2-22-12 White Paper in support of NARA OGIS Director Nesbit accepting jurisdiction of a request for OGIS facilitation services re September 13, 2011 FOIA requested FBI documents

This White Paper (WP) is in support of the request that NARA Office of Government Information Services (OGIS) Director Miriam Nesbit take jurisdiction of the request for facilitation services regarding the September 13, 2011 *de novo* FOIA requested FBI documents:

> **Re: FBI FOIA request No. 1151829-000**
> 1) FBI Abshire documents-third request
> 2) FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report"
> 3) FBI copy of February 25, 1987 "Perot" documents
> 4) FBI copy of Robert v National Archives "FBI Agent Allison" documents
> 5) FBI unredacted copy of Robert v DOJ "62-0 file" documents
> 6) FBI Robert III v DOJ "Recarey extradition" documents
> 7) FBI Robert VII v DOJ "FISC Robert" documents
> 8) FBI Charles Robert documents including NSLs sent to banks and ISP

On September 30, 2009, OGIS Director Nesbit testified before the Senate Judiciary Committee and informed the Members of the difficulty of her OGIS task:

> The concept of the public's right to access to the records of its government is fundamental to our democracy. Yet, making our Freedom of Information Act work smoothly and efficiently to accommodate that concept has proved more difficult and costly than any of us could have imagined. Emphasis Added.
> http://www.fas.org/sgp/congress/2009/093009nisbet.pdf

OGIS Director Nesbit testified as to her task to seek solutions short of litigation:

> Clearing up those misunderstandings and seeking solutions in more complicated cases, short of litigation, would save time and money for agencies and public alike, as well as bolster confidence in the openness of government. Id. Emphasis Added.

OGIS Director Nisbet was the 1982-1994 DOJ Deputy Director of the Office Information and Privacy and the 1994-1999 NARA Special Counsel for Information Policy. As a result, she has an intimate knowledge of the FBI and NARA decision-making processes that have been applied in the 1985-2012 Robert serial FOIA actions including Robert VIII v DOJ, HHS, and SSA. OGIS Director Nesbit would be an excellent OGIS FBI facilitator for a quiet settlement of the requests for the classified FBI FOIA requested documents and the Robert FOIA actions.

Pursuant to the December 9, 2005 Robert VIII v DOJ, HHS, and SSA Order of EDNY Judge Garaufis, plaintiff Robert is enjoined from filing a FOIA complaint without Judge Garaufis' pre-clearance Order. The Robert VIII petitioner asserts that OGIS Director Nesbit should accept jurisdiction of this request for OGIS FBI facilitation services because it could lead to a quiet settlement of Robert VIII v DOJ, HHS, and SSA and Robert II v CIA and DOJ.

A. The FBI documents and the September 6, 2011 Second Circuit Robert VIII v DOJ, HHS, and SSA modification of the Robert VIII December 14, 2005 Clerk's Judgment

The request that these FBI documents be subject to OGIS facilitation services is consistent with the OGIS mission and the December 9, 2005 Robert VIII v DOJ, HHS injunction that prohibits Robert from filing a new FOIA action without a pre-clearance Order from EDNY Judge Garaufis. The Robert VIII plaintiff seeks OGIS FBI facilitation with the goal of securing a quiet settlement of Robert VIII v DOJ, HHS, and SSA so as not to have to file a 2012 Robert VIII Motion seeking EDNY Judge Garaufis' pre-clearance Order to file a new FOIA complaint.

On August 5, 2010, FBI Chief FOIA Officer Hardy decided not to process the Robert VIII v DOJ, HHS, and SSA plaintiff's July 27, 2010 FOIA request for these FBI documents:

> It is our understanding that the United States District Court for the Eastern District of New York has enjoined you from making further Freedom of Information Act requests without prior leave to file this FOIA request. We will administratively close this request until such documentation is received. Emphasis Added.

On September 6, 2011, the Second Circuit decided Robert VIII v DOJ, HHS, and SSA and affirmed Judge Garaufis' decisions. However, the Court modified the December 14, 2005 Robert VIII Clerk's Judgment to be consistent with Judge Garaufis' December 9, 2005 Memorandum and Order whereby the plaintiff was enjoined from filing a new FOIA complaint, not a FOIA request, without Judge Garaufis 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. Emphasis not added.

On September 13, 2011, based on the Second Circuit's modification of the December 14, 2005 Robert VIII Clerk's Judgment, the plaintiff filed a *de novo* FOIA FBI request with FBI Chief FOIA Officer Donald Hardy seeking the same documents sought on July 27, 2010. FBI Chief FOIA Officer Hardy has not rendered a decision notwithstanding the follow-up November 8, 2011 and December 5, 2011 requests that he contact the FBI General Counsel.

The Robert VIII plaintiff seeks OGIS FBI facilitation services whereby FBI Chief FOIA Officer Hardy renders a decision. Upon information and belief, former-FBI General Counsel Valerie Caproni had instructed FBI Chief FOIA Officer Hardy not to process the July 27, 2010 request based on her reading of the December 14, 2005 Robert VIII Clerk's Judgment. Upon information and belief, former-FBI General Counsel Valerie Caproni instructed FBI Chief FOIA Officer Hardy not to process the September 13, 2011 *de novo* FBI FOIA request that was based on the Second Circuit's September 6, 2011 decision, because she knew that these FBI FOIA requested documents would corroborate the Robert VIII appellant's grave allegation that USG attorneys had committed a "fraud upon the Court" in Robert VII v DOJ. See § S below.

B. The OGIS facilitation standard and Judge Garaufis' December 9, 2005 Order requiring a Robert pre-clearance Order to file a FOIA complaint

The Robert VIII v DOJ, HHS, and SSA petitioner is requesting FBI facilitation services because Judge Garaufis' December 9, 2005 Order requires that Robert secure Judge Garaufis' pre-clearance Order prior to filing a FOIA complaint. If the request for facilitation services was successful, then this would eliminate the need to file a Robert VIII v DOJ, HHS, and SSA Motion with Judge Garaufis to secure Judge Garaufis' pre-clearance order to file a FOIA complaint seeking these FBI documents and the mosaic of other USG documents. See the 11-30-12 Robert VIII Petition Reasons For Granting the Petition Issue II and § T below.

The NARA OGIS "Toolbox" Q and A # 7, explains the OGIS provides facilitation services to find "common ground to resolve disputes" to avoid FOIA litigation:

> 7. Facilitation is a less-structured form of mediation in which the OGIS staff (rather than an outside mediator) will work with the parties to understand each other's positions, interests and needs and to find common ground to resolve disputes. Emphasis Added.
> https://ogis.archives.gov/ogis-toolbox/ogis-procedures.htm

Thus, OGIS facilitation services are tailor-made to "find common ground to resolve disputes" in an attempt to eliminate the need for the filing of a Robert VIII Motion seeking the pre-clearance Order. In AG Holder's opposition to that Motion, he would have to consider filing "c (3) exclusion" *ex parte* Declarations that explain the use of the "Glomar Response" defense and rebut Robert's allegation that the FBI documents and the mosaic of other classified documents sought in the putative complaint, prove that USG attorneys had intentionally made Judge Garaufis the "handmaiden of the Executive" in Robert VII v DOJ and Robert v DOJ, HHS, and SSA. "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).

One of the reasons that the Robert VIII v DOJ, HHS, and SSA petitioner is seeking the release of the FBI documents is to prove to Judge Garaufis that DOJ attorneys had committed déjà vu "fraud" upon Judge Garaufis, the Second Circuit, and the Supreme Court in Robert VIII v DOJ, HHS, and SSA, 11-0684, as occurred in Robert VII v DOJ. The "fraud" occurred because AGs Gonzales and Holder did not inform Judge Garaufis, the Second Circuit and the Supreme Court that they were implementing the FISA "secret law" which was the legal basis of Robert being the 1985 target of the NSA TSP that was not reported to the "Gang of Eight" or the FISC. FBI Chief FOIA Officer Hardy's August 5, 2010 FOIA decision resulted in AG Holder making the Supreme Court AG Holder's "handmaiden" in Robert VIII. See the declassified May 6, 2004 OLC FISA Memo, https://webspace.utexas.edu/rmc2289/OLC%2054.FINAL.PDF, the Robert VIII Petition Statement of the Case §§ A, B, C, E, H, and §§ J, I, L below.

If OGIS Director Nesbit applies the facilitation standards, then she will learn from reading these FBI documents the facts that Judge Garaufis would learn from reading the documents *in camera*. Hence, this opportunity to quietly settle Robert VIII, rather than litigate the Robert VIII petitioner's Motion for a pre-clearance order to file a new FOIA complaint.

C. The March 21, 1991 "Memorandum on Criminal Liability of Former President Reagan and of President Bush" sent to IC Walsh is a 1991 "Past is Prologue" 18 U.S.C. § 371 standard to determine if USG attorneys "defrauded" Presidents Reagan and Obama by withholding facts from FBI documents that reveal serial violations of federal laws

On November 25, 2011, the National Security Archive posted on the internet, Independent Counsel (IC) Lawrence Walsh's March 21, 1991 staff's "Memorandum on Criminal Liability of Former-President Reagan and of President Bush." This 198 page Memorandum discussed in detail the legal opinions of AG Edwin Meese. IC Walsh determined that there would be no indictment of President Reagan or President Bush because their Iran-Contras decisions were based on the legal opinions of AG Meese. This is a 1991 "Past is Prologue" document because it establishes a 18 U.S.C. § 371 standard to determine whether USG attorneys "defrauded " President Obama by withholding FBI documents that reveal 2009-2011 serial impeachable violations of federal laws. See the IC Walsh Memo Document 1 posted at the end of http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB365/index.htm

The Robert VIII v DOJ, HHS, and SSA petitioner/Robert II v CIA and DOJ requester of OGIS FBI facilitation services, cites to this 1991 Memorandum for the purpose of highlighting the historical importance of these FBI documents because they reveal whether FBI agents and attorneys have "defrauded" Presidents Reagan and Obama because they intentionally withheld facts from FBI the documents that revealed the serial impeachable violations of § 413 (a) of the Social Security Act, the "exclusivity provision" of the FISA of 1978, the Posse Comitatus Act of 1878 (PCA) limitations on domestic military law enforcement, and the Social Security Act.

IC Walsh's staff explained how 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States, was the criminal statute applied to the alleged violation of civil laws:

> All of the above mentioned statutes and administrative provisions are civil in nature; there is no criminal statute that directly punishes the conduct of a covert action without a Presidential finding, or governs the replying of "covert activities" or "special activities" to Congress. However, our office has taken the position that a charge under 18 U.S.C. § 371 may be premised on a conspiracy, through deceitful and dishonest means, to violate a federal civil law to prevent the government from conducting it's operations and implementing it's policies honestly and faithfully. Accordingly, I will discuss below whether President Reagan, acting in concert with others, violated applicable provisions in a manner that might have become a federal crime through operation of Section 371. Id. 12-13. Emphasis not added.

18 U.S.C. § 371 is the criminal standard that IC Walsh applied to the actions of President Reagan's National Security Council Staff Admiral John Poindexter and Lt. Colonel North. They had been indicted for actions taken on behalf of President Reagan, but without the knowledge of President Reagan. 18 U.S.C. § 371 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. Id. 13. Emphasis Added

IC Walsh's staff concluded that the conspiracy statute did not apply to President Reagan as to providing the Congress with notification of covert activity, because there was no higher Executive Official for President Reagan to deceive:

> With respect to President Reagan, the element of deceit and honesty is wholly lacking with respect to this issue. Simply put, there was no higher Executive official for the President to deceive, and it's implausible that a President could be found criminally liable for impeding the functions of government by failing to inform a subordinate about the existence of a government operation. As will be seen below, there was no criminally-cognizable deception of Congress because the statute governing Congressional notification of covert operations allows on it's face for situations in which Congress will not be informed in advance of such activities, whether conducted by the NSC or anyone else. Id. 16-17. Emphasis Added.

However, IC Walsh's staff also identified the fact that President Reagan's subordinates concealed information from President Reagan regarding the violation of federal laws:

> As will be seen below, in many cases it does not appear that the President knew how far his subordinates went in carrying out his wishes. In other instances the record indicates that these subordinates actively kept information concealed from the President. Id. 54. Emphasis Added.

The November 25, 2011 publication of this heretofore classified 1991 IC Memo is timely because the September 13, 2011 *de novo* FOIA requested July 27, 2010 FBI documents reveal whether FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger were conducting illegal domestic "black operations" at IMC and the NSA and did not inform President Reagan of this fact. These FBI documents are "Past is Prologue" documents because they now reveal whether FBI Director Mueller knows that FBI Director Judge Webster knew in 1985 that the CIA-DIA domestic "black operations" had being conducted at IMC and NSA without informing President Reagan of this fact. See 1-23-12 OGIS NARA WP §§ I-K, O.

Whereas President Reagan was not an attorney, President Obama is a former Constitutional Law Professor. Thus, one of the purposes of the September 13, 2011 *de novo* FBI, DOJ, CIA, NSA, ODNI, OMB, HHS, SSA, and NARA FOIA requests is to secure the release of mosaic of connect-the-dots documents to prove to President Obama the existence of a 1982-2012 daisy-chain of "shadow government" attorney-patriots that has resulted in the 2012 18 U.S.C. § 371 conspiracy to "defraud" President Obama by intentionally withholding "smoking gun" facts that prove the serial impeachable violations of federal laws. This is in order to provide President Obama with a "plausible deniability" defense to the serial impeachable violations of federal laws as did FBI Director Judge Webster and AG Meese provide a "plausible deniability" defense for President Reagan. Hence, the respectful request for OGIS FBI facilitation services.

D. The 1998 Memoir of FBI Assistant Director of Investigations "Buck" Revell and FBI documents reveal whether FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger had conducted "black operations" at IMC and NSA

Prior to deciding whether to accept jurisdiction of this request for NARA FBI facilitation services, OGIS Director Nesbit should read the following excerpts from FBI Assistant Director of Investigations Oliver "Buck' Revell's Memoir A G-Man's Journal, Pocket Books 1998. These are important excerpts because on December 14, 2011 NARA Chief Special Access Officer Martha Murphy released the unredacted FOIA requested # 1 September 3, 1985 "North Notebook" document with the notation "Buck Revell FBI" that had been withheld by the CIA and the FBI pursuant to FOIA Exemptions 1 and 7. That document is a connect-the-dots document to the # 2 "FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report", the # 3 "FBI copy of February 25, 1987 "Perot", and # 4 10/1/85 CIA-DOD FOIA Exemption 1 and 3 and reference to medivac helos" documents. See 1-23-12 OGIS NARA WP §§ I-L.

In June, 1985, FBI Director Webster had appointed FBI Executive Assistant Director of Investigations Revell to Vice President Bush's 1985 Task Force on Terrorism. FBI Executive Assistant Director for Intelligence Revell explained the information-sharing and advice giving functions of VP Bush's Task Force on Terrorism as a Senior Review Group (SRG) member:

> In response to these terrorist campaigns, President Reagan established the Vice President's Task Force on Terrorism in 1985, which was chaired by Vice President Bush. Attorney General Ed Meese and Director Webster were appointed to it, as were Secretary of State George Schultz, Secretary of Defense Caspar Weinberger, CIA Director Bill Casey, and several other cabinet officers. Just below the Task Force members, a group of senior career officials were formed to develop proposals, coordinate interagency efforts, and review working group materials. This group was designated the Senior Review Group (SRG), to which, as the newly appointed Executive Assistant Director for Investigations, I was appointed. Members came together as a team and substantially moved the Task Force forward to make specific and meaningful recommendations to the President. Id. A G-Man's Journal, at 246. Emphasis Added.

