

Senator Marsha Blackburn
Questions for the Record to Sharon Franklin
Nominee for Chairman of the U.S. Privacy and Civil Liberties Oversight Board

Last summer while working for the Center for Democracy and Technology, you opposed Apple's plan to introduce certain parental-notification options into iMessage and to scan images on iCloud for known child-sexual-abuse images. As you know, critics of Apple's plans expressed concerns about its negative effects on privacy, and the company quickly canceled the plans. Do you believe that internet and tech companies like Apple should do more to police child sexual abuse and other criminal activity on their platforms?

As part of my work at the Center for Democracy & Technology I have advocated in favor of strong encryption, including explaining the important role that encryption can play in protecting everyone's privacy and cybersecurity, and particularly its role in safeguarding at risk users such as journalists and their sources, and victims of domestic violence who are trying to protect themselves from their abusers. The jurisdiction of the Privacy and Civil Liberties Oversight Board is to conduct oversight and provide advice to ensure that counterterrorism programs appropriately balance national security and privacy and civil liberties. So, it is possible that the PCLOB could examine the impact of encryption on the government's counterterrorism efforts and the implications for national security, privacy, and civil liberties. If I am confirmed and the PCLOB does take on such a project, I would review all the facts and make assessments with an open mind.

What are ways that Apple and these companies could better assist law enforcement in stopping these crimes while allaying your concerns about user privacy?

There has certainly been an active debate over the years over the use of strong encryption and the extent to which this may pose a barrier to law enforcement. Various academics, security researchers, and non-governmental organizations have been examining how to address harmful content online while still preserving end-to-end encryption and the role it plays in safeguarding users' privacy and security. Congress has also considered a number of proposals to address these issues. If I am confirmed and the PCLOB takes on a review of the impact of encryption on the government's counterterrorism efforts, I would work with my fellow Board Members and PCLOB staff to serve as a resource to Congress in this regard.

SENATOR TED CRUZ U.S. Senate Committee on the Judiciary

Questions for the Record for Sharon Bradford Franklin, to be Member and Chair of the Board of the Privacy and Civil Liberties Oversight Board

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. If confirmed, what will your top priorities be for the Privacy and Civil Liberties Oversight Board (PCLOB)?

If confirmed, I would first work with my fellow Board Members and the PCLOB's staff to review the open oversight projects that staff have continued to pursue during the sub-quorum period, to assess which projects may be concluded, and which investigations should be continued. I would then work with my fellow Board Members and the PCLOB's staff to consider what additional oversight projects the PCLOB should initiate. In this regard, it would be important to develop a portfolio of projects that is diverse and strategic. This should include focusing on a range of different agencies that operate counterterrorism programs. In addition, the PCLOB's enabling statute directs the agency to make its reports available to inform the public to the greatest extent possible consistent

with protection of classified information and applicable law. While some of the PCLOB's oversight reports must remain classified, the PCLOB should aim to provide accountability through transparency where possible, and should choose some oversight projects that are likely to lead to public reports.

2. What role should PCLOB take in assessing and recommending policy changes to address FISA abuses?

The Department of Justice Inspector General issued three public reports from December 2019 through October 2021 finding widespread problems and major failures in how the Justice Department and FBI have brought matters before the FISA Court. This investigation shows the need for improved safeguards to ensure that FISA applications are complete and based on reliable evidence, and that the FISA court is presented with all relevant information. The PCLOB has in the past issued reports and made recommendations to improve protections for privacy and civil liberties under certain provisions of FISA, and to improve the operations of the FISA Court. If I am confirmed, I would work with my fellow Board Members and PCLOB staff to consider what further oversight of FISA surveillance the PCLOB should conduct, and to serve as a resource for Congress as it evaluates any potential changes to FISA and the procedures the government follows to implement FISA surveillance.

3. Would you be in favor of reauthorizing the USA FREEDOM Act of 2015?

When Congress was considering the USA FREEDOM Reauthorization Act in 2020, I wrote about several changes that I supported as part of that reauthorization, including ending the Section 215 Call Detail Record (CDR) program. Further, the PCLOB issued a report in February 2020 that examined operation of the Section 215 CDR program, and Board Members stated that they agreed with the NSA's decision to suspend operation of the program.

