December 3, 2013 White Paper in Support of the FOIA request for the expedited release of the classified May 24, 1984 "OLC Olson FISA Memo" and the March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" that reveal whether President Obama knows about 1982-2013 E.O. 12333 "FISA exempt" NSA TSP content data mining

This December 2, 2013 White Paper (WP) is in support of the December 3, 2013 FOIA request for the expedited release of the following Top Secret OLC Memos:

1. May 24, 1984 Top Secret classified Constitutionality of Certain National Security Agency Electronic Surveillance Activities Not Covered Under the Foreign Surveillance Act of 1979 of AAG of the OLC Theodore Olson, the "OLC Olson FISA Memo"

2. May 6, 2004 Top Secret reclassified Memorandum for the Attorney General: Review of the Legality of the (redacted b1,b3) Program, of AAG of the OLC Jack Goldsmith, the "OLC Goldsmith FISA Memo"

The FOIA requester was the plaintiff in the FOIA actions Robert VII v DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007) and Robert VIII v DOJ, HHS, and SSA, 439 Fed. Appx 32 (2d Cir. 2011), cert. den. 132 S. Ct. 1549 (2012). In Robert VII v DOJ, the plaintiff sought the release of the "FISC Robert" documents that were withheld pursuant to the March 1, 2004 DOJ FOIA decision to ratify the CIA's decision to withhold those documents based on FOIA Exemption 1 and the "Glomar Response" defense. In Robert VIII v DOJ, HHS, and SSA, the plaintiff sought a mosaic of documents that reveal whether AG Gonzales had in Robert VII v DOJ withheld material facts from EDNY Judge Garaufis, the Second Circuit and the Supreme Court re NSA Directors implementation of the E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP that had been conducted without the knowledge of the "Gang of Eight" or FISC. See the 316 page 7-27-10 Robert VIII WP §§ K-O posted at http://snowflake5391.net/7_27_10_RobertVIII.pdf

On October 3, 2013, the FOIA requester filed public invited Comments with President Obama's Review Group which is to file a December 15, 2013 Final Report recommending reforms to the NSA Terrorist Surveillance Program (TSP). The FOIA requester has requested that the FOIA Record include the enclosed Review Group Robert Comments that places the Review Group Members on Notice that President Obama does not know that the 1982-2013 AGs had approved the NSA Directors warrantless content data mining of the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks. See 10-3-13 Comments §§ A-D, M, S.

The FOIA requester asserts that the 1984 and 2004 Top Secret OLC FISA Memos contain "smoking gun" admissions that President Reagan's December 4, 1981 E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP, has been conducted in serial violation of the "exclusivity provision" of the FISA of 1978, § 413 (a) of the National Security Act, and the Posse Comitatus Act of 1878 (PCA). He asserts that these OLC FISA documents reveal whether the E.O. 12333 "FISA exempt" NSA TSP is based on AG John Mitchell's 1969 Article II Commander in Chief "inherent authority" theory that President Nixon had the Article II duty to conduct domestic surveillance of U.S. citizens if this was necessary to protect the nation from terrorists. He asserts that *faux* "Commanders in Chiefs" have made E.O. 12333 "FISA exempt" NSA TSP decisions without President Obama's knowledge. See Comments §§ F-I.

A. The May 24, 1984 classified "OLC Olson FISA Memo"

On May 24, 1984, AAG of the OLC Theodore Olson wrote the Constitutionality of Certain National Security Agency Electronic Surveillance Activities Not Covered Under the Foreign Intelligence Surveillance Act of 1979 Memorandum, hereinafter called the "OLC Olson FISA Memo." Upon information and belief, the "OLC Olson FISA Memo" was designated as a Top Secret OLC Memo and has not been revoked. If so, then this document will be subject to Article III *in camera* review in a FOIA action seeking the release of this Top Secret OLC Memo. The FOIA Requester intends to file that FOIA action in 2014. See 10-3-13 Comments §§ D, E.

This document was identified in an Edward Snowden leaked document, the November 20, 2007 Memorandum for the Attorney General from AAG of the National Security Division Kenneth Wanstein to AG Michael Mukasey (November 7, 2007-January 20, 2009) with a copy to OLC Principal DAAG Stephen Bradbury. That November 20, 2007 document states at p. 4:

> As an initial matter, we note that the analysis of information legally within the possession of the Government is likely neither a "search" nor a "seizure" within the meaning of the Fourth Amendment. *See, e.g. Jabara v Webster, 691 F. 2d 272, 277-279 (6th Cir 1982*) (holding that the disclosure of information by an agency that lawfully possessed it to another agency does not implicate the Fourth Amendment); Memorandum for the Attorney General from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re Constitutionality of Certain National Security Electronic Surveillance Activities Not covered Under the Foreign Intelligence Surveillance Act of 1979*, at 59 (May 24 1984) ("Olson Memorandum" (Traditional Fourth Amendment analysis holds that once evidence is constitutionally seized, its dissemination or subsequent use raises no additional Fourth Amendment question." As noted, we assume for the purpose of this memorandum that the NSA has lawfully acquired the information it wishes to analyze. Nevertheless, the Olson Memorandum went on to consider the limits on the subsequent use of information when assessing the constitutionality of NSA's surveillance activities under the Fourth Amendment. *See Id*. In an abundance of caution, then, we analyze the constitutional issue on the assumption that the Fourth Amendment may apply even though the Government has already obtained the information lawfully. Id. p.n. 4. Underline added.
> http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB436/docs/EBB-017.pdf.

Upon information and belief, this document explains the "FISA secret law" that SG Donald Verrelli withheld from the Supreme Court in Clapper v Amnesty, 568 U.S. ___(2013) and in his October 11, 2013 In re EPIC response. If so, then this "OLC Olson FISA Memo" is an admission of the serial violation of the "exclusivity provision" of the FISA of 1978 and the Fourth Amendment. It raises the Marbury v Madison separation of powers issue because AG Holder and SG Verrelli have determined what the FISA law "is" rather than the Supreme Court. The Justices cannot determine what the FISA law "is" if they have not been informed of the legal basis for the 1982-2013 E.O. 12333 "FISA exempt" NSA TSP. See Comments § B.

B. The May 6, 2004 reclassified "OLC Goldsmith FISA Memo"

On May 6, 2004, AAG of the OLC Jack Goldsmith sent AG John Ashcroft his Memorandum for the Attorney General: Review of the Legality of the (redacted b1,b3) Program, hereinafter called the "OLC Goldsmith FISA Memo." Upon information and belief, the "(redacted b1,b3) Program" is the E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP that is discussed in the Top Secret May 24, 1984 "OLC Olson FISA Memo." The fact that this document was reclassified on March 18, 2011, it is an admission that AAG of the OLC Virginia Seitz (2011-) has ratified AAG of the OLC Goldsmith's 2004 legal opinion. President Obama's Review Group should know this fact prior to filing its Final Report.

On March 18, 2011, AG Holder reclassified this OLC Memorandum and released a declassified redacted Memo. https://webspace.utexas.edu/rmc2289/OLC%2054.FINAL.PDF. AG Holder reclassified the May 6, 2004 "OLC Goldsmith FISA Memo" redacted sections and pages pursuant to FOIA Exemptions 1, 3, and 5. The requester requests that AG Holder's FOIA Officer explain the application of each FOIA defense that attaches to each redaction that is identified by page and paragraph of the original 108 page May 6, 2004 "OLC Goldsmith FISA Memo."

Upon information and belief, the reclassified "OLC Goldsmith FISA Memo" explains the legal basis for the 1982 E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP that has been conducted without the knowledge of the FISC or the Supreme Court. Justice Samuel Alito noted in his February 26, 2013 Clapper v Amnesty dicta that this E.O. 12333 "FISA exempt" NSA TSP has not been subject to Supreme Court review:

> And, although we do not reach the question, the Government contends that it can conduct FISA-exempt human and technical surveillance programs that are governed by Executive Order 12333. See Exec. Order No. 12333, §§1.4, 2.1–2.5, 3 CFR 202, 210–212 (1981), reprinted as amended, note following 50 U. S. C. § 401, pp. 543, 547–548. Id. slip op. 14. Emphasis added.

AAG of the OLC Goldsmith wrote the Top Secret May 6, 2004 OLC FISA Memo for AG Ashcroft after the infamous March 10, 2004 confrontation between WH Counsel Alberto Gonzales, AG John Ashcroft, DAG James Comey, and FBI Director Robert Mueller in AG Ashcroft's hospital room re the signing of the 2004 FISA certification for the NSA TSP. Upon information and belief, the redacted sections of the reclassified "OLC Goldsmith FISA Memo" contain admissions that the 1982-2004 AGs knew that the E.O. 12333 Top Secret "FISA exempt" NSA TSP was in serial violation of the "exclusivity provision" of the FISA of 1978.

The FOIA requester is the plaintiff in the FOIA actions Robert VII v DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007) and Robert VIII v DOJ, HHS, and SSA, 439 Fed. Appx 32 (2d Cir. 2011), cert. den. 132 S. Ct. 1549 (2012). The FOIA requester had sought the release of the Robert VII "FISC Robert" documents withheld pursuant to OIPR James Baker's March 1, 2004 ratification of the CIA's use of FOIA exemption 1 and the "Glomar Response" defense, and a mosaic of Robert VIII documents that reveal which DOJ attorneys knew of the "FISA secret law" that SGs Paul Clement and Donald Verrelli had withheld from the Justices. See Comments §§ A, B and 11-30-11 Robert VIII Petition Statement of the Case § H. http://snowflake5391.net/Robert8vDOJpetition1.pdf.

C. Request for declassification of the May 24, 1984 "OLC Olson FISA Memo"

The FOIA requester's requests that AG Holder declassify this May 24, 1984 document by application of President Obama's December 29, 2009 E.O. 13526, Classified National Security Information, 75 F.R. 707 (January 5, 2010), § 3.3 Automatic Declassification twenty five year standard (1984+25=2009). If AG Holder determines that President Obama's 25 year automatic declassification standard does not apply, then he should explain the legal basis for that decision. The Review Group should know AG Holder's reason prior to December 15, 2013.

The December 29, 2009 E.O. 13526 § 3.3 Automatic Declassification provides:

> (a) …all classified records that (1) are more than 25 years old and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. All classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of origin, except as provided in paragraphs (b)–(d) and (g)–(j) of this section.

Because of the gravity of the Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA plaintiff's allegations, the FOIA requester respectfully suggests that the § 3.3 declassification decision should be made by AG Holder and not by any other DOJ official. If AG Holder determines that the "OLC Olson FISA Memo" should remain as a classified document, then AG Holder has a duty to inform the Review Group of his decision. This is especially the case if this OLC document reveals that AAG of the OLC Olson determined that the "exclusivity provision" of the FISA of 1978 was an "unconstitutional" encroachment on the President's Article II Commander in Chief authority to conduct domestic surveillance of U.S. citizens in order to protect the nation from terrorists. See Comments §§ F-J and 11-30-11 Robert VIII Petition § H.

AG Holder should also determine whether EDNY U.S. Attorney Dearie (1982-1986) knew of the existence of the May 24, 1984 "OLC Olson FISA Memo" prior to the Second Circuit's August 8, 1984 U.S. v Duggan, 743 F. 2d 59 (2d Cir. 1984) decision which affirmed EDNY Judge Sifton's July 21, 1983 U.S. v Duggan decision. This is an important EDNY U.S. Attorney Dearie 1984 *mens rea* fact because on July 2, 2012 Chief Justice Roberts appointed EDNY Judge Dearie to the FISC for seven years. During the Robert VIII v DOJ, HHS, and SSA litigation the EDNY Chief Judge was Judge Dearie. See Comments § D and §§ K-P below.

The declassification of the May 24, 1984 "OLC Olson FISA Memo" takes on greater significance if AAG of the OLC Olson had ratified the August, 1982 Jackson v Schweiker nonacquiescence" policy decision of SG Rex Lee and HHS General Counsel Juan del Real. If AAG of the OLC Olson ratified the 1982 Jackson "nonacquiescence" policy, then AG Holder should know whether, as asserted by the FOIA requester, the 1982-2013 Jackson "nonacquiescence" policy funds continue to be an off-OMB funding source for the "immaculate construction" of 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks that could not be funded with classified OMB Budget funds because of the "exclusivity provision" of the FISA of 1978. If so, then this document affects millions of 1994-2013 Ford v Shalala, 87 F. Supp 2d 163 (E.D.N.Y. 1999) nationwide class members because AG Holder has not complied with Judge Sifton's September 29, 1999 Ford Order. See §§ Q-Y below.

D. Request for declassification of the March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" because the document conceals serial impeachable violations of law by application of E.O. 13526 § 1.7 (a)(1) Classification Prohibitions and Limitations

The FOIA requester's requests that AG Holder declassify 100 % of the May 6, 2004 reclassified "OLC Goldsmith FISA Memo" by application of President Obama's December 29, 2009 E.O. 13526, § 1.7 (a)(1), Classification Prohibitions and Limitations, standard. If AG Holder makes the declassification decision, then AG Holder can determine whether this document was reclassified on March 18, 2011 to conceal serial impeachable violations of law.

E.O. 13526 §1.7, Classification Prohibitions and Limitations, provides:

> a) In no case shall information be classified , continue to be maintained as classified, or fail to be classified in order to:
> (1) conceal violations of law, inefficiency, or administrative error;
> (2) prevent embarrassment to a person, organization, or agency;
> (3) restrain competition;
> (4) prevent or delay the release of information that does not require protection in the interest of the national security. Emphasis added.

The FOIA requester asserts that §1.7 (a)(1) applies because the unredacted document reveals the reasons why the 1982-2004 AGs had approved the 1982-2004 NSA Directors serial impeachable violations of federal laws. Because of the March 18, 2011 reclassification decision, §1.7 (a)(1) also applies to the decisions of AG Holder (2009-). The FOIA requester asserts that this document reveals AG Holder's knowledge of the violations of the following laws:

1. § 413 (a) of the National Security Act of 1947 because none of the 1982-2013 AGs informed the "Gang of Eight" of the E.O. 12333 "FISA exempt" NSA TSP. See § U below.

2. The "exclusivity provision" of the FISA of 1978 because the E.O. 12333 "FISA Exempt" NSA TSP has been conducted without the knowledge of the FISC. See § U below.

3. The Posse Comitatus Act (PCA) of 1878 because it has statutory limitations on domestic military law enforcement by the military NSA Directors and DIA Directors. See § U below.

4. The Social Security Act SSI program of 1972 which has the statutory requirement of a uniform federal standard equally applied to SSI recipients in all 50 states. See § U below.

The DOJ FOIA Officer is placed on Notice of the FOIA requester's prior 2011 request for E.O. 13526 § 3.5 Mandatory Declassification Review (MDR) of this document. That MDR request was denied in 2011. The DOJ FOIA Officer is placed on Notice that the DOJ FOIA case file documents, case file notes, and e-mails regarding that 2011 MDR request for the same document provides a paper trail that reveals the names of AG Holder's "chain of command" attorneys who made the 2011 MDR decisions. The FOIA requester hereby incorporates by reference his April 11, 2011, White Paper in support of the OLC MDR request for declassification of AAG of the OLC Goldsmith's redacted May 6, 2004 Memorandum for the Attorney General. http://snowflake5391.net/4_11_11_OLC_MDR_WP.pdf. See § X below.

E. Request for declassification of the March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" because the document is being withheld to prevent embarrassment to USG officials by application of the E.O. 13526 § 1.7 (a)(2) embarrassment standard

The FOIA requester's requests that AG Holder declassify 100 % of the May 6, 2004 reclassified "OLC Goldsmith FISA Memo" by application of President Obama's December 29, 2009 E.O. 13526, § 1.7 (a)(2), Classification Prohibitions and Limitations, standard. If AG Holder makes the declassification decision, then AG Holder can determine whether this document was reclassified on March 18, 2011 to prevent embarrassment to DOJ attorneys and the intelligence community agencies: DOJ, FBI, CIA, DOD, DIA, NSA, and DNI.

E.O. 13526 §1.7 (a)(2) Classification Prohibitions and Limitations provides:

> a) In no case shall information be classified, continue to be maintained as classified, or fail to be classified in order to:
> (2) prevent embarrassment to a person, organization, or agency; Emphasis added.

The FOIA requester asserts that §1.7 (a)(2) applies because the March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" reveals whether AG Holder and AAG of the OLC Virginia Seitz ratified the May 24, 1984 Top Secret "OLC Olson FISA Memo" that revealed whether there had been serial impeachable violations of § 413 (a) of the National Security Act. the "exclusivity provision" of the FISA of 1978, the PCA of 1878 limitations on military law enforcement, and the Social Security Act. The Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA plaintiff is asserting that whereas AAG of the OLC Olson's May 24, 1984 OLC opinion may have had a 1984 plausible defensible legal conclusion, this is not the case when the March 18, 2011 reclassification of May 6, 2004 OLC decision was made. See §§ U, X below.

The FOIA requester asserts that with March 18, 2011 hindsight, the May 24, 1984 "OLC Olson FISA Memo" was akin to the September 12, 1985 legal opinion of Intelligence Oversight Board (IOB) Counsel Bretton Sciaroni re the Boland Amendment. He asserts that if President Obama's Review Group Law Professors former-OIRA Administrator Law Professor Cass Sunstein, former-OMB Chief Counsel for Privacy Law Professor Pete Swire, and Law Professor Geoffrey Stone, the author of Top Secret: When Our Government Keeps Us in the Dark (2007), read the March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo," then they will agree the 2011 ratification of the 1984 "OLC Olson FISA Memo" was not only an incorrect legal analysis, but a 2011 legal embarrassment. See §§ U, X below.

The FOIA requester also asserts that after President Obama, a former Constitutional Law Professor, reads the March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" along with the Review Group's December 15, 2013 Final Report, then he will conclude that his Intelligence Community (IC) General Counsels knew the March 18, 2011 ratification of the May 6, 1984 "OLC Goldsmith FISA Memo" was a DOJ embarrassment. President Obama will learn that his 2011-2013 CIA, DOD, DIA, NSA, DNI, and FBI General Counsels took no action to end the 1982-2013 Top Secret "FISA exempt" NSA TSP that they learned had been a serial impeachable violation of the "exclusivity provision" of the FISA, because they did not want their clients embarrassed. If so, then the Review Group should be consulting with each of the IC General Counsels re this 2011-2013 embarrassment factor. See §§ K-Q, U, X below.

F. Request for declassification of the March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" because the document is being withheld after the Snowden leaks by application of the E.O. 13526 § 1.7 (a)(4) delay standard

The FOIA requester requests that AG Holder declassify 100 % of the May 6, 2004 reclassified "OLC Goldsmith FISA Memo" by application of President Obama's December 29, 2009 E.O. 13526, § 1.7 (a)(4), Classification Prohibitions and Limitations, standard. If AG Holder makes the declassification decision, then AG Holder can determine whether there remains a national security "sources and methods" risk that the Review Group should consider because President Obama has tasked the Review Group to recommend 2014 NSA TSP reforms. However, AG Holder also has to consider the application of the § 1.7 (a)(4) delay standard to the President's § 413 (a) of the National Security Act "Gang of Eight" Notification "shall" duty that would apply to the March 18, 2011 reclassification decision. See Comments § C.

E.O. 13526 §1.7 (a)(4), Classification Prohibitions and Limitations, provides:

> a) In no case shall information be classified , continue to be maintained as classified, or fail to be classified in order to:
> (4) prevent or delay the release of information that does not require protection in the interest of the national security. Emphasis added.

The FOIA requester asserts that §1.7 (a)(4) applies because the March 18, 2011 reclassification of the document reveals that AG Holder made "prevent or delay the release of information" decisions when Robert VIII v DOJ, HHS, and SSA and Clapper v Amnesty were being litigated. AG Holder knew on March 18, 2011 that the Supreme Court would be making decisions in those cases without knowing that the E.O. 12333 "FISA exempt" NSA TSP was being conducted. This is an important AG Holder *mens rea* time line fact because SG Verrelli's October 11, 2013 In re EPIC response did not inform the Justices of the "FISA secret" law that is revealed in the reclassified May 6, 2004 OLC Memo. See Comments §§ B, I and § X below.

The FOIA requester asserts that because of the Snowden leaks, the cat-is-out-of-the-bag as to the NSA, DIA, FBI, CIA "sources and methods" of data mining of the 1982-2013 NSA TSP data banks. The Review Group should walk-back-the-cat and determine the name of AAG of the OLC Olson's "client" when he rendered his May 24, 1984 Top Secret FISA Memo that explained why the E.O. 12333 Top Secret "FISA exempt" NSA TSP was not a serial impeachable violation of the "exclusivity provision" of the FISA. If his "client" was a *faux* "Commander in Chief" who was not President Reagan, then the Review Group Law Professors should know this fact and so inform President Obama of this "Past is Prologue" fact. See Comments § R and § U below.

The FOIA requester asserts that because of the December 29, 2009 E.O. 12526 § 3.3, Automatic Declassification, 25 year standard (1984+25=2009), and the gravity of the Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA plaintiff's allegation that USG officials and attorneys have "defrauded" President Obama, the decision to continue to classify this document should be made by President Obama and not other Article II officials. After reading this May 24, 1984 Top Secret "OLC Olson FISA Memo" and the Review Group's December 15, 2013 Final Report, President Obama can make the E,O. 13526 §1.7 (a)(4) determination whether the delay in the release of this document is necessary in the interest of national security. See § C above

G. Request for waiver of FOIA fees by application of the "public interest" standard

The FOIA requester seeks a waiver of FOIA fees because the release of these documents is in the public interest. He asserts that with the Snowden leaks re the NSA TSP, that there is a public interest in knowing whether these two classified OLC documents reveal whether there have been Article I, Article II, or Article III checks and balances to prevent the serial violation of the "exclusivity provision" of the FISA. The public interest is tweaked with every new Snowden leak and investigative reporter analysis. These two OLC Memos are easy to find and there is minimum search fee financial cost in any cost benefit fee analysis. See § X below.

On April 2, 1987, AAG of the Office of Legal Policy (OLC) Stephen Markman explained the DOJ FOIA fee waiver policy:

> The FOIA's new fee waiver standard, found at 5 U.S.C. § 552(a)(4)(A)(iii), more specifically defines the term "public interest" and provides:
>
> Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.
>
> This new statutory fee waiver standard thus sets forth two basic requirements, both of which must be satisfied before fees properly assessable can be waived or reduced. First, it must be established that "disclosure of the [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." Second, it must be established that "disclosure of the information . . . is not primarily in the commercial interest of the requester."
>
> Where these two statutory requirements are satisfied, based upon information supplied by a requester or otherwise made known to an agency, the waiver or reduction of a FOIA fee is compelled by the statute and should be granted freely and promptly by the agency. Where one or both of these requirements is not satisfied, a fee waiver is not warranted under the statute. Emphasis added. 1987 FOIA Update, Vol. IIII, No. 1. http://www.justice.gov/oip/foia_updates/Vol_VIII_1/viii1page2.htm

The requester asserts that the "commercial interest" standard does not apply. He acknowledges that one of the reasons he seeks these two classified OLC documents is to cite to these documents in his putative Bivens action alleging that USG officials and attorneys have acted in concert to violate his First Amendment right of access to the Courts as per the elements explained in Christopher v. Harbury, 121 S. Ct. 2171 (2001). However, he asserts that he remains an "aggrieved person" by application of the FISA 50 U.S.C. § 1806 (f) standard whereby Congress intended that an "aggrieved person" had a FISA statutory cause of action against USG officials who violated the "exclusivity provision" of the FISA of 1978. See §§ U-Y below.

