UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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CHARLES ROBERT II, a/k/a Snowflake 5391

PLAINTIFF'S STATUS AFFIDAVIT RE THE OGIS QUIET SETTLMENT REQUEST
Cv –02-6788 (Seybert, J)

Plaintiff,

-against-

THE CENTRAL INTELLIGENCE AGENCY and
THE DEPARTMENT OF JUSTICE

Defendant.
----------X
State of New York)
)
County of Nassau)

Charles Robert being duly sworn swears under penalty of law the following:

1. He makes this Affidavit to comply with the Court's February 15, 2012 Order. "Plaintiff is ORDERED to file a status report with the Court by August 15, 2012."

2. This August 15, 2012 Status Affidavit is a supplement to the facts set forth in the plaintiff's December 14, 2011 Corrected Affidavit and February 3, 2012 letter to the Court.

A. The failure of the December 14, 2011 quiet settlement plan and the modified plan based on the Ninth Circuit's August 7, 2012 Al-Haramain holding re § 1806 of the FISA

3. The plaintiff reports that the proposed prosecution plan as explained in the December 14, 2011 Robert II v CIA and DOJ Corrected Affidavit § WW, has failed. However, on August 7, 2012 the Ninth Circuit decided Al-Haramain Islamic Foundation v. Obama, __F.3d __(9th Cir. 2012). That decision held that Congress waived the sovereign immunity defense when it enacted Section 1806 the Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1806**.** Thus, the plaintiff will renew his prosecution efforts to secure NARA OGIS facilitation services to secure in 2012 a quiet settlement of this FOIA action without further burdening the

court. Based on Al-Haramain, the use of the state secrets sovereign immunity defense would fail if the plaintiff files an action in 2013 alleging a violation of Section 1806 of the FISA.

1. Status of OGIS Requested Facilitation services

4. The plaintiff reports that NARA OGIS Director Miriam Nesbit has not yet docketed the Robert II v. CIA and DOJ plaintiff's following requests for OGIS facilitation services:

January 23, 2012	OGIS NARA request
February 1, 2012	OGIS NARA amended request
February 7, 2012	OGIS DOD request
February 7, 2012	OGIS ODNI request
February 22, 2012	OGIS FBI request

5. By not docketing the plaintiff's requests for NARA, DOD, ODNI, and FBI facilitation services, NARA OGIS Director Nesbit has not yet performed her NARA Office of Government Information Services (OGIS) duty to provide the services as explained on the OGIS website:

> 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/about-ogis/ogis-procedures.htm#Facilitation

6. The plaintiff's renewed prosecution plan efforts will explicitly reference the August 7, 2012 Ninth Circuit Al-Haramain FISA Section 1806 holding that the Congress explicitly waived the sovereign immunity defense. The plaintiff filed the February, 2012 requests for the OGIS NARA, DOD, ODNI, and FBI facilitations services so that NARA OGIS Director Nesbit would advise AG Holder whether Robert could use this mosaic of documents as evidence to prove his allegation that he was a FISA aggrieved person because of the violation of Section 1806 of the FISA. Plaintiff Robert believed that NARA OGIS Director Nesbit would prove to AG Holder that CIA Director Casey and DOD Secretary Weinberger had in 1985 conducted the illegal domestic black operation at NSA with the knowledge of FBI Director Judge Webster.

7. The plaintiff is seeking the release of four one page classified CIA 1985 "North Notebook" documents because he believes that these are connect-the-dots documents to the NARA 1985 "Perot" and "Peter Keisler Collection" documents that are subject to the February 1, 2012 amended request for OGIS NARA facilitation services. These two sets of documents continue to be withheld pursuant to the executive privilege assertion of the Estate of President Reagan. See the December 14, 2011 Robert II v. CIA and DOJ Affidavit §§ H, I.

8. As explained in more detail in the 2012 chronology of facts below, the February, 2012 request for OGIS NARA, DOD, ODNI and FBI facilitation services was to seek the release of NARA DOD, ODNI, and FBI documents that prove that a 1980s CIA-DIA black operation was conducted at the NSA in violation of the "exclusivity provision" of the FISA.

9. The plaintiff is seeking the release of four CIA classified 1985 "North Notebook" documents because he believes that these are connect-the-dots documents to the Robert VII v. DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007), "FISC Robert" documents and the Robert VIII v. DOJ, HHS, and SSA, 439 Fed. Appx 32 (2d Cir. 2011), cert. den. 132 S. Ct. 1549 (2012), "Robert v. Holz" documents. The plaintiff had asserted and continues to assert that these four classified CIA 1985 documents are part of the mosaic of FOIA withheld documents that prove whether in 1985 CIA Director Casey and DOD Secretary Weinberger's black operation at the NSA had illegally targeted and wiretapped Robert, a U.S. citizen, without a FISC warrant, and then provided information from the NSA wiretaps to HHS General Counsel del Real for his use in a "Fraud Against the Government" investigation of Robert to secure the incarceration and disbarment of Robert. See the November 30, 2011 Robert VIII v. DOJ, HHS, and SSA Petition for a writ of certiorari Statement of the Case §§ A, B, C, H available at http://snowflake5391.net/Robert8vDOJpetition1.pdf.

2. The effect of the Al-Haramain decision

10. In Al-Haramain, the Ninth Circuit held that FISA Section 1810 does not preempt the government's state secrets privilege assertion as a defense to the domestic electronic surveillance of a foreign charity and its attorneys. "Section 1810 does not include an explicit waiver of immunity, nor is it appropriate to imply such a waiver." Id. slip op. at 8784. However, the Ninth Circuit's Al-Haramain decision explained the difference between FISA Section 1810 and FISA Section 1806. The court held there is an explicit statutory waiver of sovereign immunity for Section 1806 actions. This FISA Section 1806 holding is the basis for the plaintiff's modified plan to secure OGIS facilitation services to secure a Robert II v. CIA and DOJ quiet settlement without further burdening the court.

11. The Ninth Circuit explained the contrast between FISA § 1810 with FISA § 1806 as to the application of the sovereign immunity waiver by Congress:

> Contrasting § 1810 liability, for which sovereign immunity is not explicitly waived, with § 1806 liability, for which it is, also illuminates the congressional purpose. Liability under the two sections, while similar in its reach, is not identical. Section 1806, combined with 18 U.S.C. § 2712, renders the United States liable only for "use ( ) and disclos(ure)" of information by "Federal officers and employees" in an unlawful manner. Section 1810, by contrast, also creates liability for the actual collection of the information in the first place, targeting "electronic surveillance or…disclos( )ure) or use( )" of that information. (emphasis added.). Id. slip opinion 8792. Emphasis added.

12. The plaintiff has informed NARA OGIS Director Nesbit and the co-defendants' attorneys, CIA General Counsel Stephen Preston and EDNY U.S. Attorney Loretta Lynch, that if there is no Robert II v. CIA and DOJ quiet settlement, then in 2013 the plaintiff will file a FISA cause of action based on FISA Section 1806 for which Congress has statutorily waived the sovereign immunity defense. He will be asserting that he is an "aggrieved person" pursuant to Section 1806 as per the March 9, 2006 teed up Robert VII v. DOJ Second Circuit question:

> 1. Does 50 U.S.C. § 1806 (f) apply to Robert's FOIA request to the Office of Intelligence Policy and Review FOIA Coordinator for "all FISA (Foreign Intelligence Surveillance Act) Affidavits that were relied upon by the FISA court to authorize wiretaps of the telephones of Charles Robert, Esq., a/k/a Snowflake 5391?
>
> 2. If *ex parte*, *in camera* review is required, what additional procedures, if any, are necessary to preserve the confidentiality of the information submitted to the District Court, including, but not limited to, the existence of an application of surveillance pursuant to the FISA?
> See November 30, 2011 Robert VII Petition Statement of the Case pp. 13-14. http://snowflake5391.net/Robert8vDOJpetition1.pdf

13. In his April 3, 2006 Robert VII v. DOJ letter-Brief, AG Gonzales informed the Second Circuit that plaintiff Robert was not an aggrieved person pursuant to 50 U.S.C. § 1806 (f). AG Gonzales filed this letter-Brief knowing the contents of the Robert VII v. DOJ "FISC Robert" documents that had been withheld pursuant to the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense. The Second Circuit relied upon AG Gonzales' letter-Brief when rendering its Robert VII v. DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007), decision affirming the District Court's dismissal. Upon information and belief, the Second Circuit never read *in camera* the "FISC Robert" documents.

3. The plaintiff's FISA § 1806 action

14. In plaintiff Robert's FISA § 1806 action, he will cite to a mosaic of documents that include the four classified CIA 1985 Robert II v. CIA and DOJ "North Notebook" documents. He will assert that these four classified CIA 1985 documents are subject to President Obama's E.O. 13526 § 3.3 Automatic Declassification 25 year standard:

> (a) …all classified records that (1) are more than 25 years old and (2) have been determined to have permanent historical value under title 44, United States Code, shall be automatically declassified whether or not the records have been reviewed. All classified records shall be automatically declassified on December 31 of the year that is 25 years from the date of origin, except as provided in paragraphs (b)–(d) and (g)–(j) of this section. Emphasis added. http://edocket.access.gpo.gov/2010/pdf/E9-31418.pdf

15. The putative plaintiff will assert that the four classified CIA 1985 "North Notebook" documents are connect-the-dots documents with the Robert VII v. DOJ "FISC Robert" documents that were withheld pursuant to FOIA Exemption 1 and the "Glomar Response" defense. He will assert that the Ninth Circuit Al-Haramain FISA § 1806 standard would apply to these documents. He will assert that the Article III Judge assigned to the case has a duty to read *in camera* the "FISC Robert" documents to determine whether they contain evidence that corroborates the plaintiff's assertion that he was the illegal target of an illegal 1985 National Security Agency (NSA) Terrorist Surveillance Program (TSP) that was conducted by CIA Director Casey and DOD Secretary Weinberger in violation of Section 1806 of the FISA. He will assert that AG Holder and CIA Director Petraeus knew this fact when they rejected the plaintiff's quiet settlement offer. See November 30, 2011 Robert VIII Petition Statement of the Case §§ A-C, H, Issues I, II, and December 14, 2011 Robert II v. CIA and DOJ Affidavit § A.

16. In Al-Haramain, the Ninth Circuit affirmed the dismissal of the personal liability of FBI Director Mueller by applying the Supreme Court's Ashcroft v. Iqbal "plausibility" standard:

> Al-Haramain's bare-bones allegations against Mueller are insufficient to survive summary judgment. The allegations, in their entirety, consist of two simple statements: Mueller "threatened to resign because of concerns about the legality of the warrrantless surveillance program;" and "Mueller testified before the House Judiciary Subcommittee that in 2004 the FBI, under his direction, undertook activity using information produced by the NSA through the warrantless surveillance program." These allegations do not appropriately allege a claim under FISA. See Ashcroft v Iqbal, 556 U.S. 662, 678 (2009) ("(A) complaint just contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (internal quotations and citations omitted)). Al Harmain's allegations against Mueller are significantly less concrete that those found insufficient in Iqbal See Id. at 680-681. The district court recognized that Al-Haramain could not bring forth additional allegations that might breathe life into the otherwise deficient claim against Mueller. Al-Haramain at 8797-8798. Emphasis added.

17. In the Robert II v. CIA and DOJ plaintiff's renewed prosecution plan, the plaintiff will cite to this Al-Haramain holding re FBI Director Mueller, in his renewed request for NARA OGIS FBI facilitation services. As of the date of this status Report Affidavit, FBI Director Mueller's Chief FBI FOIA Officer David Hardy has not yet docketed the plaintiff's September 13, 2011 *de novo* FOIA request for the July 27, 2010 FBI FOIA requested documents. See the December 14, 2011 Robert II v. CIA and DOJ Affidavit § HH and § E below.

18. The plaintiff asserts that it is not a coincidence that NARA OGIS Director Nesbit has not docketed the plaintiff's February 22, 2012 request for OGIS FBI facilitation services and that FBI Director Mueller's Chief FBI FOIA Officer Hardy has not docketed the September 13, 2011 *de novo* FBI FOIA request. As detailed in § E below, he asserts that the *de novo* July 27, 2010 FOIA requested FBI documents are connect-the-dots documents to the four CIA classified 1985 "North Notebook" documents being sought in this FOIA action.

19. The plaintiff further asserts that the September 13, 2011 FOIA requested FBI documents and the four 1985 CIA classified 1985 "North Notebook" documents are connect-the-dots documents with the OGIS NARA facilitation requested NARA 1987 "Perot" and "Peter Keisler Collection" documents. He asserts that those documents reveal whether FBI Director Judge Webster knew that CIA Director Casey and DOD Secretary Wienberger were conducting "black operations" at the Florida HMO International Medical Center, Inc. (IMC) and the NSA without the knowledge of President Reagan. Those documents are now subject to President Obama's pending decision whether to ratify the use of executive privilege asserted by the Estate of President Reagan. On January 21, 2009 President Obama's "Presidential Records" Executive Order 13489 Sec. 3. Claim of Executive Privilege by Incumbent President revoked President Bush's November 1, 2001 Executive Order 13233. See ¶¶ 239-241 below.