Now that three surveillance law provisions – Section 215, the lone wolf provision, and the roving wiretap provision – all expired on March 15, 2020, it would be important to assess what impact those lapses have had on the government's ability to conduct investigations. We should ensure that the government possesses the surveillance authorities it needs to keep our country safe, while building in robust safeguards to ensure that government surveillance does not unnecessarily intrude on privacy and civil liberties. Government surveillance under FISA – as amended by the USA FREEDOM Act – remains an important and appropriate subject for continued oversight by the PCLOB. If I am confirmed, I would work with my fellow Board Members and PCLOB staff to consider what further oversight of FISA surveillance the PCLOB should conduct, and to serve as a resource for Congress.

4. Which aspects of current government surveillance do you believe present the greatest threats to American civil liberties or rights?

Any government surveillance that collects the information of Americans can threaten

Americans' privacy and civil liberties. Under some surveillance authorities, the government may actually target Americans for surveillance, while under other programs, the government may collect substantial quantities of Americans' information through what the government terms "incidental collection," when Americans are on the other end of communications with foreign targets. Surveillance programs pose serious risks to privacy and civil liberties when they fail to incorporate robust safeguards at all stages of the process, including targeting, collection, analysis, retention, and dissemination.

5. What are the greatest national security or terror threats currently facing the country?

Our country faces threats from both international and domestic terrorism that are continually evolving, and that our government must take seriously. The jurisdiction of the PCLOB is to conduct oversight and provide advice to ensure that federal counterterrorism programs appropriately balance national security and privacy and civil liberties. Although the PCLOB does not play a role in developing the government's responses to the threats of terrorism, it is important for Board Members and staff to understand the nature of terrorism threats, and which threats the government assesses to be most serious. Such an understanding assists the PCLOB in determining which areas to prioritize for oversight, and is necessary for the agency's work in evaluating whether counterterrorism efforts appropriately balance national security, privacy, and civil liberties. When I served as Executive Director of the PCLOB, the Intelligence Community provided regular and periodic briefings for Board Members and staff on current terrorism threats and counterterrorism priorities. If confirmed, I would ensure that my fellow Board Members and staff had the benefit of such briefings to guide the PCLOB in its oversight and advice projects.

6. The political fault lines of privacy and surveillance policy are not always clear cut. If confirmed to be a board member on PCLOB, how do you intend to work with both political parties? Is it important to do so in a unified government?

I agree that protecting privacy and civil liberties in surveillance programs should not be a partisan issue, and it is important for the PCLOB to work to pursue its mission in a bipartisan manner. The PCLOB is headed by a five-member bipartisan Board. When I served as Executive Director of the PCLOB, I worked productively with all Board Members, and when the PCLOB published its reports on the bulk phone records program conducted under Section 215 and on the Section 702 program, twenty out of the twenty-two recommendations contained in those two reports were bipartisan and unanimous. As demonstrated by multiple letters submitted to the Senate Judiciary Committee in support of my nomination, I have a proven record of working with people across the political spectrum, and of developing policy positions that have bipartisan support. If confirmed, I would continue to work on a bipartisan basis both with my fellow Board Members, and with Congress.

7. Do you plan to try to implement any improvements to PCLOB if confirmed? If so, how do you think that PCLOB should change its approach or functions and why?

If confirmed, one of my roles as Chair would be to work with my fellow Board Members and staff to assess how the PCLOB could improve its internal operations and better serve its mission. When I served as Executive Director of the PCLOB, the agency was brand new, and I supported the Board in engaging in substantial work to stand up the agency and establish processes for its operations and governance, as well as procedures for conducting oversight and advice reviews. The PCLOB has made a lot of progress in that work both during that time, and in the five years since I left my position with the agency. If I am confirmed to serve as Chair, I would plan to continue that work to ensure that the PCLOB's operations and activities in support of its mission are conducted efficiently and effectively.

8. Do you think that PCLOB has any role in assessing the possible threats that Big Tech and social media companies may play in data privacy concerns or curtailing free speech?

The jurisdiction of the PCLOB is to conduct oversight and provide advice to ensure that federal counterterrorism programs appropriately balance national security and privacy and civil liberties. Since the PCLOB's role is to assess the counterterrorism activities of the government rather than the actions of private companies, I do not believe that the PCLOB would have any direct role to play in assessing the possible threats that Big Tech and social media companies may play in data privacy concerns or curtailing free speech. However, the amount of personal information that tech companies hold about their users affects the extent of data that is available for the government to collect through surveillance, and this could be a topic that the PCLOB could consider in any review of counterterrorism programs that involve government access to data held by tech companies.