H. Article I reason for public interest waiver of fees

The FOIA requester asserts an Article I reason to release the documents because "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." He asserts that the public should know whether these OLC opinions are admissions that AG Holder knows that all 535 Members of Congress do not know that the 1982-2013 AGs have determined that the "exclusivity provision" of the FISA of 1978 "unconstitutionally" encroaches upon the President's Article II Commander in Chief "inherent authority" to conduct domestic surveillance of U.S. citizens to protect the nation from terrorists. See 10-3-13 Comments §§ G-L.

On October 2, 2013, the Senate Judiciary Committee held a Continued Oversight of the Foreign Intelligence Surveillance Act hearing at which DNI James Clapper and NSA Director General Keith Alexander testified. The requester places the DOJ FOIA decision maker on Notice of Chairman Patrick Leahy's questions of NSA Director General Alexander re the lurking issue of whether E.O. 12333 is Article II legal authority for warrantless NSA domestic surveillance of U.S. citizens. The Q and A between Chairman Leahy and NSA Director General Alexander resulted in NSA Director General Alexander's quasi- yes answer that the NSA conducts surveillance of U.S. citizens pursuant to E.O. 12333 that is not subject to the FISC's review. See http://www.senate.gov/isvp/?comm=judiciary&type=live&filename=judiciary100213.

The public should know that AG Holder knows that NSA Director General Alexander knows that there is a "FISA exempt" NSA TSP that Chairman Leahy and the other Judiciary Committee Members do not know about. This is an especially timely issue because of the public has general knowledge of the Snowden leaks. The 535 Members of Congress now know that NSA Director General Alexander has conducted a "FISA exempt" NSA TSP that is not subject to Senate Oversight Committees' review. The public should know whether the 1984 and 2004 Top Secret OLC FISA Memos reveal that the AGs have determined that the Intelligence Committees should not know that the 1982-2013 AGs have determined that when Congress enacted the "exclusivity provision" of the FISA of 1978, that this was an "unconstitutional" encroachment on the President's Article II Commander in Chief "inherent authority" to conduct domestic surveillance of U.S. citizens without any Article I or Article III checks and balances.

The FOIA requester asserts that the public knows the July 19, 2010 series of Washington Post investigative reporters Dana Priest and William Arkin re the "Top Secret America" NSA domestic surveillance program with its mind-boggling, eye-opening, and jaw-dropping Locator Map. http://projects.washingtonpost.com/top-secret-america/map/. He asserts that the public should know if these two Top Secret OLC FISA memos are the legal basis for the NSA and the NDI to continue to conduct this domestic "Top Secret America" NSA TSP that 535 Members of Congress know continues to be conducted in 2013. See §§ U, W below.

The requester asserts that this Article I public interest reason for releasing the Top Secret OLC FISA document highlights the importance of the Review Group applying Justice Scalia's City of Arlington v FCC, 568 U.S.__ 2013, standard to AAG of the OLCs Olson's and Goldsmith's facial reading of the "exclusivity provision" of the FISA of 1978. These documents provide a concrete example of the fox-in-the-hen house debate between Chief Justice Roberts and Justice Scalia, the 1974-1977 AAG of the OLC. See Comments § I and § O below.

I. Article II reason for public interest waiver of fees

The FOIA requester asserts an Article II reason to release the documents because "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." He asserts that the public should know whether President Obama knows whether these two OLC opinions contain admissions that reveal that AG Holder knows that all of the 1982-2013 535 Members of Congress have not known that the 1982-2013 AGs have determined that the "exclusivity provision" of the FISA of 1978 "unconstitutionally" encroaches upon the President's Article II Commander in Chief "inherent authority" to conduct domestic surveillance of U.S. citizens to protect the nation from terrorists. See 10-3-13 Comments §§ G-M and §§ K-Q below.

On June 17, 2013, Charlie Rose interviewed of President Obama. The President asserted categorically that the post-9/11 NSA does not conduct domestic surveillance of U.S. citizens without a FISC warrant. "What I can say unequivocally is that if you are a U.S. person, the NSA cannot listen to your telephone calls, and the NSA cannot target your emails … and have not." Emphasis added. http://www.charlierose.com/view/interview/12981.

The requester asserts that President Obama's public representation is incorrect. He asserts that the two classified OLC FISA Memos reveal whether an E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP whereby the NSA has conducted content warrantless electronic surveillance of telephone calls. See 10-3-13 Comments p. 1.

The requester asserts that the public should know whether President Obama does not know that the two classified OLC FISA Memos are the legal authority for NSA Directors to conduct content warrantless surveillance of U.S. citizens without the knowledge of the President. The requester further asserts that the public should know whether President Obama does not know that 1982-2013 *faux* "Commanders in Chief" have been making decisions to conduct E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens without the knowledge of Presidents Reagan, Bush, Clinton, Bush, and Obama. See §§ Q, R below.

The public should know whether President Obama knows that DOD Cyber Commander-NSA Director General Alexander (2005-) and DNI Director Clapper (2011-), the 1991-1995 DIA Director and 2007-2010 DOD Under Secretary of Intelligence, data mine for content the Orwellian-Hooveresque Utah Data Center E.O. 12333 "FISA exempt" NSA TSP data banks. The public should know that this includes the DOD TALON data banks. See Comments § L.

The requester is asserting the public should also know whether the OLC FISA Memos reveal whether AG Holder and CIA Director Brennan have "defrauded" President Obama by withholding NSA TSP facts from President Obama. Independent Counsel Lawrence Walsh decided that AG Meese and CIA Director Casey had "defrauded" President Reagan by withholding material Iran Contras facts from the President, by application of 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States. IC Walsh explained the "defrauding" of the President in the March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of Vice President Bush" posted on November 25, 2011 by the National Security Archive. See http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB365/index.htm. Documents 1 and 2. See also 10-3-13 Comments § P and §§ R. S below.

J. Article III reason for public interest waiver of fees

The FOIA requester asserts an Article III reason to release the documents because "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government." He asserts that the public should know whether the FISC and the Supreme Court do not know whether these Top Secret OLC opinions contain "FISA secret law" admissions of violations of the "exclusivity provision" of the FISA. The public should know whether there have been any 1982-2013 FISC or Supreme Court checks and balances to the 1982-2013 E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP. See §§ L-O below.

The requester is asserting that the public should know whether these two classified OLC FISA documents reveal that the 1982-2013 AGs have all made *de facto* Marbury v Madison decisions that the AGs have the authority to determine what the FISA law "is" and not the FISC and/or Supreme Court. The public should know this rawest edge of the Separation of Powers issue, and why AG Holder and SG Verrelli did not inform the Justices of the Supreme Court of the E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP in In Re EPIC and Clapper v Amnesty. "And, although we do not reach the question, the Government contends that it can conduct FISA-exempt human and technical surveillance programs that are governed by Executive Order 12333. Id. Justice Alito at Clapper slip op. 14.

The requester is asserting that the public should know whether the OLC FISA Memos reveal whether AG Holder has ratified the 1985 Mitchell v Forsyth, 105 S.Ct. 2806 (1985), "nonacquiescence" policy of AG Meese and AAG of the OLC Charles Cooper (1985-1988). The requester asserts the Supreme Court could not have been clearer in Mitchell v Forsyth re the AG's duty not to conduct warrantless surveillance. "We conclude that the Attorney General is not absolutely immune from suit for damages arising out of his allegedly unconstitutional conduct in performing his national security functions." Id. 2811. See Comments § O.

The requester is asserting that the public should know whether AG Holder has made the FISC and Supreme Court the "handmaiden of the Executive" by not informing the Article III Judges of the "FISA secret law" that AG Holder is implementing. "Under no circumstances should the Judiciary become the handmaiden of the Executive." Doe, et. al. v Mukasey, Mueller, and Caproni, 549 F 3d 861, 870 (2d Cir. 2008). See § U below.

The requester is asserting that the public should know whether these OLC FISA documents reveal whether AG Holder has intentionally withheld the fact that these documents reveal whether the 1982-2013 AGs have determined what the FISA law "is" without informing the FISC and the Supreme Court of the AGs' decisions. If so, then he asserts that the public should know whether in Clapper v Amnesty and In re EPIC a Chambers v. Nasco, 111 S. Ct. 2123 (1991), "fraud upon the court" has been committed. "It is a wrong against the institutions set up to protect and safeguard the public." Id.. 2132. See § X below.

The requester is asserting that these documents provide the public with an Article III answer to the how-it-could-have-ever-happened question that E.O. 12333 "FISA exempt" NSA TSP was conducted without the knowledge of the FISC. The requester asserts that the public should know why the FISC has not been an Article III check and balance for the NSA TSP.

K. The May 24, 1984 Top Secret "OLC Olson FISA Memo" is a connect-the-dots document to President Carter' October 25, 1978 Signing Statement

On October 25, 1978, President Carter signed into law the Foreign Intelligence Surveillance Act of 1978. http://www.presidency.ucsb.edu/ws/index.php?pid=30048. His Presidential Signing Statement did not include a "**FISA exempt**" exception for the NSA based on the President's Article II Commander-in-Chief "inherent authority" to conduct warrantless domestic surveillance of U.S. citizens in order to protect the nation from terrorists. One of the purposes for the FOIA request for the May 24, 1984 Top Secret "OLC Olson FISA Memo" is to determine whether it cites to President Ford's December 19, 1974 Top Secret E.O. delegating to the AG, upon the request of the FBI Director, the authority to conduct warrantless domestic surveillance and/or President Carter's October 25, 1978 Signing Statement. See Comments § F.

President Carter noted the FISA provided U.S. citizen wire tapping checks and balances:

> As I said a year and a half ago at the beginning of the process that produced this bill, "one of the most difficult tasks in a free society like our own is the correlation between adequate intelligence to guarantee our Nation's security on the one hand, and the preservation of basic human rights on the other."
>
> This is a difficult balance to strike, but the act I am signing today strikes it. It sacrifices neither our security nor our civil liberties. And it assures that those who serve this country in intelligence positions will have the affirmation of Congress that their activities are lawful.
>
> In working on this bill, the Congress dealt skillfully with sensitive issues. The result shows our country benefits when the legislative and executive branches of Government work together toward a common goal.
>
> The bill requires, for the first time, a prior judicial warrant for all electronic surveillance for foreign intelligence or counterintelligence purposes in the United States in which communications of U.S. persons might be intercepted. It clarifies the Executive's authority to gather foreign intelligence by electronic surveillance in the United States. It will remove any doubt about the legality of those surveillances which are conducted to protect our country against espionage and international terrorism. It will assure FBI field agents and others involved in intelligence collection that their acts are authorized by statute and, if a U.S. person's communications are concerned, by a court order. And it will protect the privacy of the American people.
>
> In short, the act helps to solidify the relationship of trust between the American people and their Government. It provides a basis for the trust of the American people in the fact that the activities of their intelligence agencies are both effective and lawful. It provides enough secrecy to ensure that intelligence relating to national security can be securely acquired, while permitting review by the courts and Congress to safeguard the rights of Americans and others.

> This legislation is the first long step toward the goal of establishing statutory charters for our intelligence agencies. I am committed to that goal, and my administration will work with the Congress to achieve it. Many people played important roles in securing passage of this bill.
>
> I am convinced that the bill would not have passed without the leadership of Attorney General Bell; the personal commitment of the Director of Central Intelligence, Admiral Turner; and the work of Admiral Inman of the National Security Agency and Directors Webster and Kelley of the FBI. I extend my personal appreciation to these men and their staffs.
>
> My administration's bill was based on some fine work during the Ford administration under the leadership of Attorney General Levi. His contribution to this legislation was substantial, illustrating the bipartisan nature of this process. Emphasis added.

Upon information and belief, WH Counsel Robert Lipshutz (1977-1979) drafted President Carter's October 25, 1978 Signing Statement. Upon information and belief, he did not know that President Ford's December 19, 1974 Top Secret E.O. was not revoked. If AAG of the OLC Olson's May 24, 1984 Top Secret OLC FISA Memo cites to President Ford's December 19, 1974 E.O., then this is evidence that it was not revoked by President Carter. See Comments § O.

The Review Committee should know whether President Ford's December 19, 1974 E.O. was revoked by President Carter. If not, then President Obama should know whether it exists in 2013. If so, then President Obama should know whether this E.O. survived the October 25, 1978 signing of the FISA of 1978 with or without the knowledge of the 1978-2013 WH Counsels:

> President Carter's Robert Lipshutz (1977-1979), Lloyd Cutler (1979-1981)
>
> President Reagan's Fred Fielding (1981-1986), Peter J. Wallison (1986-1987), and Arthur Culvahouse (1987-1989)
>
> President Bush's 1989-1993 C. Boyden Gray
>
> President Clinton's Bernard Nussbaum (1993-1994), Lloyd Cutler (1994), Abner Mikva (1994-1995), Jack Quinn, (1995-1996), Lanny Davis (1996-1998) Charles Ruff (1998-1999), and Beth Nolan (1999-2001)
>
> President Bush's Alberto Gonzales (2001-2005), Harriet Miers (2005-2007), and Fred Fielding (2007-2009)
>
> President Obama's Greg Craig (2009-2010), Robert Bauer (2010-2011) and Kathryn Ruemmler (2011-)

If President Obama learns that his White House Counsels never knew that President Ford's December 19, 1974 Top Secret E.O had not been revoked, then President Obama can revoke this E.O. If so, then President Obama has a duty to determine there have been PCA violations during his Constitutional watch because *faux* "Commanders in Chief" have made E.O. 12333 Top Secret "FISA exempt" NSA decisions without President Obama's knowledge.

L. The FOIA requested 1984 and 2004 Top Secret OLC FISA Memos have historical significance by the application of former-DOD Secretary Rumsfeld's "known-known", "unknown-unknown", and "unknown-known" fact analysis of the 1969-2013 NSA TSP

The FOIA requested 1984 and 2004 Top Secret OLC FISA Memos have historical significance by application of former-DOD Secretary Rumsfeld's "known-known", "unknown-unknown", and "unknown-known" fact analysis of the 1969-2013 NSA TSP. The public's knowledge of whether there has been 1982-2013 serial impeachable violation of the exclusivity provision of the FISA of 1978, is enhanced by the Top Secret "known-known" 1984 and 2004 OLC FISA Memos as historical anchors when reviewing the 1969-2013 history of the now "known-unknown" NSA TSP. The public will learn which USG attorneys knew the "known-known" fact of the warrantless domestic surveillance of U.S. citizens and when they knew it.

On February 12, 2002, DOD Secretary Rumsfeld explained his historical prism through which to understand known-known, known-unknown, and unknown-unknown facts:

> Reports that say that something hasn't happened are always interesting to me, because as we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns -- the ones we don't know we don't know. And if one looks throughout the history of our country and other free countries, it is the latter category that tend to be the difficult ones. DoD News Briefing, 2-12-2002. Emphasis Added.
> http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=2636

President Bush's DOD Secretary Rumsfeld (2001-2006) had been President Ford's Chief of Staff (1974-1975) when President Ford issued his December 19, 1974 Top Secret unnumbered E.O. that delegated to the AG the authority to conduct domestic surveillance of U.S. citizens. This was prior to his becoming President Ford's DOD Secretary Rumsfeld (1975-1977) who continued DOD Secretary Laird's 1969-1974 MINARET program that included conducting the NSA warrantless surveillance of U.S. citizens. See 10-3-13 Comments §§ F- H.

On February 12, 2002, DOD Secretary Rumsfeld (2001-2006) knew that NSA analysts content data mined the 1982-2002 E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks without the knowledge of the FISC in violation of the "exclusivity provision" of the FISA, and the "Gang of Eight" in violation of § 413 (a) of the National Security Act. He also knew that VP Cheney, the 1974-1975 Deputy WH Chief of Staff, 1975-1977 WH Chief of Staff, 1979-1989 Congressman, and 1989-1993 DOD Secretary, knew these "known-known" NSA TSP facts.

The Robert II v CIA and DOJ plaintiff seeks the release of the May 24, 1984 "OLC Olson FISA Memo" as a connect-the-dots document to the four CIA classified 1985 "North Notebook" documents to prove whether DOD General Counsel Rumsfeld knew as a "known-known" fact that DOD Secretary Weinberger (1981-1987) and AG Meese (1985-1988) knew as a "known-known" fact that HHS General Counsel del Real had been CIA Director Casey's CIA domestic agent when he made 1982-1985 Jackson v Schweiker "nonacquiescence" policy decisions. He seeks the release of the March 11, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" to prove whether AG Holder (2009-) and DOD Secretary Gates (2006-2010), the 1982-1985 CIA Deputy Director for Intelligence, knew these same "known-known" facts. See § U below.

M. The FOIA requested 1984 and 2004 Top Secret OLC FISA Memos can be applied to a three dimensional USG decision-making map for the public to learn the answer to the how-could-this-have-ever-happened question as to the 1982-2013 serial impeachable violation of the "exclusivity provision" of the FISA without any Presidents' knowledge

The FOIA requested May 24, 1984 "OLC Olson FISA Memo" and the March 18, 2011 reclassified Top Secret May 6, 2004 "OLC Goldsmith FISA Memo" can be applied to a three dimensional USG decision-making map for the public to learn the answer to the how-could-this-have-ever-happened question as to the 1982-2013 serial impeachable violation of the "exclusivity provision" of the FISA of 1978. The public should know the architecture of the decision-making process that has implemented the 1982-2013 E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP. The public should know why Presidents Reagan, Bush, Clinton, Bush, and Obama did not know that the 1982-2013 NSA Directors were content data mining the 1982-2013 Top Secret "FISA exempt" domestic surveillance of US. citizens NSA TSP data banks without the knowledge of their Presidents. See § L above.

The FOIA requester seeks these two OLC FISA Memos to cite to FBI Director Comey (2013) so that he can determine whether they contain evidence of USG attorneys "defrauding" President Obama re serial impeachable violations of the "exclusivity provision" of the FISA. See § X below. He will suggest that FBI Director Comey apply the following three dimensional USG decision-making map to the 1984 and 2004 Top Secret OLC FISA Memos:

1. Vertical- these are the 1984-2004 Intelligence Community (IC) agencies' decision-makers for the AG, the DOD Secretary, the NSA Director, the CIA Director, and the FBI Director.

2. Horizontal- these are the 1984-2004 IC agencies "stovepipe" liaison officers who are tasked with information-sharing Top Secret information and whether this data should bypass the AG, the DOD Secretary, the NSA Director, the CIA Director, the FBI Director, and the President.

3. Time- these are the 1982-2013 IC agencies decision-makers who have formed a *de facto* bi-partisan "shadow government" of officials and attorneys who have made Top Secret decisions on behalf their Presidents without their Presidents' knowledge of the 1982-2013 serial impeachable violations of the FISA of 1978, § 413 (a) of the National Security Act, the PCA of 1878 limitations on military domestic law enforcement, and the Social Security Act.

The 1982-2013 "shadow government" of officials and attorneys know whether the May 24, 1984 "OLC Olson FISA Memo" and the March 18, 2011 reclassified Top Secret May 6, 2004 "OLC Goldsmith FISA Memo" explain AG Mitchell's 1969 Article II Commander in Chief "inherent authority" theory upon which President Nixon conducted warrantless surveillance of U.S. citizens in order to protect the nation from terrorists. The 1982-2013 USG attorneys who know the "known-known" facts revealed by these 1984 and 2004 Top Secret OLC Memos, know that President Obama has an Article II "take Care to faithfully execute" duty to read these Top Secret OLC Memos. The three Review Group Law Professors Cass Sunstein, Peter Swire, Geoffrey Stone, the author of Top Secret: When Our Government Keeps Us in the Dark (2007), know that they have a Review Group duty to read these 1984 and 2004 Top Secret OLC FISA Memos and recommend whether President Obama should revoke these OLC Memos and file a § 413 (b) of National Security Act "corrective action" plan to remedy illegal IC activitiess.

N. The two Top Secret OLC documents will assist the Review Group in determining the names of the "geniuses" who made the 2009-2013 "Unitary Executive" decisions that resulted in "FISA secret law" decisions being made without the knowledge of SG Verrelli

The 1984 and 2004 Top Secret OLC FISA documents will assist the Review Group in determining the names of the "geniuses" who made the 2009-2013 "FISA secret law" decisions that were "known-known" facts to the 2009-2013 decision-makers, but were "unknown-unknown" facts to SG Verrelli (2011-). AAG of the OLC Goldsmith (2003-2004) knew the names of the "geniuses" who made the "FISA secret law" decisions upon which AAG of the OLC Olson (1981-1984) based his May 24, 1984 Top Secret OLC FISA memo and AAG of the OLC Goldsmith based his May 6, 2004 Top Secret OLC FISA memo. SG Verrelli will be learning the 2009-2013 "geniuses" names when he responds to a November 20, 2013 letter from three Senators who raised the issue of SG Verrelli making misrepresentations to the Supreme Court in Clapper v Amnesty re the implementation of the FISA of 1978 that SG Verrelli has not yet cured. See 10-3-13 Comments § B, § K above, and § X below.

Former AAG of the OLC Goldsmith explained in his Memoir, The Terror Presidency, W.W.Norton & Company, 2007, that prior to his resignation he came to understand the "genius" of the proponents of the "Unitary Executive" theory whereby they would tightly control which facts provided to USG decision-makers including himself as the AAG of the OLC:

> They were geniuses at this," Goldsmith said. "they could divide up all these problems in the bureaucracy, ask different people to decide things in their lanes, control the facts that they gave them, and then put the answers together to get the result they want. Conflict Over Spying Led White House to Brink. Gellman, Washington Post, 9-14-08, internet print out 3 of 9. Emphasis Added.

On November 20, 2013, Senators Mark Udall, Ron Wyden and Martin Heinrich sent a letter to SG Verrelli re the accuracy of his Clapper v Amnesty representations made to the Supreme Court. "Official records suggest that the Court was given misleading information that appears to have informed the majority's decision, and that some of these misleading statements have not yet been acknowledged or corrected." Emphasis added. Savage, Warrantless Surveillance Continues to Cause Fallout, New York Times 11-21-12. See § X (12) below.