Executive Assistant Director for Intelligence Revell explained the President's Task Force on Terrorism coordination with the National Security Council and Lt. Col North. This is a 2012 "Past is Prologue" fact given the content of the three 1985 classified NARA "North Notebook" documents subject of the Robert VIII petitioner's request for OGIS NARA facilitation services and to the December 29, 2009 E.O. 13,526 § 3.3 Automatic Declassification 25 year standard:

> From the SRG of senior officials of key departments, subgroup was formed and permanently placed in the National Security Council apparatus. This was the Operational Sub-Group (OSG). Together were an arm of the National Security Council that reported directly to the National Security Advisor and cabinet officers of the represented agencies. We met weekly at the White House for overall coordination of government

> strategy and operations against terrorism; Lieutenant Colonel Oliver North was the NSC coordinator." Id. 248. Emphasis Added.

Assistant Director of Investigations Revell reported that FBI Director Judge Webster wanted him to improve the coordination between the FBI and the CIA:

> Now, in 1985, there was a renewed impetus to the process. I met with John Mc Mann, Deputy Director of the CIA, Clair George, Deputy Director for Operations, and Bob Gates, Deputy Director for intelligence, and together we had a number of useful discussions. We talked about everything from philosophy of intelligence and to actual operational issues. Id. 250. Emphasis Added.

The 1985-1987 communications from Assistant Director of Investigations Revell and his successor Assistant Director in Charge of Investigative and Intelligence Divisions Floyd Clarke, reveal the facts they provided FBI Director Judge Webster re CIA Director Casey's and DOD Secretary Weinberger's illegal domestic "black operations" conducted at IMC and NSA:

> As an Executive Assistant Director (then the second-ranking position in the Bureau), I would be responsible for all the Bureau's investigative, intelligence, and liaison programs, with oversight of the Criminal Investigative and Intelligence Divisions. Floyd Clarke would replace me as Assistant Director in charge of CID, and Jim Geer would report to me as the Assistant Director in charge of the Intelligence Division." Id. 249.

On December 14, 2011, NARA Chief Special Access Officer Murphy released the September 13, 2011 *de novo* FOIA requested classified # 1 "9/3/85 North-FBI Revell "North Notebook" log entry" document withheld pursuant to FOIA Exemption 1 and 7. This declassified document revealed the name of "CHALOBE" as a CIA source for information provided to the VP's Task Force on Terrorism. This is an important 1985 fact because of Ahmed Chalabi's Iraqi National Congress' relationship with "Curveball" the CIA source who in 2002 had provided false information to 1996-2004 CIA Director George Tenet and President Bush re weapons of mass destruction in Iraq. Upon information and belief, FBI Director Mueller approved the declassification of this September 3, 1985 "North Notebook" document because he determined this CIA source name could not be withheld because of the 25 year declassification standard.

The Robert VIII v DOJ, HHS, and SSA petitioner seeks OGIS FBI facilitation services, because of the "Past is Prologue" significance of the declassification of this September 3, 1985 CIA source. FBI Director Mueller now appreciates the need to double check the accuracy of information from CIA sources that is then provided to President Obama. He knows that if he does not properly vet CIA sources, then FBI Director Mueller could be providing false "Curveball" information to President Obama. See 1-23-12 OGIS NARA WP §§ EE-II.

Hence, the importance of FBI Director Mueller knowing whether FBI Director Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger were conducting illegal domestic "black operation" at IMC. If so, then President Obama should know this 1985 fact.

E. The February 12, 2002 analysis of DOD Secretary Rumsfeld as to "known-known", "known-unknown", and "unknown-unknown" facts as applied to the FBI documents

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should read DOD Secretary Rumsfeld's February 12, 2002 DOD News Briefing at which he made public his historical analysis tool of "known-known", "known-unknown", and "unknown-unknown" facts. This historical analysis tool should be applied to the FBI documents as to FBI Director Judge Webster's "known-known" facts as to the 1985 CIA-DIA "black operation" at IMC and FBI Director Mueller's 2005 FBI Special Counsel Andrew Weissmann's "known-known" facts as to the existence of the pre-9/11 NSA TSP that he knew was revealed in OIPR Baker the "FISC Robert" documents as explained by OIPR Director Baker in his October 1, 2004 "corrected" Robert VII v DOJ Declaration. See § V below.

On February 12, 2002, DOD Secretary Rumsfeld explained his historical analysis tool:

> 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.
> http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=2636

If NARA OGIS Director Nesbit decides to provide FBI facilitation services, then she will be able to apply DOD Secretary Rumsfeld's historical analysis tool to the FOIA requested # "FBI Abshire", # 2 "FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report", and # 3 "FBI copy of February 25, 1987 "Perot" documents, and determine whether FBI Director Judge Webster knew as a 1985 "known-known" fact that CIA Director Casey and DOD Secretary Weinberger were conducting an illegal domestic "black operation" at IMC. "Those who fail to learn from history are doomed to repeat it." George Santayana. See § W below.

In his November 30, 2011 Robert VIII v DOJ, HHS, and SSA petition for a writ of certiorari, the petitioner suggested that the Justices apply DOD Secretary Rumsfeld's historical analysis tool to the FISA "secret law" that AG Holder applied during the Robert VIII Second Circuit appeal. He noted that AG Gonzales had known that Judge Garaufis, the Second Circuit, and the Supreme Court had not known AG Meese's 1985 FISA "secret law" that was being applied during Robert VII v DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007). See Robert VIII Petition Statement of the Case § H.

If NARA OGIS Director Nesbit facilitator accepts jurisdiction of the request for facilitation services for the FOIA requested FBI documents, then DOD Secretary Rumsfeld's historical analysis tool will be helpful in learning what were "known-known" facts to FBI Director Mueller's Special Counsel Weissman in 2005 re the # 7 "FBI Robert VII v DOJ "FISC Robert" documents that OIPR Counsel Baker had reviewed when on March 1, 2004 he affirmed the CIA's use of FOIA Exemption 1 and the "Glomar Response' defense to withhold the documents that reveal whether FBI Director Judge Webster had provided false facts to the FISC when AG Meese sought Robert FISC warrants. See 7-27-10 Robert VIII WP §§ M, N, AAA.

F. The 2005 Memoir of President Reagan's 1986-1987 Special Counselor David Abshire and the FBI FOIA requested # 1 "FBI Abshire" documents

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should read the following excerpts from President Reagan's Special Counselor David Abshire's 2005 Memoir Saving the Reagan Presidency: Trust is the Coin of the Realm, David M. Abshire, Texas A & M University Press 2005. This Memoir provides background to the September 13, 2011 *de novo* FBI FOIA requested # 1 "FBI Abshire" documents. The "FBI Abshire" documents corroborate the Robert VIII v DOJ, HHS, and SSA petitioner/Robert II v CIA and DOJ plaintiff's allegation that FBI Director Judge Webster knew in 1985 that CIA Director Webster and DOD Secretary Weinberger were conducting an illegal domestic "black operation" at IMC in violation of 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the PCA limitations on domestic military law enforcement, and the Social Security Act without the knowledge of President Reagan. See WP § M below.

After AG Meese held the November 25, 1986 Press Conference informing the public of the actions of Lt. Co. North and Admiral John Poindexter, President Reagan appointed Ambassador David Abshire to be his Special Counselor to represent him before the Article II Tower Commission. Ambassador Abshire had been a 1981-1982 Member of the President Reagan's Foreign Intelligence Advisory Board (PFIAB). Special Counselor Abshire, who was not an attorney, retained Judge Charles Bower to be his attorney on behalf of the President. Judge Bower was designated as the 1987 Deputy Special Counsellor to President Reagan.

In his 2005 Memoir, Ambassador Abshire reported on his actions taken when representing President Reagan before the Article II Tower Commission. He reported on his relationship with Judge Bower and FBI Director Judge Webster who had appointed a December 1986 "task force of departmental general counselors" who reviewed over 3000 documents that were not provided to the Tower Commission. This was to prevent the Article II Tower Commission from learning of the CIA's "sources and methods" during the Iran-Contras Affairs.

Ambassador Abshire reported in his Memoir:

> During this period, Judge Bower's task force of departmental general counselors continued to review three thousand relevant documents identified by the FBI for investigations. Each of these documents had to be carefully sorted, and the most sensitive had to be retained for safekeeping in the executive branch, where the committee staffs and others were invited to view them. This was one of the initial problems we had with the Congress – safekeeping. The CIA was very slow in replying to requests related to the contra supply operation because they had difficulty evaluating the documents. As for the Walsh team, we had to work out arrangements to have filing cabinets and space at CIA headquarters in Langley, Virginia. This enabled the Walsh attorneys to see what the agency had blacked out as legally irrelevant but sensitive in terms of revealing sources and methods. Similar arrangements were worked out with the Treasury Department since it also wanted to follow North's money trail. Id. 110-111. Emphasis Added.

On February 6, 1987, Special Counsel Abshire reported to President Reagan that the document screening process used by Judge Brower as to the 3000 documents he had received from the FBI, had resulted in the intelligence agencies' "sources and methods" being protected:

> Mr. President, as I've already told you, three thousand documents have been supplied to the house committee, and eight boxes of documents will go to the senate select committee at 4 p.m. today. This completes our first task. In our preparatory review, the various departments and agencies have cooperated superbly as part of the committee Judge Brower chaired. I am proud to say that our intelligence methods and sources have been protected" –unlike what happened in the Church and Pike Committee investigations of the 1970s. Id. 113. Emphasis Added.

After the Tower Commission issued its February 26, 1987 Report, Special Counselor Abshire made recommendations to President Reagan re the actions taken by CIA Director Casey because CIA "black operations" had bypassed the PFIAB without the Board's knowledge:

> He should call a special meeting of the President's Foreign Intelligence Advisory Board and vehemently proclaim that this board would never be bypassed again as it had been during the Iran-contra matter (something the Tower Board missed.). Id. 115. Emphasis Added.

As of February 26, 1987, Special Counselor Abshire, the PFIAB, and the Tower Commission all "missed" the "Perot" documents that on February 25, 1987 President Reagan provided AG Meese and FBI Director Judge Webster to investigate. "He has laid on me a story of chicanery & corruption in our executive branch including the mil. & CIA." These are the 1987 "Perot" documents subject to this request for OGIS mediation services. See § O below.

The "FBI Abshire" documents are now 2012 "Past is Prologue" documents because they are connect-the-dots document with the NARA 1987 "Perot" and "Peter Keisler Collection" documents that are now subject to President Obama's executive privilege decision. President Obama should know whether in 1985 FBI Director Judge Webster knew that CIA Director Casey and DOD Secretary Weinberger were conducting illegal domestic "black operations" at IMC and the NSA. If so, then President Obama will decide whether the public and Congressional Oversight Committees should know of the existence of the 1980s CIA-DIA-FBI illegal domestic "black operations" that had been conducted with the knowledge of FBI Directors 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-), but without the knowledge of Presidents Reagan, Bush, Clinton, Bush, and Obama.

Hence, the importance of President Reagan's Special Counselor David Abshire's 2005 Memoir and the "FBI Abshire" documents. They are especially important if FBI Director Mueller's 2005 Special Counsel Andrew Weissmann knew that FBI Director Mueller did not know that FBI Director Judge Webster had known in 1985 that CIA Director Casey and DOD Secretary Weinberger had conducted illegal domestic "black operation" at IMC and the NSA If not, then he knew an FBI "stovepipe" bypassed FBI Director Mueller. See §§ N, V, W below.

G. The 2007 President Reagan's Diary's February 24 and 25, 1987 entries and the May 26, 1987 knowledge of FBI Director Judge Webster and CIA Director Judge Webster

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should read the 2007 President Reagan's Diary's February 24 and 25, 1987 entries that discuss the "Perot" documents that the President had presented to AG Meese and FBI Director Judge Webster. In 2007, Professor Douglas Brinkley published the Reagan Diaries, Brinkley, HarperCollins, 2007, and revealed facts not revealed in the Tower Commission Report, Senate-House Iran/Contra Report, or Independent Counsel (IC) Lawrence Walsh's Final Iran Contra Report. The "Perot" documents establish the May 26, 1987 *mens rea* of FBI Direct Judge Webster the day he became CIA Director Judge Webster. FBI Director Mueller should know the content of these "Perot" documents because they are now subject to President Obama's January 21, 2009 Executive Order 13489, Presidential Records, appeals procedure and his 2012 executive privilege decision. See 1-23-12 OGIS NARA WP §§ M, N.

On February 24, 1987, President Reagan made an entry re a meeting with Mr. H. Ross Perot re his allegations of "chicanery & corruption" at DOD and the CIA:

> Then upstairs for an hour with Ross Perot. He has laid on me a story of chicanery & corruption in our executive branch including the mil. & CIA. It's a shocker & and has me asking where do I start. Of course all he told me was based on circumstantial evidence. Id. 477. Emphasis Added.

On February 25, 1987, President Reagan made a log entry that he would provide these "Perot" documents to AG Meese and FBI Director Judge Webster:

> Well this A.M. I had talked to Ed M. Im going to turn this over to him & and our Dir. of the FBI. First however I'm going to give it all a good going over –the material Ross left with me. Id. 478. Emphasis Added.

Upon information and belief, the "Perot" documents that were reviewed by AG Meese and FBI Director Judge Webster, revealed that CIA Director Casey and DOD Secretary Weinberger had established a classified CIA-DIA off-the-shelf health care delivery system at the Florida HMO International Medical Center, Inc (IMC). Upon information and belief, the CIA-DIA "black operation" at IMC was funded with unaudited HHS funds that were used to pay for medical supplies and treatment of the Contras in violation of the Boland Amendments, § 413(a) National Security Act of 1947, and the Social Security Act. CIA Director Casey and DOD Secretary Weinberger conducted this illegal domestic "black operation" at IMC without the knowledge of President Reagan, but with the derivative knowledge of WH Counsels Fred Fielding (1981-1986), Peter Wallison (1986-1987), and Arthur Culvahouse (1987-1989). See the "Peter Keisler Collection" documents as discussed in 1-23-12 OGIS NARA WP §§ N, EE.

On September 28, 2007, the Robert VIII v DOJ, HHS, and SSA plaintiff filed his request for the 1987 "Perot" documents with the President Ronald Reagan Library Archivist Shelly Jacobs Williams. This FOIA request was denied because a representative of the Estate of President Reagan asserted executive privilege. The Robert appeal of that decision is pending.