9. Does January 6 justify using additional surveillance measures to resolve open cases?

The government is continuing to investigate and prosecute people based on the events of January 6. From the information available to the public, the government has not stated that it lacks the authority it needs to conduct investigations or to bring appropriate prosecutions based on the events of January 6.

10. You have expressed disappointment with past PCLOB reports that have failed to issue recommendations. What would you do differently if confirmed to push the board to generate and include recommendations in public reports?

I believe that the PCLOB is most effective when, as part of its oversight reviews, it crafts concrete and actionable recommendations designed to protect privacy and civil liberties. In the past, the PCLOB has done this successfully. If confirmed, I would work with my fellow Board Members and staff to seek to develop concrete and actionable recommendations to protect privacy and civil liberties as part of oversight reviews, and

where possible, to develop consensus-based recommendations that have the support of all Board Members.

11. You recently suggested in an article last October that Congress create something like the 9/11 Commission to assess government surveillance and its threats to civil rights and liberties. What role would an independent commission serve to protect civil rights and liberties that PCLOB does not complete?

In my article, I suggested that as we mark the 20th anniversary of enactment of the Patriot Act, Congress should create a surveillance commission to conduct a thorough reexamination of the rules governing U.S. intelligence surveillance activities, and to make recommendations for reforms to create robust guardrails for privacy and civil liberties. The PCLOB could take on part of the role that I outlined for a surveillance commission. Like the commission I suggested, the PCLOB is bipartisan and all Board Members and staff must have top level security clearances, and the PCLOB can and does make recommendations for reforms to protect privacy and civil liberties. However, the PCLOB's jurisdiction is limited to counterterrorism and does not include all intelligence surveillance. In addition, the PCLOB is a small agency, and taking on a comprehensive reexamination of surveillance authorities including the Foreign Intelligence Surveillance Act and Executive Order 12333 would divert the agency's time and resources from its core work of conducting oversight and providing advice regarding particular counterterrorism activities.

12. You've written on behalf of the Center for Democracy & Technology that Congress should end warrantless US person queries—"backdoor searches"— under Section 702 of the FISA Act, and that these backdoor searches violate the Constitution. Is this your personal view?

Yes, I agree with the U.S. Court of Appeals for the Second Circuit, which found that U.S. person queries must comply with the Fourth Amendment, noting that "[t]reating querying as a Fourth Amendment event and requiring the query itself to be reasonable provides a backstop to protect the privacy interests of United States persons and ensure that they are not being improperly targeted." The PCLOB published a report examining the Section 702 surveillance program in 2014, and the operation of Section 702 surveillance remains an appropriate and important topic for continued PCLOB oversight. If I am confirmed, in connection with any further consideration of Section 702, I would review all the facts and make assessments with an open mind.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Sharon Bradford Franklin
Nominee to Chair the Privacy and Civil Liberties Oversight Board

- 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 protect Americans' privacy and civil liberties. If you are confirmed to PCLOB, what will be your oversight priorities?**

If confirmed, I would first work with my fellow Board Members and the PCLOB's staff to review the open oversight projects that staff have continued to pursue during the sub-quorum period, to assess which projects may be concluded, and which investigations should be continued. I would then work with my fellow Board Members and the PCLOB's staff to consider what additional oversight projects the PCLOB should initiate. In this regard, it would be important to develop a portfolio of projects that is diverse and strategic. This should include focusing on a range of different agencies that operate counterterrorism programs. In addition, the PCLOB's enabling statute directs the agency to make its reports available to inform the public to the greatest extent possible consistent with protection of classified information and applicable law. While some of the PCLOB's oversight reports must remain classified, the PCLOB should aim to provide accountability through transparency where possible, and should choose some oversight projects that are likely to lead to public reports.

- 2. What prior experiences do you have that you believe are relevant to the issues you would face while with PCLOB?**

In my career as an attorney, I have worked in several different government agencies and non-governmental organizations, and have addressed a wide variety of legal and policy issues involving national security and privacy and civil liberties. My most directly relevant experience is that after the PCLOB came into existence as an independent agency in 2012, I had the privilege of serving as its first Executive Director, and I worked to further its mission to review counterterrorism programs to ensure that there is an appropriate balance between national security concerns and privacy and civil liberties. This included supporting the Board in its reviews of, and drafting reports regarding, both the bulk telephone records program conducted under Section 215, and the surveillance program conducted under Section 702. I also analyzed various other counterterrorism programs, I led the PCLOB's staff in developing strategies for conducting oversight investigations, and I supervised and directed staff work in support of the agency's mission. In my work at several non-governmental organizations including The Constitution Project, New America's Open Technology Institute, and the Center for Democracy & Technology, I have also addressed a variety of issues related to national security, privacy and civil liberties. This has included research, writing and advocacy on issues related to government surveillance, cross-border access to electronic data, use of

facial recognition technology, and measures to promote government transparency and accountability.

