

**Nomination of Edward Felten
Privacy and Civil Liberties Oversight Board
Questions for the Record
Submitted May 14, 2019**

QUESTIONS FROM SENATOR BOOKER

- 1. The Privacy and Civil Liberties Oversight Board is charged with conducting oversight for Executive Branch policies, procedures, regulations, and information sharing practices relating to the government's efforts to protect our nation from terrorism. This oversight function is critical because it helps ensure that Americans' privacy and civil liberties are protected.**

If confirmed to serve a full term on the Privacy and Civil Liberties Oversight Board, what would be your oversight priorities?

The Privacy and Civil Liberties Oversight Board (PCLOB) plays a key role in helping to ensure that the important work of our law enforcement and intelligence agencies to protect the nation from terrorism is consistent with the need to protect privacy and civil liberties.

I believe strongly in the work and mission of the Board. It is therefore an honor and privilege to serve on the Board and to have been nominated to serve a full six-year term.

Among my high priorities as a Board Member is to examine how changes in technology affect the collection and analysis of intelligence by the government as well as efforts to protect privacy and civil liberties.

While technology creates new privacy challenges, it also creates opportunities to better protect privacy and civil liberties. Technology, if used appropriately, can reduce the privacy impact of some programs, and it can help ensure compliance with laws, policies, and best practices.

The government's use of facial recognition technology for national security purposes is one specific example of an area in which the Board's oversight work could have a positive impact on public policy.

The Board should also continue its oversight of intelligence programs operated under the FISA amendments enacted by Section 215 of PATRIOT Act and the USA FREEDOM Act. As Congress considers whether to reauthorize this program later this year, the Board's oversight could contribute valuably to this national discussion. In addition, the Board should continue to oversee the implementation of previous recommendations made related to Section 215 as well as Section 702 of the Foreign Intelligence Surveillance Act.

Paramount to all of the Board's work is transparency, consistent with the protection of classified information. If confirmed to serve a full six-year term, it will remain my top priority to ensure that the Board's work is as visible to the American public as possible

through publicly released reports and public events.

2. In addition to your recent service, what prior experiences do you have that you believe are relevant to the issues you would be presented with for a full term on the Privacy and Civil Liberties Oversight Board?

To examine the programs that are within the PCLOB's jurisdiction, the Board must engage with federal agencies to understand the details of how these programs are operated. These programs are often deeply technical in nature. If confirmed to a full term, I will continue to use my expertise as a computer scientist to help the Board more fully understand and address the technical aspects of the programs it examines.

Throughout my career and many years of public service, I have focused on the use of technology and computer science knowledge in public policy. In addition to my service on the Board, I am a Professor of Computer Science and Public Affairs at Princeton University, and Director of the Princeton's Center for Information Technology Policy. I previously served as Deputy United States Chief Technology Officer at the White House Office of Science and Technology Policy, and as Chief Technologist at the Federal Trade Commission. Experience in all of these positions has contributed to my background and perspective on the topics of the Board's work.

In addition, through my affiliation with numerous organizations, I have long advocated for public policy that safeguards national security while protecting privacy and civil liberties.

3. The USA Freedom Act enacted a number of reforms to Foreign Intelligence Surveillance Court proceedings, including requiring the appointment of at least five individuals to be amici curiae who are charged with helping to protect individual privacy and civil liberties.

What is your position on an outside amicus arguing against the government in Foreign Intelligence Surveillance Court proceedings?

I support the provision in the USA FREEDOM Act that enables an outside amicus to argue for advancing privacy and civil liberties in FISA court proceedings. This provision, which was recommended by the previous Board, helps to ensure that matters which raise novel legal or technical questions are fully considered by the FISA court. This provision helps strengthen the credibility of the FISA court and its decisions.

4. The Privacy and Civil Liberties Oversight Board plays a role in recommending individuals to be selected as an amicus curiae.

What experiences and qualities would you look for in recommending individuals to serve as an amicus curiae in Foreign Intelligence Surveillance Court proceedings?

Individuals who serve as legal amici curiae in FISA court proceedings should be recognized experts in the area of national security and intelligence. Individuals who serve as technical

amici should be recognized experts in computer science or other relevant technical fields, and especially in the cybersecurity, privacy, or data science areas.

5. Are there any ways you would want to see the amicus role changed?

I support the use of the amicus whenever the court confronts novel or systemically significant legal or technical questions. This ensures that significant questions of law, as well as novel issues raised by new technologies, are subject to an informed view in addition to that of government. If confirmed to a full term on the Board, I would continue to engage with the court, monitor the use of the amicus, and make recommendations as the need arises.

To further strengthen the amicus, Congress could add a statutory requirement that the FISC appoint one or more of the cleared amici in each individual review of an annual certification under Section 702.