

STATE OF THE NET



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12 Fireside Chat with Travis LeBlanc

Brian Fung: Travis, thanks for joining me today. really appreciate you being here.

Travis LeBlanc: No problem. Thank you, Brian. Looking forward to the conversation. And of course, thanks to Tim and State of the Net for having me back.

Brian Fung: First, I think, I probably speak on behalf of everyone here when, I say the thing I'm most curious about is what was it like to be fired by President Trump

Travis LeBlanc: A lot of people have now had the experience . I recall it was the Tuesday after inauguration. it was in the evening, and I received an email that purported to be from someone named Trent Morse, a name that I had never heard of before, asking me to resign on behalf of the President, or be terminated within 48 hours.

When I received the email, I actually thought it was a joke at first, because it came to me at my PCLOB email address, it went to my Cooley email address, and then it went to two random email addresses that have nothing to do with me, but that would look like my last name in them, at a Gmail and Yahoo.

And it looked like some guy named Greg, and I have no idea where those two email addresses came from, and so it kind of looked like it was spam, there. But then I heard from the other two board members that they received the same email within a minute of my receiving it. It was a little odd at first, because literally, I think it was the week

before, I had received a letter from President Biden, thanking me for my service on the PCLOB, to one week later, receiving a request to resign.

And what continues to strike me as interesting about the whole ordeal, is that to be on the PCLOB, you have to be nominated by the President after consultation with the Democratic leadership. You have to be confirmed by the Senate. Then, after your confirmation, you have to be commissioned. You have to be appointed to the position itself in the end. And you get a duly issued commission that is signed by the President and the Secretary of State.

We got the warrant, stamped on it that you have tenure there, and it was the oddity that, to be removed, a random person in the White House that no one has ever heard of could suddenly just send an email and you're removed. And, it seems a little bit odd that would be the process that you would go through, but nonetheless that's what happened.

Brian Fung: So, you got this random email, and you thought, hey, this seems a little bit suspicious, could be a phishing email, how did you find out that it was legit?

Travis LeBlanc: There were two other board members that also received the email, and, ultimately, we reached out to figure out whether it was legit, and we were told that it was.

Brian Fung: So, you just described the process by which you were nominated and then confirmed, and then the White House summarily dismisses you, that whole process seems certainly unusual, and I've had a lot of experts tell me, that's plainly illegal. What's your view on that, and what recourse do you have now that you're out?

Travis LeBlanc: I think it's helpful to contextualize the history of the PCLOB. The PCLOB was established following a recommendation of the 9/11 Commission in 2004. It was actually originally established in the Executive Office of the President. At the time, there were two presidentially-appointed Senate-confirmed members, and three members that could just be appointed by the President, and all members, explicitly by statute, served at the pleasure of the President.

In its first iteration, all of the board members, with the exception of one, were Republican. This was during the Bush administration. All but one were Republican. In one of the reports, I think the first report that the PCLOB did, the White House Counsel's Office sought to substantially revise the report, ultimately, because you work in the White House, you go through the process for review for any document that you want to put out through the White House.

Lanny Davis, then the only Democrat that was actually on the board, there were four, so it wasn't 3-2, it was a 4-1, Lanny Davis resigns in protest over the lack of independence

of the PCLOB. It is that resignation that led to the reconstitution of the PCLOB in 2007. When it was reconstituted, it was pulled out of the White House, pulled out of the Executive Office of the President.

It was established as an independent agency. All five board members were established as presidentially-appointed and Senate-confirmed. The President was explicitly required to consult with the Democratic leadership, in this case the opposition leadership, for nominees. They were meant to serve fixed terms of six years, which gets you over two administrations.

The people that were appointed were, by statute, it says explicitly, shall not be appointed on the basis of partisan affiliation. It's written into the statute. And then, when you look at the mandate for the agency, the very first thing that it says, when it says "The Board shall...", the board shall review proposed legislation.

Well, that's kind of odd in the executive branch, is that the first thing that an executive branch agency would do is advise Congress. So, you end up with this second feature.

What it didn't do, though, it's silent on removal. However, you have to consider it in the context of the statute that was the prior iteration of it, where everyone served at the pleasure of the president. That was taken out of the statute by Congress intentionally when it designed an independent agency.