- 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 FISC proceedings—and why do you take this position?

I support the participation of amici charged with helping to protect individual privacy and civil liberties in proceedings of the Foreign Intelligence Surveillance Court (FISC) and Foreign Intelligence Surveillance Court of Review (FISCR). As I have written previously, when Congress created the role of amici curiae to participate in the FISC and FISCR, this “was an important step toward improving the operation of these secret courts. FISA Court judges have relied upon the amici’s positions, and even where the FISA Court judges have disagreed, they have analyzed and considered the amici’s arguments.” As I also noted in my article, “[b]ecause the amici can participate behind the curtain that protects classified information, they can serve as the public’s eyes and ears, pushing back against the government’s arguments, and holding the government and the secret courts accountable.”

- 4. PCLOB plays a role in recommending individuals who are selected as amicus curiae. What experiences and qualities would you look for in recommending individuals to serve as amici in FISC proceedings?**

Section 103 of the Foreign Intelligence Surveillance Act (FISA), as amended by the USA FREEDOM Act, sets out the qualifications needed for individuals to be designated as amici, including that they should “possess expertise in privacy and civil liberties, intelligence collection, communications technology, or any other area that may lend legal or technical expertise” to the FISC and FISCR, and that they must be able to qualify for security clearances. In addition, it can be helpful for amici to have experience in advocacy, so that they are equipped to present their legal arguments and information effectively to the FISC and FISCR judges, and it would be helpful to ensure that the panel of eligible amici includes some who not only possess expertise in privacy and civil liberties, but who also have demonstrated a commitment to advocating for safeguards for individual rights. Further, since 2018, the panel of amici designated by the FISC includes both lawyers and technologists, so that the judges may benefit from both types of expertise, and I believe that the panel of qualified amici should continue to include both people with legal expertise and people with technical expertise.

- 5. Are there any ways you would like to see the amicus role change?**

Yes, as I have explained in my prior writing, when the PCLOB issued its 2014 report on the bulk phone records program conducted under Section 215, the report included a

unanimous recommendation that Congress create what the Board called a “Special Advocate” role, which was stronger than the amicus role created through the USA FREEDOM Act in three ways. First, the PCLOB recommended that the special advocates participate in more than just matters involving “novel and significant issues.” Second, the PCLOB stated that the special advocates should have full access to information related to the matters in which they participate. Third, the PCLOB urged that the special advocates should be able to petition for an appeal from the FISC to the FISCR, and from the FISCR to the Supreme Court. I would like to see the amicus role strengthened and expanded in these ways, putting the PCLOB’s recommendations into effect. Congress has worked to craft legislation to make such changes, and if confirmed, I would work with my fellow Board Members and PCLOB staff to serve as a resource for Congress on these issues.

Questions for the Record for Sharon Bradford Franklin
From Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

No.

b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

No.

Questions for the Record for Sharon Franklin
From Sen. Jon Ossoff
January 19, 2022

FISA Section 702:

What information should Congress and the American people have about the impacts of Section 702 surveillance before we vote on whether to reauthorize the law next year?

The Privacy and Civil Liberties Oversight Board published a report examining the Section 702 surveillance program in 2014, the PCLOB continued to work with the Intelligence Community regarding implementation of the recommendations in that report, and the current oversight projects listed on the PCLOB's website include examining the FBI's querying of data obtained pursuant to Section 702. The operation of Section 702 surveillance continues to be an appropriate and important topic for continued PCLOB oversight, and there remain many open questions regarding the impacts of such surveillance. These are questions on which the PCLOB could serve as a resource for Congress as Congress considers reauthorization of Section 702.

Based on your past experience with the Intelligence Community, is obtaining an estimate of Americans affected through a sample study logistically feasible, worth the time and resources it would require, and possible in a manner that is reasonably unobtrusive to the privacy of individuals within such a study?

I served as Executive Director of the PCLOB when it conducted its review of the Section 702 program in 2013 – 2014 and published its July 2014 report examining the program. Recommendation 9 of that report outlined five measures that the government should implement “to provide insight about the extent to which the NSA acquires and utilizes the communications involving U.S. persons and people located in the United States under the Section 702 program.” The PCLOB explained that “lawmakers and the public do not have even a rough estimate of how many communications of U.S. persons are acquired under Section 702” and stated that the NSA should implement measures to provide insight into this question, “enabling more informed judgments to be made about the program in the future.”

