



Trump fills out intelligence oversight board

Adam Mazmanian

March 13, 2018

The same day the nation's top diplomat was fired and a new CIA director picked, President Donald Trump announced plans to add members to the Privacy and Civil Liberties Oversight Board.

The White House announced on March 13 that Ed Felten, a Princeton computer scientist and a former White House deputy CTO, and Jane Nitze, a former Justice Department attorney and Supreme Court law clerk would be nominated to PCLOB.

Last September, Trump picked Adam Klein, former clerk for Supreme Court Justice Antonin Scalia and a senior fellow at the Center for a New American Security, as PCLOB's chair. The Senate Judiciary Committee advanced that nomination in February, but a full Senate vote has yet to be scheduled.

The board, which conducts oversight of the intelligence community with an eye to privacy and human rights, has been without a quorum to do business for the entire Trump administration. (Three members constitutes a PCLOB quorum.) The board has the authority to access government records including classified material, to interview government officials and request the Justice Department to collect material from private companies via subpoena.

Felten, who served under the Obama administration, is a computer scientist who has been a key voice in ongoing debates about encryption.

Surveillance policy expert Julian Sanchez of the Cato Institute greeted Felten's pick, noting that it's "important to have at least one serious techie among the lawyers, given how profoundly technical architectures determine civil liberties implications of collection."

Past reports, including one on mass surveillance in the U.S. in the wake of the Edward Snowden revelations, were influential in steering debates in Congress.

"In the aftermath of the Snowden leaks in 2013, the work of the PCLOB -- including televised hearings -- went a long way towards providing the American public with at least a semblance of

contextual understanding of the complexities of the surveillance operations Snowden had revealed," said Bradley Moss, an attorney specializing in national security and whistleblower cases. "If in fact there were ethical, moral or legal violations of those same authorities during the investigation into Russian interference in the 2016 election, the PCLOB will once again likely assume the role of the adult in the room."

Current board member Elisebeth B. Collins weighed in on the recent congressional debates on the reauthorization of foreign surveillance authorities in a June 2017 Senate hearing. (A six-year authorization of Section 702 of the Foreign Intelligence Surveillance Act passed Congress in January, updating rules pertaining to and oversight of searches on U.S. persons.)

PCLOB also is a key player in the ongoing administration of the Privacy Shield agreement with Europe. That deal is what makes it possible for U.S. companies like Facebook, Amazon and others to collect and transfer data on European Union residents, despite the EU's much stricter privacy laws.

The European Commission's inaugural review of the Privacy Shield, released in October, specifically called for filling the empty PCLOB slots.

Chris Calabrese, vice president for policy at the Center for Democracy and Technology, told FCW that it is "crucial that we maintain these institutions and the act of nominating people is really important -- there's no shortage of things for them to tackle."

That oversight agenda, Calabrese said, should include the new "extreme vetting" policies of the Department of Homeland Security, device searches at the border, social media monitoring and, more generally, how the government is using hacking for intelligence gathering as well as the updated and newly public vulnerabilities equities process that governs stockpiling of known computer bugs.

While Calabrese welcomed the nominations, particularly the pick of Felton who is on CDT's board, he cautioned against expecting too much from the organization, which is requesting \$8 million for 2018 to support oversight of the \$50 billion-plus intelligence community.

"PCLOB has always had a tough job," he said. "There are many more things to oversee than there are people at PCLOB to do it."