On January 21, 2009, President Obama issued E.O.13489 Presidential Records and rescinded President Bush's November 1, 2001 E.O. 13233 governing the assertion of executive privilege by deceased Presidents' Estates asserting executive privilege. Pursuant to President Obama's E.O. 13489 § 3, the final decision as to the use of executive privilege by deceased and living former-Presidents' to withhold classified documents, is to be made by the incumbent President. Sec. 3 (c) Claim of Executive Privilege by Incumbent President provides:

> (c) If either the Attorney General or the Counsel to the President believes that the circumstances justify invocation of executive privilege, the issue shall be presented to the President by the Counsel to the President and the Attorney General. Emphasis Added.
> http://www.whitehouse.gov/the-press-office/presidential-records

Upon information and belief, AG Holder and WH Counsel Kathyrn Ruemmler have made the decision to ratify the execute privilege decision of the Estate of President Reagan. WH Counsel Ruemmler was the 2000 to 2001 Associate Counsel for President Bill Clinton, the 2009 Principal Associate of DAG for AG Holder, and the 2010 Associate WH Counsel to President Obama. Upon information and belief, they both reviewed the NARA 1987 "Perot" documents before rendering their executive privilege decisions on behalf of President Obama.

If AG Holder and WH Counsel Ruemmler ratified the executive privilege decision, then they have presented their decision to President Obama for his executive privilege decision. If so, then they had a duty not to "defraud" President Obama not only re the content of the "Perot" documents, but also the content of the "FBI Abshire" documents that reveal whether FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger had conducted an illegal domestic "black operation" at IMC in serial impeachable violation of § 413 of the National Security Act and the Social Security Act. See § C above and § M below.

President Ronald Reagan Library Archivist Shelly Jacobs Williams also used executive privilege to withhold the FOIA requested "Peter Keisler Collection" documents. Upon information and belief, AG Holder and WH Counsel Ruemmler have also reviewed those documents and ratified the use of executive privilege by a representation of the Estate of President Reagan. If so, then they had a duty not to "defraud" President Obama re the content of the connect-the-dots "Peter Keisler Collection" documents that reveal whether WH Counsels Fred Fielding (1981-1986), Peter Wallison (1986-1987), and Arthur Culvahouse (1987-1989), had withheld facts from President Reagan to provide President Reagan with a "plausible deniability " defense. They knew the CIA-DIA-FBI domestic "black operations" at IMC and NSA were serial impeachable violations of the § 413 of the National Security Act, Social Security Act, the "exclusivity provision" of the FISA, and the Posse Comitatus Act (PCA) limitations on domestic military law enforcement. See 1-23-12 OGIS NARA WP §§ C-H.

President Obama has a duty to make 2012 "Past is Prologue" decisions re the "Perot" and "Peter Keisler Collection" documents. Hence, the importance of the September 13, 2011 *de novo* FBI FOIA request # 1 "FBI Abshire" and # 3 "FBI copy of February 25, 1987 'Perot' documents." These documents reveal whether FBI Director Mueller knows that FBI Director Judge Webster knew in 1985 that a CIA-DIA "black operation" was being conducted at IMC.

H. The April 30, 2008 testimony of former-ISSO Director Leonard that the AG's "secret law" is a threat to accountable government because there are no Article I, II, or III checks and balances to the President's Article II national security "secret law" authority

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should read former-NARA Information Security Oversight Office (ISSO) Director Leonard's April 30, 2008 testimony to the Senate Judiciary Committee Secret Law and the Threat to Democratic and Accountable Government. In that testimony, he highlighted the fact that there were no reasonable checks and balances to the overclassification of documents that is intended to prevent the Congress and the Courts from learning the "secret law" that the Executive Branch was implementing and changing at an Alice-in-Wonderland whim:

Former-NARA ISSO Director Leonard framed the "secret law" issue:

> The ability of President's authority to act unilaterally are defined by the willingness and ability of the Congress and the courts to constrain it. Of course, before the Congress or the courts can act to constrain Presidential claims to inherent unilateral powers, they must first be aware of those claims. Yet, a long recognized power of the President is to classify and thus restrict the dissemination of information in there interest of national security. The combination of these two powers of the President-that is, when the President lays claim to inherent powers to act unilaterally, but does so in secret—can equate to the very open-ended, non-circumscribed, executive authority that the Constitution's framers sought to avoid in constructing a system of checks and balances. Added to this is the reality that the President is not irrevocably bound by his own Executive orders, and this administration claims that President can depart from the terms of an Executive Order without public notice. Thus, at least in theory, the President could authorize the classification of the OLC memo, even though to do so would violate the standards of his own Executive Order. Equally possible, the president could change his Executive Order governing secrecy, and do so in secret, all unbeknownst to the Congress and the courts. It is as if Lewis Carroll, George Orwell, and Franz Kafka jointly conspired to come up with the ultimate recipe for unchecked executive power. Id. 8. Emphasis Added. http://www.fas.org/sgp/congress/2008/law.html

Former-NARA ISSO Director Leonard's Carroll-Orwell-Kafka analysis merits repeating to OGIS Director Nesbit as she decides whether to accept OGIS FBI facilitation services jurisdiction. "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. Emphasis Added.

OGIS Director Nesbit will learn whether former-ISSO Director Leonard's April 20, 2008 testimony was accurate if she processes this request for FBI facilitation services and is confronted with the Carroll-Orwell-Kafka logic of 2012 "Unitary Executive" zealots. If OGIS Director Nesbit is informed that she does not have the authority to read the FOIA requested FBI documents, then she will know that former-ISOO Director Leonard got it exactly right.

I. The September 14, 2008 Washington Post excerpt from former-AAG of the OLC Goldsmith's Memoir, The Terror Presidency, as to the OLC decision making process

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should read the Washington Post excerpt of former-AAG of the OLC Goldsmith's Memoir, The Terror Presidency, W.W. Norton & Company, 2007, as to the OLC decision making process. He explained how the "geniuses" of the compartmentalized decision making process made the "Unitary Executive" decisions. The Robert VIII v DOJ, HHS, and SSA petitioner/Robert II v CIA and DOJ plaintiff requester of facilitations services, asserts that this is the USG decision making process that triggered former-ISOO Director Leonard's Carroll-Orwell-Kafka characterization. See Robert VIII Petition Statement of the Case § H.

As recounted in the September 14, 2008 Washington Post excerpt:

> 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.

One of the reasons for the request for the OGIS FBI facilitation services is to provide NARA OGIS Director Nesbit, the 1982-1994 DOJ Deputy Director of the Office Information and Privacy and the 1994-1999 NARA Special Counsel for Information Policy, an opportunity to consider simultaneously the facilitation requests for the FBI, DOJ, NARA, ODNI, and DOD facilitation services in order to learn the names of the 2009-2012 "geniuses" who have been making the "Unitary Executive" decisions that from 2001-2008 had been made by VP Richard Cheney and his Chief of Staff Counsel David Addington. Upon information and belief, NARA OGIS Director Nesbit will learn that the 2009-2012 "geniuses" have been the 2009-2012 daisy-chain of "shadow government" attorney-patriots whose 2009-2012 *faux* "Commander in Chief" has not been President Obama. See Robert VIII Petition Statement of the Case § A, § H above.

Needless to say, when President Obama makes his 2012 executive privilege decision re the NARA 1987 "Perot" and "Peter Keisler Collection" documents, AG Eric Holder and WH Counsel Kathyrn Ruemmler should provide President Obama with the names of the "geniuses" who have made the "Unitary Executive" decisions on behalf of President Reagan. They should also provide President Obama with a "heads up" memo as to the content of the FOIA requested FBI documents because the 1985 facts known to FBI Director Judge Webster that were not known by President Reagan, are now "Past is Prologue" facts that are known to FBI General Counsel Weissmann, but, which may not be known by FBI Director Mueller. See §§ V,W below.

Needless to say, President Obama should know the names of the USG attorneys who are making "Unitary Executive" decisions on behalf of FBI Director Mueller, CIA Director Petraeus, and DOD Secretary Panetta without the knowledge of FBI Director Mueller, CIA Director Petraeus, and DOD Secretary Panetta. Hence, the importance of the NARA OGIS Director Nesbit determining that she has jurisdiction to provide FBI facilitation services. See § Y below.

J. The November 14, 2008 interpretation of AG Mukasey of the OLC Reporting Act of 2008 and the "secret law" that AG Holder and FBI Director Mueller are enforcing in 2012

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should read AG Mukasey's November 14, 2008 Memo to the Senate Majority Leader the "Constitutionality of the OLC Reporting Act of 2008" that explains AG Mukasey's reasons why the President has Article II authority to keep OLC legal opinions as "secret law" so as not to be known by Article I Congressional Oversight Committees. The Robert VIII v DOJ, HHS, and SSA petitioner asserts that AG Mukasey's November 14, 2008 OLC Memo is an excellent example of former-ISSO Director Leonard's April 30, 2008 Carroll-Orwell-Kafka "secret law" warning as evidenced by the fact that AG Gonzales' FISA "secret law" was not known to the Supreme Court in Robert VII v DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007). See the 11-30-11 Robert VIII Petition Statement of the Case §§ A, B, H and the 1-23-12 OGIS NARA WP §§ T-W.

On November 14, 2008, after the Presidential election, AG Mukasey sent his Memo to the Majority Leader of the Senate explaining AG Mukasey's opinion that the proposed statute that would amend and toughen the 2002 28 U.S.C. § 530D duty of the AG to report OLC "nonacquiescence" decisions to Congress, was unconstitutional:

> Section 2 of the bill would amend 28 U.S.C. § 530D(a)(1) to require the Attorney General to submit to Congress, within 30 days of issuing legal advice covered by the provision, a report of any instance in which the Department of Justice issues an "authoritative legal interpretation" of "any Federal statute," even if the legal construction had not risen, and may never rise, to the level of an Executive policy not to enforce the statute in question and simply construes the statute using settled interpretative rules that courts routinely employ. Section 2 would then amend 28 U.S.C. § 530D(a)(2) to mandate that any report containing "classified information" related to "intelligence activities" shall be deemed submitted to the House and Senate judiciary committees as well as the intelligence committees, and that any report containing "classified information about covert actions" shall be deemed properly submitted only if it is submitted to the foregoing committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate. Id. 1. Emphasis Added. http://www.justice.gov/olc/2008/olc-reporting-act.pdf

AG Mukasey explained why this would be an "unconstitutional" amendment:

> First it infringes upon the President's settled constitutional authority over classified information by purporting to prescribe the content, timing, and recipients of any classified disclosures the Executive Branch chooses to make in connection with section 530D reports. Id. 1-2. …
>
> Second, and more broadly, the bill's disclosure requirements are unconstitutional because they would require reporting to Congress about

> confidential legal advice that is subject to the constitutional doctrine of executive privilege while narrowing section 530's current exemption for privileged information from reports. Currently, 28 U.S.C. § 530D requires the Attorney General to report Department legal positions outside the litigation context only where the Department "establishes or implements a formal or informal policy" either (1) to refrain from enforcing a statutory or other legal position "on the grounds that such provision is unconstitutional" or (2) to refrain from complying with a binding judicial decision interpreting the Constitution or any other law that is enforced by the Department. 28 U.S.C. § 530D(a)(1)(A)(i)(ii). The bill would substantially expand the foregoing reporting obligations by requiring the Attorney General to report on legal advice on statutory construction that does not, and may never, result in a "formal or informal policy to refrain from enforcing" a federal statue on constitutional or other grounds. Much of the legal advice the Department provides the President and Executive Branch agencies about how to interpret and comply with federal statutes might fall within one of the sub-provisions the bill would add to section 530D(a)(1). Id. 2. Emphasis Added.

AG Mukasey explained that the amendment would require the disclosure of OLC opinions that were protected by executive privilege that extends to the attorney-client privilege:

> Thus, we believe that the bill would contemplate reporting on many Office of Legal Counsel ("OLC") opinions. OLC opinions belong to a category of Executive Branch documents protected by executive privilege. They fall within the scope of the deliberative process, attorney-client, and to the extent that they are generated or used to assist in presidential decisionmaking, presidential communications components of executive privilege. Id. 3. Emphasis added.

Subsequently, AG Mukasey publicly noted that the DOD Secretary and the CIA Director would have to approve any release of a classified OLC "nonacquiescence" decision because these "nonacquiescence" decisions based on DOD and CIA requests. "But Mukasey said yesterday that the legal opinions are drafted at the request of other federal entities, such as the Defense Department and the CIA, which have a say in how and when they are released. Some of the materials also are highly classified, which adds a layer of complexity. "Mukasey Says Obama May Have to Wait for Some Legal Opinions, Johnson, Washington Post, 12-4-08.

Hence, the importance of the September 13, 2011 *de novo* FOIA FBI requested # 7 "FBI Robert VII v DOJ "FISC Robert" documents" that reveal whether FBI Director Judge Webster implemented AG Meese's FISA "secret law" that included his Mitchell v Forsyth, 472 U.S. 511 (1985), "nonacquiescence" policy. This is the lurking Marbury v Madison issue presented in the Robert VIII v DOJ, HHS, and SSA petition for a writ of certiorari because AG Holder "cannot locate" the Barrett v. United States, 798 F. 2d 565 (2d Cir. 1986) "nonacquiescence" policy document because he did not contact AG Holder's AAG of the OLC Virginia Seitz. See 11-30-11 Robert VIII Petition Statement of the Case § E and Issue I and §§ V, W below.

K. The March 30, 2011 Ninth Circuit Islamic v Shura FBI credibility standard as applied to former-FBI General Counsel Caproni's knowledge of the "known-known" facts contained in the September 13, 2011 *de novo* 7-27-10 FBI FOIA requested documents

Prior to deciding whether to accept jurisdiction of this request for NARA FBI facilitation services, OGIS Director Nesbit should read Islamic Shura Council v. FBI, 635 F. 3d 1160 (9th Cir. 2011), and apply the "deception perverts justice" standard to the fact that former-FBI General Counsel Valerie Caproni had instructed FBI Chief FOIA Officer Hardy not to decide the September 13, 2011 *de novo* 7-27-10 FBI FOIA requested documents. If FBI facilitation services were provided, then NARA OGIS Director Nesbit could determine from FBI Chief FOIA Officer Hardy's case file notes whether FBI Director Mueller's August, 2003-October 2011 FBI General Counsel Caproni knew as "known-known" facts, that USG attorneys had implemented the "Barrett nonacquiescence policy" in Robert v National Archives, 1 Fed. Appx. 85 (2d Cir. 2001), Robert v DOJ, 2001 WL 34077473 (EDNY), 26 Fed. Appx. 87 (2d Cir. 2002), Robert II v CIA and DOJ, Robert III v DOJ, 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. See 11-30-11 Robert VIII Petition Statement of the Case § E, and §§ M-R below.

On March 30, 2011, the Ninth Circuit in Islamic Shura v FBI determined that the FBI had provided false facts to the District Judge when explaining denial of a FBI FOIA request:

> The withholding mislead the court into believing the government had complied with all statutory obligations under the FOIA. It was not until the court convened ex parte, *in camera* proceedings that it learned of the existence of additional documents which were responsive to the plaintiffs; FOIA requests. Id. 1161. Emphasis Added.

The Court discussed the use of the "Glomar Response" defense when the USG informs the FOIA plaintiff and the Article III Judge that it has produced all "responsive" documents:

> Therefore, if the government believes that submitting a detailed affidavit would compromise the information it is seeking to protect, then it must seek an *in camera* review. It cannot, however, represent to the district court that it has produced all responsive documents when in fact it has not. Id. 1166. Emphasis Added.

On April 27, 2011, the District Court issued its remanded decision. Judge Carney ordered FBI sanctions because FBI Chief FOIA Officer Hardy had knowingly misled the Court in the FBI's representations of its response to the FBI FOIA requests:

> The United States Constitution entrusts the Judiciary with the power to determine compliance with the law. It is impossible for the Court to determine compliance with the law and to protect the public from Government misconduct if the Government misleads the Court. Id. slip op. 3. http://www.mainjustice.com/files/2011/04/Cormac-Carney-Order.pdf.