Brian Fung: So what does that mean for you now? Could you sue to try and get your old position back?

Travis LeBlanc: I am definitely looking at legal options, and considering what the next step would be.

Brian Fung: Okay.

[applause]

You wrote an Op-Ed for The Guardian, and the headline to that was 'Trump fired me, now it will be easier for the government to spy on Americans'. What kind of abuses keep you up at night, and do you worry that what used to be incidental collection of U. S. person data might soon become targeted collection of U. S. person data.

Travis LeBlanc: One of the requirements on the PCLOB is that we all have top secret security clearances, so I have to balance the answer to your question about what keeps me up at night with what I can speak about publicly. I do think that there are several projects right now that the PCLOB is actively working on that do keep me up at night and make me concerned.

One of those projects is one that many people in this room probably know a lot about, which is Section 702 of the Foreign Intelligence Surveillance Act, which will go up for reauthorization in, I think, April of 2026. That is a critical, and indeed, one of the feature projects that the board has historically been involved in. It's one that, at the end of last year, the board voted to approve a new project into it.

I led the effort to do that. It was not a unanimous vote, it was a 3-1 vote. One member voted against it. The idea that we would not have the PCLOB on the beat when section 702 is up for reauthorization keeps me up at night. There are changes, reforms that were mandated the last time it was reauthorized. There are concerns about incidental collection that continue to exist, U. S. person queries, that continue to exist. I think it's absolutely critical that the PCLOB have a role doing that, and I hope that the prior opposition, that was to Section 702, will not end up killing the report.

A second example that keeps me up at night is another project that we opened at the end of last year into Tactical Terrorism Response Teams, as part of CBP, Customs and Border Protection.

For those who don't know much about them, this is an elite unit, within CBP, that works at the border to conduct surveillance, counter terrorism, using a lot of surveillance techniques, such as accessing phones. It's the border, and at the border, there is less protection.

I am particularly concerned about the extent to which there may be coordination between CBP and the FBI, or other agencies, for example, at the border, and using that for counterintelligence, or for other purposes, including of US persons, not just of foreigners that are crossing the border, and obviously, with all the attention to the border right now, that's a heightened area of surveillance concern.

Brian Fung: Both, in your experience, and then also we've seen President Trump try to remove the chair of the Federal Election Commission. What does your experience mean for other independent agencies? What can we expect for their independence and their ability to operate, given that the PCLOB itself is not a full quorum right now?

Travis LeBlanc: That's an interesting question, because to me it really goes to the essence of what is an independent agency, and why do we have them? What value do they add?

Independent agencies historically have been useful because they are insulated from the political process, and thus are able to make recommendations or decisions without having to fear that the decision that they're making is going to automatically remove them from office, or having to vet everything that they do with the current administration.

It allows expertise and highly sophisticated areas to be brought to an agency, and it allows a diversity of views to be aired, so that all of those views can be seen or observed or taken into account in decision making. If, independent agencies no longer exist in this country, if everyone ultimately ends up serving at the pleasure of the current administration, we lose the benefit of expertise. We lose the benefit of, independence.

And, where independent agencies get their strength is not because they're someone at the top that somebody else trusts, it is that both sides, both parties, they all feel like their views are aired, and that trust in and of itself is what gives them power.

When you take that away, when you take away the minority side, when you only give one stream of information and communication, it calls into question whether you're getting the true story, and it calls into question the credibility of the ultimate decisions or recommendations that are coming out of the agency.

My fear is that in a lot of heavily regulated spaces -- privacy is just one, transportation, elections is another, energy -- in a lot of these spaces, the economy, consumer financial products, that all of that gets called into question, and that, ultimately, you have a stable source of regulatory guidance that is undermined and taken away.

And ultimately, the bottom line for the average American citizen, the American consumer, that not having Independent agencies working on their behalf, kind of removes a path of redress for them. If they have a concern, what's left? Congress and the courts, right? You would have Congress and the courts, and obviously there's still value in transparency.

The fourth branch of government, which, you know quite well, the media, as well continues to serve a function.

Brian Fung: But, as we've seen, President Trump appears to be interested, if not openly willing, to flout court orders, and a lot of people have been talking about, just this week, whether we may be in a constitutional crisis with the administration, either about to refuse, or refusing to respect the power of the judiciary. What does that mean in the context of surveillance oversight, if the administration is not willing to respect the power of the courts.?

