

November 2016



Judge Patricia Wald

Former Chief Judge U.S. Court of Appeals for the District of Columbia and Presidential Medal of Freedom Recipient

Since 2012, **Judge Wald** has been serving as a member of the Privacy and Civil Liberties Oversight Board (PCLOB). (“This is an independent agency established by Congress in 2004 to advise the President and other senior executive branch officials “to ensure that privacy and civil liberties in the United States are appropriately considered in the development and implementation of all laws, regulations, and executive branch policies related to terrorism.”)

From 1979 to 1999 Judge Wald served on the U.S. Court of Appeals for the District of Columbia, including five years as Chief Judge.

Between 1999 and 2012, she has served in various capacities including as a Judge on the International Criminal Tribunal for the former Yugoslavia and as a Member on the President’s Commission on the Intelligence Capabilities of the U.S. Regarding Weapons of Mass Destruction.

Subject Area/Topic: PRIVACY AND NATIONAL SECURITY

Highlights: Judge Wald has been serving in a part-time capacity as a member of the Privacy and Civil Liberties Board (PCLOB). She discussed the dilemma facing a tiny agency (a Chair, four part-time board members and eighteen employees) charged with providing advice to and oversight over seventeen intelligence agencies with hundreds of thousands of employees. Judge Wald noted, “It is ridiculous to think that we could look at the entire intelligence community.” A noteworthy complication is that while the board’s charter calls for providing advice on counterterrorism and protection of civil liberties, the intelligence agencies are not required to ask for advice.

A bipartisan group of Senators asked the tiny agency to investigate and provide an unclassified report on two National Security Agency (NSA) programs— “under one, the NSA collects telephone call records or metadata — but not the content of phone conversations— covering the calls of most Americans on an ongoing basis. Under the second program, the government collects the content of electronic communications, including phone calls and emails, where the targets are reasonably believed to be non-U.S. persons located outside the United States.” House Minority Leader Nancy Pelosi later requested that the board also consider operations of the Foreign Intelligence Surveillance Court, which approved the two programs.

Judge Wald said that after four and a half years on the PCLOB, she is very appreciative of the intelligence agencies and does not believe that they are trying to get around the law. However, “the law on civil liberties is not fleshed out. The Supreme Court has stayed away from clarifying the jurisdiction of intelligence agencies [and] we really don’t know how the Constitution affects foreign intelligence.”