20. The plaintiff believes his renewed prosecution plan that cites OGIS Director Nesbit to the Al-Haramain holding re FBI Director Mueller will lead to the docketing of the February, 2012 requests for OGIS NARA, DOD, ODNI, and FBI facilitation services. OGIS Director Nesbit will know that plaintiff's FISA § 1806 cause of action will be Iqbal viable.

B. The modified plan for OGIS NARA facilitation services to secure a quiet settlement is based on the Supreme Court's Clapper v. Amnesty FISA standing decision

21. The plaintiff reports that on May 21, 2012, the Supreme Court granted Solicitor General (SG) Donald Verrelli's February 17, 2012 Clapper v. Amnesty petition for a writ of certiorari seeking the reversal of the Second Circuit's March 21, 2011 Amnesty v. Clapper, 638 F. 3d 118 (2d Cir. 2011), FISA standing decision. On July 23, 2012, the Supreme Court scheduled October 29, 2012 for the oral argument for Clapper v. Amnesty, Docket No. 11-1025. http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/11-1025.htm.

1. The Clapper v Amnesty standing issue

22. The Robert II v. CIA and DOJ plaintiff's modified prosecution plan will be to explicitly reference to OGIS Director Nesbit that the Supreme Court's Clapper standing decision is expected to be issued in the first quarter of 2013. That decision will establish the FISA standing standard that would apply to the Robert II v. CIA and DOJ plaintiff's putative FISA § 1806 cause of action that he had been the illegal target of the NSA TSP and that his First Amendment right of access to the courts was violated by USG officials and attorneys who covered up the FISA violation by making uncured misrepresentations of facts and law to Article III Judges throughout the plaintiff's serial 1985-2012 FOIA litigation.

23. The plaintiff believes that because the Clapper v. Amnesty oral argument is scheduled for October 29, 2012, that NARA OGIS Director Nesbit will reevaluate her decision not to docket the plaintiff's February, 2012 requests for OGIS NARA, DOD, ODNI and FBI

facilitation services. Even if the Supreme Court reverses the Second Circuit's Amnesty v. Clapper standing decision, the Court will establish a FISA standing standard. The plaintiff will cite to this standing standard in his 2013 putative FISA Section 1806 cause of action that will be based on the facts that will also form the basis of his Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971), claim that his First Amendment right of access to the courts had been violated. See Christopher v Harbury, 536 U.S. 403 (2002), setting forth the elements. See November 30, 2011 Robert VIII Petition Statement of the Case §§ C, E, H and Issue II, December 14, 2011 Robert II v. CIA and DOJ Affidavit § W, HH, KK, NN and § H below.

24. On July 26, 2012, SG Donald Verrelli filed the Clapper v. Amnesty Brief on behalf of ODNI Director James Clapper, NSA Director and Chief of the Central Security Service General Keith Alexander, and AG Eric Holder. He framed the FISA standing question as:

> Whether respondents lack Article III standing to seek prospective relief because they proffered no evidence that the United States would imminently acquire their international communications using Section 1881a authorized surveillance and did not show that an injunction prohibiting Section 1881a-authorized surveillance would likely redress their purported injuries. Emphasis added.
> http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-1025_petitioner.authcheckdam.pdf

2. The "North Notebook" documents needed for plaintiff's standing

25. The Robert II v. CIA and DOJ plaintiff seeks the four classified CIA 1985 "North Notebook" documents to be part of the mosaic of documents that he will proffer in his putative complaint in 2013 alleging a violation pursuant to FISA § 1806 and his First Amendment right of access to the courts. He will assert that this mosaic of documents, that includes the Robert VII v. DOJ "FISC Robert" documents, have been in the custody of USG officials and attorneys. These documents contain concrete evidence of whether Robert was illegally wiretapped. The plaintiff will cite to these documents in opposing any Motion to Dismiss the plaintiff's complaint based

on Ashcroft v. Iqbal. See 11-30-11 Robert VIII Petition Statement of the Case pp. 37-40, December 14, 2011 Robert II v. CIA and DOJ Affidavit § W, and §§ E, H below.

26. In Amnesty, the Second Circuit had provided a standing holding that opens the courtroom door for plaintiffs who claim that they had been or will be the targets of illegal wiretaps in violation of the FISA of 1978 and the FISA Amendments Act of 2008:

> Because standing may be based on a reasonable fear of future injury and costs incurred to avoid that injury, and the plaintiffs have established that they have a reasonable fear of injury and have incurred costs to avoid it, we agree that they have standing. Amnesty v. Clapper, 638 F. 3d 118, 121 (2d Cir. 2011). Emphasis Added.

27. The Robert II v. CIA and DOJ plaintiff's standing argument is much stronger than the Amnesty plaintiffs who challenged the interception of their international phone calls without any "hard" evidence that they had been wiretapped. The appellant challenges the illegal wiretapping of his domestic phone calls. He can cite to the concrete Robert VIII v. DOJ, HHS, and SSA, 439 Fed. Appx 32 (2d Cir. 2011), cert. den. 132 S. Ct. 1549 (2012), "Robert v. Holz" documents that are presently in the custody of AG Holder. Those documents reveal the government's "used and disclosed" information from the NSA domestic wiretaps. Those documents were withheld pursuant to the FOIA Exemption 5, and not a classified FOIA Exemption or the state secrets defense that AG Holder had successfully used in Al-Haramain. See the November 30, 2011 Robert VIII Petition Statement of the Case § C and §§ E, H below.

28. In Amnesty, the Second Circuit rejected AG Holder's argument that there must be proof that there was USG monitoring or "effectively certain" evidence:

> The government argues that the plaintiffs can obtain standing only by showing either that they have been monitored or that it is "effectively certain" that they will be monitored. The plaintiffs fall short of this standard, according to the government, because they "simply speculate that they will be subjected to government action taken pursuant to (the FAA). Id. at 135. Emphasis Added.

29. AG Holder and the courts can learn the "effectively certain" proof that Robert was monitored by reading the Robert VII v. DOJ "FISC Robert" documents withheld pursuant to the CIA's use of FOIA Exemption 1 and the "Glomar Response" decision. Upon information and belief, the DOJ's 2005-2007 Robert VII v. DOJ case file notes also reveal that DOJ attorneys knew that information from the NSA Terrorist Surveillance Program wiretaps of Robert had been "used and disclosed" during the 1985-1987 "Fraud Against the Government" investigation of Robert with FBI Director Judge Webster's knowledge that the FISA "exclusivity provision" and FISA § 1806 had been violated without the knowledge of the FISC.

30. In Amnesty, the Second Circuit explained how a present injury can be based on plaintiffs' actions taken in anticipation of future government action:

> When a plaintiff asserts a *present* injury based on conduct taken in anticipation of *future* government action, we evaluate the likelihood that the future action will in fact come to pass. To determine whether the present injury "fairly can be traced to the challenged (future) action," see Simon v Eastern Ky. Welfare Rights Org., 426 U.S. 26, 38 (1976), we must consider whether a plaintiff's present injury resulted from some irrational or otherwise clearly unreasonable fear of future government action that is unlikely to take place. Such a disconnect between the present injury and the predicated future government action would break the cause chain required for standing. Amnesty v. Clapper, 638 F. 3d 118, 135 (2d Cir. 2011). Italics in original. Underline emphasis added.

31. The plaintiff asserts that it is not unduly speculative to anticipate that in 2013 the AG will file an Ashcroft v. Iqbal Motion to dismiss plaintiff's action. See Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S.388 (1971). The AG will argue that Robert's allegations that he was the target of an illegal NSA Terrorist Surveillance Program (TSP) that was conducted by AG Meese and FBI Director Judge Webster before and after Mitchell v. Forsyth, 105 S.Ct. 2806 (1985), are not plausible. The plaintiff's renewed prosecution plan is based on his hope that NARA OGIS Director Nesbit's actions will preempt the need for the plaintiff to file his putative

Bivens action by docketing in 2012 and providing OGIS NARA, DOD, ODNI and FBI facilitation services that lead to a quiet settlement.

32. The plaintiff believes that AG Holder will apprehend that the Supreme Court's Clapper v. Amnesty decision will establish the standard to be applied in 2013 when the 2013 AG is performing due diligence by reading the putative plaintiff Robert's allegations that cite to FOIA requested CIA, NARA, DOD, ODNI and FBI documents. These documents have been in the custody of USG attorneys who have implemented the FISA secret law that SGs Clement and Verrelli had withheld from the Justices in Robert VII v. DOJ, Robert VIII v. DOJ, HHS, and SSA, and Clapper. See November 30, 2011 Robert VIII Petition Statement of the Case § H.

33. Hence the plaintiff's belief that plaintiff's citations to Al-Haramain and Clapper will result in NARA OGIS Director Nesbit's docketing the OGIS requests. If NARA honors the requests for OGIS NARA, DOD, ODNI and FBI facilitation services simultaneously, then this will increase the possibility of a Robert II v. CIA and DOJ quiet settlement in 2012.

C. The proposed modification of the December 14, 2011 quiet settlement plan

34. The plaintiff proposes additional actions in anticipation of Supreme Court's Clapper v. Amnesty decision. If the plaintiff's actions do not lead to NARA OGIS Director Nesbit's docketing the February, 2012 requests for OGIS NARA, DOD, ODNI and FBI facilitation services in 2012, then the plaintiff will abandon his attempts to secure a quiet settlement. After Clapper is decided by the Supreme Court and pursuant to this Court's Individual Motion Practices Summary Judgment Pre-motion Conference Rule IV F 2, the plaintiff will request a conference. At the Pre-motion conference, the plaintiff will again request that the co-defendants release the four one-page classified CIA 1985 "North Notebook" documents pursuant to the E.O. 13526 § 3.3 Automatic Declassification 25 year standard (1985+25=2010).

1. Renewed requests for OGIS facilitation services

35. After SG Verrelli files his Clapper v. Amnesty Reply Brief on or about September 21, 2012, the plaintiff will file with NARA OGIS Director Nesbit requests for OGIS facilitation services for DOJ, OMB, HHS and SSA documents that were the subject of his September 13, 2011 *de novo* FOIA requests for documents. These documents are part of the mosaic of documents that the plaintiff will cite in his 2013 putative FISA § 1806 and Bivens complaint. He will request that these new requests for NARA facilitation services be considered along with the February, 2012 OGIS NARA, DOD, ODNI and FBI requests. See § E and H below.

36. The plaintiff will assert that if the requests for facilitation services are granted, then all of the classified documents should be subject to President Obama's December 29, 2012 E.O. 13526 § 1.7, Classification Prohibitions and Limitations, standards:

> a) In no case shall information be classified , continue to be maintained as classified, or fail to be classified in order to:
> (1) conceal violations of law, inefficiency, or administrative error;
> (2) prevent embarrassment to a person, organization, or agency;
> (4) prevent or delay the release of information that does not require protection in the interest of the national security. Emphasis added. Available at http://edocket.access.gpo.gov/2010/pdf/E9-31418.pdf

37. The plaintiff will note that historians and investigative reporters not subject to the Robert VIII v. DOJ, HHS, and SSA pre-clearance Order of Judge Garaufis could in 2013 file their own FOIA requests and learn whether in Clapper SG Verrelli had intentionally withheld the Article II FISA secret law from the Supreme Court. The probability of historians and investigative reporters filing their own FOIA requests seeking the release of the OGIS requested documents was enhanced by the May 13, 2012 60 Minutes Report Hank Crumpton: Life as a spy. http://www.cbsnews.com/8301-18560_162-57433105/hank-crumpton-life-as-a-spy/. In this 60 Minutes Report, former-CIA Chief of the National Resources Division Hank Crumpton

informed the public of the CIA's Counter-Terrorism Center that had conducted domestic electronic surveillance to protect the nation from terrorists. See ¶¶ 234-236 below.

38. If SG Verrelli's September, 2012 Clapper v. Amnesty Reply Brief does not inform the Justices of the FISA secret law that is explained in the March 18, 2011 reclassified May 6, 2004 OLC FISA Memorandum, then the plaintiff will file a formal complaint with DOJ Inspector General Michael Horowitz. The Robert II v. CIA and DOJ-Robert VIII v. DOJ, HHS, and SSA plaintiff will assert that in Clapper v. Amnesty SG Verrelli will have committed a "fraud upon the court" because he has not informed the Justices of the Article II FISA secret law that AG Holder has been implementing based on the Top Secret May 6, 2004 FISA OLC Memorandum. See November 30, 2011 Robert VIII Petition Statement of the Case § H, December 14, 2011 Robert II v. CIA and DOJ Affidavit §§ C, Y, Z, KK, LL and § H below.

39. The plaintiff's continued plan is also based on his belief that CIA General Counsel Stephen Preston and EDNY U.S. Attorney Loretta Lynch will inform CIA Director Petraeus and AG Holder of the facts and 2012 time line chronicled in this Affidavit. He believes that they will advise CIA Director Petraeus whether the Second Circuit's Doe v Mukasey, 549 F 3d 861 (2d Cir. 2008), holding applies to the facts that DOJ attorneys had intentionally withheld from the FISC and the Supreme Court in Robert VIII. "Under no circumstances should the Judiciary become the handmaiden of the Executive." Id. at 870. This would include the facts withheld from Judge Seybert in any Robert II v. CIA and DOJ "c (3) exclusion" *ex parte* Declarations filed by CIA General Counsels Scott Muller (2002-2004) and (Acting) John Rizzo (2005-2009). This would also include the facts revealed in the FOIA requested documents that are subject to the plaintiff's requests for NARA, DOD, ODNI, FBI, DOJ, OMB, HHS and SSA facilitation services. See the December 14, 2011 Robert II v. CIA and DOJ Affidavit §§ D, E. F.

