

QUESTIONS FOR THE RECORD: Responses of Elisebeth C. Cook

From Senator Amy Klobuchar

“Nominations to the Privacy and Civil Liberties Oversight Board”

April 18, 2012

Questions for all witnesses

Question No. 1: Career Experience

You have all established very impressive careers with experience working in both public service and private legal practice.

- Can you describe any experiences you have had in your career in balancing civil liberties with national security or other priorities?
- How did you go about analyzing such conflicts?

During my time at the Department of Justice (2005-09), I had many experiences balancing civil liberties with national security and other priorities. For example, I was involved in the effort that resulted in the Attorney General Guidelines for Domestic FBI Operations, which reflect a balance of civil liberties protections with national security and criminal investigative needs. These guidelines provided an opportunity to provide clear and consistent guidelines across national security and criminal investigations, while at the same time increasing oversight of domestic operations through a combination of approval, notice, and audit requirements.

Question No. 2: Privacy Concerns in the Commercial Arena

Privacy concerns are not just present in the national security context, but also in the commercial arena and with respect to the government’s regulation of commerce.

- Can you talk about how the dynamics or considerations of privacy might be different in commercial contexts as opposed to security contexts?
- Specifically, how can industry, including telecommunications firms, and the government work together to improve our approach to privacy issues?

As an initial matter, the legal framework for private companies to obtain and retain information is different from that applying to government acquisition, retention, and dissemination of information. Moreover, imperatives for which government collects and uses information, such as national security and criminal investigations, may be largely absent for private actors. In the end, industry, including telecommunications firms, and the government can each benefit from clear and consistent frameworks for protecting privacy.