Travis LeBlanc: A lot of the surveillance programs and activities that we certainly looked at the PCLOB, they never find their way to a court. Some do, but not the majority of the kinds of things. They never quite make it there. And so, what I think the value is of oversight agencies and oversight authorities, is that they are able to address issues of abuse or unlawful activity or waste outside of the judicial process, and even in addition to the congressional oversight process.

There is great value in having that mechanism there, that doesn't have to wait on a case to be able to investigate a matter, and take action where appropriate.

Brian Fung: So we've so far been talking purely about, the United States and what's happening within the United States, but obviously our approach to the PCLOB and its work, and its impact, reaches far beyond the United States. Tell me a little bit about how, in your conversations, folks across the the Atlantic and Europe are talking, are thinking about what's happening here, about the gutting of, PCLOB, what this might mean for the future of EU-US data transfers, what can you tell us about that?

Travis LeBlanc: There's a real concern in Europe that the gutting of the PCLOB will ultimately end up calling into question the integrity of the Data Privacy Framework that permits data flows between Europe and the United States. I have now been in, I don't know, four, five, I can't remember right now, annual reviews that are done between the Europeans and the United States, that look at the Privacy Shield or the Data Privacy Framework.

The U. S. government gets great value in being able to explain the independent oversight processes that take place with regard to federal surveillance activities. And the PCLOB has been, in my entire time on the PCLOB, a full 100 percent feature of the U.S. case that it makes to establish that we do have independent oversight of our surveillance authorities.

In fact, it is because of the annual review with the Europeans that, in 2018, three board members were confirmed to give us a quorum literally the day before they got on a plane to fly to Europe to actually attend the Data Privacy Shield annual review. The board plays a role, not only in identifying judges and special advocates and passing those names on to the Attorney General, for example, but in annually reviewing and certifying the redress program that is part of it.

The concern is that, to the Europeans, if there's a perception that the PCLOB isn't independent, that the names that it's setting forth are not actually independent, but actually are the names the administration wants, that the board will certify whatever the administration tells it to certify, that it is part of the administration, that it can't be trusted, and it loses that value.

It's not just the PCLOB that is called into question, it's actually the Data Protection Review Court that's called into question as well, and is another feature of the review. We've already seen one resignation, publicly, of the Special Advocate in the last couple weeks. I suspect that more resignations will become public in short order.

When you have a combination of removals from the PCLOB, resignations from the Data Protection Review Court, one can't help but wonder about the future of the Data Privacy Framework.

Brian Fung: I wasn't here this morning, but apparently Beth Williams was, and I'm told that her message to this audience was essentially, everything will be fine.

Do you have a response to that?

Travis LeBlanc: We've spoken a bit during this conversation about how the real value, the key value of the PCLOB is it's independent, and the diversity of views it can put forward. If there's a perception that the PCLOB is working at the behest of the administration, it's not really independent, and it's approving everything, then it undermines the whole value of it, and you start to wonder, what's the difference between the PCLOB and the Intelligence Oversight Board that's already within the White House?

But moreover, the PCLOB right now is operating with one part time board member, not a full time board member, a part time board member, who may or may not live in New Jersey part of the time, and is not able to be operational at full time, so, even if you have an expert staff, I don't know that there's a commitment that whatever report the expert staff puts out is the report that goes out, and it won't be line-edited -- by one person, becoming essentially that one person's report.

And so, the concern I have is, even if the staff are able to prepare a report that Beth is willing to put out under her name, that's just one individual's views on a very thorny topic that could greatly benefit from a diversity of perspectives.

Brian Fung: I want to open it up to questions from the audience in just a couple minutes, but before I do, a few more from me. One, do you have any thoughts on President Trump's nominees for DNI and FBI Director?

Travis LeBlanc: I do not have any thoughts.

Brian Fung: Okay.

if you want to revisit that, I'm okay with that, at any point.

Travis LeBlanc: Here's what I will tell you. The PCLOB does interact with him, and this actually goes to your prior question as well. The PCLOB meets regularly with the heads of agencies in the intelligence community, and when there's a disagreement, those meetings flare up a little bit more.