2. The President's duty to cure illegal intelligence activities

40. The plaintiff's ongoing efforts are also based on National Security Act, 50 U.S.C. § 413 (b). This statute imposes a duty on the President to report to Congress a corrective action plan to cure the intelligence community's illegal 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.

41. Upon information and belief, the four CIA classified 1985 "North Notebook" documents are connect-the-dots documents with the Robert VII "FISC Robert" and Robert VIII "Robert v. Holz" documents and reveal the 1980s illegal intelligence activities of CIA Director Casey and DOD Secretary Weinberger. If so, then President Obama has a "shall ensure" duty to file a corrective action plan to cure these 1985 illegal intelligence activities. 50 U.S.C. § 413 (b). If President Obama files a corrective action plan to cure these 1985 illegal intelligence activities, then this will moot this FOIA action. However, if a § 413 (b) corrective action plan is not filed in 2012, then after the Supreme Court's Clapper v. Amnesty decision is rendered, this FOIA action will be ripe for the plaintiff's Summary Judgment Motion.

42. This 2002 FOIA action has now matured to the plaintiff's seeking the co-defendants' release of the four one page classified CIA 1985 "North Notebook" documents. The remainder of this Affidavit reveals the plaintiff's 2012 quiet settlement efforts and facts for a future Summary Judgment Motion if necessary. The plaintiff believes that if CIA General Counsel Preston and EDNY U.S. Attorney Lynch present these facts to CIA Director Petraeus and AG Holder, then the co-defendants will agree to the plaintiff's quiet settlement offer and thereby moot the need for Judge Seybert to decide any Summary Judgment Motion. See § E below.

D. The four 1985 one-page Robert II v CIA and DOJ "North Notebook" documents

43. The Robert II v. CIA and DOJ plaintiff seeks the release of the four 1985 one page "North Notebook" redacted classified documents which are being withheld pursuant to FOIA Exemptions 1, 3, and 7. These same classified documents are also subject of the plaintiff's September 13, 2011 *de novo* NARA FOIA request. NARA Chief Special Access/FOIA Staff Martha Wagner Murphy's series of December, 2011 FOIA decisions led to the plaintiff's January 23, 2012 request for NARA OGIS services to secure a quiet settlement of Robert II v. CIA and DOJ. These four CIA documents are also now subject to President Obama's December 29, 2009 E.O. 13526 § 3.3 Automatic Declassification 25 year standard (1985+25=2010).

44. The following four 1985 "North Notebook" documents are now in the custody of CIA Director Petraeus' FOIA Officer Susan Viasco:

> 1. 9/3/85 North-FBI Exemptions 1,7 and Buck Revell "North Notebook" log entry http://www.snowflake5391.net/9-3-85North-FBI.pdf.
>
> 2. 9/6/85 North-CIA-FBI Exemptions 1, 3 and NHAO http://www.snowflake5391.net/9-6-85NorthCIA.pdf.
>
> 3. 9/16/85 North-Call to Perot Exemptions 1 and 3 http://snowflake5391.net/perot.pdf.
>
> 4. 10/1/85 CIA-DOD FOIA Exemption 1 and 3 and medivac helos http://www.snowflake5391.net/medivachelos.pdf.

45. Pursuant to the FOIA Exemptions 1 and 7, the CIA and the FBI withheld the September 3, 1985 "North Notebook" redacted log entry document with the "Buck Revell" FBI notation. The plaintiff had asserted and continues to assert that this document was part of a mosaic of documents that reveal whether there were communications between the CIA, DIA (Defense Intelligence Agency), and FBI agents regarding a domestic "black operation" that CIA Director Casey and DOD Secretary Weinberger were conducting at the Florida HMO

International Medical Center, Inc. (IMC) in serial violation of the Boland Amendment and § 413 (a) of the National Security Act. An FBI FOIA Officer released the unredacted copy to NARA Chief Special Access/FOIA Staff Murphy who then released this "Buck Revell" declassified document with its unredacted "CHALOBI" notation to the Robert II v CIA and DOJ plaintiff. However, the plaintiff seeks the CIA copy of this unredacted released document to cite to CIA Director Petraeus as an example of evidence that had been withheld from the CIA Directors when they considered the plaintiff's ongoing quiet settlement offer that he presented to the 2002-2012 CIA General Counsels. See the 12-14-11 Robert II v CIA and DOJ Affidavit § VV.

46. Pursuant to the FOIA Exemptions 1 and 7, the CIA and FBI withheld the September 6, 1985 "North Notebook" redacted log entry document with the September 10, 1985 "NHAO" notation pursuant to FOIA Exemptions 1 and 3. The plaintiff had asserted and continues to assert that this document was part of a mosaic of documents that reveal whether Lt. General North knew that the Department of State Nicaraguan Humanitarian Assistance Office (NHAO) funds were not used to pay for the medical supplies and treatment of the Contras at IMC. Rather, Lt. General North knew that off-OMB Budget unaudited HHS funds were used to pay for Contras medical supplies and treatment at IMC which was a serial violation of the Boland Amendment, § 413 (a) of the National Security Act, and the Social Security Act. See the 12-14-11 Robert II v CIA and DOJ Affidavit § C and § E below.

47. Pursuant to FOIA Exemptions 1 and 3, the CIA withheld the September 16, 1985 "North Notebook" redacted log entry document with the "Ross Perot" notation. The plaintiff had asserted and continues to assert that this document is a connect-the-dots document to the FOIA requested NARA 1987 "Perot" and "Peter Keisler Collection" documents that are being withheld pursuant to the executive privilege assertion of the Estate of President Reagan.

President Obama has a 2012 duty pursuant to his January 21, 2009 E.O. 13489 Presidential Records Sec. 3. Claim of Executive Privilege by Incumbent President, to decide whether to ratify the executive privilege assertion of the Estate of President Reagan. The plaintiff asserts that the 9-16-85 "Perot" and NARA 1987 "Perot" and "Peter Keisler Collection" documents contain "smoking gun" facts that confirm his allegation that CIA Director Casey and DOD Secretary Weinberger were conducting illegal domestic black operations at IMC and the NSA in serial violation of Boland Amendment, § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the Posse Comitatus Act (PCA) limitations on domestic military law enforcement, and the Social Security Act with the knowledge of FBI Director Judge Webster. See 12-14-11 Robert II v CIA and DOJ Affidavit § D and ¶¶ 239-241 below.

48. Pursuant FOIA Exemptions 1 and 3, the CIA and DOD withheld the October 1, 1985 "North Notebook" redacted log entry with the "medivac helos" notation. The plaintiff had asserted and continues to assert that this document is a connect-the-dots document to the FOIA requested "Peter Keisler Collection" documents that have been withheld pursuant to the executive privilege assertion of the Estate of President Reagan. The plaintiff had asserted and continues to assert that these documents reveal whether the "medivac helos" were paid for with unaudited HHS funds paid to IMC. He also had asserted and continues to assert that these are connect-the-dots documents to other Robert FOIA requested documents that reveal whether DOD Secretary Weinberger and FBI Director Judge Webster knew in December, 1986 that HHS General Counsel del Real was CIA Director Casey's covered agent both as HHS General Counsel and then in December, 1985 as IMC President Miguel Recarey's Chief of Staff who administered a 20 million dollar unaudited HHS voucher paid to IMC. See the December 2, 1985 HHS voucher posted at http://www.snowflake5391.net/IMC.pdf.

49. If the four 1985 Robert II v. CIA and DOJ 1985 withheld classified "North Notebook" documents and the NARA "Perot" and "Peter Keisler Collection" documents withheld pursuant to the executive privilege assertion of the Estate of President Reagan reveal that HHS General Counsel del Real was CIA Director Casey's covered agent, then this is a connect-the-dots fact to the Robert VIII v. DOJ, HHS, and SSA "Robert v. Holz" and "Ruppert" documents withheld pursuant to FOIA exemption 5. Because FOIA Exemption 5 was used and not the classified FOIA Exemptions 1 or 3, these two sets of Robert VIII documents are now in the custody of both AG Holder and his client who had asserted the attorney-client privilege defense. See 11-30-11 Robert VIII Petition Statement of the Case §§ C, D and § H below.

50. The Robert VIII "Robert v. Holz" documents reveal whether the "Fraud Against the Government" investigation of Robert that was initiated by HHS General Counsel del Real, was to eliminate Robert who as the Ruppert v. Bowen, 671 F. Supp. 151 (EDNY 1987), attorney was challenging the Jackson v. Schweiker, 683 F. 2d 1076 (7th Cir. 1982), "nonacquiescence" policy of HHS General Counsel del Real. The documents reveal whether HHS General Counsel del Real had used information he had received from an FBI counterintelligence "plumber" unit that was disclosed from the domestic DOD "Force Protection" NSA TSP that DOD Secretary Weinberger had established to protect the nation from terrorists and protect the rights of U.S. persons. See DOD Secretary Weinberger's October, 1982 DOD 5240 1 R "Procedures Governing the Activities of DOD Intelligence Components That Affect United States Persons. http://www.cnss.org/DoD%20Intell%20Affecting%20US%20Persons%20Regs.pdf. If HHS General Counsel del Real was CIA Director Casey's covered agent, then the Robert VIII v DOJ, HHS, and SSA "Robert v. Holz" documents being withheld pursuant to FOIA Exemption 5 contain concrete facts for plaintiff's Bivens First Amendment cause of action.

51. The Robert VIII "Ruppert" documents reveal whether AAG of the Civil Division Richard Willard appeared at the September 4, 1985 Ruppert conference held in Judge Altimari's Chambers. Judge Altimari scheduled the Ruppert conference pursuant to the Ruppert counsel's complaint against USG attorneys because USG Special Agents were contacting his aged, blind, and disabled clients, including plaintiff Ruppert, and interrogating them *ex parte* to learn the legal advice Robert was providing and the legal fees he was charging. Judge Wexler would become the Ruppert Judge after Judge Altimari was confirmed as a Second Circuit Judge. As the Robert v. Holz FOIA progressed, plaintiff asserted in both Robert v. Holz and Ruppert v. Bowen that unaudited HHS Jackson "nonacquiescence" policy funds were used as a funding source for CIA-DIA "black operations" at IMC and the NSA. He asserted that HHS funds were the funding source for the "immaculate construction" and maintenance of the NSA TSP data banks that could not be funded with classified OMB funds because of the serial violation of the § 413 (a) of the National Security Act. See the 11-30-11 Robert VIII Petition Statement of the Case §§ C, D and 12-14-11 Robert II v CIA and DOJ Affidavit § D.

52. If the four classified CIA 1985 Robert II v CIA and DOJ "North Notebook" documents and the NARA "Perot" and "Peter Keisler Collection" documents withheld pursuant to the executive privilege assertion of the Estate of President Reagan, reveal that HHS General Counsel del Real was CIA Director Casey's covered agent, then this a connect-the-dots fact to the Robert VII v. DOJ "FISC Robert" documents that were withheld pursuant to the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense. On March 1, 2004, Office of Intelligence Policy and Review (OIPR) Counsel James Baker read the classified "FISC Robert" documents and ratified the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense. His corrected October 1, 2004 Robert VII v. DOJ Declaration filed with Judge Garaufis is

posted at http://www.snowflake5391.net/baker.pdf. See also 11-30-11 Robert VIII Petition Statement of the Case §§ B-E and § H below.

53. The four 1985 Robert II v. CIA and DOJ 1985 withheld classified "North Notebook" documents reveal, upon information and belief, whether AG Meese withheld the fact of the CIA-DIA-FBI black operations at IMC and NSA from President Reagan. If so, then these documents reveal whether CIA Director Casey, DOD Secretary Weinberger, and AG Meese had violated 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States. See March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of Vice President Bush" and "Criminal Liability of President Bush" Memorandum of IC Lawrence Walsh. Available at http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB365/index.htm. See also 12-14-11 Robert II v. CIA and DOJ Affidavit § C and § E below.

54. Upon information and belief, these documents reveal whether the 1985 "North Notebook" classified facts are now facts known to AG Holder that he has intentionally withheld from President Obama. If so, then the 1985 facts also reveal whether in 2012 AG Holder has violated 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States. This is a timely issue because President Obama has not yet made his 2012 decision whether to ratify the executive privilege assertion of the Estate of President Reagan to withhold the FOIA requested NARA 1987 "Perot" and "Peter Keisler Collection" documents. Hence, the importance of CIA Director Petraeus reading these four one-page classified CIA 1985 "North Notebook" documents, including the September 3, 1985 "CHALOBI" document that the FBI FOIA Officer released, in order that CIA Director Petraeus can provide accurate facts to President Obama when the President makes his decision whether to ratify the assertion of the executive privilege to withhold the NARA 1987 "Perot" and "Peter Keisler Collection" documents.