District Judge Cormac Carney explained how the AG's decision to withhold classified documents from the Judges resulted in the need for a "deception perverts justice" standard:

> The Government argues that there are times when the interests of the national security require the Government to mislead the Court. The Court strongly disagrees. The Government's duty of honesty to the Court an never be excused, no matter what the circumstance. The Court is charged with the humbling task of defending the Constitution and ensuring that the Government does not falsely accuse people, needlessly invade their privacy or wrongfully deprive them of their liberty. The Court simply cannot perform this important task if the Government lies to it. Deception perverts justice. Truth always promotes it. Id. slip op. 17. Emphasis added.

The Robert VIII petitioner/NARA OGIS requester has placed OGIS Director Nesbit on Notice of the Islamic Shura decision and the "deception perverts justice" standard because it goes to the heart of his argument that AG Holder and SG Verrelli have committed déjà vu Supreme Court "fraud upon the court" in Robert VIII v DOJ, HHS, and SSA as occurred when AG Gonzales and SG Clement had withheld material facts from Supreme Court in Robert VII v DOJ. FBI General Counsel Weissmann knows whether the September 13, 2011 FOIA requested # 7 "FBI Robert VII v DOJ "FISC Robert" and # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" prove that AG Gonzales had committed a "fraud upon the court" in his March 3, 2006 Second Circuit letter-Brief filed in response to the Second Circuit's teed up FISA standing question whether Robert was an "aggrieved person" by application of the FISA 50 U.S.C. § 1806 (f) standard. See http://www.snowflake5391.net/RobertvDOJbrief.pdf.

OGIS Director Nisbet is placed on Notice that Robert VIII petitioner seeks the release of the September 13, 2011 *de novo* FBI FOIA requested # 5 "FBI unredacted copy of Robert v DOJ "62-0 file" documents and # 6 "FBI Robert III v DOJ "Recarey extradition" documents to prove to President Obama whether FBI Director Webster's successors, FBI Directors John Otto (1987), William Sessions (1987-1993), (Acting) Floyd Clarke (1993), Louis Freeh (1993-2001), (Acting) Thomas Pickard (2001), and Robert Mueller (2001-) all knew that CIA Director Casey conducted illegal domestic "black operations" at IMC and NSA which were not reported to Congress. President Obama needs these facts to file his § 413 (b) "corrective action" plan.

Because FBI General Counsel Weissmann was FBI Director Mueller's 2005 Special Counsel when AG Gonzales filed his 2005 Motion with Judge Garaufis seeking the Robert injunction to prohibit Robert from filing a FOIA request, he has an affirmative duty to inform FBI Director Mueller, his client, the content of the FOIA requested # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" documents in order that FBI Director Mueller can make his own assessment of the credibility of former- FBI General Counsel Caproni and FBI General Counsel Weissmann. If FBI Director Mueller applies the Islamic Shura "deception perverts justice" he will know not only whether AG Gonzales in 2005 had deceived Judge Garaufis in Robert VII v DOJ, but whether his own 2001-2012 FBI General Counsels Larry Parkinson (1997- 2002), Kenneth Wainstein (2002-2003), Caproni (2003-2011), and Weissmann have "defrauded" FBI Director Mueller by application of IC Walsh's interpretation of 18 U.S.C. § 371, by withholding the FBI facts of the illegal targeting of Robert. See § C above.

L. Tim Weiner's 2012 Enemies: The History of the FBI and the FBI documents that reveal whether FBI Director Mueller knows that AG Holder is implementing AG Meese's FISA "secret law" that is not known to the Supreme Court or to President Obama

Prior to deciding whether to accept jurisdiction of this request for NARA FBI facilitation services, OGIS Director Nesbit should read the following excerpts from Tim Weiner's 2012 Enemies: A History of the FBI. Random House 2012. The Robert VIII v DOJ, HHS, and SSA petitioner/Robert II v CIA and DOJ plaintiff asserts that these excerpts reveal that FBI General Counsel Weissman, FBI Director Mueller's 2005 Special Counsel, may know from reading the September 13, 2011 *de novo* FOIA FBI requested # 7 "FBI Robert VII v DOJ "FISC Robert" documents" that at this late date FBI Director Mueller does not know that AG Holder is implementing AG Meese's 1985 FISA "secret law" that is not known to the Supreme Court or to President Obama. See the 11-30-11 Robert VIII Petition Statement of the Case §§ A, B, H, and Issues III and IV, http://snowflake5391.net/Robert8vDOJpetition1.pdf. and §§ V, W below.

Tim Weiner prefaced his book with a 1787 Alexander Hamilton quote:

> Safety from external danger is the most powerful director of national conduct. Even, the ardent love of liberty will, after a time, give way to its dictates. The violent destruction of life and property incident to war, the continual effort and alarm attendant on a state of continual danger, will compel nations the most attracted to liberty to resort for repose and security in institutions which have a tendency to destroy their civil and political rights. To be more safe, they at length become willing to run the risk of being less free. Emphasis Added.

The excerpts below reveal that FBI attorneys had intentionally withheld facts from FBI Director Mueller. This resulted in an FBI "stovepipe" that was administered by FBI attorneys whose "client" was not FBI Director Mueller. As a result, from 2009-2011 these FBI attorneys have known that the decisions to data mine the 1984-2011 NSA TSP data banks were made by a *faux* "Commander in Chief" who was not President Obama. See § Y below.

Tim Weiner reported that the respected FBI Agent Catherine Kizer was the FBI liaison with the NSA prior to 9/11. As a result, she knew whether FBI Director Mueller knew that the FBI Directors had received information from the pre-9/11 NSA TSP that FBI Director Judge Webster knew had been established by CIA Director Casey and DOD Secretary Weinberger and was not reported to the "Gang of Eight" in violation of § 413 (a) of the National Security Act:

> She was among the first FBI agents stationed at the new National Counterintelligence center at the CIA in 1996. Over the next four years, she led scores of seminars about spying; she was in high demand at the FBI's training Academy, where she schooled new agents on the laws governing counterintelligence and counterterrorism.
>
> Kizer was the sole FBI liaison agent stationed at the National Security Agency from 1999-2002. The NSA's headquarters in Fort Meade

> Maryland, was the center of America's electronic-eavesdropping and data-mining powers, tapping into the world's telephones and computers, circling the earth with spy satellites, and monitoring secret portals at telecommunication companies. Kiser knew the rules when agents wanted national security warrants from the FISA court to spy on foreign enemies. She served as a human switchboard, one of the only people in America who could connect FBI agents with Fort Meade. On her desk sat an array of computers, including her kludge of an FBI lap top. A frail connection to headquarters, and telephones that never seemed to stoop ringing. Id. e-book location 8035. Emphasis Added.

Tim Weiner reported how in October, 2001, after the implementation of the Patriot Act and President Bush's secret FBI Stellar Wind project, NSA Director General Hayden had opened up the NSA data bank "spigot" for FBI Director Mueller to use NSA TSP data:

> But the Patriot Act was not enough for the White House. On October 4, Bush commanded the National Security Agency to work with the FBI in a secret program code named Stellar Wind.
>
> The program was ingenious. In time, Mueller would decide that it was also illegal.
>
> The Director of the National Security Agency, General Michael V. Hayden, had told tens of thousands of his officers in a video message" "We are going to keep America free by making Americans feel safe again. Immediately, after September 11, attacks, Hayden said, he had 'turned on the spigot of NSA reporting to FBI in, frankly, and unprecedented way." He and his chief of signals intelligence, Maureen Baginski, had been sending the FBI a torrent of raw data—names, telephones, and e-mail address mined from millions of communications entering and leaving America. …
>
> The president and the vice president wanted the FBI to execute searches in secret, avoiding the strictures of the legal and constitutional standards set by the Foreign Intelligence Surveillance Court. The answer was Stellar Wind. The NSA would eavesdrop freely against Americans and aliens in the United State without probable cause or search warrants. It would mine and assay the electronic records of millions of telephone conversations-both callers and receivers-and the subject lines of e-mails, including names and internet addresses. Then it would send the refined intelligence to the Bureau for action. Id. e-book 8178. Emphasis Added.

The fact that NSA Director General Hayden opened up the NSA "spigot" from the NSA TSP data banks to the FBI after 9/11, is an important FBI time line fact. This "smoking gun" fact proves false any assertion by USG officials or attorneys that the NSA TSP began after 9/11, and not before. This is a fact of the FISA "secret law" that AG Holder intentionally withheld in Robert VIII v DOJ, HHS, and SSA. See 11-30-11 Robert VIII Petition Statement of Case § H.

Tim Weiner reported on the existence of an FBI "stovepipe" that bypassed FBI Director Mueller regarding the enhanced interrogations at Guantanamo that were observed by FBI agents:

> No one got the information to Mueller.
>
> The FBI agents at Guantanamo continued to report what their counterparts were doing The gist of their reports went from lawyers to the FBI to the highest levels of the Justice Department. But Mueller's closest aides shielded him from an increasing fierce battle-"ongoing, longstanding, trench warfare," in the words of Ashcroft's chief of staff-at Justice, the CIA, the Pentagon, and the White House. The argument over interrogation, intelligence, torture, and the law went on for more than a year. Id. e-book 8295. Emphasis Added.

This is an important 2002 FBI time line fact because the same FBI "stovepipe" that bypassed FBI Director Mueller regarding the CIA enhanced interrogations, also bypassed FBI Director Mueller as to AG Ashcroft's 2002 implementation of the 1985 FISA "secret law" of AG Meese that had not been reported to the "Gang of Eight" as required by § 413 (a) of the National Security Act. This is a 2012 Past is Prologue fact because FBI General Counsel Weissmann knows that AG Holder is implementing in 2012 the 1985 FISA "secret law" of AG Meese without the knowledge of the Supreme Court. He knows whether the FISA "secret law" is being implemented without the knowledge of FBI Director Mueller and President Obama.

Tim Weiner reported that on May 1, 2003 that FBI Director Mueller established the FBI Office of Intelligence and made NSA Director Hayden's former Chief of Signals Intelligence Maureen Baginski the Director of the FBI's participation in the Stellar Wind program:

> Mueller created an Officer of Intelligence at the FBI out of thin air and hired the chief of signals intelligence at the National Security Agency as its director. She was the most powerful woman in the American intelligence community. Almost no one at the FBI had ever heard of her.
>
> Maureen Baginski was a career NSA office who had started out as a Russian analyst and risen to command authority. At the turn of the century, when the NSA found itself unable to keep pace with the explosion of encrypted information on the Internet, and the agency's supercomputers sputtered and crashed, General Hayden had put Baginski in charge of fixing things. Her SIGNIT directorate was the biggest single component of the United States espionage establishment; she commanded a budget that rivaled the FBI's $4 billion and a workforce bigger than the FBI nearly eleven thousand agents. She also had run Stellar Wind since its inception.
>
> Mueller made her his right hand. She would be by his side at every crucial meeting. He gave her an office down the hall form his and told her to go to work. Id. e-book 8339. Emphasis Added.

This is an important FBI time line fact because on May 1, 2003 FBI Office of Intelligence Director Baginski knew the 'known-known" fact of the off-OMB Budget funding source for the "immaculate construction" and maintenance of the 1984-2003 NSA TSP data banks that were not funded with OMB classified OMB Budget funds. She knew there had been no § 413 (a) Notification of the "Gang of Eight" of the existence of NSA TSP domestic surveillance program. Upon information and belief, this was also a "known-known" fact to FBI General Counsel Kenneth Wainstein (2002-2003). However, upon information and belief, this was an "unknown-unknown" fact to FBI Director Mueller. See § E above §§ S, T below.

Tim Weiner reported on FBI Director Mueller's February, 2004 dilemma when he made his report to the Senate Intelligence Committee in closed session:

> The task of "neutralizing al Quaeda operatives that have already entered the U.S. and have established themselves in American society is one of the most serious intelligence and law enforcement challenges," Mueller told a closed-door meeting of the Senate Select Committee on Intelligence on February, 2004. Now the director faced a task as daunting. He had to defy the president and the vice president of the United States and confront them in a showdown over secrecy and democracy, and challenge them in the name of the law.
>
> At least three separate global eavesdropping programs had been mining and assaying electronic ether under the rubric of Stellar Wind. At least two of them violated the Constitution's protections against warrantless searches and seizures. Id. Chapter "If We Don't Do This, People Will Die" e-book 8411. Emphasis Added.

The February, 2004 closed session with the Senate Intelligence Committee is an important time line fact because FBI Director Mueller did not inform the Senators of the existence of the either the *pre*-9/11 or the *post*-9/11 NSA domestic surveillance program. This is a "smoking gun" fact because WH Counsel Gonzales knew of the violation of § 413 (a) of the National Security Act, but it was not until December 22, 1985 that AG Gonzales provided § 413 (a) Notification to the "Gang of Eight" the retroactive Notification for the *pos*t-9/11 2001-2005 NSA TSP, but not for the pre-9/11 NSA TSP. See 11-30-11 Robert VIII Petition pp. 6-7.

Tim Weiner reported that FBI Director Mueller knew there was a 2004 statutory ticking time bomb because he had his own doubts about the legality of the NSA domestic surveillance program that AG Ashcroft had not reported to the "Gang of Eight" pursuant to his 413 (a) duty:

> Stellar Wind had to be reauthorized by the signatures of President Bush and Attorney General Ashcroft every forty-five days. They acted on the basis of reports from CIA intelligence officers called them "the scary memos"—justifying the continued surveillance. The number of people who knew the facts were exceedingly small, but it was growing. A handful of Justice Department lawyers and intelligence court judges thought the programs were unconstitutional and their power had to be controlled. They convinced

> James Comey, the newly appointed number-two man at the Justice Department. And Comey soon won a convert in Robert Mueller.
>
> On March 4, Mueller and Comey agreed that the FBI could not continue to go along with the surveillance programs. The scope of the searches had to be altered to protect the rights of Americans. They thought Attorney General Ashcroft could not re-endorse Stellar Wind as it stood. Comey made his case to his boss in an hour-long argument at the Justice Department that day, and Ashcroft concurred. Id. e-book 8422. Emphasis Added.

The March 4, 2004 date has time line significance because on March 1, 2004 OIPR Counsel Baker had made his decision to affirm the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense to withhold the "Robert FISC" documents. Those documents revealed whether FBI Director Judge Webster had provide false facts to the FISC re FBI evidence that Robert was a terrorist or agent of a foreign power. As a result, FBI General Counsel Wainstein knew as a "known-known" fact that CIA General Counsels Scott Muller (2002-2004) and (Acting) John Rizzo (2004-2009) were implementing the "Barrett nonacquiescence policy" and withholding material facts re the CIA-DIA-FBI "black operation" at NSA from Judge Gershon in Robert III v DOJ and from Judge Seybert in Robert II v CIA and DOJ. See 7-27-10 Robert VIII WP §§ M, N, and 11-30-11 Robert VIII Petition pp. 3-19.

