

Nomination of Travis LeBlanc
Privacy and Civil Liberties Oversight Board
Questions for the Record
Submitted February 6, 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 on the Privacy and Civil Liberties Oversight Board, what would be your oversight priorities?

If confirmed, I would work with fellow members to set the Board's agenda, and I would seek to advance the following near-term priorities. First, I would aim to bring each of the Board's existing oversight projects to an appropriate conclusion, issuing a public report transparent to the greatest extent possible in each case, consistent with our obligation to protect national security and classified information. Second, I would collaborate with fellow members in issuing semiannual reports, as required by the Board's statute. Third, I would encourage fellow members to conduct a Board review of the Intelligence Community's policies and practices associated with implementation of the USA FREEDOM Act—particularly those associated with the provisions that are set to expire later this year. Fourth, I would work with fellow members to examine and strengthen the PCLOB's role in connection with the EU-U.S. Privacy Shield Agreement. The Privacy Shield framework is critical to transatlantic trade and commerce, and the Board occupies an important role in helping the United States government meet the compliance and oversight assurances that the U.S. has made in connection with the Privacy Shield Agreement.

In the longer term, I would encourage the Board to prioritize oversight for significant signals intelligence activities within the Intelligence Community that result in the collection of large amounts of data about U.S. persons, or that otherwise affect privacy and civil liberties for a large number of individuals. Appropriate subjects for additional Board oversight could include the status of past Board recommendations that were not fully implemented at the time of the Board's last public Recommendations Assessment Report, as well as the implementation of recent legislative changes to Section 702 of the Foreign Intelligence Surveillance Act. It should be a priority for the Board to consult with stakeholders inside and outside of government, including congressional oversight committees, as it develops its agenda.

2. What experience do you have that you believe is relevant to the issues you would be presented with on the Privacy and Civil Liberties Oversight Board?

Much of my professional career has been devoted to working on issues of privacy, civil liberties, telecommunications, and national security. In 2017, I was appointed by the Department of Commerce and the European Commission to serve as an arbitrator of disputes under the EU-U.S. Privacy Shield Agreement. From 2014 to 2017, I served as the Federal Communications Commission's Chief of Enforcement

at a time when the Commission's enforcement activities included bringing over \$50 million in actions related to privacy and security violations, as well as taking general responsibility for protection of the integrity and security of the nation's communications networks. Prior to joining the FCC, I served as Special Assistant Attorney General of California, where I worked under former Attorney General Kamala D. Harris to establish California's Privacy Enforcement and Protection Unit as well as the State's high-tech crime unit (the "e-Crime Unit"). From 2009 to 2011, I worked on national security matters as an attorney in the U.S. Department of Justice's Office of Legal Counsel.

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?

Congress was wise to include amici curiae in Foreign Intelligence Surveillance Court (FISC) proceedings. The participation of cleared amici in FISC matters that are systemically significant or raise novel legal or technical questions, as recommended by the Board and enacted by Congress in the USA FREEDOM Act, strengthens the public credibility and rigor of judicial oversight of surveillance authorities, while preserving the government's ability to use these authorities flexibly and effectively once approved by the FISC. I believe that this independent expert advice on national security and civil liberties issues is valuable to the FISC, the Intelligence Community, and Congress.

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?

If confirmed, I would look for individuals with significant legal, technical, or policy expertise in national security, civil liberties, cybersecurity, data privacy, and telecommunications. In my prior roles at the Federal Communications Commission and the California Department of Justice, I experienced firsthand the necessity and rarity of technical expertise in law enforcement and government policymaking, and I worked hard to bring technical experts into both of those agencies. I commend the FISC for recently designating several technologists as amici curiae. I also believe that it is critical that the amici curiae represent the diverse perspectives and communities of our nation, and if confirmed, I would work with fellow Board members toward that goal.

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

I do not currently have access to classified material about FISC litigation, including which matters have or have not included amicus participation and which might or might not benefit from amicus participation. I also have not had an opportunity to engage with members of the FISC, FISC amici, or elements of the Intelligence Community about this topic. As a result, I have not yet formed an opinion about how the current amicus role

could be improved. I have familiarized myself with unclassified and declassified material about amicus practice before the FISC, and if confirmed, I would carefully study the amicus role. I would pay especially close attention to the current standard for amicus participation and whether amici should automatically participate in the annual Section 702 certification process.