D. The application of former DOD Secretary Rumsfeld's "known-known" historical analysis to the 1985 "known-known" facts of CIA General Counsels from 1981-1985 Stanley Sporkin through 2009-2011 Stephen Preston

55. The four one-page classified CIA 1985 documents have "Past is Prologue" significance because of President Obama's 50 U.S.C. § 413 (b) of the National Security Act duty to file a corrective action plan to cure illegal intelligence activities. If, as the plaintiff asserts, the four classified CIA 1985 "North Notebook" documents are connect-the-dots documents with the NARA 1987 "Perot" and "Peter Keisler Collection" documents that are being withheld pursuant to executive privilege assertion of the Estate of President Reagan, then there should be no question of fact that CIA Director Petraeus had provided President Obama with accurate 1985 facts regarding any CIA-DIA-FBI domestic black operations at IMC and the NSA when the President makes his 2012 executive privilege decision.

56. The CIA General Counsels from 1981-1985 CIA General Counsel Stanley Sporkin to 2009-2011 CIA General Counsel Stephen Preston know the 1985 fact of whether CIA Director Casey had conducted domestic black operations at IMC and NSA without President Reagan's notification to the "Gang of Eight" as required by § 413 (a) of the National Security Act. CIA General Counsel Preston has a duty to inform CIA Director Petraeus whether the four one-page classified 1985 "North Notebook" documents are connect-the-dots with NARA 1987 "Perot" and "Peter Keisler Collection" documents being withheld pursuant to the executive privilege assertion the Estate of President Reagan, and that reveal whether CIA Director Casey had committed illegal 1985 intelligence activities at IMC and the NSA for which President Obama has a § 413 (b) of the National Security Act duty to file a corrective action plan in 2012.

57. The plaintiff's renewed quiet settlement plan is based on former-DOD Secretary Donald Rumsfeld's "known-known" historical analysis:

> There are known-knowns. These are things we know that we know. There are known unknowns. That is to say, there are things that we know we don't know. But there are also unknown unknowns. There are things we don't know we don't know. Emphasis Added. DOD News Briefing, 2-2-02 http://www.defense.gov/transcripts/transcript.aspx?transcriptid=2636

58. In 1985, CIA General Counsel General Counsel Stanley Sporkin knew as a "known-known" fact whether CIA Director Casey was conducting black operations at IMC and the NSA. If so, then he knew the off-OMB Budget funding source for these CIA domestic black operations that he knew could not be funded with classified OMB Budget funds because there would be a violation of the President's § 413 (a) of the National Security Act reporting duty. In 2012, CIA General Counsel Preston knows these same "known-known" 1985 facts.

59. As cited below in the chronology of 2012 facts, there are 2012 facts that are now publically known concerning CIA-DIA-FBI black operation at the NSA which had been "unknown-unknown" facts to the "Gang of Eight" and the FISC in 1985. These were also "unknown-unknown" 1985 facts to Judge Seybert in Robert II v. CIA and DOJ and to the Supreme Court in Robert VII v. DOJ and Robert VIII v. DOJ, HHS, and SSA.

60. Although these were "unknown-unknown" 1985 facts to the Article III Judges, they were "known-known" 1985 facts to USG attorneys who filed FRCP 11 signed pleadings in the Robert FOIA actions. The Robert v. Holz-Robert II v. CIA and DOJ-Robert VIII v. DOJ, HHS, and SSA plaintiff had asserted and continues to assert that the USG attorneys' "known-known" facts included the 1985 joint CIA-DIA-FBI black operation of data mining the pre-9/11 NSA TSP data banks based on the Article II FISA and SSI secret law that was in serial 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. See 11-30-11 Robert VIII Petition Statement of the Case § H and 12-14-11 Robert II v. CIA and DOJ § B.

61. An understanding of former-DOD Secretary Donald Rumsfeld's use of "snowflakes" is also helpful in understanding the 1985-2012 Robert FOIA litigation saga. Investigative reporter Bob Woodward explains in State of Denial, Simon & Schuster (2006), the importance of "snowflakes" when DOD Secretary Rumsfeld made "plausible deniability" decisions:

> Rumsfeld sent short notes all around the building, called "snowflakes," asking questions, seeking detail and asking for reconstructions when it was unclear to him what happened. He'd developed the snowflake system early in the Nixon administration, when he led the Office of Economic Opportunity. Though unsigned, everyone knew they represented orders or questions from the boss. But if a snowflake leaked, it provided deniability – no signature, no clear fingerprints. He was quite proud of his new management tool. When Rumsfeld had been ambassador to NATO form 1973 to 1974, his memos were on yellow paper called "yellow perils." Now they were once again on white paper, and "snowflake" was resurrected. Id. 23. Emphasis added.

62. The Robert II v. CIA and DOJ plaintiff had been designated as "Snowflake 5391" as revealed in a February 12, 1986 "Manny R" memo that was released during the Robert v. Holz litigation. http://www.snowflake5391.net/DOJ_OLS.pdf. This "Snowflake 5391" memo is a connect-the-dots document to the Robert VII "FISC Robert" documents that OIPR Counsel Baker withheld on March 1, 2004 when he ratified the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense to withhold CIA documents that reveal whether Snowflake 5391 was the target of a pre-9/11 NSA TSP that had never been reported to FISC or to the "Gang of Eight" as required by § 413 (a) of the National Security Act. See § H below.

63. Snowflake 5391 became a serial FOIA plaintiff in his quest to secure documents to explain how-it-could-have-happened that he had been the wiretap target of a "do not exist" NSA TSP based on a determination that he was a terrorist or an agent of a foreign power. As the FOIA litigation saga progressed, he sought documents that revealed the names of Article II United States Government (USG) officials who made the "plausible deniability" decisions to

implement the NSA TSP without the knowledge of the Article I "Gang of Eight" or Article II President Reagan or the Article III FISC. His serial filing of FOIA actions was necessary because there needed to be a three dimensional analysis of facts that track back to 1982: 1) vertical intra-agency decision making, 2) horizontal inter-agency decision making, and 3) a time analysis of the ever changing 1982-2012 decision makers.

64. The four September, 1985 and October 1, 1985 CIA classified "North Notebook" documents are part of a mosaic of documents to which this three dimensional historical analysis yields the names of the USG attorneys who had provided legal opinions to AG Meese, CIA Director Casey, DOD Secretary Weinberger, and FBI Director Judge Webster that the Boland Amendment did not apply to the National Security Council (NSC). These were important historical legal opinions because Lt. Col. North was a member of the NSC staff in September, 1985 and CIA General Counsel Sporkin had resigned on some date in the Spring of 1985.

65. On April 5, 1985, President Reagan nominated former-CIA General Counsel Sporkin to be a Federal Judge for the District of Colombia. This would become an important fact because of Judge Sporkin's August 1, 1988 Duggan v. Bowen, 688 F. Supp. 1687 (D.C.D.C. 1988), decision that severely criticized the HHS "nonacquiescence" policy. See ¶ 74 below.

66. On June 6, 1985, the Senate, and on June 12, 1985, the House, had approved the appropriation of $ 27 million for humanitarian aid to the Contras. This was an exception to the Boland Amendment. These funds were to be paid to the Contras through Department of the State's Nicaraguan Humanitarian Assistance Office (NHAO). If the State Department NHAO funds were not used to pay for the medical supplies and treatment of the Contras, the use would violate the Boland Amendment. Historian Theodore Draper quoted a NSC staff member as to

the use of the NHAO funds in A Very Thin Line, Draper, Hill and Wang (1990), at p. 46-50. "I think everyone knew we were walking a very thin line." Id. at 50.

67. On September 12, 1985, Bretton Sciaronni, Counsel to President Reagan's Intelligence Oversight Board (IOB), wrote a legal Memorandum for the IOB and opined that the Boland Amendment applied to the Intelligence Community agencies, but not to the National Security Council. This was the legal opinion that became the Contras' Article II "secret law" that Lt. Colonel North, AG Meese, CIA Director Casey, DOD Secretary Weinberger, and FBI Director Judge Webster all relied upon as the basis for the use of 1985 appropriated funds to pay for the Contras' medical supplies and treatment as an exception to the Boland Amendment.

68. On December 1, 1986, President Reagan established the "Tower Commission" and tasked Senator John Tower, former Secretary of State Edmund Muskie, and former-National Security Advisor Brent Scowcroft to provide an Article II Report as to the Iran Contras events by February 28, 1987. The President appointed Ambassador David Abshire, a 1981-1982 Member President's Foreign Intelligence Advisory Board, as the President's Special Counselor to review the documents that would be submitted to the Article II Tower Commission, the Article I joint Senate-House Committee investigating the Iran-Contras Affair, and Independent Counsel (IC) Lawrence Walsh. Special Counselor Abshire was tasked with sorting out the "known-known" classified documents in order to protect CIA sources and methods that were to be "unknown-unknown" facts to the Tower Commission, to the joint Senate-House Committee investigating the Iran-Contras Affair, and to IC Walsh. These were also to be "unknown-unknown" facts to Judge Wexler in the 1985 FOIA Robert v Holz in which the plaintiff sought the release of the "Fraud Against the Government" documents that revealed whether HHS General Counsel del Real was a CIA covered agent. See 12-14-11 Robert II v. CIA and DOJ § C and § E below.

69. On February 25, 1987, Electronic Data Systems (EDS) President H. Ross Perot handed President Reagan documents that he alleged proved "chicanery and corruption" at the CIA and DOD. These are the NARA 1987 "Perot" documents that are subject to President Obama's 2012 decision whether to ratify the executive privilege assertion of the Estate of President Reagan. See 12-14-11 Robert II v. CIA and DOJ §§ B-E and ¶¶ 239-241 below.

70. On February 28, 1987, the Tower Commission issued its Report. There was no discussion of any CIA-DIA black operation at IMC that was involved in supplying medical supplies and treatment to the Contras. See Tower Commission Report excerpts available at http://www.presidency.ucsb.edu/PS157/assignment%20files%20public/TOWER%20EXCERPTS.htm. See 12-14-11 Robert II v. CIA and DOJ Affidavit §§ B, C, D, E, and § E below.

71. On May 26, 1987, President Reagan appointed FBI Director Judge Webster to be the CIA Director. He succeeded CIA Director Casey who had resigned on January 29, 1987 and had died on May 6, 1987. This is an important time line fact because on February 25, 1987 President Reagan had handed then-FBI Director Judge Webster the "Perot" documents that are now subject to President Obama's 2012 decision whether he will ratify the executive privilege assertion of the Estate of President Reagan. See § E below.

72. On June 9, 1987, the content of Counsel to President Reagan's Intelligence Oversight Board (IOB), Sciaronni's September 12, 1985 opinion became a public "known-known" fact:

> In light of these events, and in accordance with the board's policy, I undertook legal research and a factual investigation. As a result of these efforts, I concluded: 1) That the Boland amendment was directed solely to the Federal agencies making up the intelligence community. 2) That the Boland amendment was not applicable to the N.S.C. because it is not considered part of the intelligence community. More Parts of the Puzzle: A White House Lawyer, the Colonel's Secretary, NY Times, 6-09-1987 available at http://www.nytimes.com/1987/06/09/world/more-parts-of-the-

puzzle-a-white-house-lawyer-the-colonel-s-secretary.html?pagewanted=print&src=pm

73. On November 18, 1987, the joint Senate-House Report of the Congressional Committees Investigating the Iran-Contra Affair was made public. There was no discussion of any CIA-DIA black operation at IMC that provided medical supplies and treatment to the Contras in violation of the Boland Amendment. The Minority Report was written by then Congressman Dick Cheney with former-Assistant CIA General Counsel David Addington (1981-1984) on staff, and discussed the "Unitary Executive" theory. Report excerpts available http://www.presidency.ucsb.edu/PS157/assignment%20files%20public/congressional%20report%20key%20sections.htm.

74. On August 1, 1988, Judge Stanley Sporkin, the former-CIA General Counsel, rendered his unappealed Duggan v. Bowen, 688 F. Supp. 1687 (D.C.D.C. 1988), decision with a class certification order. Judge Sporkin severely criticized HHS Secretary Bowen's Medicare nonacquiescence policy and AG Meese's defense of the HHS Medicare nonacquiescence policy:

> Indeed the actions by HHS in the cases presented to me has been reprehensible. It is the most blatant form of stonewalling that an agency can engage in and the Secretary should certainly take all steps to prevent this from happening again. Id. at 1501-1502. Emphasis Added.

75. The Robert II v CIA and DOJ plaintiff recites these facts to provide an historical context to the four classified CIA 1985 "North Notebook" documents that are subject to the President Obama's E.O. 13526 § 3.3 Automatic Declassification 25 year rule. If the plaintiff files a Summary Judgment Motion, then the 2013 AG will have the burden of explaining why these four one-page documents have not been released. If the 2013 AG files a "c (3) exclusion" *ex parte* Declaration, then the 2013 CIA General Counsel will have the due diligence duty of advising the 2013 CIA Director of the September 12, 1985 legal opinion of President Reagan's

IOB Attorney Sciaronni and Judge Sporkin's August 1, 1988 Duggan v Bowen decision and admonition re the HHS "nonacquiescence" policy.

76. CIA General Counsel Preston knows as a "known-known" time line fact that when President Reagan first learned the legal basis for the payment of funds to IMC for the medical treatment and supplies to the Contras, is revealed in the NARA "Peter Keisler Collection" documents. F07-014 Peter Keisler Collection OA 16033: Legal Analysis Contra Aid laws, Congress Notification, and Application States re: Contras. He also knows whether those documents withheld pursuant to the executive privilege assertion of the Estate of President Reagan, reveal that CIA Director Casey had conducted illegal domestic black operations both at IMC and the NSA. See 11-30-11 Robert VIII Petition Statement of the Case §§ C, E, G, H.