In the Recommendations Assessments Report that the PCLOB published in February of 2016, the PCLOB stated that the NSA was in the process of implementing two of the five measures outlined in Recommendation 9, that it faced challenges with the remaining three statistics, and that the NSA had advised the PCLOB that “it remains committed to developing and implementing measures that will, in the language of the Board's recommendation, ‘provide insight about the extent to which the NSA acquires and utilizes’ communications involving U.S. persons and people located in the United States under the Section 702 program.” The impact of the Section 702 program on the privacy and civil liberties of Americans, including the extent to which Americans' communications are collected under the program, is an important issue for Congress and the American people to understand. Based on this prior work of the PCLOB, it could be

appropriate for the agency to continue to work with the NSA to assess what measures the NSA could implement that would provide this insight, without posing an undue resource burden and in a manner that protects the privacy of individuals.

If confirmed, will you commit to working with the Intelligence Community, Congress, privacy experts, and other stakeholders to help obtain such an estimate before the 2023 sunset of Section 702?

As the PCLOB's report on the Section 702 program explains, gaining insight into the extent to which the communications of U.S. persons and people inside the United States are collected under the Section 702 program would assist Congress and the public to better understand the privacy and civil liberties impact of the Section 702 program. This remains as an important privacy and civil liberties issue, and one which could be appropriate for the PCLOB to continue to evaluate, and on which the PCLOB could serve as a resource for Congress as it considers reauthorization of the Section 702 program.

EO 12333:

What else can PCLOB do to provide public insights into how EO 12333 surveillance works and impacts Americans? Will you commit to working to provide such insights if you are confirmed? Will you commit to working with appropriately cleared congressional staff, to ensure that Congress has oversight over information, even if classified?

Executive Order 12333 provides a legal framework under which the Intelligence Community (IC) conducts most of its intelligence activities, including surveillance. The PCLOB has already conducted three "deep dive" reviews of counterterrorism activities conducted under E.O. 12333, comprised of two deep dive reviews of CIA activities and a review of the NSA's use of XKEYSCORE. These deep dives involved classified activities and did not result in public reports. The PCLOB also issued a public report in 2021 that provides an overview of how the IC operates under E.O. 12333. As Board Members stated publicly during my tenure as Executive Director of the PCLOB, given the extent of counterterrorism activities conducted under E.O. 12333, it is likely that the PCLOB will continue to review and assess such activities well into the future.

The PCLOB's authorizing statute directs the agency to make its reports available to inform the public to the greatest extent possible consistent with the protection of classified information and applicable law. Although some of the PCLOB's reports and recommendations must remain classified, I believe that the PCLOB can and should promote accountability through transparency where possible. The PCLOB served this role in particular with publication of its report on the Section 702 program. As the PCLOB prepared that report, I represented the agency in working with the IC to determine what information could be declassified in the public interest, and our efforts resulted in a report that provided substantial new public insight into the Section 702 program. Executive Order 13526 on classification provides for declassification in the public interest in certain circumstances, which require careful examination. If confirmed, I would work with my fellow Board Members and staff to identify some areas for

oversight that are likely to be able to lead to public reports, and would ensure that the PCLOB worked carefully with the IC to pursue any requests for public interest declassification. For information that remains classified, I would work with my fellow Board Members and PCLOB staff to brief Members of Congress and cleared staff regarding the PCLOB's work.

PCLOB Authority and Resources:

Should the PCLOB's jurisdiction remain limited to oversight of the government's efforts to prevent terrorism? Would you recommend that Congress expand the PCLOB's jurisdiction to include oversight of the government's broader intelligence efforts? In your view, what are the benefits or drawbacks of expanding PCLOB's scope?

There are numerous activities that the government undertakes to address the threats from terrorism, spread across the elements of the Intelligence Community as well as other agencies such as the Department of Homeland Security. At present, the PCLOB does not have the capacity to review and assess all such activities, and must be strategic in determining its portfolio of oversight reviews and advice projects. Should Congress decide to expand the PCLOB's jurisdiction, it would be important to also provide commensurate resources to enable the PCLOB to handle its expanded role.

What are meaningful reforms that Congress could make to better ensure PCLOB can accomplish its goals of ensuring US counterterrorism policies are properly balanced with the need to protect privacy and civil liberties?

