, including “Dark Days of the Black Codes,” and “The D.C. Judge Who Bedeviled President Lincoln”

Programs on historic cases and issues and the role of judges: “A Conversation on Judging – Then and Now” between Senior Judge Paul L. Friedman and Judge Ketanji Brown Jackson, “Women in the Life and Law of the District of Columbia Circuit Courts,” and “The Separation of Powers and the Independent Counsel: *Morrison v. Olson* Revisited”

Streaming videos of Society programs on the Society’s website

Maintaining the Society’s website, www.dcchs.org; Facebook page, www.facebook.com/CircuitHistory; and Twitter account, twitter.com/CircuitHistory

Circulation of *Calmly to Poise the Scales of Justice: A History of the Courts of the District of Columbia Circuit*

HISTORY IS IMPORTANT

Programs like this depend on the generosity of Society members, law firms, and others. Non-members are invited to join the Society by applying online at <http://dcchs.org/News/join.html>

In re *Judith Miller* – National Security and the Reporter’s Privilege

In December 2003, the Department of Justice appointed a Special Counsel to investigate whether government employees had violated federal law when they revealed to various reporters the identity of a CIA agent. Although New York Times reporter Judith Miller never published a story identifying the agent, the grand jury sought from her documents and testimony related to conversations she had had with a government official concerning the agent’s identity. Ms. Miller refused to comply with the subpoenas, and the District Court held her in civil contempt. She eventually spent 85 days in jail.

On appeal, Ms. Miller argued that she was entitled to conceal her confidential sources under both the First Amendment and a common-law reporter’s privilege. The panel of the Court of Appeals (with separate opinions by Judges Sentelle, Henderson and Tatel) was unanimous in affirming her conviction, agreeing that there is no First Amendment privilege protecting the evidence sought and that the Government’s need was sufficient to overcome any qualified common-law privilege. Judges Sentelle and Tatel divided, however, over whether a common-law reporter’s privilege to resist a grand jury subpoena even exists.

Our program will begin with a presentation of the historical context of the case, followed by a reenactment of the common-law privilege arguments presented to the Court of Appeals. Finally, our participants will gather as a panel to explore the appropriate balance between free speech and common-law protections of reporters’ sources, on the one hand, and the government’s need to know in aid of its law enforcement and national security responsibilities, on the other.

Setting the Stage:

David Pozen, Professor of Law, Columbia University, author of “The Leaky Leviathan: Why the Government Condemns and Condone Unlawful Disclosures of Information”

Reenactment:

For appellant Judith Miller, **Laura R. Handman**, Davis Wright Tremaine LLP, attorney for news organizations, reporters and internet firms in national security investigations

For appellee United States, **Amy Jeffress**, Arnold & Porter Kaye Scholer LLP, former Chief, National Security Section, D.C. U.S. Attorney’s Office

David S. Tatel, Judge, U.S. Court of Appeals for the D.C. Circuit

David B. Sentelle, Senior Judge, U.S. Court of Appeals for the D.C. Circuit

Moderator of Panel Discussion:

Stuart S. Taylor, Jr., author, journalist, lawyer and National Journal contributing editor

Panelists

James M. Cole, Sidley Austin LLP, former Deputy Attorney General and key person in the 2014 revision of the Department of Justice’s news media policies

Laura Handman, Amy Jeffress, David Pozen