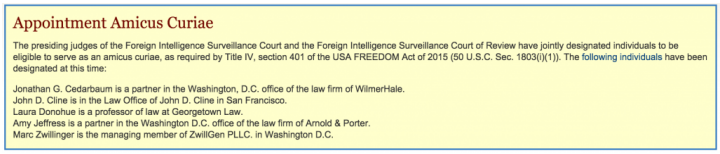
FISC MAKES FAR BETTER AMICUS CHOICES THAN I EXPECTED

I've long been skeptical about the potential efficacy of the amicus provision in USA Freedom Act, especially because the government can always withhold information.

But the FISC (and FISCR's, they make clear) choices for potential amici is far better than I expected.



Appointment Amicus Curiae

The presiding judges of the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review have jointly designated individuals to be eligible to serve as an amicus curiae, as required by Title IV, section 401 of the USA FREEDOM Act of 2015 (50 U.S.C. Sec. 1803(i)(1)). The following individuals have been designated at this time:

Jonathan G. Cedarbaum is a partner in the Washington, D.C. office of the law firm of WilmerHale.
John D. Cline is in the Law Office of John D. Cline in San Francisco.
Laura Donohue is a professor of law at Georgetown Law.
Amy Jeffress is a partner in the Washington D.C. office of the law firm of Arnold & Porter.
Marc Zwillinger is the managing member of ZwillGen PLLC. in Washington D.C.

Laura Donohue, besides being an important voice on surveillance reform, is one of the few people who has as weedy an understanding of the details of the surveillance programs as I do. Plus, unlike me, she can argue the legal aspects of it with authority.

Marc Zwillinger has represented at least one corporation — Yahoo, in its 2007-8 challenge to Protect American Act — before FISC already (as well as an industry push for the right to provide more transparency numbers), and is currently representing Apple in an EDNY discussion about back doors. He even has experience not receiving notice of unclassified details necessary to his arguments before FISC!! At a PCLOB hearing on this topic, he and others predicted he'd likely be among those picked. Voila!

John Cline is probably best known to readers of this blog for the representation he gave Scooter Libby. But he did so because he has represented a wide range of defendants dealing with classified information — he's one of the best on such issues. That perspective is one that even most (though not all) judges on the FISC lack, and I'm impressed they would let someone have

vision on both processes.

Jonathan Cedarbaum was acting head at OLC for a while, though mostly worked on domestic policy issues. Though I think he did work on some cybersecurity issues. The closest tie I know of to counterterrorism came in his role on the Boumedienne case, for which he was targeted by right wingers while at DOJ.

I'm perhaps least thrilled about Amy Jeffress (whose father also represented Scooter Libby) on the panel. She has a ton of experience on all kinds of national security cases — but overwhelmingly as a prosecutor. She almost got the Assistant Attorney for National Security job until it was given to John Carlin. While a top advisor to Eric Holder, she likely saw some things that might get debated at FISC (in the same way Rachel Brand and Elisabeth Collins Cook were involved in things at DOJ during the Bush Administration that PCLOB has reviewed), which might lead her to be more invested in the government outcome than I'd like. But from everything I know she's a very good lawyer.

All in all, a far better collection of lawyers than I expected, and any of them is a better choice than Preston Burton.