77. In 1986 Peter Keisler was one of President Reagan's Assistant WH Counsels. In 1987 he would become an Associate WH Counsel. On January 24, 2002, he was AG Ashcroft's Principal Deputy Associate AG and became the Acting Associate AG. On July 1, 2003, he became the AAG of the Civil Division. From 2003-2007 he was the AAG of the Civil Division and made key litigation decisions during the Robert II v CIA and DOJ, Robert VII v DOJ, and Robert VIII v DOJ, HHS, and SSA FOIA litigation. He also made Ford v Shalala, 87 F. Supp 2d 163 (E.D.N.Y. 1999), decisions as to the remedy to cure the due process violations that were visited upon the millions of 1994-2007 Ford v. Shalala class members. From September 18, 2007-November 9, 2007, he was the Acting AG after AG Judge Gonzales had resigned.

78. On August 1, 2006, then-Ranking Member of the Senate Judiciary Committee Patrick Leahy explained his reason for opposing President Bush's 2006 nomination of then-AAG of the Civil Division Peter Keisler for the D.C. Circuit. One of the reasons was because the Committee could not secure the NARA "Peter Keisler Collection" documents:

> We know that Mr. Keisler served in the White House Counsel's Office under President Reagan, but we really do not know what he did there. The Reagan Library has files for Mr. Keisler about controversial subjects like "Arms Sales," "Contra Aid Laws," and "Signing Statements," but we have not yet had access to those files. We learned a lot reviewing similar files for Justice Alito and Chief Justice Roberts, but in Mr. Keisler's case, we are not being afforded any opportunity to review those records. That is not the proper consideration our system calls for, and it is a disservice to this Committee, this nominee and the Americans we serve. Emphasis Added. http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da119fe61&wit_id=e655f9e2809e5476862f735da119fe61-0-1

79. If the four classified CIA 1985 Robert II v. CIA and DOJ "North Notebook" documents subject to President Obama's December 29, 2009 E. O. 13526 § 3.3 Automatic Declassification 25 year standard are declassified and released, then the public will learn additional "known-known" facts that are connect-the-dots facts to the CIA 1985 "known-known" facts contained in the "Peter Keisler Collection" documents. Therefore, President Obama should know the CIA 1985 "known-known" facts contained in the four "North Notebook" documents when he makes his decision whether to ratify the executive privilege assertion to withhold the "Peter Keisler Collection" and "Perot" documents that reveal whether CIA Director Casey and DOD Secretary Weinberger had conducted illegal domestic black operations at IMC and NSA that require a § 413 (b) National Security Act correction plan.

80. Hence, the importance of CIA Director Petraeus knowing whether the 1981-2012 CIA General Counsels from CIA General Counsel Sporkin (1981-1985) to CIA General Counsel Preston (2009-2012) knew CIA "known-known" facts that CIA Director Casey and DOD Secretary Weinberger had conducted illegal 1985 domestic operations at IMC and the NSA with the knowledge of FBI Director Judge Webster (1978-1987). If so, then CIA Director Petraeus can provide the details of these 1985 illegal intelligence activities to President Obama so that he can file a § 413 (b) of the National Security Act corrective action plan in 2012.

E. The relationship between Robert II v. CIA and DOJ and FBI Chief FOIA Officer Hardy's decision not to process the September 13, 2011 *de novo* FOIA request for the July 27, 2010 FBI FOIA requested documents

81. The plaintiff reports that FBI Chief FOIA Officer David Hardy continues not to docket the plaintiff's September 13, 2011 *de novo* FBI FOIA request for the July 27, 2010 FBI FOIA requested documents. The Robert II v. CIA and DOJ plaintiff has been seeking eight sets of FOIA requested FBI documents because they are connect-the-dots documents with the four 1985 Robert II v CIA and DOJ "North Notebook" documents being withheld pursuant to FOIA Exemptions 1 and 3, the NARA 1987 "Perot" and "Peter Keisler Collection" documents being withheld pursuant to the executive privilege assertion of the Estate of President Reagan, and the "Robert v National Archives "Bulky Evidence File" documents now in the custody of NARA Archivist Ferriero. See 12-14-11 Robert II v. CIA and DOJ § C.

82. The plaintiff asserts that these FBI documents contain "smoking gun" evidence that FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger were conducting domestic black operations at IMC and the NSA. If so, then the decision of the FBI Chief FOIA Officer Hardy's command and control officer that he not docket the September 13, 2011 *de novo* FOIA request for the July 27, 2010 FOIA requested FBI documents, is an ongoing FBI intentional decision to cover up facts that prove true the plaintiff's almost incredible allegation as to the *mens rea* of FBI Director Judge Webster (1978-1987)-CIA Director Judge Webster (1987-1991). If so, then this would be a violation of President Obama's December 29, 2009 E.O. 13526 § 1.7, Classification Prohibitions and Limitations.

83. The plaintiff believes that FBI Director Mueller does not know that FBI Chief FOIA Officer has not docketed the September 13, 2011 *de novo* July 27, 2010 FBI FOIA requested documents that reveal whether FBI Director Judge Webster knew in 1985 that CIA Director

Casey and DOD Secretary Weinberger were conducing domestic black operations at IMC and NSA in 1985. However, he believes that FBI General Counsel Weissmann knows this refusal-to-docket fact and knows the "known-known" facts that are revealed in the September 13, 2011 *de novo* July 27, 2010 FBI FOIA requested documents.

84. The Robert II v. CIA and DOJ plaintiff filed the September 13, 2011 *de novo* FOIA request seeking the following same documents that he had sought in his July 27, 2010 FBI FOIA request that had been docketed as 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

85. The # 1 "FBI Abshire" documents reveal whether FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger were conducting a black operation at IMC without the knowledge of President Reagan. The # 2 FBI copy of the "IMC Final Investigative Report" document is the same document as the DOJ "IMC Final Investigative Report" document that the FOIA Officers of AG Gonzales and Holder could not locate during the Robert VIII v. DOJ, HHS, and SSA litigation. The # 3 FBI "February 25, 1987 Perot" documents are being withheld pursuant to the executive privilege assertion of the Estate of President Reagan. The # 4 "FBI Agent Allison" documents reveal whether FBI Agent Allison had "defrauded" IC Walsh during the Iran–Contra investigation. The # 5 FBI "62-0 file" documents reveal the names of the FBI agents who knew of the existence of the FBI "stovepipe" that bypassed FBI Director Judge Sessions. The # 6 FBI "Recarey extradition" documents reveal whether FBI Director Judge Freeh had provided accurate facts to Judge Gershon in Robert III v

DOJ as to whether a CIA-DIA black operation was conducted at IMC. The # 7 FBI Robert VII v DOJ "FISC Robert" documents reveal whether FBI Director Judge Webster knew in 1985 that Robert had been the target of the "do not exist" NSA TSP data banks and whether AG Meese had provided false facts to the FISC that FBI Director Judge Webster had evidence that Robert was a terrorist or an agent of a foreign power. The # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" reveal the data that the FBI has retained about the Robert v. Holz-Robert v. National Archives-Robert v. DOJ Robert VII v. DOJ-Robert VIII v. DOJ, HHS, and SSA-Robert II v. CIA and DOJ plaintiff including the information the FBI received from Robert's bank re his escrow accounts into which five million dollars was posted that did not exist, but which government attorneys provided to the NYS Grievance Committee seeking Robert's disbarment for kiting checks from his law firm's escrow funds. See 12-14-11 Robert II v CIA and DOJ §§ D, E, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, KK, LL NN and § H below.

86. On February 22, 2012, the Robert II v. CIA and DOJ plaintiff had filed with NARA OGIS Director Nesbit his request for OGIS FBI facilitation services with a request that the FBI facilitation services be provided along with the request for the NARA, DOD, and ODNI facilitation services. He provided a 44 page White Paper in support of the request. "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." He placed NARA OGIS Director Nesbit on Notice that FBI Chief FOIA Officer Hardy did not docket the September 13, 2011 *de novo* request for the July 27, 2010 FBI FOIA requested documents. He suggested that NARA OGIS Director Nesbit consult with FBI General Counsel Weissmann re the Second Circuit's September 6, 2011 modification Order of the Robert VIII Judgment whereby Robert was enjoined from filing a FOIA complaint, and not a FOIA request

87. On February 22, 2012, the Robert II v. CIA and DOJ plaintiff placed FBI General Counsel Andrew Weissman on Notice that FBI Chief FOIA Officer Hardy continued not to docket the September 13, 2011 *de novo* FBI FOIA request. On July 20, 2012, the Robert II v CIA and DOJ plaintiff placed him on Notice that NARA OGIS Director Nesbit continued not to docket the February 22, 2012 request for OGIS FBI facilitation services.

88. As of August 13, 2012, NARA OGIS Director Nesbit has not docketed this February 22, 2012 request for facilitation services. The plaintiff asserts this is an in concert decision not to docket the FBI OGIS request that has been made with the knowledge of FBI General Counsel Weissmann and CIA General Counsel Preston because the eight sets of FOIA requested FBI documents are connect-the-dots with the four classified CIA 1985 "North Notebook" documents that are in the custody of CIA Director Petraeus' CIA FOIA Officer Susan Viasco.

89. FBI General Counsel Weissmann's knowledge of the content of the September 13, 2011 *de novo* FBI FOIA requested documents is an important fact because he succeeded 2003-2011 FBI General Counsel Valerie Caproni on October 26, 2011. She was FBI Director Mueller's counsel when the infamous March 10, 2004 confrontation between then-WH Counsel Gonzales and AG Ashcroft, DAG Comey, and FBI Director Mueller occurred, when on May 6, 2004 AAG of the Civil Division of the OLC Goldsmith wrote the Top Secret classified FISA OLC Memorandum to AG Ashcroft, when after May 6, 2004 OIPR Counsel Baker filed his Robert VII v. DOJ *ex parte* "uncorrected" and his October 1, 2004 "corrected" Declarations and explained his FOIA Exemption 1 and "Glomar Response" decisions, and in 2005 when FBI Director Mueller's 2005 Special Counsel was Andrew Weissmann. See § H below.

90. FBI General Counsel Caproni (2003-2011) was a 1985-1989 EDNY AUSA in the Criminal Division and became the 1994-1998 EDNY Chief of the Criminal Division. She knew

of the FBI's counterintelligence "plumber" unit's involvement in the 1984-1988 "Fraud Against the Government" investigation of Robert. She also knew whether she had "defrauded" FBI Director Mueller by never informing FBI Director Mueller of her knowledge of the data mining of the pre-9/11 NSA TSP as to the targeted Robert VII v. DOJ plaintiff. She knew that she knew this fact prior to the infamous March 10, 2004 confrontation of FBI Director Mueller with then-WH Counsel Gonzales in AG Ashcroft's hospital room. She knew this fact prior to AAG of the OLC Goldsmith sending the Top Secret May 6, 2004 OLC FISA Memo to AG Ashcroft and throughout the Robert VII v. DOJ and Robert VIII v. DOJ, HHS, and SSA FOIA litigation. See 11-30-11 Robert VIII Petition Statement of the Case §§ A-C, E, H, 12-14-11 Robert II v. CIA and DOJ Affidavit § C, and § H below.

91. Upon information and belief, FBI General Counsel Caproni also knew whether a 1985-2011 EDNY "stovepipe" bypassed the EDNY U.S. attorneys: Raymond J Dearie (1982-1986), Reena Raggi (1986), Andrew J. Maloney (1986-1992), Mary Jo White (1992-1993), Zachary W. Carter (1993-1999), Loretta E. Lynch (1999-2001), Alan Vinegrad (2001-2002), Roslynn R. Mauskopf (2002-2007), Benton J. Campbell (2007-2008), and Loretta E. Lynch (2009-), in order that they would have a "plausible deniability" defense to the fact that during the "Fraud Against the Government" investigation of Robert, he had been the illegal target of the illegal CIA-DIA-FBI NSA TSP. The existence of a 1985-2012 EDNY "stovepipe" was made a more important "Past is Prologue" fact when on May 13, 2012 CIA Director Petraeus made his *de facto* declassification decision as to the fact that the CIA had a domestic CIA Counter Terrorism unit that conducted electronically surveillance of U.S. citizens to protect the nation from terrorists.Upon information and belief, the 1985-2011 EDNY U.S. Attorneys had not known this fact. See 11-30-11 Robert VIII Petition Statement of the Case §H and ¶¶ 234-236.

92. The existence of a 1985-2011 EDNY "stovepipe" that bypassed the 1985-2011 EDNY U.S. Attorneys is also a "Past is Prologue" fact because the Ford v. Shalala due process violations continue not to be cured thirteen (13) years after Judge Sifton's September 29, 1999 Order and twelve (12) years after DAG Holder made the October, 2000 Ford v. Shalala decision not to perfect EDNY U.S. Attorney Lynch's Ford v. Shalala Notice of appeal. As a result, the due process rights of millions of 1994-2012 Ford class members continue to be violated during President Obama's Constitutional watch because as of August 15, 2012 President Obama has not fulfilled his Article II "take Care that the Laws be faithfully executed" as applied to the millions Ford v. Shalala class members. See 11-30-11 Robert VIII Petition Statement of the Case §§ C, D and 12-14-11 Robert II v. CIA and DOJ Affidavit ¶¶ 32-34.

