

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

Dear Friend of TCP,

It was with great sadness that I heard the news earlier this week that Abner Mikva had passed away. Judge Mikva held high office in all three branches of government, serving as a U.S. congressman from Illinois, as a federal judge on the U.S. Court of Appeals for the District of Columbia (including a four-year stint as chief judge), and as White House counsel to President Bill Clinton. In 2014, President Obama awarded him the Presidential Medal of Freedom, the country's highest civilian honor, noting that Judge Mikva "helped shape the national debate on some of the most challenging issues of the day."



I first met Judge Mikva when he was the Chief Judge of the DC Circuit, but had the privilege of getting to know him later when he agreed to co-chair TCP's very first committee that produced a seminal report, "Great and Extraordinary Occasions: Developing Guidelines for Constitutional Change," which still serves as a primer on the constitutional amendment process. I am proud that he was so supportive of TCP's mission that he later served on our Board of Directors and Board of Advisors.

Judge Mikva was one the sharpest legal minds of his generation, as well as a savvy politician. He always stood firm in his convictions, knowing how to disagree without being disagreeable. He was a friend and mentor. I will miss him.

Sincerely,



Virginia Sloan
President

In This Issue

- [TCP-Led Coalition Asks Senate Not to Restrict Work of Privacy Board](#)
- [Recusal Required in Pennsylvania Death Penalty Case, Supreme Court Rules](#)
- [TCP Fights Against Expansion of National Security Letters](#)
- [Members of TCP Board Back Judicial Independence](#)
- [Groups Call for Congressional Hearings on FBI's Biometric Database](#)
- [Sloan Addresses International Death Penalty Forum](#)

TCP-Led Coalition Asks Senate Not to Restrict Work of Privacy Board

Government Surveillance & Searches

Nearly 50 civil society organizations, companies, trade associations and academics joined TCP in asking the Senate to reject a proposal to limit the Privacy and Civil Liberties Oversight Board from considering the privacy interests of foreigners. In a [June 24 letter](#) to members of the U.S. Senate, the group said such a limitation would be "detrimental to human rights and to transatlantic trade."

The provision restricting the PCLOB from considering the privacy and civil liberties impact of national security surveillance programs on anyone other than citizens and lawful permanent residents of the U.S. is part of the Intelligence Authorization Act for Fiscal Year 2017, which was adopted by the Senate Select Committee on Intelligence in closed session and without public input earlier in the year.

[Back to top](#)

Recusal Required in Pennsylvania Death

Penalty Case, Supreme Court Rules

Death Penalty

A judge may not hear an appeal in a death penalty case that he worked on as a prosecutor, the U.S. Supreme Court ruled on June 9 in Williams v. Pennsylvania. TCP organized two separate friend-of-the-court briefs in support of Williams - one from seven distinguished [former appellate judges](#), the other from 16 [former prosecutors](#) who subsequently became judges - that were submitted to the Supreme Court last December.

Terrance Williams was convicted of the 1984 murder of a Philadelphia man, and sentenced to death. Williams alleged that former Pennsylvania Chief Justice Ronald Castille should have recused himself from the 2014 Pennsylvania Supreme Court hearing on Williams' appeal because he had served as the local district attorney at the time of Williams' initial conviction, and had subsequently sought and won election to the court by championing his record of sending 45 people to death row, including Williams. On a vote of 5 to 3, the [justices ruled](#) that, even though his vote was not the dispositive one, Castille's failure to recuse himself in the case violated Williams' constitutional right to due process.

"Our democracy requires that our court system function fairly and impartially. The Supreme Court's ruling in Williams will go a long way toward ensuring that future defendants do not have their cases decided by the very person who sought to prosecute them in the first instance," said TCP President Virginia Sloan in a [press release](#).

[Back to top](#)

TCP Fights Against Expansion of National Security Letters

Government Surveillance & Searches

TCP is working with other privacy advocates and tech companies to block legislation that would give the FBI the power to collect sensitive information about Americans' online communications - including browsing history and location information - without a court order. Instead, the legislation would permit the agency to collect the information through use of a National Security Letter, or NSL, that can be issued by FBI agents in field offices without any judicial oversight. NSLs are routinely accompanied by a "gag order" to prevent the service provider from notifying a user that the FBI had compelled disclosure of the information.

On June 6, a coalition of three dozen civil society organizations, companies, and trade associations joined TCP in [sending a letter](#) to the Senate arguing against the expansion of NSLs. "The new categories of information that

could be collected using an NSL-and thus without any oversight from a judge-would paint an incredibly intimate picture of an individual's life. ... This information could reveal details about a person's political affiliation, medical conditions, religion, substance abuse history, sexual orientation, and even his or her movements throughout the day," the groups wrote.

[Back to top](#)

Members of TCP Board Back Judicial Independence

Checks & Balances

Members of the TCP Board of Directors released a [statement](#) on June 8 decrying recent statements that judges should be precluded from sitting in certain cases simply because of their race, ethnicity, religion or other background factors. The statement notes that criticism of judge who decides a controversial case or seemingly makes a mistake is protected by the First Amendment and helps to promote judicial accountability.

"But when legitimate judicial criticism degenerates into such statements [based on race, religion and other background factors], they become a form of intimidation that threatens not only judicial independence, but also our individual rights and freedoms that only independent judges -- operating as part of a third and co-equal branch of government -- can protect," the Board members wrote.

[Back to top](#)

Groups Call for Congressional Hearings on FBI's Biometric Database

Data Collection & Privacy

A coalition of civil rights, human rights, immigrant rights, privacy, and transparency organizations joined TCP in urging leaders in Congress to conduct hearings on the FBI's proposal to exempt its massive national database of fingerprints and facial photos from the Privacy Act. Called the Next Generation Identification (or NGI) system, the database uses advanced surveillance technologies such as facial recognition, iris scans, and fingerprint recognition. It contains records on millions of Americans, even if they have never been accused of a crime. The FBI uses the same facial recognition technology to search other government databases, including drivers' license files in at least 16 states. All of these searches are conducted without any judicial oversight.

"The collection of biometric data on millions of people gives law enforcement the ability to identify individuals without probable cause, reasonable

suspicion, or any other legal standard that might otherwise be required for law enforcement to obtain traditional identification," the group wrote in a [June 23 letter](#) to leaders of the Senate and House Judiciary Committees and the House Committee on Oversight and Government Reform.

[Back to top](#)

Sloan Addresses International Death Penalty Forum

Death Penalty

TCP President Virginia Sloan spoke at the Sixth World Congress Against the Death Penalty, held in Oslo, Norway from June 21 to June 23, 2016. Her remarks centered on how other organizations could utilize TCP's model to recruit "unlikely allies" in death penalty discussions. The event was attended by more than 1300 representatives from 80 countries. Participants included human rights officials from the United Nations and European Union, as well as justice officials and NGO representatives from abolitionist and retentionist countries alike, Nobel Peace Prize laureates, death-row exonerees from around the world, attorneys, journalists, and activists.

[Back to top](#)

[Donate Now](#)

The Constitution Project | 1200 18th St NW | Washington, DC | 20036

T: 202.580.6920 | F: 202.580.6929

www.constitutionproject.org

[Join Our Mailing List](#)