The three Senators' letter expressed their concern that the DOJ had not taken appropriate steps to cure "incomplete and or misleading representations" provided to the Supreme Court. "Still, we are concerned that the Justice Department has not gone far enough to correct incomplete or misleading representations that we believe were made by the government to the Supreme Court. Id. Emphasis added. https://www.documentcloud.org/documents/837839-112013-clapper-v-amnesty-letter-1.html. See §§ X (10)-(18) below.

After SG Verrelli performs his due diligence to determine how-it-could-have-happened that he made misrepresentations to the Supreme Court, he will learn the names of the USG "geniuses" who knew "known-known" facts about the implementation of the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP that were "unknown-unknown" facts to SG Verrelli when he FRCP 11 signed the Supreme Court Clapper v Amnesty Briefs. SG Verrelli will decide whether he will inform the Supreme Court of these now "known-known" facts. See § X below.

O. The March 20, 2013 City of Arlington v FCC fox-in-the-hen-house sparring between Chief Justice Roberts and Justice Scalia highlights the importance of the Review Group reading the Top Secret OLC memos to determine whether AAGs of the OLC Olson and Goldsmith were the foxes-in-the-hen house who made Marbury v Madison decisions

The March 20, 2013 City of Arlington v FCC, City of Arlington v FCC, 568 U.S. __ (2013), fox-in-the-hen-house sparring between Chief Justice Roberts and Justice Scalia highlights the importance of the Review Group reading the Top Secret OLC memos to determine whether AAGs of the OLC Olson and Goldsmith had been foxes-in-the-hen house who made Marbury v Madison decisions. After reading the May 24, 1984 and May 6, 2004 Top Secret FISA Memos, the three Review Group Law Professors can decide whether AAGs Olson's and Goldsmith's OLC FISA Memos were incorrect when written. If so, then they can recommend that President Obama file a § 413 (b) of the National Security Act "corrective plan" that revokes these two Top Secret OLC FISA Memos as part of the his remedy for the serial impeachable 1982-2013 violations of the "exclusivity provision" of the FISA of 1978. See Comments §§ B, C, D, G, I, J, L, M, O, S.

Justice Scalia addressed Chief Justice Robert's dissent's fox-in-the-henhouse syndrome argument. Chief Justice Roberts explained that there should first be an Article III jurisdictional determination prior to whether the Chevron standards applied to the agency's decision:

> Those who assert that applying *Chevron* to "jurisdictional" interpretations "leaves the fox in charge of the henhouse" overlook the reality that a separate category of "jurisdictional" interpretations does not exist. The fox-in-the-henhouse syndrome is to be avoided not by establishing an arbitrary and indefinable category of agency decision making that is accorded no deference, but by taking seriously, and applying rigorously, in all cases, statutory limits on agencies' authority. Where Congress has established a clear line, the agency cannot go beyond it; and where Congress has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow. But in rigorously applying the latter rule, a court need not pause to puzzle over whether the interpretative question presented is "jurisdictional." If "the agency's answer is based on a permissible construction of the statute," that is the end of the matter. *Chevron*, 467 U. S., at 842. Id. slip op. 16-17. Emphasis added.

Justice Scalia explained that there was no jurisdiction and non-jurisdiction distinction because the authority of the agency is prescribed by Congress:

> That is not so for agencies charged with administering congressional statutes. Both their power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly, no less than when they act beyond their jurisdiction, what they do is ultra vires. Because the question—whether framed as an incorrect application of agency authority or an assertion of authority not conferred—is always whether the agency has gone beyond what Congress has permitted it to do, there is no principled basis for carving out some arbitrary subset of such claims as "jurisdictional." Id. slip op. 6.Emphasis added.

Chief Justice Roberts explained his fundamental disagreement with Justices Scalia, Thomas, Ginsburg, Sotomayor, Kagan, and Breyer, based on the fact that the Article III Court has to first decide whether the Article II agency is entitled to any deference:

> My disagreement with the Court is fundamental. It is also easily expressed: A court should not defer to an agency until the court decides, on its own, that the agency is entitled to deference. Courts defer to an agency's interpretation of law when and because Congress has conferred on the agency interpretive authority over the question a tissue. An agency cannot exercise interpretive authority until it has it; the question whether an agency enjoys that authority must be decided by a court, without deference to the agency. Id. slip op. 1. Emphasis added.

Chief Justice Roberts cited to one of the Constitution's author's definition of tyranny when there is too much power if the powers of legislative, executive, and judiciary were in the same governing branch. His separation of powers concern was the accumulating power of the Article II President to make legislative, executive, and judiciary decisions:

> One of the principal authors of the Constitution famously wrote that the "accumulation of all powers, legislative, executive, and judiciary, in the same hands, . . . may justly be pronounced the very definition of tyranny." The Federalist No. 47, p. 324 (J. Cooke ed. 1961) (J. Madison). Although modern administrative agencies fit most comfortably within the Executive Branch, as a practical matter they exercise legislative power, by promulgating regulations with the force of law; executive power, by policing compliance with those regulations; and judicial power, by adjudicating enforcement actions and imposing sanctions on those found to have violated their rules. The accumulation of these powers in the same hands is not an occasional or isolated exception to the constitutional plan; it is a central feature of modern American government. Id. slip. op. 2. Emphasis added.

Chief Justice Roberts raised the specter of a Big Brother government agencies that are "poking into every nook and cranny of daily life" that requires oversight:

> The Framers did divide governmental power in the manner the Court describes, for the purpose of safeguarding liberty. And yet . . . the citizen confronting thousands of pages of regulations—promulgated by an agency directed by Congress to regulate, say, "in the public interest"—can perhaps be excused for thinking that it is the agency really doing the legislating. And with hundreds of federal agencies poking into every nook and cranny of daily life, that citizen might also understandably question whether Presidential oversight—a critical part of the Constitutional plan—is always an effective safeguard against agency overreaching. Id. Emphasis added. 4-5.

Chief Justice Roberts cited to the core Marbury v Madison separation of powers principle that is the Judiciary that says what the law "is" and not the Executive:

> "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). The rise of the modern administrative state has not changed that duty. Indeed, the Administrative Procedure Act, governing judicial review of most agency action, instructs reviewing courts to decide "all relevant questions of law." 5 U. S. C. §706. Emphasis added.
>
> We do not ignore that command when we afford an agency's statutory interpretation *Chevron* deference; we respect it. We give binding deference to permissible agency interpretations of statutory ambiguities *because* Congress has delegated to the agency the authority to interpret those ambiguities "with the force of law." Id. 6. Emphasis added.

Chief Justice Roberts framed the administrative law debate with Justice Scalia as the Court's duty to "police the boundary between the Legislature and Executive" branches:

> But there is another concern at play, no less firmly rooted in our constitutional structure. That is the obligation of the Judiciary not only to confine itself to its proper role, but to ensure that the other branches do so as well.
>
> An agency's interpretive authority, entitling the agency to judicial deference, acquires its legitimacy from a delegation of lawmaking power from Congress to the Executive. Our duty to police the boundary between the Legislature and the Executive is as critical as our duty to respect that between the Judiciary and the Executive. See *Zivotofsky* v. *Clinton*, 566 U. S. ___, (2012) (slip op., at 8). In the present context, that means ensuring that the Legislative Branch has in fact delegated lawmaking power to an agency within the Executive Branch, before the Judiciary defers to the Executive on what the law is. That concern is heightened, not diminished, by the fact that the administrative agencies, as a practical matter, draw upon a potent brew of executive, legislative, and judicial power .And it is heightened, not diminished, by the dramatic shift in power over the last 50 years from Congress to the Executive—a shift effected through the administrative agencies.
>
> We reconcile our competing responsibilities in this area by ensuring judicial deference to agency interpretations under *Chevron*—but only after we have determined on our own that Congress has given interpretive authority to the agency. Our "task is to fix the boundaries of delegated authority," Monaghan, 83 Colum. L. Rev., at 27; that is not a task we can delegate to the agency. We do not leave it to the agency to decide when it is in charge. Id. slip opinion 16-17. Emphasis added.

The City of Arlington fox-in-the-henhouse" sparring highlights the "Past is Prologue" importance of these two OLC Memos. There should be Article III review of AAGs of the OLC Olson and Goldsmith making Top Secret decisions as to what the FISA secret law "is."

P. The two FOIA requested Top Secret OLC documents will assist the Review Group determine whether the 2009-2013 "foxes-in-the-henhouse" who made the Marbury v Madison "FISA secret law" decisions have also "defrauded" President Obama

The two FOIA requested Top Secret OLC documents will assist the Review Group Law Professors determine whether the 2009-2013 "foxes-in-the-henhouse" who made the Marbury v Madison "FISA secret law" decisions have also "defrauded" President Obama. The Robert VIII v DOJ, HHS, and SSA plaintiff asserts that the 2009-2013 "foxes-in-the-henhouse" who made the Marbury v Madison "FISA secret law" decisions that were "unknown-unknown" facts to SG Verrelli, have also "defrauded" President Obama. This assertion is based on the content of the Robert VII v DOJ "FISC Robert" documents withheld pursuant to FOIA Exemption 1 and the "Glomar Response" defense and the Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA connect-the-dots case file notes and e-mails. See Comments §§ A, B, P, R.

The assertion that 2009-2013 "foxes-in-the-henhouse have "defrauded" President Obama is based on an application of 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States, as interpreted by Independent Counsel (IC) Lawrence Walsh in the March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of Vice President Bush" Memorandum. AG Meese had "defrauded" President Reagan by withholding the fact of the AG's interpretation of laws. The Snowden leak raises the ugly specter of USG officials intentionally withholding "minimization" violations from President Obama for the purpose of preventing President Obama from learning of NSA content data mining of the NSA TSP data banks that contain the fruits of the "FISA exempt" domestic surveillance of U.S. citizens undertaken via the authority of E.O. 12333. IC Walsh determined that President Reagan and VP Bush had no Iran-Contras criminal liability because they had reasonably relied upon the accuracy of AG Meese's legal opinions. See "Iran Contra at 25, Reagan and Bush 'Criminal Liability" Evaluations" Document 1-Parts 1-4 the National Security Archive posted at its http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB365/index.htm. See §§ L-N below.

18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. Emphasis added.

The 2011-2012 SG case file notes and e-mails re the November 30, 2011 Robert VIII v DOJ, HHS provide a paper trail to the 2012 "foxes-in-the-henhouse" in that case in which SG Verrelli did not file a Brief in opposition. http://snowflake5391.net/Robert8vDOJpetition1.pdf. The 2012-2013 SG case file notes and e-mails re SG Verrelli's own February, 2012 Clapper v Amnesty Petition for a writ of certiorari, provide a paper trail to the 2012-2013 foxes-in-the-henhouse" in that case. On SG Verrelli's Petition ten other attorneys were listed. They included DNI General Counsel Robert Litt, Acting NSA General Counsel Patrick Reynolds, and AAG of the Civil Division Tony West. These attorneys' e-mails reveal the names of their "foxes-in-the henhouse" clients at ODNI, NSA, and DOJ. http://sblog.s3.amazonaws.com/wp-content/uploads/2012/02/11-1025-Clapper-v.-Amnesty-International-Petition.pdf.

Q. The November 23, 2013 publication of Snowden released February 23, 2012 SIGINIT Strategy 2012-2016 Report highlights the importance of the public learning who made the March 18, 2011 decision to reclassify the May 6, 2004 "OLC Goldsmith FISA Memo" in order to learn the name of the *faux* "Commander in Chief" who is not President Obama

On November 23, 2013, investigative reporters James Risen and Laura Poitras reported on a Snowden leaked February 23, 2012 DOD SIGINIT Strategy 2012-2016 document that was a mission statement for the expansion of the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP. N.S.A. Report Outlined Goals for More Power. This document highlights the importance of the public learning who made the March 18, 2011 decision to reclassify the Top Secret May 6, 2004 "OLC Goldsmith FISA Memo" in order to learn the name of the *faux* "Commander in Chief" who is not President Obama. This is a connect-the-dots document to the 1984 and 2004 OLC FISA Memos that raises the issue of a 1982-2013 serial impeachable violations of the Posse Comitatus Act of 1878 limitations on military domestic law enforcement as revealed in the Robert VII v DOJ "FISC Robert" documents, Robert VIII v DOJ, HHS, and SSA "Robert v Holz" documents, and case file notes and e-mails in those cases. See § R below.

The DOD SIGINIT Strategy 2012-2016 Report is a déjà vu mission statement of the 2002 DOD Defense Advanced Research Projects Agency (DARPA) Total Information Awareness (TIA) program implemented by Director Rear Admiral, Ret. John Poindexter. He had been President Reagan's 1983-1985 Deputy National Security Advisor and 1985-1986 National Security Adviser. One of the purposes of the Robert II v CIA and DOJ FOIA action seeking the release of four CIA classified 1985 connect-the-dots documents, is to prove to President Obama that the May 24, 1984 Top Secret "OLC Olson FISA Memo" explains how the President's Article II Commander in Chief "inherent authority" has been the legal basis for the E.O. 12333 Top Secret CIA domestic "special activities" at IMC. The documents prove whether National Security Advisor Poindexter knew that unaudited off OMB Budget HHS funds had been used to pay for CIA Director Casey's E.O. 12333 Top Secret CIA domestic "special activities both at the NSA and IMC without the knowledge of President Reagan. See §§ S, T below.

Risen and Poitras cited to the SIGINIT Strategy 2012-2016 Report which was posted on an investigative reporters cloud website. They reported that this DOD classified document noted the need to update the "interpretation and guidelines" for the DARPA program:

> The interpretation and guidelines for applying our authorities, and in some cases the authorities themselves, have not kept pace with the complexity of the technology and target environments, or the operational expectations levied on N.S.A.'s mission," the document concluded. Emphasis added.

They reported that NSA officials noted that the NSA needed more "flexibility" in the legal authorities upon which the NSA TSP had been based, but that the 2012 "culture of compliance" of the NSA Director and the DOD analysts would not be compromised:

> The N.S.A.'s powers are determined variously by Congress, executive orders and the nation's secret intelligence court, and its operations are governed by layers of regulations. While asserting that the agency's "culture of compliance" would not be compromised, N.S.A. officials argued that they needed more flexibility, according to the paper. Emphasis added.

The DARPA SIGINIT Strategy 2012-2016 Report and the DARPA 2002 TIA program are linked by the legal authorities upon which each DOD program was based. The 2002 TIA program was based on the May 24, 1984 Top Secret "OLC Olson FISA Memo." The SIGINIT Strategy 2012-2016 plan is based on the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo" that was reclassified on March 18, 2011. If the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo" cites to the May 24, 1984 Top Secret "OLC Olson FISA Memo," then the legal authority for the two DARPA programs has been the May 24, 1984 "OLC Olson FISA Memo."

If the two DARPA programs are based on AAG of the OLC Olson's Top Secret May 24, 1984 OLC FISA memo, then the goals of the two DARPA programs have been goals of the 1984-2012 *faux* "Commanders in Chief" who implemented these programs without the knowledge of all three branches of government: the Article I Congressional Oversight Committees, the Article II 1984-2012 Presidents, and Article III FISC and the Supreme Court. Hence, the importance of the public to learn the names of the *faux* "Commanders in Chief" of NSA Directors General Hayden (1999-2005) and NSA Director General Alexander (2005-).

In his August 2, 2002 remarks at a DARPA Tech 2002 Conference, Overview of the Information Awareness Office, Poindexter explained that one of the goals of the use of the new information technologies was to break down the "stovepipes" by sharing "new and old" information databases that could be mined by the intelligence agencies without FISC warrants:

> I think the solution is largely associated with information technology. We must become much more efficient and more clever in the ways we find new sources of data, mine information from the new and old, generate information, make it available for analysis, convert it to knowledge, and create actionable options. We must also break down the stovepipes - at least punch holes in them. By this, I mean we must share and collaborate between agencies, and create and support high-performance teams operating on the edges of existing organizations. Tools are needed to facilitate these collaborations, and to support these teams that work to ensure our security. http://www.fas.org/irp/agency/dod/poindexter.html.

DOD Secretary Rumsfeld approved TIA Director Poindexter's 2002 TIA project. Its purpose was for military analysts to capture and data mine U.S. citizens information by accessing all of the IC data bases both USG and private company data bases. One critic of the TIA likened it to a prototype of a military Thought Police far more effective then the fictional Thought Police described by George Orwell in 1984. "Prophetic as he was in 1984, however, he could not have imagined how advanced surveillance technology would become." Hentoff, We'll All Be Under Surveillance: Computers will say what we are. Village Voiced, 12-10-02.http://www.villagevoice.com/2002-12-10/news/we-ll-all-be-under-surveillance/.

The TIA program was being implemented on November 18, 2002 when the FISC Court rendered its In Re Sealed decision. This decision noted the President's Article II Commander in Chief "inherent authority" to conduct surveillance of U.S. citizens if it was necessary to protect the nation from terrorists. That decision did not discuss the May 24, 1984 Top Secret "OLC Olson FISA Memo" because AG Ashcroft did not inform the Court of that Memo or the E.O. 12333 "FISA exempt" NSA TSP. See 10-3-13 Comments § B and § R below.

The November 18, 2002, In re Sealed decision became more important on November 22, 2002 when Senate Judiciary Committee Ranking Member Charles Grassley requested that DOD Secretary Rumsfeld's DOD IG Schmitz investigate the TIA program being conducted without the Committee's knowledge. Ranking Member Grassely did not know the May 24, 1984 Top Secret "OLC Olson FISA Memo" even existed. See § S below.

On December 12, 2003, DOD IG Schmitz would issue the Information Technology Management Report: Terrorism Information Awareness Program (D-2004-033) Report. He informed Congress that the TIA program had been terminated. He did not inform the Congress that DOD Secretary Rumsfeld transferred the TIA program to another DOD unit. See § S below.

The fact that DOD Secretary Rumsfeld continued the TIA program in another DOD agency is revealed in the DARPA's 2012 website that explained how it had developed the NSA's algorithms for "constructs of data storage and manipulation" of the NSA TSP:

> The primary goal of this focus area is the exploitation of insights into mathematical constructs for data storage and manipulation to complement or impact hardware performance and requirements. As the broadband environment is being exponentially crowded from diverse signals and interference, it is important to develop new information processing algorithms and techniques to identify and efficiently communicate with the embedded signals of interest. In addition, programs will be developing advanced digital image processing algorithms to leverage the unique image plane information for more rapid image analysis and target identification leading to revolutionary advances in the detection, precision identification, and tracking of elusive targets. Emphasis Added.
> http://www.darpa.mil/Our_Work/MTO/Focus_Areas/Algorithms.aspx

DARPA did not release to the public its February 23, 2012 SIGINIT Strategy 2012-2016 Report. The public and Congressional Oversight Committees would learn of this Snowden leaked Report when the investigative reporters Risen an Poitras published the document on November 23, 2013. This is an important time line fact because on July 19, 2010, the public and 535 Members of Congress had learned from Washington Post investigative reporters Dana Priest and William Arkin, of the "Top Secret America" domestic surveillance program. They published a jaw dropping Location Map that revealed the hundred of Intelligence Community (IC) locations where analysts implemented the E.O. 12333 Top Secret "FISA exempt" NSA TSP. See http://projects.washingtonpost.com/top-secret-america/map/

The fact that the February 23, 2012 DOD SIGINIT Strategy 2012-2016 Report was issued after the March 18, 2011 decision to declassify and to reclassify portions of AAG of the OLC Goldsmith's May 6, 2004 Top Secret OLC FISA Memo. means that DOD Secretary Robert Gates (December 18, 2006-July 1, 2011), the 1991-1993 CIA Director, and 2007-2010 Under Secretary of Intelligence James Clapper, the 1991-1995 DIA Director, knew that the TIA program had continued as a SIGINIT program on September 17, 2007 when they terminated the TALON program. They transferred those 1982-2007 E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks to the FBI that included the accumulated U.S. citizen data. These TALON data banks were in 2013 transferred into the Utah Data Center. See 10-3-13 Comments L.

R. The May 24, 1984 Top Secret "OLC Olson FISA Memo" and the November 18, 2002 FISC of Review In re Sealed decision's "take for granted" dicta that the President has the Article II Commander in Chief "inherent authority" to conduct warrantless domestic surveillance of U.S. citizens to protect the nation from terrorists

On November 18, 2002, the FISC of Review decided In re Sealed, 310 F.3d 717 (Foreign Intel. Surv. Ct. of Rev. 2002). This was the first FISC of Review decision rendered and made public. This decision was rendered without the panel of judges being informed of the May 24, 1984 Top Secret "OLC Olson FISA Memo" that did not apply the Chevron and Youngstown standards in it review of the FISA of 1978 being applied to the E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP. The Review Group should read the May 24, 1984 Top Secret "OLC Olson FISA Memo" and apply the City of Arlington-Chevron standard to the In Re Sealed decision's "take for granted" dicta to determine whether DOJ attorneys withheld facts from the FISC of Review. See 10-3-13 Comments §§ I-M.

In the In re Sealed Per Curiam decision, Circuit Court Judges Silberman, Guy, and Leavy explained the FISC's "take for granted" belief that the President can conduct a warrantless domestic of U.S. citizens NSA TSP to obtain foreign intelligence information:

> "(A)ll the other courts to have decided the issue (have) held that the President did have inherent authority to conduct warrantless searches to obtain foreign intelligence information…. We take for granted that the President does have the authority and, assuming that is so, FISA could not encroach on the President's constitutional power." Id. 742. Emphasis added.

The In re Sealed Case decision reversed a FISC Judge Royce Lamberth's May 17, 2002 Order that placed restrictions on the post-9/11 NSA TSP. "The appeal is brought by the United States from a FISA court surveillance order which imposed certain restrictions on the government." Id. 719. The USG attorneys who filed the FISC of Review Brief were AG Ashcroft, SG Olson, DAG Thompson, Associate DAG Kris, and OIPR Counsel Baker. They followed AG Mitchell's "take for granted" theory that the President has the Article II Commander in Chief "inherent authority" to conduct warrantless domestic surveillance of U.S. citizens. SG Olson knew why he did not inform the FISC of Review knew of his May 24, 1984 Constitutionality of Certain National Security Agency Electronic Surveillance Activities Not Covered Under the Foreign Intelligence Surveillance Act of 1979 Memorandum.

The fact AG Ashcroft was on the 2002 In re Sealed FISA Court of Review Brief is an important fact because of his March 10, 2004 refusal to sign the recertification of the NSA TSP as requested by WH Counsel Gonzales. This raises the fact question of whether AG Ashcroft knew of AAG of the OLC Olson's May 24, 1984 FISA Memo when he signed off on the Brief.