Tim Weiner reported FBI Director Mueller's March 9, 2004 White House confrontation with VP Cheney with the "known-known" knowledge that the Stellar Wind program had not been reported to the "Gang of Eight" as required by § 413 (a) of the National Security Act:

> The FBI Director met Vice President Cheney at the White House at noon on March 9. They stared at one another across the table in the corner office of the president's chief of staff, Andrew Card. Cheney was adamant: no one had the right to challenge the president's power. The spying would continue at his command. It would go on with or without the Justice Department's approval. Id. e-book 8436. Emphasis Added.

Tim Weiner reported FBI Director Mueller's "known-known" knowledge on March 10, 2004 when WH Counsel Gonzales had the infamous confrontation with AG Ashcroft and DAG Comey in AG Ashcroft's hospital room regarding AG Ashcroft signing off on the Stellar Wind program. He reported that on March 12, 2011 FBI Director Mueller intended to resign:

> The president signed the authorization alone in the White House on the morning of March 11. It explicitly asserted that his powers as commander in chief overrode all other laws of the land. Mueller met with White House chief of staff Card at noon. His notes say that he told Card that the "the WH was trying to do an end run" around the law.
>
> Mueller drafted a letter of resignation by hand at 1:30 A.M. on March 12, 2004. "In the absence of clarification of the legality of the program on the Attorney General," he wrote, "I am forced to withdraw the FBI from

> participation in the program. Further, should the President order the continuation of the FBI's participation in the program, and in the absence of further legal advice from the AG, I would be constrained to resign as Director of the FBI. Id. e-book 8451.

The March 12, 2004 draft resignation letter has time line significance because it reveals that FBI Director Mueller would resign rather than implement an NSA TSP that he believed was contrary to the FISA. President Obama asked FBI Director Mueller to remain past his 10 year statutory term. The Congress approved a two year extension. As a result, FBI General Counsel Weissmann knows that in 2012 FBI Director Mueller would resign rather than knowingly participating in an NSA TSP that violated the FISA or the Constitution. See § V, W below.

Tim Weiner reported that on March 13, 2004 in the Oval Office FBI Director Mueller informed President Bush of his belief that the warrantless surveillance was illegal:

> After the meeting, the president stood alone with Mueller in the Oval Office. Bush now realized that the FBI director, the attorney general, and the deputy were in rebellion. Mueller told Bush face-to-face that he would resign if the FBI was ordered to continue warrantless searches on Americans without an order from the Department of Justice. Mueller said he had an "independent obligation to the FBI and to DOJ to assure the legality of actions we undertook," according to his recent declassified notes on the meeting. "A presidential order alone could not do that."
>
> Both man had sworn upon taking office to faithfully execute the laws of the United States. Only one still held to his oath.
>
> The president pleaded ignorance of the law and the facts. He said he hadn't known Ashcroft had been in the hospital. He said he hadn't known Mueller and Comey had been blowing the whistle. He was almost surely deceiving the director, and deliberately. Id. e-book 8467. Emphasis Added.

FBI Director Mueller's March 13, 2004 meeting with President Bush highlighted the importance of the FBI Director providing accurate facts to the President. Needless to say, FBI Director Mueller would provide President Obama with accurate facts if he learned that there had been illegal data mining of the pre-9/11 NSA TSP data banks that had not been reported to the "Gang of Eight" as required by § 413 (a) of the National Security Act, in order that President Obama could fulfill his § 413 (b) duty to file a "corrective action" plan. See § Y below

Tim Weiner reported that on April 28, 2009 President Obama came to the FBI Building with FBI Director Mueller and presented a FBI hundredth anniversary speech:

> "I also know that some things have remained constant, he said, his voice leveling. "The rule of law—that is the foundation on which America was built. That is the purpose that has always guided our power. And this is why we must always reject a false the choice between our security and our

ideals." Obama had come of age as the champion of civil liberties and constitutional law. Id. e-book 8697. Emphasis Added.

FBI Director Mueller knew as a "known-known" fact that on April 28, 2009 President Obama agreed with FBI Director Mueller's decision on March 13, 2004, that the rule of law trumped a Presidential Order that the FBI Director should violate the FISA. This was before the public learned on July 19, 2010 from the Washington Post "Top Secret America" of the existence of the NSA domestic surveillance program with its eye-opening and jaw-dropping Orwellian-Hooveresque Locator Map revealing thousands of domestic work stations where tens of thousands of analysts data mined the NSA TSP data banks. The NSA TSP was based on a FISA "secret law" not known to the Supreme Court. http://projects.washingtonpost.com/top-secret-america/map/. See 11-30-11 Robert VIII Petition Statement of the Case §§ A, B, C, E, H.

Tim Weiner reported that on November 7, 2011 FBI Director Mueller released to the public a 460 page FBI manual establishing FBI's domestic counterterrorism guidelines:

> Yet there was still a sign that the rule of constitutional law might govern government counterterrorism for years to come. A new set of guidelines for the FBI's intelligence investigations emerged on November 7, 2011. It followed from a decade of struggle over how to use the immense powers thrust upon the Bureau in the war on terror, and three years of trying to repair the damage done in the name of national security under the Bush Administration.
>
> The FBI's new rules set specific legal limits on intelligence searches and seizure, wiretaps, and buts, data mining, and electronic eavesdropping, the trapping, and tracing of e-mails and cell phones. The 460 page manual, made public with significant deletions, looked like something new in the twenty-first century. It looked as if American government was trying, in good faith, to balance liberty and security. ….
>
> The FBI might now have created the first realistic operating manual for running a secret intelligence service in an open democracy. The new rules state at the outset that "rigorous obedience to constitutional principles and guarantees is mote important than the outcome of any single interview, search for evidence, or investigation." Id. e-book 8726. Emphasis Added.

The November 7, 2011 FBI Guidelines provide a standard to apply to September 13, 2011 *de novo* FOIA requested FBI documents to determine whether 1985-2012 FBI General Counsels knew that there had been violations of the FISA when the FBI counterintelligence "plumber" unit had made Robert a target of the NSA TSP and provided AAG of the Civil Division Richard Willard facts for the "Fraud Against the Government" investigation of Robert. http://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29. The Robert VIII "Robert v Holz" documents lead to these FBI "plumber" unit facts. Tim Weiner reported the historical legacy that FBI Director Mueller does not want. "You won the war on terrorism, but you sacrificed your civil liberties." Id. e-book 8740.

M. The FOIA requested # 1 "FBI Abshire" documents that reveal facts that FBI Director Mueller should provide President Obama who has a duty to make a 2012 executive privilege decision as to the NARA "Perot" and "Peter Keisler Collection" documents

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether the September 13, 2011 *de novo* FBI FOIA requested July 27, 2010 "FBI Abshire" document, reveal facts that FBI Director Mueller should provide President Obama who has a duty to make a 2012 executive privilege decision as to the NARA 1987 "Perot" and "Peter Keisler Collection" documents. The "FBI Abshire" documents reveal whether CIA-DIA-FBI "sources and methods" were used that were not known to the Tower Commission or to the joint Senate/House Iran Contras Committee, or to IC Walsh. FBI Director Mueller has a duty to provide accurate FBI facts to President Obama because that executive privilege decision could be subject to Congressional Oversight. See § U below.

The "FBI Abshire" documents have taken on greater importance because of the December 14, 2011 decision of NARA Chief Special Access/FOIA Staff Martha Wagner Murphy to release the 9/3/85 North-FBI Exemptions 1,7 and Buck Revell "North Notebook" log entry document with the "CHALOBE" notation. This was a decision of the FBI, but not the CIA. http://www.snowflake5391.net/9-3-85North-FBI.pdf. This declassified 1985 document highlights the importance of FBI Director not providing President Obama with "Curveball" false facts when President Obama makes his 2012 executive privilege decisions as to the NARA "Perot" and "Peter Keisler Collection" documents that reveal whether FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger were conducting a domestic "black operation" at IMC without the knowledge of President Reagan and without providing § 413 (a) Congressional Notification. See the 1-23-12 OGIS WP §§ X, Y, EE.

NARA OGIS Director Nesbit should know why the FBI FOIA Officer, but not the CIA Officer, approved the declassification of this 9-3-85 "North Notebook" document. This is especially the case if CIA Director Petraeus does not know that a CIA FOIA Officer had made a December, 2011 reclassification decision as to this "North Notebook" document that has been sought in the pending Robert II v CIA and DOJ. Given the content of the "FBI Abshire" documents, FBI Director Mueller and CIA Director Patraeus should know who ordered Acting CIA FOIA Officer Susan Viasco to make her February 8, 2012 decision to deny the January 23, 2012 FOIA request for the release of Robert II v CIA and DOJ documents. "You were advised that the declarations you seek relate to an exclusion from FOIA records maintained by the Federal Bureau of Investigation and our initial request was not processed, and, therefore, there are no additional appeals rights and we cannot accept your appeal." Emphasis Added.

NARA OGIS Director Nesbit should know whether the FBI and CIA FOIA Officers are information-sharing re the classified "North Notebook" documents because FBI and CIA information-sharing was one of the reasons why in 1985 FBI Director Judge Webster had designated Executive Assistant Director of Investigations Revell to be a member of VP Bush's Task Force on Terrorism Senior Review Group (SRG). The "FBI Abshire" documents provide a March, 2012 opportunity for FBI Director Mueller, CIA Director Petraeus, and DOD Secretary Panetta to information-share in order to provide accurate facts to President Obama re the illegal domestic CIA-DIA-FBI "black operation" that was conducted at IMC. See §§ C, D above.

N. The FOIA requested # 2 FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report" that AG Holder could not locate in Robert VIII v DOJ, HHS, and SSA

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI Chief FOIA Officer Hardy has located the FOIA requested # 2 "FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report" that AG Holder could not locate in Robert VIII v DOJ, HHS, and SSA. FBI Director Mueller should know whether the FBI has a copy of this document because it reveals whether in 1985 FBI Director Judge Webster conducted the "Fraud Against the Government" investigation of IMC in order to protect the CIA-DIA "sources of methods" of conducting an illegal domestic "black operation" at IMC in violation of the Boland Amendment and without § 413 (a) Congressional Notification. See 11-30-11 Robert VIII Petition Statement of the Case § G.

If FBI Director Mueller learns that the FBI has a "FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report" document, then he will know that this fact corroborates the Robert VIII petitioner's grave allegation that AG Holder and SG Verrelli have committed déjà vu "fraud upon the court" in Robert VIII as occurred in Robert VII v DOJ. The "FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report" reveals whether AG Holder had determined that the need to protect the CIA-DIA-FBI "sources and methods" at IMC, trumped his duty to provide accurate facts to Judge Garaufis, the Second Circuit, and the Supreme Court in FRCP 11 signed pleadings re the two due diligence searches conducted by AG Gonzales and AG Holder to locate the DOJ copy of the "IMC Final Investigative Report" document.

If FBI Chief FOIA Officer Hardy denies the FOIA request for the "FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report" document, then this will result in the Robert VIII v DOJ, HHS, and SSA plaintiff filing a 2012 Motion with Judge Garaufis seeking a pre-clearance Order to file a FOIA complaint to seek the release of this FBI document. The Robert VIII plaintiff would cite to the Islamic Shura "deception perverts justice" standard, and request that Judge Garaufis order FBI Director Mueller to file a Declaration detailing FBI Chief FOIA Officer Hardy's search for the "FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report" document that AG Gonzales and AG Holder could not locate. See § K above.

FBI General Counsel Weissmann has a litigation duty not to place FBI Director Mueller in the position of being a FOIA defendant and subject to a Robert VIII Motion that he be ordered to file a due diligence Declaration with Judge Garaufis. Quite the contrary, this *de novo* FOIA request for the "FBI copy of joint FBI-DOJ-HHS task force's "IMC Final Investigative Report" provides FBI General Counsel Weissmann with an opportunity to provide FBI Director Mueller with a "heads up" memo that explains in detail the FBI documents that prove that in 1985 FBI Director Judge Webster knew that CIA Director Casey and DOD Secretary Weinberger were conducting an illegal domestic "black operation" at IMC, and that the FBI was conducting a sham joint FBI-DOJ-HHS task force "Fraud Against the Government" investigation of IMC to protect the DIA-CIA-FBI "sources and methods" at IMC. See April 14, 1988 House Committee on Government Operations Report: Medicare Health Maintenance Organizations: The International Medical Centers Experience. Miami Mystery: Paid to Treat Elderly, IMC Moves in Worlds of Spying and Politics: Medicare Money Flowed in: Only Mr. Recarey Knows Where It Flowed Next: Congress, "bugs" and Mob. Wall Street Journal 8-9-1988, and §§ V, W below.

O. The FOIA requested # 3 "FBI copy of February 25, 1987 "Perot" documents which are the same documents subject to President Obama's 2012 executive privilege decision

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI Director Mueller knows that the **"**FBI copy of February 25, 1987 "Perot" documents are the same documents that are subject to President Obama's 2012 executive privilege decision. This is a critical FBI Director Mueller *mens rea* fact because FBI General Counsel Weissmann knows that FBI Director Mueller would make sure that President Obama has not been provided "Curveball" false FBI facts re the "black operation" at IMC prior to President Obama making his 2012 executive privilege decision. See 7-27-10 Robert VIII §§ V, W, Y, Z, EE and WP 1-23-12 OGIS NARA WP § D.

The # 3 **"**FBI copy of February 25, 1987 "Perot" documents are connect-the-dots documents to the # 1 "FBI Abshire" and # 2 "FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report" documents. They reveal whether the 1993-2009 FBI General Counsels Howard Shapiro (1993-1997), Larry Parkinson (1997- 2002), Kenneth Wainstein (2002-2003), and Valerie Caproni (2003-2011) knew that IC Walsh did not know that a CIA-DIA-FBI "black operation" had been conducted at IMC in violation of the Boland Amendment and § 413 (a) of the National Security Act, when he issued his August 4, 1993 Final Report of the Independent Counsel for Iran/Contra Matters. http://www.fas.org/irp/offdocs/walsh/

The # 3 **"**FBI copy of February 25, 1987 "Perot" documents reveal that after FBI Director Webster became the May 26, 1987-August 31, 1991 CIA Director, he had withheld from IC Walsh the fact that he knew that an illegal domestic CIA "black operation" had been conducted at IMC. This is an important fact because his CIA successor Robert M. Gates (November 6, 1991-January 20, 1993) would become the 2006-2011 DOD Secretary with the knowledge of IMC "black operation" facts not contained in IC Walsh's August 4, 1993 Final Report of the Independent Counsel for Iran/Contra Matters. FBI Director Mueller should know this fact because DOD Secretary Gates had been CIA Director Casey's 1982-1986 CIA Deputy Director for Intelligence when the CIA-DIA "black operation" was conducted at IMC.

Hence, the importance of FBI General Counsel Weissmann providing a "heads up" memo to FBI Director Mueller as to the who, knew, what, where, when, why, and how knowledge of the DIA-CIA "black operation" at IMC as to 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-). The # 3 **"**FBI copy of February 25, 1987 "Perot" documents are 2012 "Past is Prologue" documents because they reveal CIA-DIA domestic "sources and methods" continue to be protected by the existence of an FBI "stovepipe" that bypasses the FBI Directors in order that they have a "plausible deniability" defense to the serial impeachable violations that occur when the CIA and DIA conduct illegal domestic "black operations" without § 413 (a) of the National Security Act notification. These FBI documents also reveal whether FBI General Counsels have been members of the 1984-2012 daisy-chain of "shadow government" attorney-patriots who have been implementing decisions of f*aux* "Commanders in Chief" who were not Presidents Reagan, Bush, Clinton, Bush, and Obama, based on the Article II "secret law" of 1984-2012 AGs. See 1-23-12 OGIS NARA WP §§ C, Z.