93. FBI General Counsel Caproni's 2004 *mens rea* knowledge of the USG's 1985 "Fraud Against the Government" investigation of Robert, who was the 1981-1989 Ruppert v Bowen counsel challenging the 1982-1985 Jackson "nonacquiescence" policy of HHS General Counsel Juan del Real, is a 2012 "smoking gun" fact. In Robert VIII v DOJ, HHS, and SSA the "Ruppert" documents have been withheld pursuant to FOIA Exemption 5 and not a classified defense. The "Ruppert" documents, now in the custody of AG Holder, are the September 4, 1985 Ruppert case file notes that reveal whether AAG of the Civil Division Richard Willard was the "Washington" attorney who had an *ex parte* communication with Judge Altimari prior to the September 4, 1985 Ruppert Chambers conference. See 11-30-11 Robert VIII Petition § D.

94. The Robert v. Holz plaintiff, as plaintiff Ruppert's counsel, had requested that Judge Altimari hold a Ruppert conference regarding what Robert alleged were unfair litigation practices of HHS General Counsel del Real and AG Meese because USG Special Agents were interrogating his aged, blind, and disabled clients *ex parte* in their homes to learn the legal advice

that Robert provided and the legal fees that he charged. The Robert VIII "Ruppert" documents are "Past is Prologue" connect-the-dots documents with the Robert VIII "Robert v. Holz" documents because they reveal whether FBI Director Judge Webster had determined in 1985 that Robert was a terrorist or an agent of a foreign power so as to be a target of the "does not exist" NSA TSP. See 11-30-11 Robert VIII Petition Statement of the Case §§ C, D, F and 12-14-11 Robert II v. CIA and DOJ §§ B, E, G, H, Y, HH, RR, VV, WW, and § H below.

95. FBI General Counsel Weissmann (2011-) was a 1988-2003 EDNY AUSA. He was the 2000-2003 EDNY Chief of the Criminal Division and a successor of 1994-1998 EDNY Chief of the Civil Division Caproni. In 2005 he was Special Counsel to FBI Director Mueller. He knows whether FBI Director Mueller knew in 2005 of the 1984-2005 data mining of the NSA TSP data banks without the knowledge of the FISC or the "Gang of Eight."

96. Upon information and belief, 2005 FBI Special Counsel Weissmann "defrauded" FBI Director Mueller, as did FBI General Counsel Caproni, because he did not inform FBI Director Mueller of his 2005 knowledge of the data mining of the pre-9/11 NSA TSP data banks. FBI Special Counsel Weissmann's 2005 *mens rea* is an important "Past is Prologue" fact because he knew why on May 6, 2004 AAG of the OLC Goldsmith issued the Top Secret OLC FISA Memorandum to AG Ashcroft. He knew that on March 1, 2004 OIPR Counsel Baker had read the "FISC Robert" documents when he ratified the CIA FOIA Officer's use of FOIA Exemption 1 and "Glomar Response" defense as explained in his Robert VII v. DOJ *ex parte* "uncorrected" Declaration written after AAG of the OLC Goldsmith's Top Secret May 6, 2004 FISA OLC Memorandum to AG Ashcroft, and his subsequent "corrected" October 1, 2004 Declaration. As a result, FBI General Counsel Weissmann knows not only the content of the Robert VII "FISC Robert" documents, but also why 1997-2004 CIA Director Tenet's FOIA

Officers had used FOIA Exemption 1 and the "Glomar Response" to withhold the documents that revealed whether Robert had been the illegal U.S. citizen target of the illegal NSA TSP with the 1985 knowledge of FBI Director Judge Webster and AAG of the Civil Division Willard.

97. FBI General Counsel Weissmann, the 2005 FBI Special Counsel, has an ongoing duty to information-share with CIA General Counsel Preston, the 1993-1995 DOD Principal Deputy General Counsel, and 1995-1998 Civil Division DAAG responsible for appellate litigation, the content of the September 13, 2011 *de novo* FOIA requested FBI documents. The information-sharing between FBI General Counsel Weissmann and CIA General Counsel Preston, takes on greater importance if the September 13, 2011 *de novo* FOIA requested FBI documents prove that CIA General Counsels Scott Muller (2002-2004) and (Acting) John Rizzo (2005-2009) had filed Robert II v. CIA and DOJ *ex parte* Declarations that had intentionally withheld from Judge Seybert the material facts contained within the FBI documents that proved true the plaintiff's almost incredible allegation: FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger were wiretapping U.S. citizens in serial violation of the "exclusivity provision" of the FISA without the knowledge of the FISC, the "Gang of Eight", or President Reagan, but with the knowledge of AG Meese.

98. If both FBI General Counsel Weissmann and CIA General Counsel Preston know that the September 13, 2011 *de novo* FOIA requested July 27, 2010 FBI documents prove true the plaintiff's almost incredible allegation re FBI Director Judge Webster, then they are continuing to implement the 1986 "Barrett nonacquiescence policy" of AG Meese and AAG of the OLC Charles Cooper by withholding material facts from Judge Seybert. This is with the intent of deceiving Judge Seybert to make her the "handmaiden of the Executive" along with Judge Garaufis, the Second Circuit, and Supreme Court in Robert VIII v. DOJ, HHS, and SSA.

"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.

99. 2009-2012 EDNY U.S. Attorney Lynch knew both FBI General Counsels Caproni and Weissmann when they were EDNY AUSAs. She was a 1990-1994 EDNY AUSA and the 1994-1998 EDNY Chief of Long Island before becoming the 1999-2001 EDNY U.S. Attorney.

100. 1999-2001 EDNY U.S. Attorney Lynch had made litigation decisions in Ford v. Shalala, 87 F. Supp 2d 163 (E.D.N.Y. 1999), including the decision to file the Ford v. Shalala Notice of Appeal. She filed subsequent Second Circuit Motions seeking an extension of time to perfect the Ford v. Shalala appeal. EDNY U.S. Attorney Lynch knew in October, 2000 why then-DAG Holder approved the decision not to perfect the Ford v Shalala appeal. EDNY U.S. Attorney Lynch (2009-2012) knows why thirteen years (1999-2012) after Judge Sifton's September 29, 1999 decision, that the due process violations of the millions of 1994-2012 Ford v Shalala class members continue unabated. See 11-30-11 Robert VIII Petition §§ D, F.

101. 1999-2001 EDNY U.S. Attorney Lynch also made litigation decisions in Robert v National Archives, 1 Fed. Appx. 85 (2d Cir. 2001), in which the plaintiff sought the "FBI Agent Allison" documents. She also made litigation decisions in Robert v. DOJ, 2001 WL 34077473 (EDNY), 26 Fed. Appx. 87 (2d Cir. 2002), in which the plaintiff sought the release of the "FBI Agent Allison", "FBI 62-0", "Starr", "Bromwich", "OPR Rogers", "Kuhl", "Diaz", "AAG Hunger-Gordon", "Begleiter", "Noyer", "Allbray", "Mikva", and "Charles Robert criminal investigation file" documents. As a result, she knows whether those FOIA requested documents corroborate the Robert II v. CIA and DOJ plaintiff's assertion that FBI Director Judge Webster knew in 1985 that HHS General Counsel del Real was CIA Director Casey's covered agent and

that there was not a scintilla of evidence that Robert was a terrorist or an agent of a foreign power so as to trigger the FISA, or fraud evidence that merited a "Fraud Against the Government" investigation of Robert.

102. The Robert v. National Archives and the Robert v. DOJ DOJ case file notes reveal whether 1999-2001 EDNY U.S. Attorney Lynch knew whether HHS General Counsel del Real was CIA Director Casey's covered agent when he initiated the "Fraud Against the Government" investigation of Robert. If so, then those DOJ case file notes reveal that U.S. Attorney Lynch knows that the September 13, 2011 *de novo* July 27, 2010 FBI FOIA requested documents prove that FBI Director Judge Webster knew that Robert was not a terrorist or an agent of a foreign power when he was a target of the illegal NSA TSP that was conducted in violation of § 1806 of the FISA. See 12-14-11 Robert II v. CIA and DOJ Affidavit ¶¶ 30 and 31.

103. Former-1999-2001 EDNY U.S. Attorney Lynch was a 2009 Member of the New York State Commission on Public Integrity. As a result, she knows that NYS licensed attorneys, including former-FBI General Counsel Caproni, FBI General Counsel Weissmann, CIA General Counsel Preston, and herself all have an April 1, 2009 NYS Rules of Professional Conduct Rule 3.3(a)(3) duty to cure misrepresentations of fact and law made to Article III Judges. "If a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of the falsity, the lawyer shall take responsible remedial measures, including if necessary disclosure to the tribunal." Emphasis added.

104. However, in defense of EDNY U.S. Attorney Lynch, because of the EDNY "stovepipe" that has bypassed the 1984-2011 EDNY U.S. Attorneys, at this late date EDNY U.S. Attorney Lynch may not know whether AAG of the Civil Division Richard Willard knew on September 4, 1985 that Robert was the target of the illegal NSA TSP. If not, then she would not

know that in 2012 FBI General Counsel Weissmann and CIA General Counsel Preston are in concert breaching the NYS Judiciary Law § 487, Misconduct by attorneys, penal standard based on their 2012 "good faith" belief that this is necessary to protect the "continued classification" of the domestic CIA Counter-Terrorism Center that wiretapped U.S. persons, including Robert, a/k/a Snowflake 5391 to the DOJ. "1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party;" Emphasis Added. See 12-14-11 Robert II v. CIA and DOJ Affidavit ¶¶ 8, 10, 20, 31, 38-42.

105. Also in defense of EDNY U.S. Attorney Lynch, upon information and belief, she has signed a Classified Information Nondisclosure Agreement Form SF 312. As per the SF-312 Briefing Booklet, she knows that she would be violating her Agreement if she directly or indirectly discloses classified information to an unauthorized person. "The SF 312 is a contractual agreement between the U.S. Government and you, a cleared employee, in which you agree never to disclose classified information to an unauthorized person." Id. 5. http://www.archives.gov/isoo/training/standard-form-312.pdf. She would know that if she disclosed the name of a CIA covered agent who participated in the "Fraud Against the Government" investigation of Robert, that she would violate The Intelligence Identities Protection Act (IIPA), 50 U.S.C. § 421, The Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources. She would know this statute would apply if she knew that HHS General Counsel del Real was a CIA covered agent when he initiated the "Fraud Against the Government" investigation of Robert to secure Robert's incarceration and disbarment. See 12-14-11 Robert II v. CIA and DOJ Affidavit ¶¶ 38-42.

106. If EDNY U. S. Attorney signed an SF-312 Nondisclosure Agreement, then this would explain why she has taken no action given her knowledge of FBI Chief FOIA Officer

Hardy's decision not to docket in 2012 the Robert II v. CIA and DOJ plaintiff's September 13, 2011 *de novo* FOIA request for the eight sets of FBI documents. Upon information and belief, CIA General Counsel Preston has placed EDNY U.S. Attorney Lynch on Notice that her Classified Information Nondisclosure Agreement continues to apply in Robert II v. CIA and DOJ notwithstanding Judge Seybert's February 15, 2012 Robert II v CIA and DOJ Order and CIA Director Petraeus' *de facto* May 13, 2012 declassification of the Top Secret fact of the existence of the domestic CIA Counter Terrorism Center. Upon information and belief, he placed her on Notice that her Nondisclosure Agreement applies to the Top Secret reason why FBI Chief FOIA Officer Hardy's command and control officer ordered him not to docket the September 13, 2011 *de novo* FBI request for the release of the July 27, 2010 FBI FOIA requested documents, FBI Docket No. 1151829-000, that those documents would reveal that HHS General Counsel del Real was a CIA covered agent.

107. The plaintiff's renewed prosecution plan is based on his belief that EDNY U.S. Attorney Loretta Lynch (1999-2001 and 2009-2012) will fulfill her own April 1, 2009 NYS Rules of Professional Conduct Rule 3.3(a)(3) duty to cure misrepresentations of fact and law made to tribunals. He believes that upon reading this August 15, 2012 Robert II v CIA and DOJ Affidavit, U.S. Attorney Lynch will contact FBI General Counsel Weissmann and determine 1) why FBI Chief FOIA Officer Hardy has not docketed the September 13, 2011 *de novo* FBI FOIA request, and 2) whether the content of the eight sets of FBI documents prove true the plaintiff's allegation that FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger were conducting illegal domestic black operations at IMC and NSA. If so, then these are FBI facts known to FBI General Counsel Weissmann that can be compared to the facts contained in the CIA's "c 3 exclusion" *ex parte* Robert II v. CIA and DOJ Declarations.