The fact OIPR Counsel Baker was on the 2002 In re Sealed FISA Court of Review Brief is an important fact because of his March 1, 2004 decision to ratify CIA Director Tenet's FOIA Officer's use FOIA exemption 1 and the "Glomar Response" defense to withhold the "FISC Robert" documents. This raises the fact question of whether he knew of the May 24, 1984 Top Secret "OLC Olson FISA Memo" and the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo" when he filed his "corrected" Robert VII v DOJ Brief on October 1, 2004 and did not inform Judge Garaufis of these OLC FISA Memos. http://www.snowflake5391.net/baker.pdf.

The fact that Associate DAG Kris (2000-2003) was on the 2002 In re Sealed FISA Court of Review Brief is an important fact because of his January 26, 2006 "whistleblower" memo asserting his belief that the October 25, 1978 "exclusivity provision" of the FISA continued to be the controlling statute after the September 18, 2001 Authorization to Use Military Force (AUMF). He framed the issue with his question "2. Did Congress Intend Such Surveillance to be Conducted Solely Under FISA?" Id. 2. http://balkin.blogspot.com/kris.fisa.pdf

> A. Constitutional Preclusion. Congress intended to foreclose the President's constitutional power to conduct foreign intelligence "electronic surveillance" without statutory authorization. A provision of FISA, enacted in 1978 and now codified at 18 U.S.C. § 2511(2)(f), provides in relevant part that "procedures in …the Foreign Intelligence Surveillance Act of 1878 shall be the exclusive means by which electronic surveillance, as defined in (FISA)…may be conducted. It also provides that the criminal wiretapping law known as "Title III," and other statutes governing ordinary law-enforcement investigations, are "exclusive" as to the surveillance activity that they regulate. Id. 2. Emphasis not added.

Former-Associate DAG Kris' memo was in response to the AG Gonzales' January 19, 2006 Legal Authorities Supporting the Activities of the National Security Agency Described by the President White Paper sent to the Majority Leader explaining the legal basis for the post-9/11 NSA TSP. AG Gonzales' WP conspicuously did not discuss the May 24, 1984 Top Secret "OLC Olson FISA Memo" or the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo" or the 1982-2006 E.O. 12333 Top Secret "FISA exempt" NSA TSP that Justice Alito would note in his Clapper v Amnesty dicta. http://www.usdoj.gov/olc/2006/nsa-white-paper.pdf. See § X below.

The 2002 In re Sealed Case decision also has 2013 "Past is Prologue" significance because Circuit Court Judge Lawrence Silberman was the DAG who had reviewed President Ford's December 19, 1974 Top Secret unnumbered and unrevoked E.O. that delegated to the AG the authority to conduct warrantless domestic surveillance of U.S citizens. DAG Silberman (1974-1975) had succeeded DAG William Ruckelshaus after he had resigned on the "Saturday massacre" day after AG Richardson had resigned. President Ford's Top Secret December 19, 1974 unnumbered E.O. was issued after the Supreme Court's June 19, 1972, United States v U.S. District Court (Keith), 407 U.S. 297 (1972), and July 24, 1974, U.S. v Nixon, 418 U.S. 683 (1974), decisions re the Article II authority of the President. This unrevoked 1974 E.O. is now subject to President Obama's 2014 review of the 1969-2013 NSA TSP. See Comments § F.

Chief Justice Rehnquist (1986-2005) appointed D.C. Circuit Judge Silberman to the FISC of Review panel to decide In re Sealed. Chief Justice Rehnquist had been the 1969-1971 AAG of the OLC when AG Mitchell had approved the NSA MINARET program that conducted warrantless wiretapping of U.S. citizens believed to be terrorists after the Congress had enacted the Title III of the Omnibus Crime Control and Safe Streets Act of 1968. The MINARET program was conducted during the Laird v Tatum, 408 U.S. 1 (1972), litigation in which the plaintiffs could not establish standing. Justice Rehnquist would subsequently explain in Laird v Tatum, 409 U.S. 824 (1972), that he did not recuse himself because as the AAG of the OLC he did not know about the NSA MINARET program. Hence, the link between Laird v Tatum, In re Sealed, and Justice Alito's 2013 Clapper v Amnesty dicta. See Comments §§ B, H.

S. The November 22, 2002 letter of Senator Grassley, the December 2, 2002 letter of Senator Hagel, and the December 18, 2002 letter of Senator Nelson requesting that DOD IG Schmitz determine whether the DOD Total Information Awareness Program (TIA) violated the Posse Comitatus Act of 1878 because of military law enforcement actions

On November 22, 2002, Senator Charles Grassley, on December 2, 2002 Senator Chuck Hagel, and on December 13, 2002 Senator Bill Nelson, sent letters to DOD IG Schmitz to determine whether the DOD Total Information Awareness Program (TIA) was being conducted in violation of the Posse Comitatus Act of 1878. On January 17, 2003, DOJ IG Schmitz informed Senator Grassley that there would be an IG audit of the program. This would become a "Past is Prologue" audit because the DOD TIA program had been conducted without the knowledge of the Senate Finance Committee and the FISC as had the 1982-2013 E.O. 12333 "FISA exempt NSA TSP. Senator Hagel is now DOD Secretary Hagel whose DOD Cyber Commander NSA Director Alexander (2005-) has data mined the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP with exponentially more powerful algorithms.

The Robert v Holz-Robert VII v DOJ- Robert VIII v DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff-FOIA requester notes that these letters were written after the November 18, 2002 FISC of Review's In re Sealed decision with its dicta as to the President's unlimited authority to conduct surveillance to protect the nation from terrorists. "We take for granted that the President does have the authority and, assuming that is so, FISA could not encroach on the President's constitutional power." Id. 742. See Comments § H and § R above.

Senators Grassley, Hagel, and Nelson did not "take for granted" the President had Article II Commander in Chief unlimited authority not to comply with the Posse Comitatus Act of 1878 as to military officers collecting data re U.S. citizens for law enforcement purposes. These Senators did not know that from 1982-2002 the NSA military analysts and the DIA military analysts had been data mining the E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks. Hence, the 2014 importance of Senators Grassley and Nelson knowing whether DOD Secretary Hagel (2013-) knows that DOD Cyber Commander-NSA Director Alexander (2005-) has conducted warrantless content data mining of the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks based on the "FISA secret law" that includes 1984 and 2004 legal opinions of AAGs of the OLC Olson and Goldsmith. See 7-27-10 Robert VIII WP § K.

On November 22, 2002, Senator Grassley was the Ranking Member of the Senate Finance Committee who in 2003 would become the Chairman of the Senate Finance Committee. His letter to DOD IG Schmitz was based on his knowledge from news reports of TIA program:

> TIA is a research program that would review a vast amount of information including credit card purchases, driver's license and car rentals for the benefit of the law enforcement officials. In addition news reports state that neither the Department of Justice or the Federal Bureau of Investigations has been consulted on TIA.
> I am at a loss to understand why DoD resources are being spent on research for domestic law enforcement. In addition, to develop such a program in a vacuum from federal law enforcement seems to be asking for taxpayer dollars to be sent down the drain. Emphasis added.

Then Ranking Member Grassley asked a series of questions that included a query as to the statutory authority for the TIA. "1) What is the statutory authorization for TIA?." Senator Grassley's November 22, 2002 letter is in Appendix B, pp 17-18 of the DOJ IG December 12, 2003 Report: Information Technology Awareness Program (D)2004-033). http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB436/docs/EBB-009.pdf. See § T below.

On December 2, 2002 Senator Hagel wrote to DOD IG Schmitz:

> Since 1878, the law of the United States has been to separate the military domestic police functions and law enforcement. The Posse Comitatus Act, and this separation of responsibilities, has helped foster strong public support and respect for the men and women of uniform. In the Homeland Security legislation signed by President Bush on November 25, Section 8666 specifically confirmed the importance of the Posse Comitatus Act. Therefore, I am concerned to hear of a $10 million program at the Department of Defense to conduct searh for domestic law enforcement technology. Id. Appendix B p. 19, of the December 12, 2003 DOJ IG Report. Emphasis added.

On December 13, 2002 Senator Nelson wrote to DOD IG Schmitz:

> I am writing to ask you to review the statutory authority and legal standing of the Total Information Awareness program being developed by the Defense Advance Research Projects Agency (DARPA).
> I strongly support DARPA, and believe we must use our technological advantages to fight the war on terror, but I am concerned that this technology, if ever developed and used, could lead to the violations of the Privacy Act, as well as other federal laws. I also share Senator Grassley's concern that military use of this technology might violate the Posse Comitatus Act which prohibits using military personnel in civililan law enforcement.
> I think you will agree that the possibility of abuse of additional privacy rights is enormous Therefore, we must ensure this program is being conducted in accordance with the federal law and that proper safeguards are in place to uphold the principles which underpin our free and open society. Id. Appendix B p. 20 of the December 12, 2003 DOJ IG Report. Emphasis added.

On January 17, 2003, DOD IG Schmitz wrote to now Chairman Grassley of the Senate Finance Committee and informed him that an IG audit would be conducted in 2003:

> The TIA Program intends to use an overreaching technical capability to link existing technologies for the purpose of gathering and combining data from existing data bases to predict foreign terrorist activity. The capability could have dual application to both the gathering of foreign intelligence and to domestic law enforcement (counter-terrorism). The primary application would be to provide our country and its deployed forces "defense in depth" by attempting to predict potential threat activity outside U.S. borders. The

> second application wold be to use the technology to predict terrorist activity within the United States. Id. Appendix C p. 21, of the December 12, 2003 DOJ IG Report. Emphasis added.

This 2003 DOD IG audit of the TIA would be conducted while NSA Director General Michael Hayden was conducting warrantless content data mining of the 1982-2003 E.O. 12333 Top Secret "FISA exempt" NSA TSP without "Gang of Eight" Notification as required by § 413 (a) of the National Security Act. NSA Director General Hayden knew that Finance Committee Chairman Grassley did not know about the funding source for the 1982-2002 E.O. 13333 "FISA exempt" domestic surveillance of U.S. citizens NSA TSP. This is an important fact because NSA Director General Hayden would become the first Principal Deputy Director of the NDI (April 21, 2005-May 26, 2006) during the Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA litigation. On May 30, 2006, after AG Gonzales had filed his April 3, 2006 Robert VII v DOJ Second Circuit letter-Brief as to whether Robert was a FISA "aggrieved person," he would become the CIA Director and the 2006-2009 co-defendant in Robert II v CIA and DOJ. See 11-30-11 Robert VIII Petition Statement of the Case § A, and § U below.

DOD IG Schmitz copied his January 27, 2003 letter to Senator Max Baucus who was the Ranking Member of the Senate Finance Committee. This is an important fact because Ranking Member Baucus was the 2001-2002 Chairman of the Finance Committee and would became the 2007-2013 Chairman. Upon information and belief, neither Chairman Baucus nor Chairman Grassley have ever known the off-OMB Budget funding source for the 1982-2013 E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP data banks that were not funded with OMB Budget classified funds. See 7-27-10 Robert VIII WP § Z.

The Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff seeks the release of the May 24, 1984 Top Secret "OLC Olson FISA Memo" and the March 18, 2011 reclassified Top Secret "OLC Goldsmith FISA Memo" to present to Senate Finance Committee Chairman Baucus and Ranking Member Grassley. These Top Secret OLC FISA memos explain whether the AAGs of the OLC had determined that the "exclusivity provision" of the FISA "unconstitutionally" encroached upon the President's Article II Commander in Chief "inherent authority" to conduct domestic surveillance of U.S. citizens if the AG determined that there was evidence that the U.S. citizen was a terrorist or an agent of a foreign power. If so, then this same Article II "Commander in Chief" authority would be the basis of determining whether the PCA of 1878 had become an "unconstitutional" encroachment on the NSA Director's duty to provide E.O. 12333 Top Secret "FISA exempt" NSA TSP information re U.S. citizens to the FBI for military domestic law enforcement purposes.

The FOIA requester will cite the Chairman and Ranking Member of the Senate Finance Committee to these Top Secret OLC FISA Memos along with the Robert VII v DOJ "FISC Robert" documents as evidence of the serial impeachable violation of both the "exclusivity provision" of the FISA of 1978 and the Posse Comitatus Act of 1878. He will assert that those connect-the-dots documents reveal that the 1980s NSA Directors had provided content information secured from the illegal warrantless surveillance of Robert. This was for the "law enforcement" purpose of securing the incarceration of Robert who was challenging the off-OMB Budget source for the "immaculate construction" of the E.O. 12333 Top Secret "FISA exempt" NSA TSP that could not be funded with classified OMB Budget funds. See § U below.

T. DOD IG Schmitz December 12, 2003 Report that the Total Information Awareness (TIA) program had ended while the DOD TALON program continued pursuant to the E.O. 12333 Top Secret "FISA exempt" NSA TSP whereby data was disseminated to the FBI for domestic law enforcement purposes in violation of the Posse Comitatus Act

On December 12, 2003, DOD IG Schmitz issued the Information Technology Management Report: Terrorism Information Awareness Program (D-2004-033), and reported that the TIA program had ended. This Report was in response to the three Senators request for a DOD IG investigation. http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB436/docs/EBB-009.pdf. However, DOD IG Schmitz did not inform the Senators that DOD Secretary Donald Rumsfeld (1975-1977 and 2001-2006) continued to implement the 1982-2013 E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens through the DOD TALON program. NSA military analysts provided data to the FBI for law enforcement in purposes in violation of the Posse Comitatuts Act (PCA) of 1878. See 7-27-10 Robert VIII WP § K.

This DOD IG Report was issued after the Congress had "defunded" the TIA program. Acting Deputy Inspector General for Intelligence Thomas F. Gimble sent a cover sheet Memorandum re the TIA program to the DARPA Under Secretary of Defense for Acquisition, Technology, and Logistics Director explaining the deterrent goal of this IG Report:

> This audit was conducted to complete our response to congressional requests (See Appendix C). Section 131 of the National Defense Appropriations Act for Fiscal Year 2004 (Public Law 108-87, September 30, 2003) eliminated funding for the majority of the Terrorism Information components. However, the content of this report remains applicable to the event that program concerns are resolved or DoD pursues similar technologies in the future. Id. 3. Emphasis added.

DOD IG Schmitz did not inform the three Senators that the DOD TALON program continued and used the algorithms developed by the DARPA TIA program. On September 17, 2007, DOD Secretary Gates (2006-2010) and Under Secretary for Intelligence Lt. General James Clapper would end the TALON program. However, they transferred the TALON data banks to the FBI and retained a copy of the TALON "haystacks" data banks that included the 1982-2007 E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP data banks. "DoD's Counterintelligence Field Activity (CIFA) will close the TALON Reporting System effective Sept. 17, 2007, and maintain a record copy of the collected data in accordance with intelligence oversight requirements." Emphasis added. See 10-3-13 Comments L.

The Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff-requester asserts that because the DOD TALON program used the DARPA TIA algorithms, the Congressional defunding of the TIA program had zero deterrent effect. Indeed, given the Snowden leaked February 23, 2012 DOD SIGINIT Strategy 2012-2016 document, a *de facto* TIA program would continue throughout President Obama's 2009-2013 Constitutional watch with the knowledge of DOD Secretary Gates (2006- 2010) and Review Group Member Mike Morell, who had been Acting CIA Director (2012-2013), and with (or without) the knowledge of DOD Secretary Panetta (2011-2013), DOD Secretary Hagel (2013-) and DOD General Counsel Jeh Johnson, the new Department of Homeland Security Secretary.

The Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff-requester asserts that the use of DARPA TIA algorithms to data mine the E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks continued in 2013 with the knowledge of the 2013 *faux* Commander in Chief, DNI Director Clapper (2011-), DOD Cyber Commander-NSA Director General Alexander (2005-), CIA Director Brennan (2013-), DOD General Counsel Preston (2013-), DNI General Counsel Litt (2009-) NSA General Counsel De (2012-), DAG James Cole (2010-), AAG of the National Security Division Lisa Monaco (July 1-2011-March 8, 2013), and Acting James Carlin (March 9, 2013-). If so, then the Review Group Law Professors should inform President Obama in the December 15, 2013 Report. See § X below.

On March 1, 2004, Chairman Newton N. Minow of the DOD Technology and Privacy Advisory Committee (TAPAC delivered the Committee's Report Safeguarding Privacy in the Fight Against Terrorism, to DOD Secretary Rumsfeld. This was in DOD Secretary Rumsfeld's blue ribbon committee that was in response to the Congressional concerns re the TIA. The Committee included Floyd Abrams, Zoe Baird, Griffin Bell, Gerhard Caspar, William Coleman, Lloyd Cutler, and John Marsh. http://www.cdt.org/security/usapatriot/20040300tapac.pdf

Chairman Minow reported to DOD Secretary Rumsfeld:

> TIA was only one of the programs within DOD and elsewhere in the government involved, or with the potential for being involved, in data mining concerning U.S. persons. The committee believes that data mining plays a critical role in the fight against terrorism, that that it should be used – and can be effectively—only in ways that do not compromise the privacy of U.S. persons. That is the goal of our recommendations. We believe our recommendations both protect privacy and facilitate the appropriate, effective, and efficient use of data mining tools to fight terrorism. Id. 1. Emphasis added.

The Robert VII v DOJ plaintiff notes that the TAPAC Report was sent to DOD Secretary Rumsfeld on March 1, 2004, the same day that OIPR Counsel Baker ratified CIA Director Tenet's FOIA Officer's use of FOIA Exemption I and the "Glomar Response" defense to withhold the "FISC Robert" documents. As a result, the Robert VII v DOJ "FISC Robert" documents provide AG Holder with an opportunity to apply the TAPAC recommendations to these documents as a base line test to compare 1985 and 2004 "minimization" standards to the 2013 "minimization" standards applied by the 2013 SIGINIT analysts tasked to data mine the 1982-2013 E.O. 12333 top Secret "FISA Exempt" NSA TSP data banks in the Utah Data Center. The plaintiff will be requesting that FBI Director Comey apply this test if he investigates plaintiff's complaint that 2014 USG officials are "defrauding" President Obama. See § X below.

Hence, the importance of the December 3, 2013 FOIA request for the 1984 and 2004 Top Secret OLC FISA Memos. They explain the legal basis for the use of the DARPA algorithms, including the TIA algorithms, that continue to be used to data mine the E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks. If the three Review Group Law Professors determine that DARPA algorithms were applied in the TALON program, then they will know the legal basis for the 2013 data mining of the E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks. If so, they may include some of the TAPAC recommendations in the Review Group Final Report.

U. The March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" is a connect-the-dots document to AAG of the National Security Division Wainstein's Snowden released November 20, 2007 Memorandum for the Attorney General because it reveals Fourth Amendment violations when data mining the "FISA exempt" NSA TSP data banks

The March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" takes on "smoking gun" significance because it reveals AG Holder's March 18, 2011 "chain of command" attorneys "known-known" knowledge of the legal basis for DOD Cyber Commander-NSA Director General Alexander (2005-) to continue to data mine the 1982-2011 E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks that in 2013 would be transferred in to the Utah Data Center. As a result, this is a connect-the-dots document to AAG of the National Security Division Wainstein's Snowden released Top Secret November 20, 2007 Memorandum for the Attorney General because it reveals whether there were serial impeachable Fourth Amendment violations when conducting warrantless data mining of the "constitutionally seized" data in the "FISA exempt" NSA TSP data banks. See 10-3-13 Comments § R and § U below.

The Snowden leaked document, the November 20, 2007 Memorandum for the Attorney General from AAG of the National Security Division Kenneth Wainstein to AG Michael Mukasey (November 7, 2007-January 20, 2009) with a copy to OLC Principal DAAG Stephen Bradbury Memorandum, framed the issue for the Review Group Law Professors as to "constitutionally seized" E.O. 12333 Top Secret "FISA exempt" NSA TSP data being disseminated for other purposes. The Review Group should determine whether the September 17, 2007 TALON "haystacks" data banks had been "constitutionally seized" by the NSA:

> As an initial matter, we note that the analysis of information legally within the possession of the Government is likely neither a "search" nor a "seizure" within the meaning of the Fourth Amendment. *See, e.g. Jabara v Webster, 691 F. 2d 272, 277-279 (6th Cir 1982*) (holding that the disclosure of information by an agency that lawfully possessed it to another agency does not implicate the Fourth Amendment); Memorandum for the Attorney General from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, *Re Constitutionality of Certain National Security Electronic Surveillance Activities Not covered Under the Foreign Intelligence Surveillance Act of 1979*, at 59 (May 24 1984) ("Olson Memorandum" (Traditional Fourth Amendment analysis holds that once evidence is constitutionally seized, its dissemination or subsequent use raises no additional Fourth Amendment question." As noted, we assume for the purpose of this memorandum that the NSA has lawfully acquired the information it wishes to analyze. Nevertheless, the Olson Memorandum went on to consider the limits on the subsequent use of information when assessing the constitutionality of NSA's surveillance activities under the Fourth Amendment. *See Id*. In an abundance of caution, then, we analyze the constitutional issue on the assumption that the Fourth Amendment may apply even though the Government has already obtained the information lawfully. Id. p.n. 4. Underline added.
> http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB436/docs/EBB-017.pdf.

President Obama's Review Group Law Professors former-OIRA Administrator Law Professor Cass Sunstein, former-OMB Chief Counsel for Privacy Law Professor Peter Swire, and Professor Law Geoffrey Stone, the author of Top Secret: When Our Government Keeps Us in the Dark (2007), have a duty to read this November 20, 2007 Top Secret Memo along with the 1982 and 2004 Top Secret OLC Memos. They can determine the timeliness of AAG of the National Security Wainstein's 2007 "Olson Memorandum" Fourth Amendment reference:

> Traditional Fourth Amendment analysis holds that once evidence is constitutionally seized, its dissemination or subsequent use raises no additional Fourth Amendment question. Emphasis added.

The Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA plaintiff asserts that because of the "exclusivity provision" of the FISA, the data within the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP "haystacks" data banks, was "unconstitutionally seized" without FISC Orders by the 1982-2013 NSA Directors Lt. General Faurer (1981-1985), General William Odom (1985-1988), Admiral William Studeman (1988-1992), Vice Admiral Mike Mc Connell (1992-1996), Lt. General Kenneth Minihan (1996-1999), General Michael Hayden (1999-2005), and General Keith Alexander (2005-). The 1982-2013 NSA Directors have used DARPA algorithms to data mine these NSA TSP "haystacks" data banks without a FISC Order because they relied upon the legal opinion of AAG of the OLC Olson that the "exclusivity provision" of the FISA of 1978 was an "unconstitutional" encroachment on the President's Article II Commander in Chief "inherent authority" to conduct warrantless domestic surveillance of U.S. citizens in order to protect the nation from terrorists. See 10-3-13 Comments §§ I, J.