P. The FOIA requested # 4 "FBI copy of Robert v National Archives "FBI Agent Allison" documents that reveal the facts that FBI Agent Allison had provided IC Walsh re the allegations of violations of the Boland Amendment at a "black operation" at IMC

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI Director Mueller knows whether the "FBI copy of Robert v National Archives "FBI Agent Allison" documents reveal that FBI Agent Allison's 1989 "client" was not FBI Director Judge Sessions or IC Walsh, but the *faux* "Commander in Chief" who was not President Bush. This is an important March 29, 1989 fact for FBI Director Mueller to know in order that he can provide accurate FBI facts to President Obama when he makes his executive privilege decision as to the NARA 1987 "Perot" and "Peter Keisler Collection" documents. See the 1-23-12 OGIS NARA WP §§ O, P and § V below.

FBI Agent Allison was FBI Director Judge Sessions' designated FBI agent as the liaison with Independent Counsel (IC) Walsh. She met with Robert on March 29, 1989 in the Office of IC Walsh and had custody of the documents that Robert asserted revealed that an illegal CIA "black operation" had been conducted at IMC in violation of the Boland Amendment, § 413 of the National Security Act, and Social Security Act. The "FBI Agent Allison" documents are a subset of the documents being sought in the 2-1-12 request for OGIS NARA facilitation services seeking the release of the NARA "Robert v National Archives 'Bulky Evidence File'" documents that had been in the 2008 custody of NARA Deputy Director Adrienne Thomas.

The # 4 "FBI copy of Robert v National Archives "FBI Agent Allison" documents reveal whether on March 29, 1989 FBI Agent Allison reported to FBI Director Judge Sessions or to IC Walsh or to the *faux* "Commander in Chief" who was not President Bush. If FBI Agent Allison reported to FBI Director Judge Sessions, then this raises the issue of whether FBI Director Judges Sessions "defrauded" IC Walsh by application of 18 U.S.C. § 371 conspiracy statute as explained in § C above. If she reported to IC Walsh, then this raises the question of whether she "defrauded" IC Walsh. If she reported to the *faux* "Commander in Chief," then this is evidence of a 1989 violation of the PCA limitations on domestic military law enforcement.

The # 4 "FBI copy of Robert v National Archives "FBI Agent Allison" documents also reveal whether NARA General Counsel Gary Stern and EDNY U.S. Attorney Loretta Lynch had implemented the "Barrett nonacquiescence policy" by withholding material facts from Judge Wexler, Judge Mishler, and the Second Circuit in Robert v National Archives, 1 Fed. Appx. 85 (2d Cir. 2001), Robert v DOJ, 2001 WL 34077473 (EDNY), 26 Fed. Appx. 87 (2d Cir. 2002), and from Judge Gershon in Robert III v DOJ. The "FBI Agent Allison" documents had become NARA documents after IC Walsh had filed his August 4, 1993 Final Report of the Independent Counsel for Iran/Contra Matters and the IC's files were transferred to NARA and subject to NARA FOIA requests. See 7-27-10 Robert VIII WP §§ V, W and § C above.

The # 4 "FBI copy of Robert v National Archives "FBI Agent Allison" documents also reveal whether FBI General Counsel Weissmann knows that FBI Director Mueller does not know that CIA Director Judge Webster knew in 1989 that either FBI Director Judge Sessions or FBI Agent Allison had "defrauded" IC Walsh by not informing him of the CIA-DIA-FBI "black operation at IMC. Hence, the importance of the requested OGIS FBI facilitation services.

Q. The FOIA requested # 5 "FBI unredacted copy of Robert v DOJ '62-0 file' documents" reveal where the FBI filed the Robert's 1987 allegations of violations of the Boland Amendment at CIA DIA domestic "black operation" that was conducted at IMC

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI Director Mueller knows of the existence of the Robert FBI "62-0" file in which the FBI FOIA requested # 5 "FBI unredacted copy of Robert v DOJ '62-0 file' documents" are located. The Robert FBI "62-0" file documents take on greater importance because in 1987 Assistant Director, Executive Assistant Director Floyd Clarke knew of the existence of the Robert "62-0" file when he was the FBI's liaison to the VP Bush's Task Force on Terrorism, and it is a connect-the-dots file to the FBI FOIA requested # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" now in the FBI's custody. See 7-27-10 Robert VII WP §§ AA, AAA, § D above, and § T below.

The # 5 "FBI unredacted copy of Robert v DOJ '62-0 file' documents" establish the fact that FBI Director Judge Sessions had in his 1987 custody documents that revealed an allegation that a CIA-DIA-FBI "black operation" had been conducted at IMC through which unaudited HHS funds were used to pay for medical treatment and supplies of the Contras in violation of the Boland Amendment, § 413 (a) of the National Security Act, the PCA limitations on the military domestic law enforcement, and the Social Security Act. These are "Past is Prologue" documents because FBI Director Mueller has a duty to inform President Obama that the FBI had 1987 knowledge of the allegations that an illegal domestic CIA-DIA-FBI "black operation" had been conducted at IMC, prior to President Obama making his 2012 executive privilege decision re the NARA 1987 "Perot" and "Peter Keisler Collection" documents. See 1-23-12 NARA OGIS § M.

The # 5 "FBI unredacted copy of Robert v DOJ '62-0 file' documents" establish the fact that 1987 Assistant Director, Executive Assistant Director Floyd Clarke knew this 1987 fact. This is an important *mens rea* time line fact because he would become the Acting FBI Deputy Director from July 19, 1993 – September 1, 1993 who preceded FBI Director Judge Freeh. He knows why the "62-0 file" documents were redacted. See 7-27-10 Robert VIII WP §§ M, N, AA.

The # 5 "FBI unredacted copy of Robert v DOJ '62-0 file' documents" also establish the 1987 *mens rea* time line fact of 1981-1988 AAG of the Civil Division Richard Willard when he sent his November 12, 1987 letter. He had consulted with Executive Assistant Director Clarke when he conducted a review of Robert's August 14, 1987 complaint to DAG Arnold Burns:

> While I cannot discuss the specifics of your allegations of a cover-up within the Department of Justice regarding the policies of the Department of Health and Human Services, or your allegations of misrepresentations by the Department of Justice to federal courts, please rest assured that the concerns raised by your letter have been given careful scrutiny. However, I have concluded that your allegations are without foundation. Emphasis added. http://www.snowflake5391.net/aagwillard.pdf.

On November 18, 1987 the Senate-House Iran-Contras Report was released. Hence, the importance of FBI Director Mueller knowing the content of the "62-0" file documents.

R. The FOIA requested # 6 "FBI Robert III v DOJ 'Recarey extradition' documents" which reveal whether USG attorneys implemented the "Barrett nonacquiecensce policy" in order to make Judge Gershon the "handmaiden" of the Executive Branch

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI Director Mueller knows the content of the # 6 "FBI Robert III v DOJ 'Recarey extradition' documents." These FBI documents reveal whether FBI Director Judge Freeh and FBI General Counsels Parkinson (1997- 2002) and Wainstein (2002-2003) had implemented the "Barrett nonacquiescence policy" and made Judge Gershon the "handmaiden of the Executive" in Robert III v DOJ, cv 01-4198 (Gershon, J), by withholding material facts. See 7-27-10 Robert VIII WP §§ E-G, Y and §§ D, E, K above.

The # 6 "FBI Robert III v DOJ 'Recarey extradition' documents" are the documents upon which FBI Director Judge Freeh made the decision not to extradite from Spain the fugitive Miguel Recarey, the former President of the defunct HMO International Medical Center, Inc. The plaintiff seeks the release of the withheld documents to prove to President Obama that IMC President Recarey had been a covered agent when CIA Director Casey and DOD Secretary Weinberger established the off-the-shelf medical delivery system at IMC. These documents also reveal whether his IMC Chief of Staff Juan del Real, the former- HHS General Counsel, was a CIA covered agent when he administered the unaudited HHS funds, including the December 2, 1985 $20 million dollar HHS voucher paid to IMC. See http://www.snowflake5391.net/IMC.pdf.

The # 6 "FBI Robert III v DOJ 'Recarey extradition' documents" contain the "c (3) exclusion" *ex parte* Declaration that was filed on behalf of FBI Director Mueller by either FBI General Counsel Parkinson or FBI General Counsel Wainstein. That document withheld material facts from Judge Gershon re the CIA-DIA-FBI "black operation that had been conducted at IMC with the 1985 knowledge of FBI Director Judge Webster. "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. See Robert VIII Petition § E and § C above.

The # 6 "FBI Robert III v DOJ 'Recarey extradition' documents" reveal whether the FBI General Counsel had made Judge Gershon" the "handmaiden of the Executive" in order to protect the "sources and methods" of the CIA which included the DOJ policy of withholding facts from Article III Judges re the violation of § 413 (a) of the National Security Act and the Social Security Act. "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).

The # 6 "FBI Robert III v DOJ 'Recarey extradition' documents" reveal why FBI Director Mueller, AG Thornburgh's 1989 AAG of the Criminal Division, should apply the "fraud" exception to the attorney-client privilege to the Robert III v DOJ case file notes of the USG attorneys including EDNY U.S. Attorneys Lynch (1999-2001), Vinegrad (2001-2002), and Mauskopf (2002-2007). He can determine whether the USG attorneys intended to deceive Judge Gershon. "A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told." Clark v United States, 289 U.S. 1, 15 (1933). See Robert VIII WP 7-27-10 WP §§ E-G, V, W, Y, AAA and § V below.

S. The FOIA requested # 7 "FBI Robert VII v DOJ FISC Robert" documents which reveal whether AG Holder and SG Verrelli had committed déjà vu "fraud" upon the Supreme Court in Robert VIII v DOJ, HHS, and SSA as occurred in Robert VII v DOJ

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI Director Mueller knows the content of the **# 7** "FBI Robert VII v DOJ FISC Robert" documents which reveal whether AG Holder and SG Verrelli had committed déjà vu "fraud" upon the Supreme Court in Robert VIII v DOJ, HHS, and SSA as occurred in Robert VII v DOJ. FBI Director Mueller should know the content of these FBI documents in order that he can provide accurate facts to President Obama re the FISA "secret law" that AG Holder is implementing in 2012 when President Obama makes his executive privilege decision re the "Perot" and "Peter Keisler Collection" documents.

The # 7 "FBI Robert VII v DOJ FISC Robert" documents reveal the existence of the documents upon which FBI Director Judge Webster determined that the FBI had evidence that Robert was a terrorist or an agent of a foreign power. AG Meese relied upon these FBI facts when he filed the "FISC Robert" petition seeking FISC Robert warrants. The Robert VII and Robert VIII plaintiff has asserted that there is zero evidence that Robert was a terrorist or an agent of a foreign power. He has asserted that the reason that he was the target of the NSA TSP was to eliminate by incarceration and disbarment an attorney who was challenging the "Jackson nonacquiescence policy" of HHS General Counsel del Real which was the off-OMB Budget funding source for the "immaculate construction" and maintenance of the NSA TSP data banks that could not be funded with classified OMB Budget funds because of the serial impeachable violations of the § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the PCA limitations on domestic military law enforcement, and the Social Security Act.

The # 7 "FBI Robert VII v DOJ FISC Robert" documents reveal whether déjà vu Supreme Court "fraud" was committed in Robert VIII, as it was in Robert VII, because the FBI documents reveal that Robert was an "aggrieved person" by application of 50 U.S.C. § 1806 (f). AG Gonzales and AAG of the Civil Division Peter Keisler did not inform the Second Circuit of the facts revealed in the "FBI Robert VII v DOJ FISC Robert" documents in his April 3, 2006 letter Brief filed in response to the Second Circuit's teed up FISA "aggrieved person" question. http://www.snowflake5391.net/RobertvDOJbrief.pdf. See 7-27-10 Robert VIII WP §§ K, M, N, CC, 11-20-11 Robert VIII Petition Statement of the Case § B, pp. 13-14, and §§ V, W below.

FBI Director Mueller can read the September 13, 2011 *de novo* FOIA requested # 7 "FBI Robert VII v DOJ FISC Robert" documents and decide for himself whether these documents reveal that Robert was a FISA "aggrieved person" by application of the 50 U.S.C. § 1806 (f). FBI Director Mueller should make that determination because in Robert VIII v DOJ, HHS, and SSA the "Robert v Holz" documents were withheld pursuant to FOIA Exemption 5, and not as classified documents. This is an important fact given the content of the 1985 "Fraud Against the Government" investigations of Robert and of IMC. If FBI Director Mueller reads the # 7 "FBI Robert VII v DOJ FISC Robert" documents along with the DOJ "Robert v Holz" documents, then he will know whether OIPR Baker's October 1, 2004 "corrected" October 1, 2004 Robert VII Declaration and explanation for the use of FOIA Exemption 1 and the "Glomar Response" was accurate. See Robert VIII Petition Statement of the Case § C and § W below.

T. The FOIA requested # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" documents are connect-the-dots documents with the "Robert v Holz" and "Barrett nonacquiescence" policy documents at issue in Robert VIII v DOJ, HHS, and SSA

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI Director Mueller knows that the # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" are connect-the-dots with the "Robert v Holz" and "Barrett nonacquiescence" policy documents at issue in Robert VIII v DOJ, HHS, and SSA. After reading these documents, FBI Director Mueller will know whether the FBI General Counsels have instructed Chief FOIA Officer Hardy not to process the September 13, 2011 *de novo* FBI FOIA requested documents because they knew these FBI documents would carry Robert's Ashcroft v Iqbal, 129 S.Ct. 1937 (2009), pleading burden in a putative Bivens action claiming that his First Amendment right of access to the courts were violated by an FBI counterintelligence "plumber" unit that had targeted Robert. See 7-27-10 Robert VIII WP § AAA and 11-30-11 Robert VIII Petition p. 37 and Issue II and § X below.

The # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" reveal the FBI's actions taken by the FBI agents ordered to target Robert. They are connect-the-dots documents to the " Robert v Holz" documents which reveal why Robert was the target of the "Fraud Against the Government" investigation that was initiated by HHS General Counsel Juan del Real. They are also connect-the-dots documents to the Robert VII v DOJ "FISC Robert" documents that reveal the facts provided by the FBI counterintelligence "plumber unit" to FBI Director Judge Webster that indicated that the FBI had evidence that Robert was a terrorist or an agent of a foreign power. See 11-30-11 Robert VIII Issues I-IV and See § V-Y below.

The # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" documents reveal the FBI's actions taken by FBI General Counsel Caproni (2003-2011) who knew AAG of the Civil Division Keisler, OIPR Baker, and EDNY U.S. Attorney Mauskopf had implemented the "Barrett nonacquiescence policy" in Robert VII v DOJ and intentionally withheld material facts from Judge Garaufis, the Second Circuit, and the Supreme Court. "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.

The # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" documents reveal FBI General Counsel Caproni's concerted actions with DOJ attorneys that led to Judge Garaufis' December 9, 2005 Robert VIII injunction Order and the December 14, 2005 Robert VIII Clerk's Judgment that enjoined Robert from filing a FOIA request without a pre-clearance Order from Judge Garaufis. That injunction has significantly impacted Robert's access to the federal courts to prove that USG attorneys withheld material facts in OIPR Counsel Baker's October 1, 2004 Declaration and AG Gonzales' April 3, 2006 Second Circuit letter-Brief given the content of the "FISC Robert" documents withheld by the CIA pursuant to FOIA Exemption 1 and the "Glomar Response" defense. See 7-27-10 Robert VIII WP § AAA.

The ODNI facilitation services take on greater importance if FOIA Exemption 7 is used to protect the FBI counterterrorism "plumber" unit. FBI Director Mueller should know this fact.

U. FBI General Counsel Weissman knows that FBI Director Mueller should make the FBI FOIA decision that will determine whether President Obama's executive privilege decision will ratify AG Holder's "Unitary Executive" decision that he had the Article II authority to commit Supreme Court Chambers v Nasco "fraud upon the Court" in Robert VIII

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI General Counsel Weissmann knows that FBI Director Mueller should make the FBI FOIA decision because it will determine whether President Obama's 2012 executive privilege decision will ratify AG Holder's "Unitary Executive" decision that he had the Article II authority to commit Supreme Court Chambers v Nasco, 111 S. Ct. 2123 (1991), "fraud upon the Court" in Robert VIII. NARA OGIS Director Nesbit knows that President Obama relies upon the accuracy of AG Holder's and WH Counsel's Ruemmler's President Records E.O. 13489 § 3 (c) presentation of facts upon which they ratified the Estate of President Reagan's use of executive privilege to withhold the NARA "Perot" and "Peter Keisler Collection" documents. OGIS Director Nesbit knows that FBI Director Mueller should made the FOIA decision because these FBI documents contain facts that reveal AG Holder's 2012 *mens rea* which President Obama should know when the President makes his 2012 executive privilege decision. See §§ C-L above and §§ T-Y below.

On June 6, 1991, the Supreme Court decided Chambers v Nasco and established the federal "fraud upon the court" standard. In reviewing false pleadings filed by a party, the Supreme Court highlighted the inherent authority of a court to protect its own integrity when false representations are made to a court to vacate prior judgments:

> This "historic power of equity to set aside fraudulently begotten judgments," cite omitted, is necessary to the integrity of the courts for "tampering with the administration of justice in (this)manner …involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public. cites omitted. Moreover, a court has the power to conduct an independent investigation whether it has been the victim of a fraud. Cite omitted. Id. at p. 2132. Emphasis Added.

The Chambers decision was rendered after IC Walsh's March 21, 1991 staff's "Memorandum on Criminal Liability of Former-President Reagan and of President Bush" that discussed the application of 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States, to President Reagan and President Bush. IC Walsh concluded that the Presidents had relied upon incorrect legal opinions from AG Meese and other USG attorneys.

President Obama will be relying upon the legal advice that AG Holder and WH Counsel Ruemmler provide him when he decides in 2012 whether to ratify the decision of AG Holder and WH Counsel Ruemmler that the representative of the Estate of President Reagan had correctly used executive privilege to withhold the FOIA requested NARA 1987 "Perot" and NARA "Peter Keisler Collection" documents. Hence, the importance of FBI Director Mueller, not FBI Chief FOIA Officer Hardy or FBI General Counsel Weissmann, making the FOIA decision re the FBI documents that are connect-the-dots documents with the executive privilege NARA documents.

NARA OGIS Director Nesbit, the 1982-1994 DOJ Deputy Director of the Office Information and Privacy and the 1994-1999 NARA Special Counsel for Information Policy, knows from reading the 1-23-12 OGIS NARA WP and the 2-1-11 amendment seeking OGIS NARA facilitation services, that the NARA documents contain "smoking gun" evidence whether AG Meese had "defrauded" President Reagan by application of 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States, statute. If so, then NARA OGIS Director Nesbit also knows whether AG Holder "defrauded" the Supreme Court when he committed déjà vu Chambers v Nasco "fraud upon the court" in Robert VIII v DOJ, HHS, and SSA as occurred in Robert VII v DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007). See Robert VIII Petition Statement of the Case §§ A, B, C, E, G, H.

FBI General Counsel Weissmann, the 2000-2003 EDNY Chief of the Criminal Division and 2005 Special Counsel to FBI Director Mueller, knows that IC Walsh's interpretation of 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States, statute could apply to AG Holder's intentional decision to withhold material facts from the Supreme Court in Robert VIII. He knows that if he applied the Chambers v Nasco "fraud upon the court" standard to FBI Chief FOIA Officer Hardy's decision not to docket or decide the September 13, 2011 *de novo* FBI FOIA request for the July 27, 2010 FBI documents, that there has been an FBI concerted "fraud upon the court" because FBI Chief FOIA Officer Hardy was provided a copy of Second Circuit's September 6, 2011 Robert VIII v DOJ, HHS, and SSA decision re the modification of the Robert VIII December 14, 2005 Clerk's Judgment. He knew that the FOIA requester would be filing a Robert VIII petition for a writ of certiorari that would cite to FBI documents that revealed that FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger had conducted domestic "black operations" at IMC and NSA in violation of § 413 (a) of the National Security Act and the "exclusivity provision" of the FISA.

FBI General Counsel Weissmann knows that FBI General Counsel Caproni had known the "smoking gun" significance of the FBI facts revealed in the FOIA requested # 1 "FBI Abshire", # 2 "FBI copy of joint FBI-DOJ-HHS "IMC Final Investigative Report", # 3 FBI copy of February 25, 1987 "Perot", and # 4 "FBI copy of Robert v National Archives "FBI Agent Allison" documents. He knows that FBI General Counsel Caproni knew the FISA "secret law" of AG Meese. He knows she knew that FBI Office of Intelligence Director Baginski and FBI Supervising Special Agent Kizer knew that a FBI counterintelligence "plumber" unit had accessed the pre-9/11 NSA TSP data banks that NSA Director General Hayden admitted existed when he opened up the NSA TSP "spigot" after 9/11 in violation of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, and PCA limitation on domestic military law enforcement. See Robert VIII Petition Statement of the Case §§ A, B, H and § L above.

FBI General Counsel Weissmann also knows that FBI Director Mueller, CIA Director Petraeus, DOD Secretary Panetta, and ODNI Director Clapper should know the "known-known" facts contained in the NARA "Perot" and "Peter Keisler Collection" documents that FBI Director Judge Webster knew in 1985 as FBI Director and CIA Director Judge Webster knew on May 26, 1987, that President Reagan did not know. These are "Past is Prologue" facts that FBI Director Mueller should know when the decision is made re FBI documents that reveal whether AG Holder had committed déjà vu Chambers v Nasco "fraud upon the court" in Robert VIII v DOJ, HHS, and SSA as AG Gonzales had committed in Robert VII v DOJ. See §§ T-V below.

V. FBI General Counsel Weissman knows the legal issue whether NYS Judiciary Law § 487 penal standard applies to USG attorneys who deceived Judge Garaufis, the Second Circuit, and Supreme Court in Robert VIII and Judge Seybert in Robert II v CIA and DOJ

FBI General Counsel Weissman knows the legal issue of whether NYS Judiciary Law § 487 penal standard applies to USG attorneys who deceived Judge Garaufis, the Second Circuit, and the Supreme Court in Robert VIII and Judge Seybert in Robert II v CIA and DOJ. He knows that AG Holder President Obama's 2012 executive privilege decision as to the "Perot" and "Peter Keisler Collection" documents is a *de facto* decision as to whether AG Holder is properly implementing AG Meese's "Barrett nonacquiecensce policy" in Robert VIII and Robert II v CIA and DOJ. He knows that President Obma's 2012 executive privilege decision will be *de facto* "Unitary Executive" decision whether President's Article II Commander in Chief authority, trumps a NYS law that prohibits attorneys from deceiving judges and parties.

New York State Judiciary Law § 487 establishes Misconduct by attorneys:

> An attorney or counselor who:
>
> 1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or …
>
> Is guilty of a misdemeanor, and in addition to the punishment prescribed therefore by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action. Emphasis Added.

FBI General Counsel Weissman is a licensed NYS attorney who from 1988-2003 was an EDNY AUSA handling criminal cases. He was the 2000-2003 EDNY Chief of the Criminal Division and a successor to 1994-1998 EDNY Chief of the Criminal Division Caproni. He knows the legal issue of whether there is a "national security" defense to a violation of the NYS § 487 deception standard. He also knows whether NYS Judiciary Law § 487 "any party" means party plaintiff Robert in Robert VIII and Robert II v CIA and DOJ, party defendants AG Holder, HHS Secretary Sebelius, SSA Commissioner Astrue, and CIA Director Petraeus in those FOIA actions, and the millions of party-plaintiffs in Ford v. Shalala, 87 F. Supp 2d 163 (E.D.N.Y. 1999).

FBI General Counsel Weissmann knows whether 1999-2001 EDNY U.S. Attorney Lynch made the decision that the "national security" defense applied to 1999-2001 EDNY attorneys who deceived Judge Sifton in Ford, Judge Wexler, Judge Mishler and the Second Circuit 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), and Judge Seybert in Robert I v CIA and DOJ, cv. 00-4325 (Seybert, J). He knows that 2009-2012 EDNY U.S. Attorney Lynch now has the duty to make the decision whether the "national security" defense applies to the 2009-2011 USG attorneys who deceived Judge Sifton in Ford, Judge Garaufis, the Second Circuit, and Supreme Court in Robert VIII v DOJ, and Judge Seybert in Robert II v CIA and DOJ.

After FBI General Counsel Weissmann reads the FBI documents, he will know whether NYS Judiciary Law § 487 applies. He can present the § 487 issue to FBI Director Mueller.

W. The "shall" duty of FBI General Counsel Weissmann and EDNY U.S. Attorney Lynch to fulfill their NYS ethics Rule 3.3 "shall" duty to correct misrepresentations made to Judges

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI General Counsel Weissmann and EDNY U.S. Attorney Lynch intend to fulfill their NYS ethics Rule 3.3 "shall" duty to correct misrepresentations made to Judges. She can learn this fact by simply asking these attorneys.

As of April 1, 2009, in NYS an attorney has a duty to comply with the new NYS Professional Responsibility Guidelines. Pursuant to Rule 3.3(a)(3), that an attorney, including a government attorney, has a "shall" duty to correct misrepresentations made to Judges:

> Rule 3.3 Conduct Before a Tribunal
>
> (a) A lawyer shall not knowingly:
>
> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> (2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
>
> (3) offer or use evidence that the lawyer knows to be false. 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 its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.
>
> (b) A lawyer who represents a client before a tribunal and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. Emphasis Added. NYS Unified Court System Part 1200 Rules of Professional Conduct http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/NYRulesofProfessionalConduct4109.pdf.

FBI General Counsel Weissman's 1988-2003 EDNY career overlapped with EDNY U.S. Attorney Lynch. She was a 1990-1994 EDNY AUSA who became the 1994-1998 EDNY Chief of Long Island before becoming the 1999-2001 and 2009-2012 EDNY U.S. Attorney. She also was a 2009 Member of the New York State Commission on Public Integrity. She is acutely sensitive to the issue of whether President Obama's invocation of executive privilege would trump NYS attorneys' Rule 3.3 "shall" duty to cure misrepresentations of law and fact made to Judge Seybert, Judge Garaufis, the Second Circuit, and Supreme Court. See §§ X, Y below.

Rule 3.3 compliance by FBI General Counsel Weissmann and EDNY U.S. Attorney Lynch is related to their obeisance to NYS Judiciary Law § 487. This is an important connect-the-dots issue to the millions of 1994-2012 Ford v Shalala plaintiffs whose due process rights continue not to be cured by AG Holder thirteen (13) years after Judge Sifton's 1989 Ford decision. This is a Rule 3.3 issue because EDNY U.S. Attorney Lynch knows why 2007-2012 SSA Commissioner Astrue has not cured the Ford due process violations by sending the Ford class members SSI Notices that include citations to the regulations upon which their monthly benefits are reduced or terminated. This includes citations to the "Jackson" regulation, 20 C.F.R. 415.1130 (b), which on it face is an equal protection violation as long as the "Jackson nonacquiescence policy" of HHS General Counsel del Real is applied to Ford class members. See 7-27-20 Robert VIII WP §§ R-U.

EDNY U.S. Attorney Lynch knows that Rule 3.3 compliance will result in the application of the equitable estoppel holding of Bowen v City of New York, 106 S. Ct. 2022 (1986). On June 2, 1986, Justice Powell in Bowen v City of New York, explained the application of the equitable tolling principle to cure a "clandestine" policy of the HHS Secretary:

> Moreover, we are aware that the administrative inconvenience may result from our decision. But the Secretary had the capability and the duty to prevent the illegal policy found to exist in the District Court. The claimants were denied the fair and neutral procedure required by the statute and regulations, and they are now entitled to pursue that procedure. Id. 2034. Emphasis Added

EDNY U.S. Attorney Lynch also knows that Rule 3.3 compliance will result in the application of Justice O' Connor's Schweiker v. Chilicky, 108 S. Ct. 2460 (1988), "normal sensibilities" of human beings being standard as applied to the millions 1994-2012 Ford class members for whom President Obama has breached his 2009-2012 Article II "take Care that the Laws be faithfully executed" duty. She knows the President possesses the "normal sensibilities" of human beings and does not know the remedy to cure the HHS-SSA "rigging" of the SSA computer to apply the wrong standard, is to be measured in months not years or decades:

> We agree that suffering months of delay in receiving the income on which one has depended for the very necessities of life cannot be fully remedied by the "belated restoration of back-benefits." The trauma to respondents, and thousands of others like them, must surely have gone beyond what anyone of normal sensibilities would wish to see imposed on innocent disabled citizens. Nor would we care to "trivialize" the nature of the wrongs alleged in this case. Id. at 2470. Emphasis Added.

FBI General Counsel Weissmann, FBI Director Mueller's 2005 Special Counsel, knows that FBI Director Mueller also possesses the "normal sensibilities" of human beings. Therefore, after he reads the FBI FOIA requested documents he will present his NYS Rule 3.3 ethics dilemma to FBI Director Mueller. Because FBI Director Mueller was AG Thornburgh's 1989 AAG of the Criminal Division, he will understand how FBI General Counsel Weissmann's own NYS Rule 3.3 duty requires him to disclose violations of NYS Judiciary Law § 487 because the FBI requested documents prove AG Holder's Robert VIII deception of the Supreme Court.

X. FBI General Counsel Weissmann knows whether he instructed FBI Chief FOIA Officer Hardy not to process the September 13, 2011 *de novo* FBI FOIA July 27, 2010 FBI FOIA request because he knows those documents contain "smoking gun" evidence that USG attorneys violated the Robert VIII petitioner's First Amendment right of access the courts

Prior to deciding whether to accept jurisdiction of this request for OGIS FBI facilitation services, OGIS Director Nesbit should know whether FBI General Counsel Weissmann instructed FBI Chief FOIA Officer Hardy not to process the September 13, 2011 *de novo* FBI FOIA July 27, 2010 request because he knows that these FBI documents contain "smoking gun" evidence that USG attorneys violated the Robert VIII petitioner's First Amendment right of access to the courts. The Robert VIII petitioner seeks the release of these documents to carry his very heavy evidentiary burdens in his putative Bivens action as established in Christopher v. Harbury, 121 S. Ct. 2171 (2001) and Ashcroft v Iqbal, 129 S.Ct. 1937 (2009). See 7-27-10 Robert VIII WP § M, N, V, W, AAA, 11-30-11 Robert VIII Petition Issues I and II.