F. The December, 2011-February 15, 2012 facts that were not included in the plaintiff's December 14, 2011 Corrected Robert II v. CIA and DOJ Affidavit and the plaintiff's February 3, 2012 letter to the Court

108. The following are a chronology of facts that occurred in December, 2011 through February 15, 2012 which were not included in the plaintiff's December 14, 2011 Robert II v. CIA and DOJ Corrected Affidavit and the plaintiff's February 3, 2012 letter to the Court. These are connect-the-dots facts with the February 17, 2012 through August 10, 2012 facts that the plaintiff reports below in § G in response to the Court's February 15, 2012 Order. These facts are the basis for the plaintiff's belief that NARA OGIS Director Nesbit will in September, 2012 finally docket the requests for OGIS NARA, DOD, ODNI, and FBI facilitation requests. If docketed, then NARA OGIS Director Nesbit could conduct facilitation services in October, 2012 whereby a quiet settlement is reached subject to this Court's approval.

109. On or about December 1, 2011, DOJ Office of Information and Privacy (OIP) Melanie Pustay posted the update of OIP "Referrals, Consultations, and Coordination: Procedures for Processing Records When Another Agency or Entity Has an Interest in Them." This document provides NARA OGIS Director Nesbit with a template to provide facilitation services for the September 13, 2011 *de novo* FOIA requested DOJ documents that the Robert II v. CIA and DOJ plaintiff asserts are connect-the-dots documents with the September 13, 2011 *de novo* FOIA requested OGIS NARA, DOD, ODNI, and FBI documents that are subject to the February, 2012 requests for OGIS NARA, DOD, ODNI, and FBI facilitation services. The September 13, 2011 DOJ requested OLC, SG, and Civil connect-the-dots documents reveal that AG Holder has an inter-agency and intra-agency interest because these documents reveal whether a DOJ "stovepipe" has bypassed AG Holder to provide a "plausible deniability"

defense to AG Holder as to facts that are contained in the NARA, DOD, ODNI, and FBI documents that reveal 1984-2012 serial violations of federal laws.

110. The OIP Coordination Guidelines explained the procedures when FOIA requests are filed with one agency and another agency or another component within the agency which has an interest in the documents for which there should be referral and consultation:

> In the course of processing records responsive to FOIA requests, it is not uncommon for agencies to locate records which either originated with another agency, or another component within their agency, or which contain information that is of interest to another agency or component. The long-standing practice in such situations is to either *refer* the requested record to the originating agency or component for it to process, or to *consult* with the other agency or component that has equity in the document to get its views on the sensitivity of the document's content prior to making a disclosure determination. Typically, agencies *refer* records for direct handling to another agency when the records originated with that other agency. By contrast, when records originated with the agency processing the request, but contain within them information of interest to another agency, the agency processing the request will typically *consult* with that other agency prior to making a release determination. Id. at 1. Underline emphasis Added. http://www.justice.gov/oip/foiapost/2011foiapost42.html

111. On December 5, 2011, the Clerk filed petitioner's November 30, 2011 Robert VIII v. DOJ, HHS, and SSA Petition for a writ of certiorari. The petitioner informed the Justices of the FISA "aggrieved person" standing issue by citing to the Second Circuit's March 9, 2006 teed up question whether Robert had standing by application of 50 U.S.C. § 1806 (f). He cited to AG Gonzales' April 3, 2006 letter-Brief. http://www.snowflake5391.net/RobertvDOJbrief.pdf. The petitioner noted that in Robert VII v. DOJ AG Gonzales did not inform Judge Garaufis, the Second Circuit, or the Supreme Court that he knew Robert had been the target in the 1980s of the NSA TSP during the Robert "Fraud Against the Government" investigation that was initiated by HHS General Counsel del Real. The petitioner noted that in Robert VIII v. DOJ, HHS, and SSA AG Holder did not inform Judge Garaufis or the Second Circuit that he was implementing

the FISA "secret law" that was explained in the March 18, 2011 reclassified May 6, 2004 OLC FISA Memo to AG Ashcroft. See 11-30-11 Robert VIII Petition Statement of the Case § H.

112. The Robert VIII petitioner also cited to the December 22, 2005 letter of AAG of the Office of Legislative Affairs William Moschella filed on behalf of AG Gonzales that provided the "Gang of Eight" retroactive § 413 (a) of the National Security Act Notice of the post-9/11 2001-2005 NSA PSP. http://www.fas.org/irp/agency/doj/fisa/doj122205.pdf. The petitioner noted that this § 413 (a) Notification did not inform the "Gang of Eight" of the pre-9/11 1984-2001 NSA TSP that had targeted Robert as a terrorist or an agent of a foreign power. See Robert VIII Petition pp. 6-7 and the October 1, 2004 "corrected" Robert VII v. DOJ Declaration of OIPR Counsel James Baker explaining why on March 1, 2004 he had affirmed the CIA FOIA Officer's decision to withhold the "FISC Robert" documents based on FOIA Exemption 1 and the "Glomar Response" defense. http://www.snowflake5391.net/baker.pdf.

113. On December 13, 2011, FOIA Civil Attorney-in-Charge Kovakas issued AG Holder's FOIA denial decision and used the "Glomar Response" defense to withhold the Robert VIII v. DOJ, HHS, and SSA plaintiff's September 13, 2011 *de novo* FOIA requested DOJ civil documents. Civil Control No. 145-FOI-10283. "No documents were identified responsive to items 1, 2, 4, 5, 6, 7, 8, 11, 12 of your request." Emphasis Added.

114. The Robert II v. CIA and DOJ plaintiff had asserted that these were civil DOJ connect-the-dots documents to the four classified 1985 "North Notebook" documents and evidence that USG attorneys committed a "fraud upon the court" in Robert II v. CIA and DOJ:

1. September 4, 1985 Ruppert v Bowen DOJ case file notes
2. 1985-1988 Robert v Holz "Fraud Against the Government" DOJ case file notes and e-mails
3. 1986-1996 Gordon v Shalala DOJ case file notes and e-mail
4. 1987 IMC Final Investigation Report DOJ or FBI copy
5. August 14, 1987-November 12, 1987 -AAG of the Civil Division Willard Robert notes
6. 1995 Gordon v Shalala "1995 Associate AG Gordon" memo

7. 1998-2001 Robert v National Archives, ex parte Declarations, case file notes, and e-mails.
8 1998-2002 Robert v DOJ, ex parte Declarations, case file notes and e-mails
9. 2002-2010 Robert II v CIA and DOJ ex parte Declarations case file notes, and e-mails
10. 2001-2004 Robert III v DOJ ex parte Declarations, case file notes, and e-mails
11. 2004-2007 Robert VII v DOJ ex parte Declarations, case file notes, and e-mails
12. 2004 Robert VII v DOJ "uncorrected" Declaration of OIPR Baker

115. The Robert II v. CIA and DOJ plaintiff appealed FOIA Civil Attorney-in-Charge Kovakas's decision to OIP Director Pustay, who had a duty to apply her own December, 2011 Updated OIP Coordination Guidelines. The DOJ case file notes for each of the Robert FOIA actions are connect-the-dots documents to the four Robert II v. CIA and DOJ "North Notebook" documents because the DOJ attorneys assigned to the Robert FOIA cases knew why HHS General Counsel del Real had initiated the "Fraud Against the Government" investigation of Robert. Plaintiff Robert asserted that OIP Director Pustay, a 1983-1998 OIP Attorney-Advisor, 1999-2007 OIP Deputy Director, and 2007-2011 OIP Director, would learn that DOJ attorneys knew that Robert was HHS General Counsel del Real's opposing counsel in 1982 in Glasgold v. Califano, 558 F. Supp. 129 (E.D. N.Y. 1982), aff'd sub. nom. Rothman v. Schweiker, 706 F. 2d 407 (2nd Cir. 1983), cert. den. sub. nom. Guigno v. Schweiker, 464 U.S. 984 (1983). She would learn that DOJ attorneys knew that on January 7, 1982, Judge Pratt had remanded Ruppert I for HHS Secretary Schweiker to reconsider the SSI Notice issue that would become the 1994-2012 Ford v. Shalala SSI Notice issue. "Plaintiffs' assertion that a distinction should be made between oral and written information, such that one is statutorily required while the other is not, should be adequately briefed before a decision is made." Glasgold 558 F Supp. at 151. Emphasis Added.

116. On December 14, 2011, the Robert II v. CIA and DOJ plaintiff served CIA General Counsel Preston and EDNY U.S. Attorney Lynch with the Plaintiff's Corrected Affidavit Explaining Actions Taken in the Past Three Years. The plaintiff placed CIA General Counsel Preston and EDNY U.S. Attorney Lynch on Notice of the plaintiff's belief that if CIA General

Counsel Preston presented the plaintiff's quiet settlement offer to CIA Director Petraeus, that CIA Director Petraeus would accept the quiet settlement offer after reading the four 1985 "North Notebook" documents which are subject to the E.O. 13526 § 3.3 Automatic Declassification 25 year declassification rule. CIA Director Petraeus would learn that these are connect-the-dots documents leading to the NARA 1987 "Perot" and "Peter Keisler Collection" documents withheld pursuant to the executive privilege assertion, the Robert VIII v. DOJ, HHS, and SSA "Robert v Holz" documents being withheld pursuant to FOIA Exemption 5, and the "IMC Investigation Final Report" documents that AGs Gonzales' and Holder's FOIA Officers could not locate after two diligence searches without ever searching the DOJ IMC *qui tam* file. See 11-30-11 Robert VIII Petition Statement of the Case §§ C, G and Issue IV.

117. Upon information and belief, EDNY U.S. Attorney Lynch believed that CIA General Counsel Preston, the 1993-1995 DOD Principal Deputy General Counsel, and 1995-1998 Civil Division DAAG, would present plaintiff's Robert II v. CIA and DOJ quiet settlement offer to CIA Director Petraeus for CIA Director Petraeus' consideration. Upon information and belief, U.S. Attorney Lynch believed that CIA General Counsel Preston would provide CIA Director Petraeus with a CIA General Counsel's "heads up" memo when he presented the quiet settlement offer in order that there be no question of CIA Director Petraeus's being "defrauded" by his own attorneys as had President Reagan had been "defrauded" as set forth in IG Walsh's March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of President Bush". See 12-14-11 Robert II v CIA and DOJ Affidavit § C .

118. On December 14, 2011, NARA Deputy Archivist Debra Steidell Wall issued her decision that was reported in the February 3, 2012 letter to the Court:

> 1. The "9/3/85 North-FBI Revell "North Notebook" log entry" document was released to the plaintiff based on a FBI decision, but not a CIA decision.

2. The "9/6/85 North-CIA-FBI Exemptions 1, 3 and NHAO" was withheld based on a CIA decision with an instruction that an appeal could be filed with a CIA FOIA Officer.

3. The "9/16/85 North-Call to Perot Exemptions 1 and 3" document was withheld based on a CIA decision with an instruction that an appeal could be filed with a CIA FOIA Officer.

4. The 10/1/85 CIA-DOD FOIA Exemption 1 and 3 and reference to medivac helos" was withheld based on CIA and DOD decisions with an instruction that an appeal could be filed with named CIA and DOD FOIA Officers.

119. NARA Deputy Archivist Wall knew these four 1985 "North Notebook" documents remain subject to President Obama's December 29, 2009 E.O. 13526 § 3.3 Automatic Declassification 25 year rule. She knew that the four 1985 Robert II v. CIA and DOJ "North Notebook" documents are connect-the-dots documents to the NARA 1987 "Perot" and "Peter Keisler Collection" documents. She knew those two sets of NARA documents revealed whether CIA Director Casey had conducted a CIA domestic black operation at IMC where HHS General Counsel del Real would in December, 1985 become IMC President Recarey's Chief of Staff responsible for disbursing the HHS funds that were processed by H. Ross Perot's Electronic Data Systems (EDS). She knew that these NARA documents remain subject to President Obama's decision whether to ratify the executive privilege assertion of the Estate of President Reagan by application of President Obama's January 21, 2009 "Presidential Records" E.O. 13489 Sec. 3. Claim of Executive Privilege by Incumbent President. She knows that NARA Archivist Ferriero has custody of the FOIA requested "Robert v. National Archives 'Bulky Evidence File" documents which contain the "FBI Agent Allison" documents which reveal whether FBI Agent Allison had "defrauded" IC Lawrence Walsh.

120. On December 16, 2011, SSA Commissioner Astrue's FOIA Officer Dawn S. Wiggins denied the Robert II v. CIA and DOJ plaintiff's September 13, 2011 *de novo* July 27,

2010 FOIA request, S9H AH1789. The Robert II v. CIA and DOJ plaintiff had asserted that these SSA documents were connect-the-dots documents to the four 1985 "North Notebook" documents that revealed whether HHS General Counsel del Real had been a CIA covered agent:

1. Ford-Ruppert-Jackson nonacquiescence policy documents
2. 1982-1986 "Jackson nonacquiescence policy" documents
3. 1982-1990 Ruppert remand documents
4. April 21, 1986 public comments for the amendment of the "Jackson" regulation
5. January 12, 1990 public comments for the SSI nonacquiescence policy
6. June 14, 1991 unredacted June 14, 1991 "Rental Subsidies Decision" and Tabs
7. 1991 "Navarro nonacquiescence policy" documents
8. 1996 SSA General Counsel Fried SSR-96-1p supporting documents
9. SSA v Robert "Blum exculpatory" documents, case file notes, and e-mails

121. The SSA denial for the ## 1-5, and 7 documents was a reaffirmed "Glomar Response" defense. The denial as to ## 6, 8, and 9, was made because the documents had been destroyed. This was an important SSA FOIA decision because SSA Commissioner Astrue (2007-2012) was a Robert VIII v. DOJ, HHS, and SSA defendant in which the September 4, 1985 "Ruppert" documents were withheld pursuant to FOIA Exemption 5. SSA Commissioner Astrue had been the 1985 Acting Deputy Assistant Secretary of Legislation, 1986 Legal Counsel to the SSA Deputy Commissioner for Programs, 1986-1988 Counselor to the SSA Commissioner, 1988 Associate WH Counsel for President Reagan, 1989 Associate WH Counsel for President Bush, and 1989-1992 HHS General Counsel. As a result, he knows whether HHS General Counsel del Real had been CIA Director Casey's covered agent when the 1982-1985 Jackson "nonacquiescence" policy decisions were made. He also knows who ordered him not to apply the 2000 Christensen v Harris County Christensen v. Harris County, 120 S. Ct. 1655, 1663 (2000), administrative law holding when fashioning the remedy for the millions of 1994-2011 Ford class members. "To defer to the agency's position would be to permit the agency, under the guise of interpreting a regulation, to create de facto a new regulation." Id. at 1663.