The plaintiff asserts that if the Review Group Law Professors Cass Sunstein, Peter Swire, and Geoffrey Stone read the May 24, 1984 "Olson Memorandum" they will unanimously conclude that the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP "haystacks" data banks were "unconstitutionally seized" because they were "seized" without any FISC Order. Because there were no FISC Orders, the "minimization" standards that were applied the NSA Directors were never subject to a FISC's review. If the Review Group Law Professors reach this determination, then they know that they must recommend that President Obama fulfill his § 413 (b) of the National Security Act "shall" duty and file a 2014 "corrective action" plan to cure the illegal intelligence community activities of data miming the 1982-2013 E.O. 12333 "FISA exempt" NSA TSP "haystacks" data banks without a FISC order.

AAG of the National Security Division Kenneth Wainstein's November 20, 2007 Memorandum for the Attorney General was two months after Under Secretary of Intelligence Lt. General Clapper ending the TALON program on September 17, 2007. AG Gonzales resigned on September 17, 2007. WH Counsel Gonzales (January 20, 2001-February 2, 2005) had become AG Gonzales on February 3, 2005. He knew whether NSA Directors General Hayden (1999-2005), and General Alexander (2005-), had data mined the DOD TALON data banks based on the May 24, 1984 Top Secret "OLC Olson FISA Memo" and the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo" that the Fourth Amendment did not apply when the NSA Directors disseminated data from the E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks. "Traditional Fourth Amendment analysis holds that once evidence is constitutionally seized, its dissemination or subsequent use raises no additional Fourth Amendment question. " as cited by AAG of the National Security Division Wainstein from the "Olson Memorandum."

AAG of the National Security Division Kenneth Wainstein also knew on September 20, 2007 that Acting AG Peter Keisler (September 18, 2007-November 9, 2007) knew whether NSA Directors General Hayden (1999-2005), and General Alexander (2005-), had data mined the DOD TALON data banks. This is an important "Past is Prologue" fact because Acting AG Keisler had been President Reagan's 1986-1988 Assistant and Associate WH Counsel.

The Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA plaintiff asserts that 1986-1988 Assistant and Associate WH Counsel Keisler knew that NSA Director General William Odom (1985-1988) was data mining the 1982-1988 E.O. 12333 Top Secret "FISA exempt" NSA TSP "haystacks" data banks without a FISC Order. This was when plaintiff Robert was the target the E.O. 12333 NSA TSP during the Robert "Fraud Against the Government" investigation that had been initiated in December, 1984 by HHS General Counsel del Real as CIA Director Casey's E.O. 12333 Top Secret CIA domestic agent. See §§ W, X, Y below.

The Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA plaintiff asserts that when 1986-1988 Assistant and Associate WH Counsel Keisler became the 2002-2003 Principal Deputy Associate AG and then the 2003-2007 AAG of the Civil Division, he knew that NSA Directors General Michael Hayden (1999-2005), and General Keith Alexander (2005-) had data mined the DOD TALON data banks without FISC Orders. He was OIPR Baker's supervising attorney throughout the 2004-2007 Robert VII v DOJ litigation. AAG of the Civil Division Keisler was the supervising attorney of EDNY U.S. Attorney Mauskopf when EDNY AUSA Mahoney filed the Robert VII v DOJ April 3, 2006 letter-brief complying with the Second Circuit's March 9, 2006 Order that the parties file letter-Brief answering the teed-up question whether the plaintiff Robert was a FISA aggrieved person by application of 50 U.S.C. § 1806 (f). See the DOJ Brief at http://www.snowflake5391.net/RobertvDOJbrief.pdf.

AAG of the Civil Division Keisler was also the supervising attorney of EDNY U.S. Attorney Mauskopf (2002-2007), when she filed the Robert VIII v DOJ, HHS, and SSA October, 2005 Motion seeking the injunction to prevent Robert from filing any FOIA requests without a pre-clearance Order of Judge Garaufis. That Motion was granted on December 9, 2005 prior to AG Gonzales' December 22, 2005 "Gang of Eight" Notification re the post-9/11 NSA TSP, but not re the pre-9/11 NSA TSP. See 11-30-11 Robert VIII Petition Issues I-III.

AAG of the Civil Division Keisler was also the supervising attorney of OIPR Baker when Robert II v CIA and DOJ was pending. The plaintiff was seeking other 1980s classified CIA documents. This is an important fact because on March 1, 2004, OIPR Counsel Baker had ratified CIA Director Tenet's FOIA Officer's use of FOIA Exemption 1 and the "Glomar Response" defense to withhold the "FISC Robert" documents that reveal whether Robert had been an illegal CIA target of the E.O. 12333 Top Secret "FISA exempt" NSA TSP. AAG of the Civil Division Keisler knew why OIPR Counsel Baker had to file a "corrected" October 1, 2004 Robert VII v DOJ Declaration that did not inform Judge Garaufis of the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo." http://www.snowflake5391.net/baker.pdf.

On February 9, 2006, the Washington Post reported that OIPR Baker had reported a 2004 flaw in the NSA TSP to FISC Presiding Judge Kollar-Kotelly. Upon information and belief, he discovered that flaw on March 1, 2004 when he reviewed the "FISC Robert" documents being withheld pursuant to the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense:

> James A. Baker, the counsel for intelligence policy in the Justice Department's Office of Intelligence Policy and Review, discovered in 2004 that the government's failure to share information about its spying program had rendered useless a federal screening system that the judges had insisted upon to shield the court from tainted information. He alerted Kollar-Kotelly, who complained to Justice, prompting a temporary suspension of the NSA spying program, the sources said. Lionni, Secret Court's Judges Were Warned About NSA Spy Data, Emphasis Added. Washington Post, 2-9-06. http://www.washingtonpost.com/wp-dyn/content/article/2006/02/08/AR2006020802511_pf.html

If OIPR Baker made his discovery on March 1, 2004 when he reviewed the "FISC Robert" documents, then he knew whether DAG Comey knew these facts on March 10, 2004 at the confrontation with WH Counsel Gonzales. If so, then OIPR Baker knows whether DAG Comey knew of the allegation of the illegal 1982-2004 E.O. 12333 Top Secret "FISA exempt" NSA TSP. If DAG Comey did not know of the May 24, 1984 Top Secret "OLC Olson FISA Memo" before and after the March 10, 2004 confrontation in AG Ashcroft's hospital room, then FBI Director Comey will have an opportunity to ask former-OIPR Counsel Baker when he decides whether to conduct a formal investigation of the Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff's 2014 complaint to FBI Director Comeyt that 2009-2013 USG attorneys have "defrauded" President Obama re the 1982-2013 Top Secret "FISA exempt" NSA TSP. The plaintiff will cite FBI Director Comey to the "smoking gun" evidence of the Robert VII v DOJ "FISC Robert" documents and the Robert VIII v DOJ , HHS, and SSA and Robert II v CIA and DOJ case file notes and e-mails. See § X below.

OIPR Counsel Baker became AG Gonzales' 2005-2007 Counsel for the National Security Division of Intelligence Policy. He knew who ordered EDNY U.S. Attorney Mauskopf to file the Robert VIII v DOJ, HHS, and SSA October, 2005 Motion seeking the Robert injunction. He knew why AAG of the Civil Division Keisler chose EDNY AUSA Mahoney to file AG Gonzales' April 3, 2006 Robert VII v DOJ letter-Brief answering the Second Circuit's teed up question whether Robert was a FISA "aggrieved person." This is an important fact because he knew whether AUSA Mahoney had FRCP 11 signed her April 3, 2006 letter-Brief as a "team effort" or because she did not have independent knowledge that Robert had been the target of the E.O. 12333 Top Secret "FISA exempt" NSA TSP. "The message there by conveyed to the attorney, that this is not a "team effort" but in the last analysis yours alone, precisely to the point of Rule 11." Pavelic & Le Fore v Marvel Entertainment Group, 110 S. Ct. 456, 459 (1991).

In December, 2006, CIA Director Hayden awarded Counsel for the National Security Division of Intelligence Policy James Baker the George H.W. Bush Award for Excellence in Counterterrorism. On January 19, 2007, AG Gonzales awarded him the Edmund J. Randolph Award. These are the highest CIA and DOJ awards for CIA and DOJ employees.

On March 2, 2007, Counsel for the National Security Division of Intelligence Policy Baker was interviewed on Frontline re DOJ's role in filing FISC petitions and securing FISC Orders. http://www.pbs.org/wgbh/pages/frontline/homefront/interviews/baker.html. His answers were with his knowledge of the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo" and the content of the Robert VII v DOJ "FISC Robert" documents as to whether the CIA had violated Robert's Fourth Amendment rights so as to have made Robert a FISA "aggrieved person":

Why is the FISA court and the FISA process so important?

FISA and the FISA court and the process is so important because the intention of Congress in enacting the FISA statute was to do two things simultaneously: It was to protect the security of Americans, to keep them safe from the threats posed by hostile foreign powers and their agents; and it was also intended to protect the privacy of Americans, to protect them from intrusions into their privacy as well as to protect them from abuses of national security authorities that had taken place prior to the enactment of FISA. Congress was quite plain that that was the purpose of enacting the statute.

So your office is really the front line of trying to reconcile and balance national security needs and civil liberties in privacy.

We're certainly trying to do that at all times, yes. Everybody through the system, from the FBI, the other intelligence agencies, they're all confronting those things as well. ...

But this is a critical component of the checks and balances in our system in an area where secrecy is critical.

Secrecy absolutely is critical, because we're dealing with very sensitive sources and methods, very sensitive cases and so on. So yes, the American people need to have confidence that everybody in the system -- the FISA court judges, the people at OIPR [Office of Intelligence Policy and Review], the people in the agencies that are requesting these surveillances -- that we know what we're dealing with, because we're dealing with both their security and their civil liberties at the same time and making sure on a day-to-day basis that we reconcile those and that we get the balance correct every time. That's the pressure: to make sure that we're not tipping too far one way or the other. And that's the challenge. ...

Remember, there was a regime before FISA, and in that era presidents, going back to the beginning of electronic communications, authorized the collection of certain types of information without a warrant for national security purposes. It was a variety of controversies that came to a head in the 1970s that led Congress and the various administrations -- the Ford administration and the Carter administration -- to start the process of trying to change the regime under which that authority would be implemented.

That's when they came up with the statute that has standards for who can be a target. It has standards for what information can be collected and how it's going to be handled once it is collected, and then it interposes the FISA court between the collecting agencies and the thing that they want to try to obtain. So if you would describe that as checks and balances, that's another way to say it, but it's everybody working to try to find the right balance between security and civil liberties. ...

Talk to me a little bit about the way it works. ... People have referred to the FISA court as a rubber stamp. There are thousands of applications, and only a few have been rejected. ... What's the process in dealing with the FISA court?

I just want to say that the idea that the FISA court is a rubber stamp is to my mind ridiculous, and I think the American people need to know that. ...

I think folks don't really understand the process. They don't understand the give-and-take. Judge Lamberth has commented publicly about this in the past, but basically we receive requests from the intelligence agencies to conduct a particular surveillance, let's say, and so we work on the applications with them. We get it in shape; we get it to a point where it meets the requirements of the statute. At that point, it's signed by a high-ranking official in the executive branch, such as the director of the FBI, the secretary of defense, and then it's signed by the attorney general.

After it's signed by the attorney general it's filed with the FISA court, and then we have interactive process with the FISA court. So if they have questions -- they don't understand something about the application, they have a concern about the application some way, they don't think the facts are sufficient on a particular point or a particular element of the statute -- they'll ask us about it, and they'll say, "Well, do you have any more information on this one point?" We'll say: "We don't know, Judge. We'll go back and find out." We'll go back to the FBI field office, let's say, and ask them. They'll say, "Well, actually we do have some additional information." So we'll file a supplemental document, submit that to the court, and then the court might be satisfied, and then the matter is resolved; the application is approved.

So could the court, when it first got the application, just have received it, have the question, decided it was insufficient, denied it or issued some kind of order? I guess they could have in that kind of a scenario, but that's not how the process works. The process is more interactive than that, because it is what we call in the law an ex parte relationship. There's only one party appearing before the court. It's the United States, and so there's a robust back-and-forth. Remember, we're filing 2,000 applications a year.

A robust back-and-forth?

A robust back-and-forth every day. ...

But if we take that lengthy process and we take your description and others' that it was two years, that takes us back to 2005. That doesn't take us back to 2001. My question was whether or not there was an approach made or the court was asked, as opposed to being informed, whether or not this program could have been done under the FISA statute and under the FISA process.

Well, I guess that I understand your question. The best answer I can give you, I think, is that the FISA court was asked to consider this when we filed the application. That was later in 2006, so the court really had nothing formally before it until it had a formal application signed by appropriate executive branch officials. ...

Now you're the point man, the connection between the executive branch, the Justice Department and the FISA court. Was your advice sought on the question of whether or not this could be done under FISA back in 2001/2002?

I don't want to talk about what advice I gave particularly. I'm a lawyer for the government, and there are rules about what I can disclose with respect to giving advice to my clients. But obviously, since the application went to the FISA court, I was involved in the process. I don't really want to describe the details of the advice, describe in detail the advice I gave to anybody inside the administration. ...

... **What do you do in a case where you need to single out somebody's communication apart from everybody else's? What do you do to protect the privacy of Americans who are innocent and who are not relevant to the investigation?**

... Every FISA application has to have minimization procedures. Those minimization procedures require us to reduce the amount of irrelevant [information], meaning substantively irrelevant or irrelevant because it has to do with some other person who we're not interested in. Every application has to have with it these procedures, and they require us to reduce the amount of irrelevant information that we acquire, the amount of irrelevant information that we retain and the amount of irrelevant information that we disseminate, so those three different stages of minimization. ...

So what you're saying is that with modern communications, it's almost inevitable that you're going to collect, in the sense of initially acquire, communications of innocent people, of Americans who are not suspected of terrorism, but then you have to have built into the process some way of sealing them off, getting rid of them, letting them flow back into the ether.

You have to do something. That's a fair assessment. You have to do something to protect the privacy of these irrelevant communications. And it's not just modern technology. This goes back -- you know, if you think of a telephone, you're doing a surveillance of a standard telephone, again, at a residence. Well, the person, the target may be there, and he may be the spy that you're worried about or the terrorist, but you know the wife will use the phone; the other family members will use the phone; somebody might be over at the house using the phone. And all that other stuff is

> going to be irrelevant, too. So we've always had to have these procedures to protect the privacy of these innocent people. Emphasis Added.
>
> **But the larger the volume of traffic, the more you have terrorists traveling around trying to hide themselves among ordinary people and look ordinary, the more you're going to necessarily bump into this problem of collecting information on people who are not relevant to the investigation. Is that right? ...**
>
> The issue is that -- without regard to what technique you're using -- the more you collect, the more you collect irrelevant information, and the more that you know going in that you're going to collect irrelevant information, the more you have to have thought that out and have adequate procedures in place to deal with that that will satisfy the court, because the court is going to look at these and say whether or not they think it's adequate. So you have to have in place these procedures that are well thought-out. ... Emphasis added.

The 2004-2006 Robert VII v DOJ OIPR Counsel Baker-2007 Counsel for the National Security Division of Intelligence Policy Baker, would become AG Holder's 2009-2011 Associate DAG Baker. This was when Robert VIII v DOJ, HHS and SSA was pending in the Second Circuit. SG Verrelli was AG Holder's 2009 Associate DAG and President Obama's 2010 Deputy WH Counsel. AG Holder's 2009-2011 AAG of the National Security Division was David Kris who had been the 2000-2003 Associate DAG David Kris (2000-2003) and the January 26, 2006 "whistleblower" who challenged AG Gonzales January 19, 2006 White Paper sent to Senate Majority Leader. President Obama's Assistant to the President for Homeland Security and Counterterrorism Monaco was a 2009 Associate DAG and then the 2010 Acting Principal Associate DAG. They all knew about the E.O. 12333 "FISA exempt" NSA TSP. See § X below.

Given the gravity of the Robert VIII v DOJ, HHS, and SSA plaintiff's allegation that AAG of the Civil Division Keisler, SG Clement, and AG Gonzales had withheld material facts from Judge Garaufis, the Second Circuit, and the Supreme Court in Robert VII v DOJ, Associate DAG Baker, SG Verrelli, AAG of the National Security Division Kris, and Acting Principal Associate DAG Monaco knew whether May 6, 2004 Top Secret "OLC Goldsmith FISA Memo" cited to the May 24, 1984 "OLC Olson FISA Memo." They would all knew who made the March 18, 2011 decision to reclassify the "OLC Goldsmith FISA Memo" and why.

On October 4, 2013, former-Associate DAG Baker (2009-2011) was one of the witnesses who appeared at the Privacy and Civil Liberties Oversight Board hearing: The Surveillance Programs Operated Pursuant to Section 215 of the USA Patriot Act and Section 702 of the FISA http://www.pclob.gov/SiteAssets/PCLOB%204%20Nov%20Hearing%20Agenda_Update%2031%20Oct.pdf. He did not inform the PCLOB of the May 24, 1984 Top Secret "OLC Olson FISA Memo" or the March 18, 2011 reclassified Top Secret "OLC Goldsmith FISA Memo." He did not inform of the existence of the 1982-2013 Top Secret "FISA exempt" NSA TSP data banks that had in 2013 been transferred in to the Utah Data Center. His decision not to inform the PCLOB of the E.O. 12333 "FISA exempt" NSA TSP was notwithstanding his knowledge of Justice Alito's February 26, 2013 Clapper v Amnesty dicta. "And, although we do not reach the question, the Government contends that it can conduct FISA-exempt human and technical surveillance programs that are governed by Executive Order 12333." See Comments § B.

The Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA plaintiff has reproduced large portions of the March 2, 2007 Frontline interview of former-OIPR Baker because the former-OIPR Counsel Baker had known the content of the Top Secret "FISC Robert" documents when he gave that interview. He knew whether the Robert VII v DOJ plaintiff's Fourth Amendment rights had been violated when CIA analysts data mined the E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks to "listen" to the phone conversations between Robert and his aged, blind, and disabled clients who included plaintiffs Ruppert and Gordon. See the Ruppert I and Ruppert II decision in Glasgold v. Califano, 558 F. Supp. 129 (E.D. N.Y. 1982), aff'd sub. nom. Rothman v. Schweiker, 706 F. 2d 407 (2nd Cir. 1983), cert. den. sub. nom. Guigno v. Schweiker, 464 U.S. 984 (1983), Ruppert v. Bowen, 671 F. Supp. 151 (EDNY 1987), Ruppert v. Bowen, 871 F. 2d 1172, 1177 (2d Cir. 1989) and Gordon v. Shalala, 55 F.3d 101 (2d Cir. 1995), cert. den, 517 U.S. 1103 (1996). See 7-27-10 Robert VIII WP §§ P-Z.

OIPR Counsel Baker also knew whether the 1993-2001 "chain of command" attorneys AG Reno had known that the Robert v Holz plaintiff's almost incredible allegations were true that he had made in Robert v National Archives, 1 Fed. Appx. 85 (2d Cir. 2001), and Robert v DOJ, 2001 WL 34077473 (EDNY), 26 Fed. Appx. 87 (2d Cir. 2002). OIPR Counsel Baker knew from reading the Robert v National Archives and Robert v DOJ case file notes and e-mails whether DAGs Philip Heyman (1993-1994), Jamie Gorelick (1994-1997), Eric Holder (1997-2001), Associate AGs Walter Hubbell (1993-1994), John Schmidt (1994-1997), Raymond Fisher (1997-1999), and Daniel Marcus (1999-2001), and AAGs of the Civil Division Frank Hunger (1993-1999) and David Ogden (1999-2001), knew whether the 1982-2001 NSA military were conducting warrantless data mining of 1982-2001 E.O. 12333 "FISA exempt" NSA TSP data banks in violation of the "exclusivity provision" of the FISA of 1978 and the PCA of 1878.

As a result, AG Holder's Associate DAG Baker (2009-2003) knew on October 4, 2013 when he testified before the PCLOB, that President Obama had not filed a § 413 (b) of the National Security Act "corrective action" plan to remedy the 1982-2013 Top Secret "FISA exempt NSA TSP illegal intelligence community intelligence activities. This is why the Review Group Law Professors Cass Sunstein, Peter Swire, and Geoffrey Stone have a duty read the March 18, 2011 reclassified May 6, 2004 "OLC Goldsmith FISA Memo" and the Top Secret "FISC Robert" documents. They will be able to determine whether AG Holder, DAG Cole, and AAG of the National Security Division Monaco (July 1, 2011-March 8, 2013), knew during the 2011-2013 Robert VIII v DOJ, HHS, and SSA and Clapper v Amnesty litigation that DOD Cyber Commander-NSA Director General Alexander was data mining the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP "haystacks" data banks without any FISC Orders.

Hence, the importance of President Obama's three Review Group Law Professors reading AAG of the National Security Division Wainstein's November 20, 2007 Top Secret FISA Memo to AG Mukasey along with the 1984 and 2004 Top Secret OLC FISA Memos to determine whether there were Fourth Amendment violations whenever NSA or DIA or CIA or FBI analysts conducted warrantless data mining of the E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks. The Review Group's December 15, 2013 Final Report should include a discussion of whether AAG of the OLC Olson and AAG of the National Security Division Wainstein got it right: Traditional Fourth Amendment analysis holds that once evidence is constitutionally seized, its dissemination or subsequent use raises no additional Fourth Amendment question. Emphasis added. If not, then they should so advise President Obama. See Comments §§ R, S.

V. Notice to OIP Director Pustay that the FOIA requester will be appealing any denial decision pursuant to a Robert VIII v DOJ, HHS, and SSA Motion seeking Judge Garaufis' pre-clearance Order to file a 2014 putative FOIA complaint seeking these OLC Memos

The FOIA requester places OIP Director Melanie Pustay on Notice that the FOIA requester will appeal a denial decision. He will file a Robert VIII v DOJ, HHS, and SSA Motion seeking Judge Garaufis' pre-clearance Order to file a 2014 putative FOIA complaint seeking these two OLC documents to prove that DOJ attorneys committed serial "fraud upon the court" in both Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA. See Comments §§ D, E.

On September 6, 2011, the Second Circuit decided Robert VIII v DOJ, HHS, and SSA and affirmed Judge Garaufis' decisions. However, the Second Circuit panel of Judges Ralph Winter, Joseph McLaughlin, and Jose Cabranes, modified the December 14, 2005 Robert VIII Clerk's Judgment whereby the plaintiff was enjoined from filing a FOIA request without Judge Garaufis' pre-clearance Order and not a FOIA complaint without a pre-clearance Order.

> Therefore, we exercise our authority under 28 U.S.C. § 2106 to modify the District Court's final judgment, dated October 13, 2009 to clarify that the filing injunction entered on December 15, 2005, applies only to *complaints* raising FOIA claims filed in the district court, and not to FOIA *requests* directed to a government agency or official. Italics not added.