Say, in the section 702 context, it's very hard if you disagree with the administration, especially if it's your own administration, and I say that as someone who did it, to show up in a skiff and debate the Attorney General for two hours on a particular legal issue. It is very hard to show up at the White House in the Roosevelt Room and to be seated across from the White House Council, the National Security Council, the Deputy

Attorney General, the Vice President, and the President, amongst others, and to stand up and say, I disagree with you. That is extremely hard to do. And, if you are one person trying to do it, and your party is the one that's in control, it gets even harder to do.

My fear is that, when you know those dynamics, it makes it very difficult to be able to proceed by yourself on a part-time basis.

Brian Fung: One more from me. You were alluding just now to how difficult it can be to stand up to your own party. Right now, you're a Democrat. Democrats are kind of in a crisis right now, they're trying to figure out how to respond to the current administration. What guidance would you give your fellow party leaders, in this moment?

What do you hope will happen?

Travis LeBlanc: I hope that we, in short order, can return to a time where independent agencies have quorums, and where the views of Democrats, as they are required by statute... There's a part of me that wonders whether the approach the Democrats ought to take ought to be the same as with the Tennessee Three, which is they were expelled? What do you do? They got sent right on back, shortly thereafter.

My hope is that we can return to a quorum, and where the minority views are present. I also wonder whether even those folks have to be confirmed. Again, I don't know the answer to that, or whether if you could just rename them and put them back.

Travis LeBlanc: To me, there's no stigma to really take from it, it's perfectly okay to understand, at the very beginning of the administration, you're trying to get a control of everything. And then, once you've got control, you're like, okay, let me get things back to operational efforts, and the Democrats hopefully can be supportive in having all of us who were removed, return to our roles in line with our respective decisions.

Brian Fung: So, if President Trump tomorrow said, actually we want you back on the PCLOB, what would your response be?

Travis LeBlanc: The President nominated me twice. In his first administration, I took up the call to service for him, and I would continue to take up the call for service.

Brian Fung: Any questions from the audience at this point?

Feel free to come on up. I think there are mics on either side.

Travis, we've got just a couple more minutes left, but I wonder if you might say a little bit more about, what you hope to do next, let's supposing President Trump doesn't have a sudden change of heart and ask you back.

Travis LeBlanc: I'm considering options right now. I don't have a final decision on that yet.

But, it is not lost on me that no action, or just moving on, essentially affirms the ability of any future President to remove board members of the PCLOB, and that's important, because, if you think about four new nominees showing up and getting confirmed, getting their commissions, what would stop the president on day one from telling the two Democrats that are there, thank you for your service, it's been a nice couple hours, you are dismissed. This process repeats itself.

So, either we are committed to independence, or we're not committed to independence. I don't think you get to have it both ways. Either the PCLOB ultimately becomes part of the administration, which case I question what's the difference between it and some other advisory boards or oversight boards that are out there, or we take advantage of the expertise that a diverse public agency can offer, a board of diverse perspectives that would serve cross administrations, and can bring a lot of knowledge.

I served on the board for six years. There's a lot of knowledge and information there that four new people have to completely get up to speed on. If they all just serve just for a couple years and have gone, it makes it a challenge to be able to operate.

And, keep in mind that it's hard enough to get through a normal appointment and confirmation process, but you're also dealing with people who have security clearances and expertise in a relatively unique area of law, that almost requires you to have expertise in privacy or law and policy, expertise in national security. There aren't a thousand people out there that have all of that, such that you could turn them over every four years.

Brian Fung: Do you think that eliminating the PCLOB, or rendering it ineffective, that undermines national security?

Travis LeBlanc: I think it undermines privacy and civil liberties, for sure, and confidence that the executive branch can appropriately ensure that it is complying with the law, the constitution, as well as reasonable expectations.

I think it also adds a challenge when you consider in the context of everything that's happening. The PCLOB is just one component of oversight in our broader system. Inspectors General are another component of oversight. The Data Protection Review Court would be another component. Congress.

When you see changes across a large number of these, then you start to really question the extent to which the executive branch is able to adequately and confidently police itself.

Brian Fung: I think that is about all the time that we have today.

So, Travis, thank you so much for joining me. I appreciate it.

Travis LeBlanc: Thank you, Brian.

[applause]