Members of Congress have introduced various proposals over the years to address the operation of the PCLOB. If confirmed, I would welcome the opportunity to consider any such measures and provide insights to Congress.

**Questions from Senator Thom Tillis
for Sharon Bradford Franklin
Nominee to be Chairman and Member of the
U.S. Privacy and Civil Liberties Oversight Board**

1. The PCLOB's mission is to ensure that the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties.

a. What can PCLOB do better to ensure the protection of Americans' civil liberties?

The PCLOB can ensure that it continues to conduct in-depth oversight investigations that ask difficult questions, examine all relevant facts and documents, and carefully consider whether the programs evaluated include adequate and appropriate safeguards for privacy and civil liberties. The PCLOB is also most effective when, as part of its oversight reports, it crafts concrete and actionable recommendations designed to protect privacy and civil liberties. The PCLOB should follow a similarly rigorous approach with regard to its advice projects.

b. What are the challenges you see to fulfilling the mission of balancing public safety with protecting privacy?

Based on my prior experience serving as Executive Director of the PCLOB, one challenge I observed was the difficulty in assessing the efficacy of counterterrorism programs. In the PCLOB's 2014 report on the Section 702 program, the PCLOB recommended that the government should "develop a comprehensive methodology for assessing the efficacy and relative value of counterterrorism programs." The PCLOB noted that assessing efficacy is critical in enabling policymakers and courts to "weigh the interests of the government in conducting a program against the intrusions on privacy and civil liberties that it may cause." In response to this recommendation, the Office of the Director of National Intelligence (ODNI) produced a short unclassified paper in 2016 entitled *Processes for Assessing the Efficacy and Value of Intelligence Programs* which outlined several quantitative and qualitative metrics the Intelligence Community was using, and concluded by stating that ODNI was continuing to evaluate the feasibility of using additional methods. Assessing efficacy will likely remain a challenge, and one that it is important to address.

2. If confirmed, what do you think is the top issue that the PCLOB should address?

There are several projects listed on the PCLOB's website that are already underway, and when the agency regains a quorum of Board Members, these should be evaluated to determine which may be wrapped up, and which should remain as agency priorities. There are many additional issues that could be important for the PCLOB to evaluate to ensure that counterterrorism programs appropriately balance national security, privacy,

and civil liberties. These could include continuing assessment of the surveillance program operated under Section 702 of the Foreign Intelligence Surveillance Act as the December 31, 2023 sunset date for that program approaches; evaluation of government uses of artificial intelligence in intelligence gathering and analysis in support of counterterrorism activities; review of the use of any other new and emerging technologies in support of counterterrorism activities; an examination of the impact of the March 15, 2020 lapse of three surveillance authorities – Section 215, the lone wolf provision and the roving wiretap provision; and oversight of particular counterterrorism activities conducted under Executive Order 12333.

3. If confirmed, what projects or priorities will you commit to pursuing as a commissioner?

If confirmed, I would first work with my fellow Board Members and the PCLOB's staff to review the open oversight projects that staff have continued to pursue during the sub-quorum period, to assess which projects may be concluded, and which investigations should be continued. I would then work with my fellow Board Members and the PCLOB's staff to consider what additional oversight projects the PCLOB should initiate. In this regard, it would be important to develop a portfolio of projects that is diverse and strategic. This should include focusing on a range of different agencies that operate counterterrorism programs. In addition, the PCLOB's enabling statute directs the agency to make its reports available to inform the public to the greatest extent possible consistent with protection of classified information and applicable law. While some of the PCLOB's oversight reports must remain classified, the PCLOB should aim to provide accountability through transparency where possible, and should choose some oversight projects that are likely to lead to public reports.

4. Do you believe we should make any updates to the Foreign Intelligence Surveillance Act?

Yes, as I have written in the past, I believe that Congress should enact reforms to the Foreign Intelligence Surveillance Act (FISA) to improve protections for privacy and civil liberties, and to expand and strengthen the role of the amici who provide expertise in privacy and national security issues to assist the judges of the Foreign Intelligence Surveillance Court. The PCLOB has in the past issued reports and made recommendations to improve protections for privacy and civil liberties under certain provisions of FISA, and government surveillance under FISA remains an important and appropriate subject for further oversight by the PCLOB. If I am confirmed, I would work with my fellow Board Members and staff to consider what further oversight of FISA surveillance the PCLOB should conduct. In connection with any such reviews, I would consider all the facts and make assessments with an open mind, and would work to serve as a resource for Congress as it evaluates whether and how to update FISA.