Because of the Robert VIII v DOJ, HHS, and SSA December 14, 2005 Clerk's Judgment, the plaintiff was enjoined from filing FOIA requests seeking documents to prove that there had been misrepresentations of facts made to the Article III Judges in Robert VII v DOJ. Because of the September 6, 2011 Order, on September 13, 2011, the plaintiff filed *de novo* FOIA requests seeking the documents. He sought in Robert VII, Robert VIII, and eight sets of July 27, 2010 FBI requested documents that reveal whether FBI Director Judge Webster knew in 1985 that Robert was the target of the E.O. 12333 Top Secret "FISA exempt" NSA TSP during the "Fraud Against the Government" investigation initiated by HHS General Counsel del Real as CIA Director Casey's E.O. 123333 "special activity" CIA domestic agent. See Comments §§ A, R, U.

Because of the 2013 Snowden leaks, the plaintiff will also be filing 2014 *de novo* FOIA requests for the release of the Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA FOIA requested documents that remain in the custody of AG Holder. This will include requests for the Robert VIII "Robert v Holz" and "Ruppert" documents that AG Holder is withholding pursuant to a FOIA Exemption 5 attorney client privilege defense. See 11-30-11 Robert VIII Petition Statement of the Case §§ C and D. http://snowflake5391.net/Robert8vDOJpetition1.pdf.

However, the first 2014 Robert FOIA action will be to seek the release of these two Top Secret OLC Memos because these two memos may lead to the long sought Robert II v CIA and DOJ, cv 02-6788 (Seybert, J.) quiet settlement. The FOIA requester believes that when EDNY U.S. Attorney Loretta Lynch (1999-2001 and 2010-) has to make the AG's decision whether to oppose the Robert VIII v DOJ, HHS, and SSA Motion seeking Judge Garaufis' pre-clearance Order to file a putative 2014 FOIA complaint, that she will successfully persuade her Robert II v CIA and DOJ co-defendant clients, CIA Director Brennan and AG Holder, to accept the quiet settlement and end the 1985-2014 Robert FOIA litigation saga. See Comments WP §§ R, S.

W. Notice to OIP Director Pustay that the FOIA requester will provide AG Holder's FOIA OLC decision to Judge Seybert in Robert II v CIA and DOJ and assert that it is a connect-the-dots document to the four classified 1985 "North Notebook" documents

The FOIA requester places OIP Director Pustay on Notice that the FOIA requester will provide AG Holder's FOIA OLC decision re these 1984 and 2004 Top Secret OLC opinions to Judge Seybert in Robert II v CIA and DOJ. He will assert that this is a connect-the-dots document to the four classified FOIA requested "North Notebook" documents in CIA Director Brennan's custody. The plaintiff asserts that these documents reveal whether CIA Director Casey had conducted an illegal E.O. 12333 Top Secret CIA domestic "special activity" at International Medical Center, Inc. (IMC) where former-HHS General Counsel del Real became CIA Director Casey's CIA domestic agent who diverted unaudited HHS "nonacquiescence" funds to the Contras in violation of the Boland Amendment without the knowledge of President Reagan. See 12-14-11 Robert II v CIA and DOJ Affidavit. http://snowflake5391.net/12-14-11_RIIvCIAandDOJStatusAffidavit%20.pdf and 8-15-12 Robert II v CIA and DOJ Affidavit. http://snowflake5391.net/8-15-12_RobertIIvCIA_Status_Affidavit.pdf.

The FOIA requester has informed Judge Seybert that he had decided to delay his Summary Judgment Motion seeking the release of four one-paged CIA classified 1985 documents based on the application of the E.O. 13526 § 3.3 Automatic Declassification 25 year standard, until after the Review Group filed its Final Report to President Obama before filing his Robert II v CIA and DOJ, cv 02-6788 (Seybert, J.). He informed Judge Seybert that he believed there remained a possibility that co-defendants CIA Director Brenan and AG Holder would accept his August 15, 2013 renewed quiet settlement offer. This could occur after President Obama's Review Group read the May 24, 1984 Top Secret "OLC Olson FISA Memo" and filed its December 15, 2013 Final Report. The plaintiff filed his October 3, 2013 Review Group Comments with Judge Seybert. See Robert II v CIA and DOJ Docket entries ## 66 and 67.

The Robert II v CIA and DOJ plaintiff informed Judge Seybert that after the President's Review Group" filed its December 15, 2013 Report with the President, that the plaintiff would make his final quiet settlement offer. He informed Judge Seybert that if there was no response by February 10, 2014, then on February 14, 2014 the plaintiff would file his application to reinstate this case to the active calendar for the Court to decide the plaintiff's Summary Judgment Motion re the four one-page 1985 redacted documents. CIA General Counsel Preston (2009-2013) knew whether HHS General Counsel del Real (1981-1985) was CIA Director Casey's covered agent when in December, 1984 he initiated the Robert "Fraud Against the Government" and when in December, 1985 he became the IMC Chief of Staff during the joint FBI-DOJ-HHS 1985-1987 "Fraud Against the Government" investigation of IMC. See § X (4) below.

Therefore, OIP Director Pustay should be consulting with former-CIA General Counsel Preston who is now DOD Secretary Hagel's DOD General Counsel. CIA General Counsel Preston had been 1993-1994 DOD Principal Deputy General Counsel. As a result, he knows whether DOD General Counsel Jamie Gorelick knew that the "FISA secret law" continued to be based on May 24, 1984 "OLC Olson FISA Memo." This is a "Past is Prologue" fact because 1991-1995 DIA Director Lt. General Clapper had data mined the 1982-1995 E.O. 12333 Top Secret "FISA exempt" NSA data banks based on the legal advice of DOD General Counsels David Addington (1991-1993) and Jamie Gorelick (1993-1995). See § K-N above.

OIP Director Pustay should also be consulting with Principal Deputy AAG of the OLC Caroline Krass. President Obama has nominated her to be CIA General Counsel Preston's successor. She knows the content of the May 24, 1984 Top Secret "OLC Olson FISA Memo" and the March 18, 2011 reclassified May 6, 2004 Top Secret "OLC Goldsmith FISA Memo." She was a 1999-2000 Deputy Legal Advisor to President Clinton's National Security Council. She was a 2001-2009 OLC Attorney-Advisor-Senior Counsel. She knows whether AAG of the OLC General Counsels Bybee, Goldsmith, and Bradbury knew whether a classified Mitchell v Forsyth "nonacquiescence" policy document existed. She knows that AAG of the OLC Goldsmith knew the content of the May 24, 1984 Top Secret "OLC Olson FISA Memo" prior to AG Gonzales' December 22, 2005 retroactive § 413 (a) Notification of the post-9/11 NSA TSP, but not the pre-9/11 NSA TSP. See 10-25-11 OLC Seitz WP §§ A-C, EE, 11-30-11 Robert VIII Petition Statement of the Case § H, 10-3-13 Comments §§ A-E, and § X (8) below

The CIA-DOJ legal decision making-process re the legal basis for CIA "special activities" is compartmentalized to minimize the number of attorneys who know the Top Secret legal interpretations. Former-Assistant CIA General Counsel A. John Radsan (2002-2004), explained the importance of the CIA Office of General Counsel decision-making process with a "who guards the guardians" article: Sed Quis Cotodiest Ipsos Custsodes: The CIA's Office of General Counsel? Journal of National Security Law & Policy, Vol.2:201 (2008). He explained the interrelationship between the CIA General Counsel and OLC attorneys:

> The General Counsel usually initiates requests for legal opinions from the Justice Department. She may want a second opinion on advice she has already given the Agency, or she may want somebody else's license on the line. Such CIA-DOJ interactions are tightly compartmentalized. At DOJ's Office of Legal Counsel, the group that handles the request may be limited to the lawyer who has the "CIA account," along with the chief and a deputy chief. The chief of OLC will, in turn, be inclined to brief the appropriate division chief, the Deputy Attorney General, and the Attorney General. If necessary, the Justice Department lawyers on the matter can be kept to a handful. The number of OGC lawyers will be similarly small: the General Counsel, the Deputy General Counsel, the chief lawyer to the DO, and one or tow OGC lawyers assigned to the relevant division(s). Overall, not may guards are involved in legal opinions on sensitive topics. Id. 238. Emphasis Added.
> http://www.mcgeorge.edu/Documents/publications/jnslp/01_Radsan%20Master%2009_11_08.pdf

Former-CIA Assistant General Counsel Radsan concluded by discussing the Presidents' rule of law reliance upon CIA General Counsels and the "who guards the guardians" issue:

> In basic terms, the Presidents varying approaches to the rule of law parallel those of the General Counsels at the CIA. Some Presidents, like President Carter, may have strictly adhered to the letter of the law on intelligence activities. Some Presidents, like President Reagan, may have strayed. Some CIA General Counsels have followed their President's course; some have strayed. Even when Presidents and General Counsels share similarly courses, they are not always in lock-step, because too many layers of

executive authority- White House Counsel, the National Security Adviser, the DCIA, and other staffers –often stand between them. Yet the President and the General Counsel have an effect on each other, even if that effect is indirect and not easily measured. Id. 255. Emphasis Added.

If President Obama's CIA General Counsel Nominee Krass is confirmed, then she will have an effect on President Obama's CIA rule of law decisions. Indeed, as Principal Deputy AAG of the OLC, she already has had an effect on President Obama. She knows whether AAG of the OLC Seitz has informed President Obama of the content of the 1984 and 2004 Top Secret OLC FISA opinions. This is a CIA issue because the Robert VII v DOJ "FISC Robert" documents were withheld based on OIPR Baker's ratification of CIA Director Tenet's FOIA Officer's use of FOIA Exemption 1 and the "Glomar Response" defense. See Comments §§ A, R, S and § X (14) below.

The interrelationship between OLC opinions and CIA covert activities was at issue at the May 21, 2009, Senate Intelligence Committee confirmation hearing for President Obama's CIA General Counsel Nominee Stephen Preston and ODNI General Counsel Nominee Robert Litt. After the Hearing, the Nominees submitted Responses to Committee Questions for the Record: Nominations of Robert S. Litt and Stephen W. Preston. Their answers have 2013 relevance to Principal Deputy AAG of the OLC Caroline Krass because she may be subject to the same questions as framed in 2009. http://www.intelligence.senate.gov/090521/prestonpostqfrs.pdf

As to the FOIA request for the 1984 and 2004 Top Secret OLC opinions, these are important answers because the 2009 CIA General Counsel Nominee Preston and DNI General Counsel Litt would not have been privy to the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo" when they answered questions. However, since both had been AG Reno's "chain of command" attorneys, they may have been privy to the May 24, 1984 "OLC Olson FISA Memo" as applied to the 1982 E.O. 12333 Top Secret "FISA exempt" NSA TSP.

The first question addressed the issue of congressional notifications of the CIA and DNI activities which determined to be legal activities based on OLC opinions:

Q. Would you both support, in those circumstances in which the legality of an intelligence activity has been evaluated in a legal opinion of the Department of Justice or of a General Counsel's Office in the Intelligence Community, providing that opinion to the congressional intelligence committees?

A: *I would support providing a legal opinion to the intelligence committees where appropriate in order to keep the committees fully and currently informed of intelligence activities as required by section 502 of the National Security Act of 1947. I do not support an absolute rule – either precluding disclosure of any legal opinion of the Justice Department or of an OGC in the IC to the committees in any instance, or requiring disclosure of all legal opinions of the Justice Department or of an OGC in the IC to the committees in all instances. This is a judgment to be made on a case-by-case basis in light of the particular circumstances and considerations presented.* Id. 1. Emphasis added.

The Senate Intelligence Committee asked whether the CIA General Counsel had a responsibility for ensuring all CIA personnel acted in accordance with the law and maintained full and accurate records of CIA activities:

> **Q: Does the CIA General Counsel have any responsibilities higher than ensuring that the CIA and all its personnel act in accordance with the law and maintain full and accurate records of their actions?**
>
> ***A:*** *At the most fundamental level, the General Counsel, like every lawyer in the Office of General Counsel, is sworn to uphold and protect the Constitution of the United States. That is an obligation that is not be taken lightly and underlies virtually everything the General Counsel does. Moreover, as I said in my responses to prehearing questions, "[p]erhaps the most important, overarching role of the General Counsel is in ensuring the Agency's compliance with applicable U.S. law in all of its activities." By "the Agency," I mean to include the people who comprise the Agency. And by "compliance with applicable U.S. law in all of its activities," I would include maintaining full and accurate records where the maintenance of records is required by law or otherwise undertaken.* Id 4. *Emphasis added.*

The Senate Intelligence Committee asked what would happen if there were conflicting interpretations of the law within the Intelligence Community:

> Mr. Litt, in your responses to the Committee's prehearing questions, you noted that you would work with the CIA General Counsel to ensure that legal issues related to the work of the CIA are reviewed and evaluated. You also indicated that you would work with the general counsels of the various intelligence agencies and with attorneys from the Department of Justice with respect to conflicting legal opinions within the Intelligence Community. You also stated that the DNI General Counsel does not have decisional authority to resolve conflicting legal interpretations in the Intelligence Community.
>
> **Q: Mr. Preston, will you ensure that the ODNI General Counsel has full awareness of significant legal interpretations by your office?**
>
> ***A:*** *The working relationship between ODNI OGC and CIA OGC has been described to me as highly collaborative. In legal matters of Director-level interest or of general interest to the IC, I would expect a free flow of information from CIA OGC to ODNI OGC (and vice versa). In this fashion, the ODNI GC should become fully aware of significant legal interpretations by CIA OGC. Moreover, if I learn of a legal interpretation of which the ODNI GC is not aware that I believe he should be, I will see to it that he is made fully aware of it.* Id. 6. Emphasis added.

The Senate Intelligence Committee asked about reviewing E.O. 12333 Guidelines:

> Mr. Preston, in your response to prehearing questions, you state that, if confirmed, one of your priorities will be to review existing guidelines under Executive Order 12333 and determine what changes may be warranted.
>
> **Q: If confirmed, would you undertake to report to the Committee within three months of the results of your review?**
>
> ***A:*** *I believe this is a fair request, and I will do my best to accommodate the Committee. Because I am not familiar with the existing guidelines or progress towards implementing the current version of Executive Order 12333, I cannot commit to the formal reporting of my views by a certain date or independent of the Agency. That said, I would hope to be in a position to engage with the Committee within a three-month timeframe, subject to any direction Director Panetta may provide and coordination with others as appropriate.* Id. 9. Emphasis added

The Senate Intelligence Committee asked about internal Executive Branch oversight:

> Mr. Preston, in your responses to prehearing questions about Executive Branch oversight and the relationship between the CIA General Counsel and other officials of the intelligence community, you emphasize your personal acquaintance with the nominee for the ODNI General Counsel and the new Assistant Attorney General for National Security.
>
> **Q: Please be more specific about your understanding of the offices and procedures involved in Executive Branch oversight, and what you would do to improve Executive Branch oversight.**
>
> ***A:*** *The DNI has statutory and Executive Order oversight responsibilities for the CIA and the IC generally. Under section 104A(b) of the National Security Act of 1947, the DCIA reports to the DNI "regarding the activities of the [CIA]." In addition, under section 102A(f)(4) of the Act, the DNI has the statutory responsibility to ensure that CIA activities are consistent with the Constitution and laws of the United States. The ODNI GC in turn serves as the senior legal adviser to the DNI. The Assistant Attorney General for National Security (AAG-NSD) has certain responsibilities for oversight and execution with respect to FISA applications, and CT and CI investigations and prosecutions, among other things. Because I am not yet familiar with the procedures and interactions between CIA OGC and ODNI OGC and between CIA OGC and OAAG-NSD – the latter offices having been created since the time of my prior government service -- I am unable to describe them with particularity or to make specific recommendations concerning Executive Branch*

oversight. As previously noted, I believe that highly functional relationships with the ODNI GC and the AAG-NSD are very important. While my prior acquaintance with the ODNI GC nominee and the current AAG-NSD will no doubt help, I am confident that I will have well-functioning relationships with each, no matter who the incumbent is, because I view it as imperative in order for us to get the job done. Id. 10. Emphasis added.

The Senate Intelligence Committee asked whether the failure to notify the full congressional intelligence committees of the NSA TSP was a violation of the National Security Act Congressional Notification duty:

Q: Do you agree that Section 502 of the National Security Act provides no authority to limit briefings to the Chairman and Vice Chairman and that programs other than covert action must always be notified to the full congressional intelligence committees? Was the failure to notify the full committees of the warrantless wiretapping program (the Terrorist Surveillance Program) a violation of that Act?

A: *With respect to intelligence activities other than covert actions, under section 502 of the National Security Act of 1947, the Agency is required to keep the intelligence committees fully and currently informed "[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information" that is exceptionally sensitive. The "due regard" clause is a qualification on the obligation, requiring the Agency to inform the committees in a manner consistent with due regard forthe protection from unauthorized disclosure of such classified information. Thus the law requires the complete and timely provision of information to the intelligence committees and admits of exception only in extraordinary circumstances. In my view, the norm should be to provide information to th eentire membership of the committees.*

Q: What is your understanding of the legal obligation to notify the congressional intelligence committees of covert action and other intelligence activities prior to their implementation?

A: *With respect to covert actions, section 503 of the National Security Act of 1947 requires that a finding be reported to the intelligence committees "before the initiation of the covert activity," but also provides for notice "in a timely fashion" where prior notice is not given. With respect to intelligence activities other than covert actions, section 502 of the Act does not include the same "before the initiation" language, but does include "significant anticipated intelligence activities" among the intelligence activities to be reported, subject to the "due regard" clause. In my view, the norm should be to provide information prior to implementation.* Id. 18-19. Emphasis added.

The Senate Intelligence Committee asked whether the CIA Inspector General had jurisdiction to conduct investigations of CIA activities notwithstanding the CIA General Counsel's conclusion that the activities were legal:

> **Q: Do you agree that the CIA Inspector General should have full independence to conduct investigations of CIA activities, regardless of whether the General Counsel has concluded that those activities are legal?**
>
> ***A:*** *I believe that the Inspector General should have full independence to conduct investigations of CIA activities within the scope of the Inspector General's statutory authority. By law, pursuant to section 20 of the CIA Act of 1949, the General Counsel of the Central Intelligence Agency is the chief legal officer of the Agency. As such, the General Counsel is the final authority for the Agency in matters of law and legal policy, and his legal opinions are controlling within the Agency. Rather than the General Counsel unilaterally declaring lawful activities already under investigation or the Inspector General initiating an investigation of activities previously determined to have been lawful, this strikes me as a prime example of where the two ought to work together to ensure that the considered opinions of the former and the full independence of the latter are both respected.* Id. 19-20. Emphasis added.

President Obama's CIA General Counsel Nominee Krass is now in the unique position as the Principal Deputy AAG of the OLC to determine whether President Obama's Review Group Law Professors have read the May 24, 1984 Top Secret "OLC Olson FISA Memo" and the March 18, 2011 reclassified May 6, 2004 Top Secret "OLC Goldsmith FISA Memo." Because she was a 1999-2000 Deputy Legal Advisor to President Clinton's National Security Council and a 2001-2009 OLC Attorney-Advisor-Senior Counsel, she knows whether Presidents Clinton, Bush, and Obama have known whether these two OLC FISA opinions are based on a determinations by AGs Smith in 1984, AG Ashcroft in 2004, and AG Holder in 2011 that the President has the Article II Commander in Chief "inherent authority" to conduct warrantless surveillance of U.S. citizens if this is necessary to protect the nation from terrorists. See 10-3-13 Comments §§ G-L.

Hence, the importance of AG Holder's OLC FOIA Officer consulting with Principal Deputy AAG of the OLC Krass to make sure that the three Review Group Law Professors have copies of these two FOIA requested Top Secret FISA OLC opinions. They should know whether during President Obama's watch that CIA General Counsel Preston, DNI General Counsel Litt, and AG Holder have all known the legal basis for conducting 1982-2013 E.O. 12333 Top Secret FISA exempt" warrantless data mining of the domestic surveillance of U.S. citizens data banks that has not been reported to all Members of the Intelligence Committees. This is especially the case if AAGs of the OLC Olson and Goldsmith determined that the "exclusivity provision" of the FISA is an "unconstitutional" encroachment on the President's Article II Commander in Chief "inherent authority to conduct warrantless surveillance of U.S. citizens if this is necessary to protect the nation from terrorists. If so, then the Review Group Law Professors should be making their recommendations whether 1) the E.O. 12333 Top Secret NSA TSP should be end in 2014 and 2) the President should file a § 413 (b) of the National Security Act "corrective action" plan in 2014.

X. Notice to OIP Director Pustay that the OLC documents will be cited to FBI Director Comey as evidence of USG officials "defrauding" President Obama by withholding facts re the content data mining of E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks that had been conducted when he was the 2003-2005 DAG without his knowledge

The Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA plaintiff-requester places OIP Director Pustay on Notice that if there is no Robert II v CIA and DOJ quiet settlement by February 10, 2014, then the plaintiff will be placing FBI Director Comey on Notice of these two classified OLC Memos reveal whether USG officials and attorneys have "defrauded" President Obama in violation of 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States. This is the statute under which IC Lawrence Walsh determined that he would indict USG officials including AG Meese and DOD Secretary Weinberger for withholding facts from President Reagan. FBI Director Comey has his own 2013 knowledge whether as 2003-2005 DAG Comey he had known of these two Top Secret OLC Memos. See §§ L-N above.

FBI Director Comey knows whether as 2003-2005 DAG Comey he knew of the May 24, 1984 "OLC Olson FISA Memo" before his March 10, 2004 confrontation with WH Counsel Gonzales in AG Ashcroft's hospital room. FBI Director Comey knows whether as DAG Comey he knew of the existence of the May 6, 2004 "OLC Goldsmith FISA Memo" after the March 10, 2004 confrontation and before he resigned in August, 2005. DAG Comey's resignation was prior to December 22, 2005 when AG Gonzales filed his § 413 (a) of the National Security Act Notification letter retroactively informing the "Gang of Eight" of the post-FISA 2001-2005 NSA TSP. AG Gonzales did not notify the "Gang of Eight" of the pre-9/11 1982-2001 NSA TSP or of the May 24, 1984 Top Secret "OLC FISA Olson Memo" or of the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo." http://www.fas.org/irp/agency/doj/fisa/doj122205.pdf.

After President Obama's Unclassified December 15, 2013 Review Group Final Report is made public, the Robert II v CIA and DOJ plaintiff will file a *de novo* FBI FOIA request seeking the eight sets of July 27, 2010 and September 13, 2011 FBI FOIA requested documents that FBI Director Mueller's FBI Chief FOIA Officer David Hardy was ordered not to process. FBI Director Comey will learn from reading the 2010-2012 FBI FOIA request case file notes and e-mails, whether a FBI "stovepipe" existed that bypassed FBI Director Mueller so that FBI Director Mueller would not learn of the Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA grave allegation of the 1982-2010 serial impeachable violation of the "exclusivity provision" of the FISA. See 12-14-11 Robert II v CIA and DOJ Affidavit.