On June 20, 2002 in its Harbury decision, the Supreme Court dismissed a "Bivens" claim of a violation of the First Amendment right of access to the Court because the plaintiff failed to adequately plead the First Amendment violation of right of access to the courts cause of action. However, the Court explained a viable "Bivens" claim could allege USG employees' "conspiracies to destroy or cover up evidence of a crime" that could reviewed by a Court:

> With respect to access to courts claims (including Harbury's Bivens claim on this theory), the District Court acknowledged that five Court of Appeals "have held that conspiracies to destroy or cover up evidence of a crime that render a plaintiff's judicial remedies inadequate or ineffective violat(e) the right of access," App. To Pet. for Cert. 43a, but held that Harbury had not stated a valid cause of action for two reasons. First, the court held that Harbury's claim "would have to be dismissed" (without prejudice) because, having filed no prior suit, she had "nothing more than a guess" as to how the alleged coverup might "have prejudiced her rights to bring a separate action." Id., at 46a. Second, the District Court reasoned that defendants in any event would be entitled to qualified immunity in their individual capacities because, unlike officials in a coverup cases who destroyed, manufactured, or hid evidence, the defendants here did not act contrary to "clearly established constitutional norms that a reasonable official would understand" in being less than "forthcoming in discussing the intelligence that they received about Bamaca." Id. 2175. Emphasis Added.

FBI General Counsel Weisssmann knows that in the Robert VIII petitioner's putative Bivens complaint, he would argue that USG attorneys implementation of the "Barrett nonacquiescence policy" by USG attorneys who withheld material facts from Article III Judges, was equivalent to the "hiding evidence" standard discussed in Harbury. Some of the Robert Bivens "hidden" evidence is located in the FOIA requested # 7 "FBI Robert VII v DOJ "FISC Robert" documents and # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" documents which are connect-the-dots documents with the Robert VIII "Robert v Holz" and "Barrett" documents. See 11-30-11 Robert VIII Petition Statement of the Case §§ C, H.

The Harbury Court provides guidance as to what actions constitutes a First Amendment denial of access to the courts given the extant 2005-2012 Robert injunction:

> In cases of this sort, the essence of the access claim is that official action is presently denying an opportunity to litigate for a class of potential plaintiffs. The opportunity has not been lost for all time, however, but only in the short term; the object of the denial-of-access suit, and the justification for recognizing that claim, is to place the plaintiff in a position to pursue a separate claim for relief once the frustrating condition has been removed. Id. 2186. Emphasis Added.

The Harbury Court was clear that a Bivens complaint with a well pleaded First Amendment right of access to the courts claim, could survive a Motion to Dismiss:

> While the circumstances thus vary, the ultimate justification for recognizing each kind of claim is the same. Whether an access claim turns on a litigating opportunity yet to be gained or an opportunity already lost, the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong. However, unsettled the basis of the constitutional right of access to courts, our cases rest on the recognition that the right is ancillary to the underlying claim, without which a plaintiff cannot have suffered injury by being shut out of court. We indicated as much in our most recent case on a denial of access, Lewis v Casey, supra, whether we noted that even in forward-looking prisoner class actions to remove roadblocks to future litigation, the named plaintiff must identify a "nonfrivolous," "arguable" underlying claim, id. at 353, and n.3, 116 S.Ct. 2174, and we have been give no reason to treat backward-looking access claims any differently in this respect. It follows that the underlying cause of action, whether anticipated or lost, is an element that must be described in the complaint, just as much as the allegations must describe the official acts frustrating the litigation. It follows, too, that when the access claim (like this one) looks backward, the complaint must identify a remedy that may be awarded as recompense but not otherwise available in some suit that may yet be brought. There is, after all, no point in spending time and money just as well off after litigant a simpler case without the denial-of-access element. Id. 2186-2187. Emphasis added.

The Harbury's Court's 2002 decision foreshadowed its 2009 Iqbal decision:

> Like any other element of an access claim, the underlying cause of action and its lost remedy must be addressed by allegations in the complaint sufficient to give fair notice to a defendant. See generally Swirkiewicz v Sorema N.A., 504 U.S. 506, 513-515, 122 S. Ct. 922, 152 L.Ed. 2d 1 (2002). Although we have no reason here to try to describe pleading standards for the entire spectrum of access claims, this is the place to address a particular risk inherent in backward-looking claims.

> Characteristically, the action underlying this sort of access claim will not be tried independently, a fact that enhances the natural temptation on the part of plaintiffs to claim too much, by alleging more than might be shown in a full trial focused solely on the details of the predicate action. Id. 2187. Emphasis Added.

The Harbury Court emphasized the need for a predicate cause of action to the Bivens First Amendment claim of a denial of a First Amendment right of access to the courts:

> Hence the need for care in requiring that the predicate claim be described well enough to apply the "nonfrivolous" test and to show that "arguable" nature of the underlying claim is more than hope. And because these backward-looking cases area brought to get relief unobtainable in other suits, the remedy sought must itself be identified to hedge against the risk that an access claim be tried all the way through, only to find that the court can award no remedy that the plaintiff could not have been awarded on a presently existing claim. Id. 2177. Emphasis Added.

By application of the Harbury analysis of a "backward-looking" First Amendment violation of access to the courts standard, FBI Director Mueller's 2005 FBI Special Counsel Weissmann knew the content of the Robert VII v DOJ "FISC Robert" documents in the custody of OIPR Counsel Baker when AG Gonzales made his 2005 Motion seeking Judge Garaufis' Order prohibiting Robert from filing a FOIA request without Judge Garaufis' pre-clearance order. This is an important time line fact because of AG Gonzales' April 3, 2006 letter Brief withholding from the Second Circuit the fact that FBI Director Judge Webster in 1985 knew that Robert was the 1985 target of the illegal domestic NSA TSP. This is important because FBI Director Mueller would in 2006 authorize the targeting of NSA "whistleblower" Thomas Drake and indict him for violating The Espionage Act because he released classified information regarding the Thin Thread algorithm and the NSA data mining of the pre-9/11 NSA TSP data banks in violation of the "exclusivity provision" of the FISA. See Robert VIII Petition pp. 6-9.

FBI Special Counsel Weissmann knew in 2005 that Robert's putative "backward looking" First Amendment violation would be based on the June 19, 1985 Mitchell v Forsyth, 472 U.S. 511 (1985), 'bright line" majority opinion that the AG does not have absolute immunity based on a good faith Article II national security defense. "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. 520.

FBI General Counsel Weissmann knows in February, 2012 that Robert's "backward looking" First Amendment violation has become an ongoing First Amendment violation because AG Holder in February, 2012 continues his déjà vu Supreme Court "fraud upon the court" by not informing the Supreme Court that the 2012 FISA "secret law" includes his 2012 Mitchell v Forsyth "nonacquiescence" policy. FBI General Counsel Weissmann also knows that the Robert's putative First Amendment claim has a predicate violation of the FISA because the FBI documents and Robert v Holz contain evidence that carry Robert's burden to prove he was a FISA "aggrieved person" so as to trigger a 50 U.S.C. § 1810 Civil liability cause of action:

> An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801 (a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—
> (a) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater;
> (b) punitive damages; and
> (c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred. Emphasis added.

FBI General Counsel Weissmann knows that the Supreme Court in Iqbal v Ashcroft established a high pleading "plausibility" bar for a Bivens action alleging a violation of a First Amendment right of access to the courts. The claim must be based on real evidence and not a plaintiff's creative pleading of speculative facts for which there is no concrete foundation:

> The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer probability that a defendant has acted unlawfully. Ibid. When a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief'" Id., at 557, 127 S. Ct. 1955 (brackets omitted). Id. 1949. Emphasis Added.

FBI General Counsel Weissmann knows that the FOIA requested # 7 "FBI Robert VII v DOJ "FISC Robert" documents and the # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" contain the evidence the Robert needs to survive AG Holder's Iqbal Motion to Dismiss Robert's putative Bivens action. He also knows that if a FBI FOIA denial decision is rendered, then the FBI documents will be subject a request in the Robert VIII petitioner's Motion seeking Judge Garaufis' pre-clearance order to file a FOIA action seeking the FBI documents for *in camera* review. Judge Garaufis will learn whether USG attorneys had intentionally deceived Judge Garaufis, the Second Circuit, and the Supreme Court in Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA by withholding the material fact that Robert was the target of the CIA-DIA-FBI NSA TSP that was conducted without § 413 Congressional Notification and without any evidence that Robert was a terrorist or an agent of a foreign power.

Hence, the importance of FBI General Counsel Weissman providing an accurate "heads up" memo to FBI Director Mueller explaining why he renewed former-FBI General Counsel Caproni's instruction to FBI Chief FOIA Officer Hardy not to process the Robert VIII appellant's September 13, 2011 *de novo* FBI FOIA request for the eight sets of FBI documents. Upon information and belief, if FBI General Counsel Weissmann provides accurate facts in his "heads up" FBI memo, then FBI Director Mueller will instruct FBI Chief FOIA Officer Hardy to process the September 13, 2011 FBI FOIA request. If so, then NARA OGIS Director Nesbit would be of great assistant to FBI Director Mueller is she provided facilitation services which would lead to the long sought Robert VIII and Robert II v CIA and DOJ quiet settlement.

Y. The FOIA requested FBI documents will provide FBI Director Mueller with facts that President Obama needs when he decides whether to file a § 413 (b) of the National Security Act duty "corrective action" plan to cure illegal intelligence activities at IMC and NSA

The FOIA requested FBI documents will provide FBI Director Mueller with facts that President Obama needs when he decides whether to file a § 413 (b) of the National Security Act duty "corrective action" plan to cure illegal intelligence activities at IMC and NSA. This is an important fact for NARA OGIS Director Nesbit to consider when she decides whether to accept jurisdiction of this request for OGIS FBI facilitation services that seeks the release of FBI documents that the requester asserts will reveal that FBI Director Judge Webster had knowledge of DIA-CIA domestic "black operations" that were illegal intelligence community activities.

50 U.S.C. § 413, Reports to Congressional committees of intelligence activities and anticipated activities, establishes a "shall" standard for President Obama to file a "corrective action" plan to cure illegal intelligence activities:

> **(b) Reports concerning illegal intelligence activities**
> The President shall ensure that any illegal intelligence activity is reported promptly to the congressional intelligence committees, as well as any corrective action that has been taken or is planned in connection with such illegal activity. Emphasis Added.

The September 13, 2011 *de novo* FBI FOIA requested July 27, 2010 documents reveal illegal intelligence activities and IMC and NSA that were known to FBI Director Judge Webster, but never cured by any President filing a 50 U.S.C. § 413 (b) "corrective action" plan. The illegal intelligence activities at IMC have a 2012 "Past is Prologue" legacy because AG Holder continues to defend SSA Commissioner Astrue's "rigging" of the 2009-2012 SSA computer with the 1985 "Jackson nonacquiescence policy" of HHS General Counsel del Real that is applied to the millions of 1994-2012 Ford v Shalala class members whose due process rights continue to be violated in February, 2012. The illegal intelligence activities at NSA have a 2012 "Past is Prologue" legacy because AG Holder continues to implement the FISA "secret law" of AG Meese without the knowledge of the Article I "Gang of Eight", Article II President Obama, or Article III FISC or the Supreme Court. See 1-23-12 OGIS NARA WP § EE.

If NARA OGIS Director Nesbit accepts jurisdiction of the Robert VIII petitioner's request for NARA OGIS FBI facilitation services, then this will lead to FBI Director Mueller reading these FBI documents and learning that FBI Director Judge Webster knew of the CIA-DIA illegal domestic intelligence activities at IMC and the NSA. FBI Director Mueller can provide the FBI facts contained in the FOIA requested FBI documents to President Obama. The FBI facts FBI Director Mueller provides President Obama will supplement the facts AG Holder and WH Counsel Ruemmler provided President Obama re the NARA "Perot" and "Peter Keisler Collection" documents that are subject to President Obama's executive privilege decision.

Thus, OGIS FBI facilitation services could assist President Obama fulfill his 2012 50 U.S.C. § 413 (b) duty to file a "corrective action" plan. This § 413 (b) plan would cure the collateral damage that resulted from illegal CIA-DIA-FBI "black operations" at IMC and NSA.

Z. Summary

The Robert VIII petitioner/Robert II v CIA and DOJ plaintiff requests NARA OGIS FBI facilitations services in order that FBI Director Mueller learns that the content of these FBI documents reveal whether FBI Director Judge Webster knew in 1985 that CIA-DIA illegal domestic "black operations" were conducted at IMC and NSA without the knowledge of President Reagan. FBI Director Mueller will learn that this is the result of a flawed Article II decision-making process for which there are no Article II checks and balances as explained by former- ISSO Director Leonard in his April 30, 2008 testimony to the Senate Judiciary Committee at 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.

If NARA ODNI Director Nesbit accepts jurisdiction of this February 22, 2012 request for OGIS FBI facilitation services, then the facilitation services should be conducted along with other requests for NARA OGIS facilitation services:

1. February 1, 2012 request for OGIS NARA facilitation services re the NARA 1987 "Perot", "Peter Keisler Collection", and "Robert v National Archives 'Bulky Evidence File'" documents
2. February 7, 2012 request for OGIS DOD facilitation services re the legacy "NSA TSP and PSP data banks access guidelines" document
3. February 7, 2012 request for OGIS ODNI facilitation services re the legacy "NCTC TSP and PSP data banks access guidelines" document
4. March 5, 2012 request for OGIS DOJ facilitation services re the SG, OLC, and Civil documents that are connect-the-dots document with the FBI documents
6. March 19, 2012 request for OMB, HHS, and SSA facilitation services re OMB, HHS, and SSA documents which are connect-the-dots documents with the FBI documents

The Robert VIII petitioner/Robert II v CIA and DOJ plaintiff is also requesting these facilitation services to prove to President Obama that there are FBI, NARA, CIA, DOD, ODNI, DOJ, OMB, HHS, and SSA "stovepipes" honeycombed within in these Article II agencies that lead to a *faux* "Commander and Chief." He has, without the knowledge of President Obama, made Top Secret classified decisions re the data mining of the 1984-2012 NSA TSP data banks of the Orwellian-Hooveresque NSA domestic surveillance program the public learned about from Washington Post reporters Dana Priest and William Arkin in their July 19, 2010 "Top Secret America" series with its eye-opening Locator Map. President Obama will learn "known-known" facts upon which to file a § 413 (b) of the National Security Act "corrective action" plan to cure the illegal intelligence activities not cured by Presidents Reagan, Bush, Clinton and Bush.

If NARA OGIS Nesbit denies this request for OGIS FBI facilitation services, then the Robert VIII v DOJ, HHS, and SSA petitioner will have exhausted his administrative remedies. He will file a Robert VIII v DOJ, HHS, and SSA Motion seeking Judge Garaufis' pre-clearance Order to file a FOIA action. He will seek the release of these FBI documents and the mosaic of other FOIA requested documents, to prove to Judge Garaufis that AG Holder "defrauded" Judge Garaufis, the Second Circuit, and the Supreme Court in Robert VIII v DOJ, HHS, and SSA.