

Statement of Board Member Patricia M. Wald (April 8, 2015)

The following statement reflects prepared text. Comments as delivered may differ.

I intend to vote in favor of this project description. My colleagues have covered the territory adequately, and I am going to make four brief points.

First, we need to approve this project description in order to get on with our inquiry. I believe we have followed the mandates of the Sunshine Act in scheduling this particular meeting, and I hope that a majority of the Board will approve the description. I do not perceive any of my colleagues' differences as to the substance of this memorandum as critical to its usefulness in acting as a general guide to our future inquiries.

Second, there are a few points which do – and, I believe, must – appear in the project description so as not to mislead either the Intelligence Community, Congress, or the public as to what we are attempting to do in our inquiry. One of those is the necessity to describe the legal frameworks surrounding the use of E.O. 12333 as the legal basis for counterterrorism programs conducted pursuant to it. As my colleagues stress, we are ever mindful of the focus of our statutory jurisdiction on counterterrorism and have made that clear both to the Intelligence Community and to congressional staff with whom we have discussed our 12333 project.

I do not think it would satisfy our statutory mandate to keep the public informed if we did not give any description of the legal framework that surrounds the initiation and use of 12333 counterterrorism programs. I believe that clarifying that particular framework may indeed help, not hurt, the Intelligence Community as to the misconceptions that are already out there about its scope and limits.

Third, I want to emphasize that this is only a project description. My colleagues can – and I know they will – watchdog the process and inquiry as it progresses. And they will be able to vote decisively on any final report that is issued. But it is time that we got going on this project. We have been discussing the context of this brief document for months, both inside PCLOB and with affected groups. And here I want to echo the commendations to our staff, who have been not

only of enormous assistance but also enormously tolerant during these discussions. We have also had discussions with the relevant Intelligence Community agencies and their staff. So I think that we are at the point where we should move ahead.

Fourth, there has been some discussion here about our statutory functions, which are, of course, very important. As one of our colleagues reminded us, our advice function requires that we have the cooperation and the trust of the Intelligence Community agencies; the same might be said for Congress, which has the ultimate authority over our governing statute. But I want to emphasize one other aspect of our origins, which we have to keep in mind: We are an independent agency. We are within the executive branch, but we are not required to get their approval for what we say and do. And although we report to Congress, we are not required to get their pre-approval on our work product, either.

Our unique status as an independent body inside the executive branch was created in the aftermath of 9/11 out of a genuine concern that we act independent of executive or congressional control. We are the only country that has an independent government agency with oversight over the Intelligence Community. We must use that status wisely. With that in mind, I will vote in support of this project description for our 12333 inquiry.