The FOIA requester will request that FBI Director Comey determine whether any USG officials and attorneys lied-by-omission to President Obama re the E.O. 12333 Top Secret "FISA exempt" NSA TSP. The complainant will cite FBI Director Comey to his own October 28, 2013 Remarks at his ceremonial retaking of his oath re the importance of the "gift" of FBI Integrity:

> We protect that gift by making mistakes and admitting them, by making promises and keeping them, and by realizing that nothing -- no case, no source, no fear of embarrassment -- is worth jeopardizing the gift of integrity. Integrity must be on the FBI shield. Emphasis added.
> http://www.whitehouse.gov/the-press-office/2013/10/28/remarks-president-and-fbi-director-james-comey

The FBI FOIA requester will cite FBI Director Comey to his own November 14, 2013 Statement before the Senate Committee on Homeland Security and Governments Affairs. FBI Director Comey highlighted the fact that the Intelligence Community (IC) agencies shared information for law enforcement purposes. The IC included the NSA and the CIA:

> In fact, our national Headquarters and local field offices have built partnerships with just about every federal, state, local, tribal, and territorial law enforcement agency in the nation. Our agents and professional staff also work closely with law enforcement, intelligence, and security services in foreign countries, as well as international organizations like Interpol.
>
> By combining our resources and leveraging our collective expertise, we are able to investigate national security threats that cross both geographical and jurisdictional boundaries.
>
> It is important to emphasize that the FBI carries out this broad mission with rigorous obedience to the rule of law and protecting the civil rights and civil liberties of the citizens we serve. Id. 1. Emphasis added.

The FBI FOIA requester will respectfully suggest that FBI Director Comey apply his November 14, 2013 statement as to IC information-sharing, to his 2003-2005 "known-known" knowledge of the 1982-2005 E.O. 12333 Top Secret "FISA exempt" NSA TSP, the May 24, 1984 Top Secret "OLC Olson FISA Memo", and the May 6, 2004 Top Secret "OLC Olson FISA Memo" both before and after his March 10, 2004 confrontation with WH Counsel Gonzales:

> It is important to note that we are also coordinating closely with our federal partners on the policy that drives our investigative efforts. Although our agencies have different roles, we also understand that we must work together on every significant intrusion and to share information among the three of us, following the principle that notification of an intrusion to one agency will be notification to all. Id. 3. Emphasis added.

The FBI FOIA requester will request that if FBI Director Comey learns "known-known" facts re the 1982-2005 E.O. 12333 Top Secret "FISA exempt" NSA TSP, the May 24, 1984 Top Secret "OLC Olson FISA Memo", and the May 6, 2004 Top Secret "OLC Olson FISA Memo," that he had not known in August, 2005 when he resigned as the DAG, that he read the Robert v Holz-Robert VII v DOJ- Robert VIII v DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff's July 27, 2010 FBI FOIA requested eight sets of FBI FOIA requested documents. These are the documents that FBI Chief FOIA Office David Hardy was ordered not to process because of the December 14, 2005 Robert VIII v DOJ, HHS, and SSA Clerk's Judgment. See Comments § E.

If FBI Director Comey reads these eight sets of FBI documents, then he will know whether these FBI documents reveal whether FBI and DOJ "stovepipes" had bypassed FBI Director Mueller (2001-2013) and DAG Comey (2003-2005). This was in order to provide them with a "plausible deniability" defense to the serial impeachable violations of the § 413 (a) of the National Security "Gang of Eight" Notification requirement, the "exclusivity provision" of the FISA, the PCA limitation on military law enforcement, and the Social Security Act. If so, then FBI Director Comey will have a duty to take action to restore the "gift" of FBI Integrity.

FBI Director Comey will be able to restore the "gift" of FBI Integrity by first preparing a "how-could-this-have-ever-happened" FBI White Paper. Because of the Snowden leaks, all 535 Members of Congress, the FISC, and the Supreme Court should know whether the 1982-2013 FBI Directors Judge William Webster (1978-1987), (Acting) John Otto (1987), Judge William Sessions (1987-1993), (Acting) Floyd Clarke (1993), Judge Louis Freeh (1993-2001), (Acting) Thomas Pickard (2001), and Robert Mueller (2001-13), participated in the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP. If so, then all three Branches of Government, including President Obama, should know whether the legal basis for the implementation of the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP, has been the 1982-2013 AGs ratification of AG Mitchell's 1969 Article II Commander in Chief "inherent authority" of the President theory that President Nixon could wiretap U.S. citizens if he determined that this was necessary to protect the nation from terrorists. See 10-3-13 Comments §§ B-D, F-M.

If FBI Director Comey decides to prepare a "how-could-this-have-ever-happened" FBI White Paper, then he should be consulting with the following 2013 USG attorneys:

1. **WH Counsel Kathyrn Ruemmler.** She was the 2000-2001 Associate Counsel to President Bill Clinton, 2009 Principal Associate of DAG Ogden, and 2010 Associate WH Counsel to President Obama. She knows whether President Obama knows whether the content of the March 18, 2011 reclassified May 6, 2004 OLC FISA Memo explains that the "Unitary Executive" theory of AG Meese has been the legal basis of the pre-9/11 NSA TSP data mining and the implementation of the Mitchell v Forsyth "nonacquiescence" policy. She also knows that she has a duty to present to President Obama the issue of whether the WH Counsel and AG can use executive privilege to withhold the *de novo* FOIA requested President Ronald Reagan Library "NARA Peter Keisler Collection" and "Perot" documents by application of President Obama's January 21, 2009 Executive Order 13489 Presidential Records § 3.3 Claim of Executive Privilege by Incumbent President. See 7-27-10 DOJ WP § BB and § Y below.

2. **Secretary of the Department of Homeland Security Jeh Johnson.** He was the 2009-2013 DOD General Counsel**.** He was a 1989-1991 AUSA SDNY and knows the 1982-2013 funding source for the 1984-2013 NSA TSP data banks that are in the custody of DOD Cyber Commander-NSA Director General Keith Alexander. He knows his Commander in Chief is President Obama and not the 2009-2013 *faux* "Commander in Chief" who had been making the decisions re the 2009-2013 data mining of the pre-9/11 NSA TSP data banks that had not been reported to the "Gang of Eight" in AG Gonzales' December 22, 2005 § 413 (a) of the National Security Act Notification or been subject to a § 413 (b) of the National Security Act "corrective action" plan. He also knows that he had a duty to provide DOD Secretary Panetta accurate facts re the NSA TSP so that Secretary Panetta provided accurate facts to President Obama. See 6-27-11 Senate Intelligence Committee WP §§ V-Z. 10-25-11 OLC Seitz WP §§ UU, and § Y below.

3. **Assistant to the President for Homeland Security and Counterterrorism Lisa Monaco.** She was the AAG of the National Security Division from 2011-2013. She had been the 1998-2001 Counsel for AG Reno, 2007-2009 Chief of Staff for FBI Director Mueller, and 2009-2010 Principal Associate DAG. She knows why FBI Chief FOIA Officer Hardy did not to process the September 13, 2011 *de novo* FOIA request for the FBI documents. She also knows that the Robert VIII v DOJ, HHS, and SSA joint FBI-DOJ-HHS "IMC Final Investigative Report" reveals whether FBI Director Webster had known that 1981-1985 HHS General Counsel del Real

and 1985-1986 IMC Chief of Staff del Real was a CIA covered agent. She also knows whether the reason that President Obama has not filed a § 413 (b) of the National Security Act "corrective action" plan is because President Obama does not know of the 1982-2011 illegal intelligence activities because the 1981-2011 WH "stovepipe" continues to lead to the *faux* "Commanders in Chief " who were not Presidents Reagan, Bush, Clinton, Bush, and Obama. See the Robert III v. DOJ, 01-CV-4198 (Gershon, J.), complaint and the FBI *ex parte* "c (3) exclusion" Declaration filed on behalf of FBI Director Mueller re the FBI "Recarey extradition" documents, 7-27-10 DOJ WP § Y and 10-25-11 OLC Seitz WP § FF. See § Y below.

4. **DOD General Counsel Stephen Preston**. He was the 2009-2013 CIA General Counsel and lead counsel in Robert II v CIA and DOJ cv 02-6788 (Seybert, J.). He was the 1993-1995 DOD Principal Deputy General Counsel and knew whether 1991-1995 DIA Director Lt. General James Clapper data mined the 1982-1995 E.O. 12333 Top Secret "FISA exempt" NSA TSP. He was the 1995-1998 Civil Division DAAG responsible for appellate litigation and knows whether SG Days' February 1996 Brief in Gordon v. Shalala, 55 F.3d 101 (2d Cir. 1995), cert. den, 517 U.S. 1103 (1996), defending the Jackson and Ruppert "nonacquiescence" policy, is "smoking gun" evidence that SSA Commissioner Nominee Michael Astrue's January 24, 2007 Senate Finance Committee testimony that the "nonacquiescence policy had ended prior to his becoming the HHS General Counsel in 1989, remains as uncured false testimony. He knows this has resulted in the denial of the due process rights of millions of 1994-2013 Ford class members who do not reside in the Seventh Circuit. As 2009-2013 CIA General Counsel, he knew whether CIA General Acting John Rizzo (2004-2009) and he had presented plaintiff's quiet settlement offer to their clients CIA Directors George J. Tenet (July 11, 1997-July 11, 2004), Porter J. Goss (September 24, 2004-April 21, 2005), General Michael Hayden (May 30, 2006-February 12, 2009), Leon Panetta (February 12, 2009-June 30, 2011), David Petraeus (September 6, 2011-2012), Acting Michael Morell (2012-2013), and John Brenan (2013). He knows whether he had provided accurate facts to CIA Director Petraeus re the CIA Director Casey's CIA domestic "black operations" at IMC and NSA in order that CIA Director Petraeus provided President Obama with accurate facts, and not false "Curveball" facts, when President Obama would decide whether he has a § 413 (b) duty to cure the illegal intelligence activities of CIA Director Casey. He knows that CIA Driector Casey's illegal CIA domestic intelligence activity has had the 2009-2013 collateral damage of the continued "immaculate construction" and maintenance of the 1984-2011 NSA TSP data banks with off-OMB Budget SSI funds and not classified OMB Budget funds. See 7-27-10 DOJ WP §§ AA, Comments §§ A, R, S, § U above and Y below

5. **ODNI General Counsel Litt**. He has been the 2009-2013 ODNI Counsel for DNI Directors 2009-2010 Admiral, Ret. Dennis Blair and 2010-2013 Lt. General, Ret. James Clapper. He was a 1978-1984 SDNY AUSA, 1994-1997 DAG of the Criminal Division, and 1997-1999 Principal Associate DAG. He knows who made the ODNI decision to use the "Glomar Response" defense in response to the Robert VIII v DOJ, HHS, and SSA appellant's September 13, 2011 *de novo* July 27, 2010 FOIA request for the "NCTC TSP and PSP data banks access guidelines" document. He knows whether ODNI Director Clapper knows that his DNI FOIA Officer had informed the Robert VIII appellant that ODNI Director Clapper could not locate the NCTC Guidelines used by the tens of thousands of USG and private company analysts to data mine the NSA domestic intelligence program data banks as explained by investigative reporters Priest and Arkin in the July 19, 2010 Washington Post "Top Secret America" Washington Post series. He also knows whether he informed ODNI Director Clapper, the 1992-1995 DIA

Director, of the legal significance of IC Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush" as applied to ODNI Clapper's actions taken as the 1992-1995 DNI Director. He knows whether DIA Director Lt. General Clapper data mined the NSA TSP data banks in reliance upon the legal opinions of AGs William Barr (1991-1993) and Janet Reno (1993-2001). See 7-27-10 DOJ WP § DD, 10-25-11 OLC Seitz WP § WW, 10-3-13 Comments § A, § U above, and § Y below.

6. NCTC Director Matthew Olsen. He was the 2010-2011 NSA General Counsel and knows where the NSA TSP and PSP data banks access guidelines" document is located that the NSA FOIA officer could not locate. He knows this document was the July 27, 1993 National Security Agency Central Security Service: United States Signals Directive 18 Legal Compliance and Minimization Procedures Letter of Promulgation issued by NSA Director Vice Admiral Mike McConnell (1992-1996) and approved by DOD Secretary Leslie Aspin, Jr. (1993- 1994) and AG Reno (1993-2001). He knows whether President Obama's 2010 WH Staff Secretary Rajesh De reviewed classified documents presented to President Obama that were secured from content data mining of the 1982-2001 E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks that have not been reported to the "Gang of Eight" as required by § 413 (a) of the National Security Act. He knows why on March 18, 2011 AG Holder reclassified pages of the May 6, 2004 OLC FISA Memo. He was the 2004-2005 Special Counsel for FBI Director Mueller and knew the content of the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo" NSA that explained the FISA "secret law" upon which was based the data mining of the pre-9/11 and post-9/11 NSA TSP. He was the 2005-2006 National Security Division Chief when AG Gonzales filed his December 22, 2005 § 413 (a) of the National Security Act Notification reporting the existence of the post-9/11 NSA TSP, but not the pre-9/11 NSA TSP. He was the 2006-2009 DAAG in National Security Division when AG Gonzales had withheld material facts from Judge Garaufis, the Second Circuit, and the Supreme Court re the Robert VII v DOJ plaintiff having been being the target of the E.O. 1233 Top Secret "FISA exempt" NSA TSP. He knows why in SG Verrelli's Supreme Court Amnesty v Clapper Briefs, SG Verrelli did not inform Supreme Court of the FISA OLC "secret law" that is explained in March 18, 2011 reclassified May 6, 2004 OLC Memo. See 10-25-11 OLC Seitz WP § V, Comments § B, § U above, and § Y below.

7. NSA General Counsel Rajash De. He is the NSA General Counsel (2011-) who succeeded NSA General Counsel Olson. He issued the August 9, 2013 White Paper that cited to the July 27, 1993 USSID 18 "minimization" guidelines used by NSA Director Vice Admiral Mike McConnell (1992-1996). NSA General Counsel de Rajesh De had been President Obama's 2010 WH Staff Secretary who first reviewed all classified documents presented to President Obama. NSA General Counsel De knows whether President Obama was informed of 2010 "minimization" standards being applied to the E.O. 12333 "FISA exempt" domestic surveillance of U.S. citizens NSA TSP data banks during President Obama's 2009-2013 Constitutional watch. As reported by reporter Al Kamen in an April 19, 2012 Washington Post article, NSA General Counsel De as the White House Staff Secretary, had read all classified documents presented to President Obama. "…the low-key senior staffer who reviews every single piece of paper before it goes to President Obama, is moving on to become general counsel for the National Security Agency." http://www.washingtonpost.com/blogs/in-the-loop/post/white-house-personnel-moves/2012/04/19/gIQAMGCPTT_blog.html. Prior to being President Obama's WH Staff Secretary he was from January, 2009 to August 2010 Principal DAAG of the Office of Legal Policy. He had been a 2003-2004 attorney for the 9/11 Commission. See Comments § M.

8. CIA General Counsel Nominee Caroline Krass. She is currently the Principal Deputy AAG of the OLC. She knows the content of the May 24, 1984 Top Secret "OLC Olson FISA Memo" and the March 18, 2011 reclassified May 6, 2004 Top Secret "OLC Goldsmith FISA Memo." She was a 1999-2000 Deputy Legal Advisor to President Clinton's National Security Council. She was a 2001-2009 OLC Attorney-Advisor-Senior Counsel. She knows whether AAG of the OLC General Counsels Bybee, Goldsmith, and Bradbury knew whether a classified Mitchell v Forsyth "nonacquiescence" policy document existed. She knows that AAG of the OLC Goldsmith knew the content of the May 24, 1984 Top Secret "OLC Olson FISA Memo" prior to AG Gonzales' December 22, 2005 retroactive § 413 (a) Notification of the post-9/11 NSA TSP, but not the pre-9/11 NSA TSP. She knows whether AG Gonzales had committed a "fraud upon the court" in the April 3, 2006 Robert VII v DOJ letter-Brief by intentionally withholding the fact that Robert had been the target of the pre-9/11 NSA TSP from the Second Circuit. She knows that AG Gonzales had known that the 1982-2006 "FISA secret law" was a "known-known" fact to him, but an "unknown-known" fact to the FISC, Judge Garaufis, the Second Circuit, and the Supreme Court. See 10-25-11 OLC Seitz WP §§ A-C, EE, 11-30-11 Robert VIII Petition Statement of the Case § H, 10-3-13 Comments §§ R, S, § U above, and § Y below

9. Acting FBI General Counsel Patrick Kelley. He is the Director Office of Integrity and Compliance (2007). He became the Acting FBI General Counsel when 2011-2013 FBI General Counsel Andrew Weissmann, FBI Director Mueller's 2005 Special Counsel, resigned after FBI Director Comey was confirmed. He had been an attorney in the Office of the FBI General Counsel from 1994-2013. He began as an attorney-advisor in the Administrative Law Unit where he became the chief in 1995. In 1998, he was promoted to the Senior Executive Service. He was a deputy general counsel in General Law and Legal Training Branch. He served as the OGC Chief of Staff, the FBI Component Designated Agency Ethics Official, and Senior Privacy Officer. In 2007 he becames the first Director of the newly created Office of Integrity and Compliance. He knows whether FBI General Counsels Valerie Caproni (2002-2011) and FBI Special Counsel Weissmann (2005) had known that DAG Comey had not known of the May 24, 1984 Top Secret "OLC Olson FISA Memo" before and after March 10, 2004 confrontation with WH Counsel Gonzales. He knows whether they knew that there had been a violation of the § 413 (a) of the National Security Act "Gang of Eight" Notification requirement. He also knows whether FBI Director Comey has a duty to cure any misrepresentations made by 1982-2013 FBI Directors to the FISC and the FISC of Review re the FBI Directors participation in the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP based on an "FISA secret law" that was an "unknown-unknown" fact to the FISC. See Comments §§ A-D, L, M, and § U above.

10. AG Eric Holder. He was a 1976-1988 Public Integrity Section attorney and 1997-2001 DAG. He knows whether the March 28, 1986 Personal Liability of Federal Officials: The Bivens Problem of AAG of the Civil Division applies to all of the 1986-2013 USG attorneys who have participated in E.O. 12333 "FISA exempt" NSA TSP after Mitchell v Forsyth. He knows why in October, 2000 AAG of the Civil Division David Ogden (2009-2011) decided not to perfect EDNY U.S. Attorney Lynch's Ford v Shalala Notice of Appeal that has affected the millions of 1994-2013 nationwide certified class members. AG Holder knows that because the Jackson and Ruppert are classified "nonacquiescence" policies, by application of President Bush's November 2, 2002 Presidential Signing statement, this is a "clandestine" policy that triggers the 1986 Bowen v City of New York equitable tolling remedy for the 1986-1994 aged, blind, and disabled SSI recipients who are not the millions of 1994-2011 Ford class members. See § Y below.

11. **DAG James Cole**. He was a DOJ 1979-1992 Public Integrity attorney. He knows the "minimization" standards that IC General Counsels provided President Obama's Privacy and Civil Liberties Oversight Board (PCLOB) on October 31, 2013. He knows whether these "minimization" rules were applied by the IC analysts when they data mined the 1982-2013 E.O. 12333 "FISA exempt" domestic surveillance of U.S. citizens NSA TSP data banks that included the DOD TALON data banks that in 2007 Under Secretary of Intelligence Lt. General Clapper transferred to the FBI. He knows the legal authorities upon which he relied when he supervised the USG FRCP 11 signed Briefs filed in Clapper v Amnesty and In Re EPIC that did not inform the Supreme Court of the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP, AAG of the OLC Olson's May 24, 1982 Top Secret OLC Memo, and the March 18, 2011 reclassified Top Secret May 6, 2004 "OLC Goldsmith FISA Memo." He knows whether a DOJ "stovepipe" bypassed SG Verrelli in Robert VIII v DOJ, HHS, and SSA, Clapper v Amnesty, and In re EPIC in order that SG Verrelli would not learn of the "FISA secret law" that was the legal basis for the 1982-2013 E.O. 12333 "FISA exempt" NSA TSP. See Comments §§ N-Q and § Y below.

12. SG Donald Verrelli. He was the AG Holder's 2009 Associate DAG and President Obama's 2010 Deputy WH Counsel. He knows when he first learned about the E.O. 1982-2013 Top Secret E.O. 12333 "FISA exempt" NSA TSP. He knows when he first informed AG Holder and President Obama that AG Gonzales' December 22, 2005 § 413 (a) of the National Security Act "Gang of Eight" Notification was re the post-9/11 2001-2005 E.O. 12333 NSA TSP, but not the pre-9/11 1982-2001 NSA TSP. He knows whether he has decided to cure his misrepresentations to the Supreme Court in Clapper v Amnesty that he learned about after the Clapper v Amnesty decision. This occurred because DOJ attorneys had not properly vetted SG Verelli re the details of how the NSA TSP was conducted. "It was only then that he learned of the division's practice of narrowly interpreting its need to notify defendants of evidence "derived from" warrantless wiretapping." Savage Federal Prosecutors, in a Policy Shift, Cite Warrantless Wiretaps as Evidence, NY Times 10-27-13. On December 5, 2011, the Robert VIII v DOJ, HHS, and SSA petitioner had respectfully suggested to SG Verrelli that he contact 32 named USG attorneys for background information re the "SSI secret law" prior to making his decision as to the contents of his Brief in opposition to the Robert VIII Petition. See the 12-5-11 Robert VIII letter to SG Verrelli post at http://snowflake5391.net/12_5_11_RVIII_SG_Verrelli.pdf.

13. **Associate AG Tony West.** He was the 2009-2012 AAG of the Civil Division during the Robert VIII v DOJ, HHS, and SSA and Amnesty v Clapper litigation. He had been the 1993-1994 Special Counsel to DAGs Heyman and Gorelick. He knows whether DAG Gorelick established the 1995 "wall" to protect the integrity of DOJ attorneys and to prevent DOJ attorneys from committing a "fraud upon the court" when filing FISC petitions. He knows when he first learned during the 2009-2012 Ford v Shalala litigation that SSA Commissioner Astrue, the 1988 Associate White House Counsel for President Reagan, 1989 Associate White House Counsel for President Bush, and 1989-1992 HHS General Counsel, had presented false uncured June 22, 1989 Senate testimony that the "nonacquiescence" policy had ended in 1989. He knows why AG Holder and President Obama have not fulfilled their Article II "take Care" duties to cure the facial impeachable due process and equal protection violations of the 1994-2013 Ford v Shalala class members who do not reside in the Seventh Circuit. He knows why they have not received their Ford "remedy" Notices to comply with Judge Sifton's 1999 Ford v Shalala Order. See 7-20-12 West WP. http://snowflake5391.net/7_20_12_West_WP.pdf and Comments § A, S.

14. AAG of the OLC Virginia Seitz. She was a 1995-2000 Congressional Office of Compliance Board of Director Member. She knows whether AG Holder knows that she has ratified the continued the post Clapper v Amnesty implementation of AAG of the OLC Olson's May 24, 1982 Top Secret OLC Memo, and the March 18, 2011 reclassified Top Secret May 6, 2004 "OLC Goldsmith FISA Memo." She also knows whether *de jure* or *de facto* classified 1982 Jackson v Schweiker, 1985 Mitchell v Forsyth, 1986 United States v Barrett, 1990 Ruppert v Bowen, 2001 Christensen v Harris County, 2005 National Council of La Raza, et. al. v DOJ, and 2007 Ford v Shalala "nonacquiescence" policy documents exist. If so, then she knows whether these are Top Secret OLC documents pursuant to President Bush's November 2, 2002 28 U.S.C. § 530D Signing Statement re Report on Enforcement of Laws: Policies Regarding the Constitutionality of Provisions and Non-acquiescence. If so, then she knows where these documents are located within the DOJ Building and the names of the DOJ attorneys who have access to these Top Secret documents. See 7-27-10 DOJ WP §§ D, J-O, and 10-25-11 OLC Seitz WP §§ S-CC. http://snowflake5391.net/10_25%20_11_WPSeitz.pdf

15. Acting AAG of the Civil Division Stuart Delery. He was the 2009 Chief of Staff and Counselor to DAG Ogden. He was a 2010 Associate DAG. From August 2010 until March 2012 he was AG Holder's Senior Counselor. He knows who on March 18, 2011 made the reclassification decision of the Top Secret May 6, 2004 "OLC Goldsmith FISA Memo." He knows whether a 2009-2013 DOJ "stovepipe" bypassed AG Holder and SG Verrelli in order that they would have a "plausible deniability" defense to the continued implementation of the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP that is based on the May 24, 1984 Top Secret "FISA Olson FISA Memo." He knows who ordered him not to inform SG Verrelli of the "FISA secret law" that included the 1984 and 2004 Top Secret "FISA secret law" OLC Memos in order that SG Verrelli would not inform the Supreme Court of the "FISA secret law" in Robert VIII v DOJ, HHS, and SSA, Clapper v Amnesty, and In re EPIC. See Comments § B.

16. Acting AAG of the National Security Division James Carlin. He was the 2009-2011 Chief of Staff and Senior Counsel to FBI Director Mueller. His duties included overseeing high-priority projects, advising the Director, and managing the day-to-day operations of the Director's Office. He knows whether FBI Director Mueller knew that the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP had been conducted without any FISC supervision because AG Smith determined that the "exclusivity provision" of the FISA did not apply for reasons that AAG of the OLC Olson explained in his May 24, 1984 Memorandum Constitutionality of Certain National Security Agency Electronic Surveillance Activities Not Covered Under the Foreign Intelligence Surveillance Act of 1979. He knows whether FBI Director Mueller reviewed the reasons for the use of each of the FOIA exemptions in the March 18, 2011 reclassification of the Top Secret May 6, 2004 "OLC Goldsmith FISA Memo." Those FOIA decisions will be subject Judge Garaufis review if OIP Director Pustay affirms a denial of this FOIA request for the two Top Secret OLC decisions and Judge Garaufis grants the Robert VIII v DOJ, HHS, and SSA plaintiff's Motion for a pre-clearance Order. He knows whether his predecessors Kenneth Wainstein (2006-2009), Acting Matthew Olsen (January-March 2008), Patrick Rowen (2008), David Kris (2009-2011), and Lisa Monaco (July 1-2011-March 8, 2013), all ratified the May 24, 1984 Top Secret "OLC Olson FISA Memo." He was on the FRCP 11 signed October 11, 2013 Supreme Court In Re EPIC Brief. See 10-3-13 Comments § D and § U above.

17. EOUSA Director EOUSA Director H. Marshall Jarrett. He was the 1998-2008 Chief Counsel and Director of the OPR who succeeded OPR Chief Counsel and Director Michael Shaheen (1976-1997). He knows who made the 2006 determination that he could not investigate the actions taken by DOJ attorneys re the NSA domestic surveillance program because he did not have the requisite national security clearance. He knows who ordered him not to instruct U.S. Attorneys in the 47 States that are not in the Seventh Circuit States of Illinois, Indiana, and Wisconsin, not to enforce the equal protection rights of the millions of 1994-2013 Ford class members whose monthly SSI federal SSI benefits are reduced by one-third. He knows the answer to the how- could-this-have-happened question why the "Jackson" regulation, 20 C.F.R.416.1130 (b), has not been equally enforced during President Obama's 2009-2013 Constitutional watch. See 7-27-10 DOJ WP §§ C, U, Z, ZZ and § Y below.

18. EDNY U.S. Attorney Loretta Lynch. She was the 1994-1998 EDNY Chief of Long Island Division and the supervising attorney of AUSA Bruce Gordon during Gordon v. Shalala, 55 F.3d 101 (2d Cir. 1995), cert. den, 517 U.S. 1103 (1996). She was the 1999-2001 EDNY U.S. Attorney. She knows why material facts were withheld from Judge Wexler, Judge Mishler, and the Second Circuit in Robert v National Archives, 1 Fed. Appx. 85 (2d Cir. 2001), and in Robert v DOJ, 2001 WL 34077473 (EDNY), 26 Fed. Appx. 87 (2d Cir. 2002). She was 2009 Member of the New York State Commission on Public Integrity. She knows who ordered her not to comply with her own April 1, 2009 NYS Rules of Professional Conduct Rule 3.3(a)(3) duty to cure misrepresentations of fact and law made to tribunals. "If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of the falsity, the lawyer shall take responsible remedial measures, including if necessary disclosure to the tribunal." See 7-27-10 DOJ WP § E, V, W, GG-XX and 10-25-11 OLC Seitz WP § OO, 11-30-11 Robert VIII Petition Statement of the Case §§ A-F, H and § Y below.

If FBI Director Comey makes inquiries to the above named USG attorneys, then he will learn whether DOJ and FBI "stovepipes" exist which bypass DOJ attorneys, or whether a *faux* "Commander in Chief" ordered these USG attorneys to implement the Top Secret 1985 Mitchell v Forsyth "nonacquiescence" policy because AG Meese and his successor AGs have determined that the Supreme Court had "incorrectly" decided Mitchell v Forsyth. If FBI Director Comey learns this fact, then he knows that what is at issue in 2014 will be whether President Obama will be informed of this Marbury v Madison issue whereby AG Holder decides what the FISA law "is" and not the Supreme Court. FBI Director Comey will learn the answer to the how-it-could-have-happened question that the Supreme Court was not informed that the "FISA secret law" includes the May 24, 1984 "OLC Olson FISA Memo" and the March 18, 2011 reclassified May 6, 2004 'OLC Goldsmith FISA Memo." FBI Director Comey will also learn that what is at issue is the "gift" of FBI Integrity as to its 1982-2013 participation in the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP without the knowledge of the FISC.

FBI Director Comey will also learn that what is at issue is whether he can restore the "gift" of FBI integrity. After he reads the 1984 and 2004 Top Secret OLC FISA Memos, he will have learned that former-NARA ISSO Director Leonard got it right when he framed the "secret law" issue in his April 30, 2008 testimony to the Senate Judiciary Committee re the Secret Law and the Threat to Democratic and Accountable Government: "It is as if Lewis Carroll, George Orwell, and Franz Kafka jointly conspired to come up with ultimate recipe for unchecked executive power." Id. 8 http://www.fas.org/sgp/congress/2008/law.html. See Comments § O.

Y. OIP Director Pustay knows whether these two Top Secret OLC FISA memos reveal whether a DOJ "stovepipe" exists that bypasses AG Holder to provide a "plausible deniability" defense to the serial violation of "exclusivity provision" of the FISA of 1978

In defense of AG Holder**,** OIP Director Pustay knows whether these two Top Secret OLC FISA memos reveal whether a DOJ "stovepipe" exists that bypasses AG Holder to provide a "plausible deniability" defense to the serial violation of "exclusivity provision" of the FISA of 1978. The requester does not believe that AG Holder would "defraud" President Obama by not informing the President of the content data mining of the E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP data banks. The requester believes that OIP Director Pustay knows that if AG Holder reads these 1984 and 2004 Top Secret OLC FISA memos, then he would learn that the May 24, 1984 "OLC Olson FISA Memo" was an admission of a serial violations "exclusivity provision" of the FISA. See 10-3-13 Comments §§ D, G-J.

OIP Director Pustay has been an attorney in the DOJ FOIA OIP Office for thirty years. She began as a 1983 Attorney-Advisor. She was the 1999-2007 OIP Deputy Director. On April 19, 2007, AG Gonzalez appointed her as the OIP Director to succeed OIP Director Daniel Metcalfe. She has been involved in making Robert FOIA decisions in all the 1985-2013 FOIAs that involved DOJ or FBI documents. As a result, she can assist FBI Director Comey determine whether any DOJ attorneys have "defrauded " President Obama re the implementation of the E.O. 12333 Top Secret "FISA exempt" NSA TSP that is revealed in the Robert VII v DOJ "FISC Robert" documents that continue to be withheld pursuant to the DOJ's ratification of the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense, and the Robert VIII v DOJ, HHS, and SSA "Robert v Holz" documents that she has withheld pursuant to FOIA exemption 5 after reading these 1980s documents. See 11-30-11 Robert VIII Statement of the Case §§ A-D, H.

OIP Director Pustay knows who ordered her to implement the "Barrett nonacquiescence policy" and withhold material facts from Article III Judges during the Robert FOIA actions. "Finally, acceptance of the view urged by the federal appellants would result in a blanket grant of absolute immunity to government lawyers acting to prevent exposure of the government in liability." Barrett v. United States, 798 F. 2d 565, 573 (2d Cir. 1986). Emphasis Added.

OIP Director Pustay also knows whether DOJ attorneys committed a "fraud upon the court" in Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA when they implemented the Barrett "nonacquiescence" policy and intentionally withheld material facts form Judge Garaufis, the Second Circuit, and the Supreme Court. "It is a wrong against the institutions set up to protect and safeguard the public. " Chambers v. Nasco, 111 S. Ct. 2123, 2132 (1991).

If OIP Chief Pustay needs guidance, then she knows that she has a duty to consult with her DOJ "command and control" attorney Acting AAG of the Civil Division Delery. He was one of the DOJ attorneys making Supreme Court Clapper v Amnesty litigation decisions. He knows who ordered him not to inform the Supreme Court of the two Top Secret "FISA secret law" OLC Memos in AG Holder's October 11, 2013 In re EPIC response. He had been the 2009 Chief of Staff and Counselor to DAG Ogden, 2010 Associate DAG for AG Holder, and August 2010 - March 2012 Senior Counselor for AG Holder. He knows who on March 18, 2011 made the reclassification decision of the Top Secret May 6, 2004 "OLC Goldsmith FISA Memo." He knows whether a 2009-2013 DOJ "stovepipe" has bypassed AG Holder. See Comments § B.

The Robert v Holz-Robert v National Archives-Robert v DOJ-Robert VII v DOJ, Robert VIII v DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff-FOIA requester places AG Holder's OLC FOIA Officer on Notice that OIP Director Pustay, Acting AAG of the Civil Division Delery, and Principal Deputy AAG of the OLC Krass, President Obama's 2013 CIA General Counsel Nominee, all know where these two Top Secret OLC FISA Memos can be located. They all know whether a DOJ "stovepipe" exists that bypasses AG Holder in order that he has a "plausible deniability" defense to the fact that these Top Secret OLC FISA Memos have been the legal basis for the warrantless data mining of the 1984-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks. See 10-3-13 Comments §§ R, S , and § U above.

The FOIA requester places AG Holder's OLC FOIA Officer on Notice that OIP Director Pustay had made the Second Circuit in Robert VIII v DOJ, HHS, and SSA the "handmaiden of the Executive" when she could not locate the FOIA requested documents after Judge Garaufis had ordered AG Holder's FOIA Office to conduct a second due diligence search for the Robert VIII FOIA requested documents that could not be located. OIP Director Pustay knows who ordered her not to conduct a due diligence search for these documents in the locations that the plaintiff informed EDNY U.S. Attorney Loretta Lynch (1999-2001 and 2009-), where the documents could be located. See 11-30-11 Robert VIII Petition Statement of the Case §§ A-G.

On December 15, 2008, in Doe, et. al. v Mukasey, Mueller, and Caproni, 549 F 3d 861 (2d Cir. 2008), the Second Circuit revisited the Barrett issue of Article III Judges deferring to "good faith" Article II actions of government attorney-patriots to protect the nation from terrorists. The Second Circuit affirmed with modifications the District Court injunction to prevent government officials from violating the First Amendment by use of prior restraint FBI "gag" Notices re FBI issuance of National Security Letters (NSLs), and the government's argument that there should be Article III deference to Article II national security decisions:

> There is not meaningful judicial review of the decision of the Executive Branch to prohibit speech if the position of the Executive Branch that speech would be harmful is "conclusive" on a reviewing court, absent only a demonstration of bad faith. To accept deference to that extraordinary degree would be to reduce strict scrutiny to no scrutiny, save only the rarest of situations where bad faith could be shown. Under either traditional strict scrutiny or a less exacting application of that standard, some demonstration from the Executive Branch of the need for secrecy is required in order to conform the nondisclosure requirement to First Amendment standards. The fiat of a government official, though senior in rank and doubtless honorable in the execution of official duties, cannot displace the judicial obligation to enforce constitutional requirements. "Under no circumstances should the Judiciary become the handmaiden of the Executive." United States v Smith, 899 F. 2d 564, 569, (6th Cir. 1990).

The OLC FOIA Officer is hereby placed on Notice that the following White Papers (WP) were sent to USG attorneys for the purpose of ending the 2011-2012 "defrauding" of President Obama. The named attorneys knew that President Obama did not know that the IC analysts were data mining the E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks that were funded with Jackson "nonacquiescence" policy funds and not OMC Budget classified funds:

7-27-10 Robert VIII
http://snowflake5391.net/7_27_10_RobertVIII.pdf

3-18-11 ODNI ISCAP WP
http://snowflake5391.net/3_18_11_WP_ISCAPDNI.pdf

4-11-11 OLC MDR
http://snowflake5391.net/4_11_11_OLC_MDR_WP.pdf

5-9-11 CIA MDR
http://snowflake5391.net/5_9_11_MDR_CIA.pdf

5-9-11 NARA ADR
http://snowflake5391.net/5_9_11_WP_NARA_ADR.pdf

5-9-11 NARA MDR
http://snowflake5391.net/5_9_11_WP_NARA_MDR.pdf

6-27-11 Senate Intelligence Committee WP
http://snowflake5391.net/6_27_11_IntellComWP.pdf

7-25-11 CIA General Counsel Preston WP
http://snowflake5391.net/7_25_11_WPCIAGenCouPreston.pdf

10-25-11 OLC Seitz WP
http://snowflake5391.net/10_25%20_11_WPSeitz.pdf

12-5-11 Robert VIII letter to SG Verrelli WP
http://snowflake5391.net/12_5_11_RVIII_SG_Verrelli.pdf

1-23-12 OGIS NARA WP
http://snowflake5391.net/1_23_12_OGIS_NARA_WP.pdf

2-22-12 OGIS FBI WP
http://snowflake5391.net/2_22_12_OGIS_FBI_WP.pdf

7-20-12 Associate AG West WP
http://snowflake5391.net/7_20_12_West_WP.pdf

The FOIA requester cites to these 2010-2012 WPs because he believes that WH and DOJ "stovepipes" are now being used to prevent President Obama and AG Holder from knowing who made the March 18, 2011 reclassification decision as to the Top Secret May 6, 2004 "OLC Goldsmith FISA Memo," because unaudited Ford v Shalala SSI funds continue to be the funding source for the 1982-2013 E.O. 12333 NSA TSP data banks. "We created this problem we didn't need to create," Mr. Obama said, according to one adviser who, like several interviewed, insisted on anonymity to share details of the private session." Stolberg and Shear, Inside the Race to Rescue a Health Care Cite, and Obama, NY Times, 12-1-13. See Comments § O and § N above.

The FOIA requester asserts that the DOJ case file notes and e-mails in Glasgold v. Califano, 558 F. Supp. 129 (E.D. N.Y. 1982), aff'd sub. nom. Rothman v. Schweiker, 706 F. 2d 407 (2nd Cir. 1983), cert. den. sub. nom. Guigno v. Schweiker, 464 U.S. 984 (1983), Ruppert v Bowen, 871 F.2d 1172 (2d Cir. 1989), Gordon v. Shalala, 55 F.3d 101 (2d Cir. 1995), cert. den, 517 U.S. 1103 (1996), Robert v National Archives, 1 Fed. Appx. 85 (2d Cir. 2001), Robert v U.S. Department of Justice, 2001 WL 34077473 (EDNY), 26 Fed. Appx. 87 (2d Cir. 2002), Robert VII v DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007). Robert VIII v DOJ, HHS, and SSA, 439 Fed. Appx 32 (2d Cir. 2011), cert. den. 132 S. Ct. 1549 (2012), reveal the names of 1982-2013 USG attorneys who have known a mosaic of "known-known" facts of how DOJ-HHS-SSA "nonacquiescence" policies have been implemented. They know facts that corroborate the plaintiff's almost incredible allegation that unaudited 1982-2013 Jackson "nonacquiescence" policy funds have been a funding source for the "immaculate construction" and maintenance of the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP data banks that could not be paid for with classified OMB Budget funds because of the serial impeachable violations of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, and the PCA of 1878 limitations on military domestic law enforcement. See 11-30-11 Robert VIII Petition A-D, and 10-3-13 Comments §§ A, R.

The FOIA requester will inform FBI Director Comey that the DOJ case file notes and e-mails to this December 3, 2013 OLC FOIA request are connect-the-dots documents to over thirty years of DOJ case file notes and e-mails as to who knew what and when, as to the 1982-2013 collateral damage caused by AAG of the OLC Olson's 1982 Top Secret Jackson "nonacquiescence" policy document and his May 24, 1984 Top Secret Constitutionality of Certain National Security Agency Electronic Surveillance Activities Not Covered Under the Foreign Intelligence Surveillance Act of 1979 memo. FBI Director Comey can create a three-dimensional chart of USG decisions-makers to apply DOD Secretary Rumsfeld's "known-known", "known-unknown" and "unknown-unknown" historical analysis. FBI Director Comey will be able to provide President Obama the names of the 1982-2013 *faux* "Commanders in Chiefs" who have made the E.O. 12333 Top Secret "FISA exempt" NSA TSP decisions without the knowledge of Presidents Reagan, Bush, Clinton, Bush, and Obama. See §§ L-O above.

The FOIA requester places AG Holder's OLC FOIA Officer on Notice that EDNY U.S. Attorney Lynch will not lie-by-omission to FBI Director Comey. She knows that FBI Director Comey will know that if an EDNY "stovepipe" did not bypass EDNY U.S. Attorney Lynch from 1999-2001 and 2010-2013, then she had violated the NYS Judiciary Law § 487 Misconduct by attorneys penal standard re the deception of Judges and plaintiff Robert. "1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party;" Emphasis Added. She was a 2009 Member of the NYS Commission on Public Integrity. She knows that as of April 1, 2009 NYS Rules of Professional Conduct Rule 3.3(a)(3), she has had a duty to cure misrepresentations of fact and law made to tribunals. "If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of the falsity, the lawyer shall take responsible remedial measures, including if necessary disclosure to the tribunal." Emphasis added. See 7-27-10 Robert VIII WP §§ B-J.

Hence the importance of AG Holder's OLC FOIA Officer contacting OIP Director Pustay. She has a 1985-2013 institutional memory of deceiving both Article III Judges and plaintiff Robert. "Oh what a tangled weave, When first we practice to deceive. Sir Walter Scott.

Z. Conclusion

The purpose of this FOIA request seeking the expedited release of the Top Secret May 24, 1984 "OLC Olson FISA Memo" and the March 18, 2011 Top Secret reclassified May 6, 2004 "OLC Goldsmith FISA Memo," is to trigger a DOJ FOIA request review process that will result in President Obama's three Review Group Law Professors Sunstein, Swire, and Geoffrey reading these two Top Secret OLC Memos. The FOIA requester believes that after reading the two Top Secret OLC FISA Memos, that they will include in the Review Group's December 15, 2013 Final Report a recommendation that President Obama revoke these two Top Secret OLC Memos as part of a § 413 (b) of the National Security Act "corrective action" plan that President Obama files in 2014 to cure the illegal intelligence activities that have been the result of the serial impeachable violation of the "exclusivity provision" of the FISA of 1978. See Comments § S.

Given the gravity of the FOIA requester's allegations that USG officials and attorneys have "defrauded" President Obama by withholding facts re the implementation of the "FISA secret law" as explained in these two OLC FISA Memos, the FOIA requester suggests the FOIA Officer assigned to this FOIA request seek the guidance of OIP Director Putsay. She can then seek the guidance of Acting AAG of the OLC Delery, her "command and control" officer. He can then seek the guidance of DAG James Cole who has been AG Holder's 2013 liaison with DNI Director Clapper and DOD Cyber Command-NSA Director General Alexander as to the implementation of the 1982-2013 E.O. 12333 Top Secret "FISA exempt" NSA TSP.

After AG Holder reads the 1984 and 2004 Top Secret OLC FISA Memos, he will know the importance of President Obama knowing the reasons why the March 18, 2011 declassification decision did not result in a 100 % declassification of the May 6, 2004 Top Secret "OLC Goldsmith FISA Memo." AG Holder will also know whether the Robert v Holz-Robert VII v DOJ-Robert VIII v DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff-requester's almost incredible allegation is true: 1982-2013 *faux* "Commanders in Chief" have made the E.O. 12333 Top Secret "FISA exempt" domestic surveillance of U.S. citizens NSA TSP decisions without the knowledge of Presidents Reagan, Bush, Clinton, Bush, and Obama. If so, then AG Holder will know that President Obama and the Article I "Gang of Eight" and the Article III Robert VII v DOJ Judges, the FISC and the Supreme Court should all know this PCA fact.

AG Holder, a 1976-1988 DOJ Public Integrity Section attorney, should make the determination whether NYS Judiciary Law § 487, Misconduct by attorneys, applies to DOJ attorneys who have deceived Article III Judges and plaintiff Robert. "1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; "

AG Holder should decide whether the April 1, 2009 NYS Rules of Professional Conduct Rule 3.3(a)(3) duty to cure misrepresentations of fact and law made to tribunals, applies to USG attorneys. "If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of the falsity, the lawyer shall take responsible remedial measures, including if necessary disclosure to the tribunal." Emphasis added.

Therefore, AG Holder's FOIA Officer should grant the request for an expedited decision. AG Holder should provide the Review Group Law Professors copies of these OLC Memos so that they can read the documents prior to their filing the December 15, 1913 Final Report.