122. On December 29, 2011, the Ninth Circuit decided Jewell v. NSA, 673 F. 3d 902 (9th Cir. 2011), in which the plaintiffs argued they had standing to sue the NSA Director based on their allegation that they had been caught in an electronic surveillance dragnet and illegally wiretapped. The Ninth Circuit held that they had FISA § 1806 standing to file an action alleging domestic wiretapping violations. "At issue in this appeal is whether Carolyn Jewel and other residential telephone customers (collectively "Jewel") have standing to bring their statutory and constitutional claims against the government for what they describe as a communications dragnet of ordinary American citizens." Id. 905. The Ninth Circuit cited to the Second Circuit's Amnesty v. Clapper, 638 F. 3d 118 (2d Cir. 2011), standing decision.

123. The fact that the Ninth Circuit in Jewell rejected AG Holder's state secrets defense as applied to FISA § 1806, is an important fact because the Robert VIII petitioner had made his Robert VII v. DOJ § 1806 (f) FISA standing argument when he asserted that he remained as an "aggrieved person" as evidenced by the Robert VIII "Robert v. Holz" documents in the custody of AG Holder. See 50 U.S.C. § 1806 (f). He asserted that the Robert VIII "Robert v. Holz" documents are connect-the-dots documents to the Robert VII "FISC Robert" documents that were withheld based on OIPR Counsel Baker's March 1, 2004 ratification of the CIA Director Tenet's FOIA Officer's use of FOIA Exemption 1 and the "Glomar Response" defense. The Robert VIII "Robert v. Holz" documents are being withheld pursuant to FOIA Exemption 5 and not FOIA Exemption 1 and the "Glomar Response" defenses. Therefore, they are available for Article III review without any national security issues clouding the "known-known" facts.

124. The December 29, 2011 Ninth Circuit Jewell decision has taken on greater importance because of the July 2, 2012 Jewell plaintiffs' Motion for Partial Summary Judgment Rejecting the Government Defendants' State Secret Defense. By agreement of the parties, AG

Holder's responding Brief is to be filed by August 31, 2012. On May 21, 2012, the Supreme Court had granted SG Verrelli's Clapper v. Amnesty February 17, 2012 petition for a writ of certiorari. On June 23, 2012, the Supreme Court had ordered SG Verrelli to file his Clapper Brief by July 26, 2012. SG Verrelli filed the USG's Clapper Brief and did not discuss the Ninth Circuit's Jewell decision or the state secrets defense. AG Holder will be filing his Jewell Brief on August 31, 2012 and SG Verrelli will be filing his Clapper Responding Brief on or about September 21, 2012. As a result, AG Holder will have had the month of August, 2012 to reconcile the DOJ's use of the state secrets defense throughout the Jewell v. NSA litigation, but not in the District Court and Second Circuit Robert VII or Robert VIII or Clapper litigation.

125. On January 4, 2012, SG Verrelli informed the Supreme Court Justices that the USG would waive its right to file a response to the Robert VIII v. DOJ, HHS, and SSA petition for a writ of certiorari. "The Government hereby waives its right to file a response to the petition in this case unless requested to do so by the Court." Robert VIII v. DOJ, HHS, and SSA, 439 Fed. Appx 32 (2d Cir. 2011), cert. den. 132 S. Ct. 1549 (2012). This litigation decision was made with the knowledge of the Ninth Circuit's Jewell v. NSA standing decision.

126. AG Verrelli's decision not to file a Robert VIII v DOJ, HHS, and SSA Brief in opposition to the petition for a writ of certiorari echoed SG Clement's decision not to file a Robert VII v. DOJ Brief in opposition to that petition for a writ of certiorari. The decisions of SGs Clement and Verrelli are made more significant because of the 2012 decision of AG Holder to defend AG Mukasey's decision to use the state secret defense in Jewell v. NSA. The Jewell, Robert VII, and Robert VIII litigation decisions were all made with the knowledge that on March 1, 2004 then-OIPR Counsel Baker had made his decision to ratify the CIA's use of FOIA Exemption 1 and the "Glomar Response" to withhold the "FISC Robert" documents as explained

by in his "corrected" October 1, 2004 Robert VII v. DOJ Declaration that was written after AAG of the OLC Goldsmith had written his Top Secret May 6, 2004 OLC Memorandum to AG Ashcroft. Memorandum for the Attorney General: Review of the Legality of the (redacted b1,b3) Program. https://webspace.utexas.edu/rmc2289/OLC%2054.FINAL.PDF.

127. SG Verrelli's Robert VIII v. DOJ, HHS, and SSA waiver decision was made with the knowledge of the petitioner's assertion that the Robert VII v. DOJ "FISC Robert" documents withheld pursuant to the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense, were connect-the-dots documents with the Robert VIII v. DOJ "Robert v. Holz" documents withheld pursuant to DOJ's use of FOIA Exemption 5. SG Verrelli knew that 2011 Associate DAG Baker knew whether those DOJ withheld documents contained CIA "known-known" facts that proved that the petitioner had been the illegal target of the CIA-DIA-FBI domestic black operation at NSA throughout the "Fraud Against the Government" investigation of Robert that was initiated by HHS General Counsel del Real. If so, then these are 1980's CIA "known-known" facts that CIA General Counsel Preston knows remain as 2012 "unknown-unknown" facts to Judge Seybert in Robert II v. CIA and DOJ because CIA General Counsels Muller (2002-2004) and (Acting) Rizzo (2005-2009) knew material facts had been withheld in the Robert II v. CIA and DOJ "c (3) exclusion" *ex parte* Declarations. See § H below.

128. On January 9, 2012, President Obama appointed 2011 OMB Director Jacob Lew to be his new WH Chief of Staff. See http://www.whitehouse.gov/blog/2012/01/09/jack-lew-will-replace-bill-daley-chief-staff. He had both Article I and Article II experience. He was House Speaker Thomas P. O'Neill's principal domestic policy advisor from 1979-1987. He was President Clinton's Special Assistant from February 1993 to 1994, his OMB Executive Associate Director from October, 1994-August 1995, his OMB Deputy Director from 1995-

1998, his OMB Director from July 31, 1998-January, 2001, and a Member of President Clinton's National Security Council. As a result, he has both an Article I and Article II institutional memory to know whether WH "stovepipes" had existed that provided "plausible deniability" to Presidents Reagan, Bush, Clinton, Bush, and Obama that there had been serial impeachable violations 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. He also knows that President Obama has a duty pursuant to § 413 (b) of the National Security Act to file a plan to take corrective action of these violations. See § C (2) above.

129. WH Chief of Staff Lew has the duty to exercise due diligence and provide President Obama with accurate facts when President Obama makes his decision whether to ratify the executive privilege assertion taken by the Estate of President Reagan to withhold the NARA 1987 "Perot" and "Peter Keisler Collection" documents by application of President Obama's January 21, 2009 Executive Order 13489 Presidential Records § 3. Claim of Executive Privilege by Incumbent President. "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."

130. President Obama's 2012 executive privilege decision takes on greater importance because the four one page 1985 Robert II v. CIA and DOJ "North Notebook" documents are subject to President Obama's December 29, 2009 E.O. 13526 § 3.3 Automatic Declassification 25 year declassification standard. WH Chief of Staff Lew has duty to exercise due diligence and to contact CIA Director Petraeus and learn whether CIA Director Casey had conducted 1980s domestic "black operations" at International Medical Center Inc. (IMC) and the NSA, and whether HHS General Counsel del Real was CIA Director Casey's "covered agent" when he

made his 1982-1985 Jackson "nonacquiescence" policy decisions. These are 1980s facts President Obama needs to know in order that he does not breach his duty to file a "corrective action" plan to cure illegal intelligence activities. See 50 U.S.C. § 413 (b) of the National Security Act. This cure would include the 1984-2012 collateral damage caused by CIA Director Casey's and DOD Secretary Weinberger's conducting the illegal domestic CIA-DIA black operations at IMC and NSA in serial 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. This "corrective action" plan could end the Jackson v Schweiker, Mitchell v Forsyth, Christensen v Harris County, and Ford v Shalala "nonacquiescence" policies.

131. WH Chief of Staff Lew also has a duty to exercise due diligence and contact AG Holder to determine whether, without the knowledge of the FISC Judges, from 1985-2012 AGs Edwin Meese (1985-1988), Richard Thornburgh (1988-1991), William Barr (1991-1993), Janet Reno (1993-2001), John Ashcroft (2001-2005), Judge Alberto Gonzales (2005-2007), Acting AG Peter Keisler (2007), Michael Mukasey (2007-2008), and Eric Holder (2009-) have implemented the FISA secret law as explained in the March 18, 2011 reclassified May 6, 2004 OLC FISA Memorandum from AAG of the OLC Goldsmith to AG Ashcroft. This is the FISA secret law that has been withheld from the Justices of the Supreme Court in Robert VII v. DOJ, Robert VIII v. DOJ, HHS, and SSA, and Clapper v. Amnesty that includes the implementation of the 1985 Mitchell v. Forsyth "nonacquiescence" policy. See 11-30-11 Robert VIII Petition Statement of the Case § H and §§ E, H below.

132. On January 10, 2012, President Obama reappointed Elizabeth R. Parker to the President's Public Interest Declassification Board (PIDB). She had been the 1984-1989 NSA General Counsel for NSA Directors Lt. General Faurer (1981-1985), General William Odom

(1985-1988), and Admiral William Studeman (1988-1992). She had been the 1990-1995 CIA General Counsel for Judge William Webster (1987-1991), Robert Gates (1991-1993), R. James Woolsey (1993-1995), and John Deutch (1995-1996). She had been both Presidents Bush's and Obama's NARA PIDB Member from 2004-2011. She is the only person who has been the General Counsel for both the NSA and the CIA to carry out the PIDB Mission. "The Public Interest Declassification Board is an advisory committee established by Congress in order to promote the fullest possible public access to a thorough, accurate, and reliable documentary record of significant U.S. national security decisions and activities." Function statement available at http://www.archives.gov/pidb/index.html#about.

133. Upon information and belief, PIDB Board Member Parker has a 1984-2012 knowledge of the implementation of the FISA secret law upon which was based the NSA Directors data mining of the pre-9/11 1984-2001 NSA TSP and the post-9/11 2001-2012 NSA TSP data banks. She knows the details of the 1984-2005 CIA-DIA-FBI black operation at NSA. She knows why AG Gonzales had on December 22, 2005 limited his § 413 (a) National Security Act Notification to the "Gang of Eight" for the post-9/11 NSA TSP, but not for the pre-9/11 NSA TSP. She knows what off-OMB Budget funds were used to pay for the "immaculate construction" and maintenance of the 1984-2005 NSA TSP data banks prior to AG Gonzales' December 22, 2005 § 413 (a) retroactive "Gang of Eight" Notification. She knows who made the decision as to which off-OMB Budget funds were used because she knew classified OMB Budget funds could not be used to pay for the NSA TSP data banks and maintenance because of the serial violation of § 413 (a) of the National Security Act. She also knows who made the decisions not to secure FISC warrants in violation of the "exclusivity provision" and not to inform the "Gang of Eight" of the pre-9/11 1984-2001 NSA TSP. See § H below.

134. PIDB Board Member Parker knows whether AGs William French Smith (1981-1985), Edwin Meese (1985-1988), Richard Thornburgh (1988-1991), William Barr (1991-1993), Janet Reno (1993-2001), John Ashcroft (2001-2005), Alberto Gonzales (2005-2007), Acting AG Peter Keisler (2007), Michael Mukasey (2007-2008), and Eric Holder (2009-), had "defrauded" Presidents Reagan, Bush, Clinton, Bush, and Obama by violating 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States, as interpreted by IC Walsh in the March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of Vice President Bush" and "Criminal Liability of President Bush" Memorandum. She knows whether the AGs knew that there were 1984-2011 serial impeachable violations of the PCA limitations on domestic military law enforcement because she knew that military officers have been data mining the 1984-2012 NSA TSP data banks. This included the DIA TALON military officers who worked with the CIA Counter-Terrorism Center agents and the FBI domestic counter intelligence "plumber" agents. See the August 21, 2007 DOD Press Release that the TALON data base was transferred to the FBI. http://www.defenselink.mil/releases/release.aspx?releaseid=11251. As the 1984-1989 NSA General Counsel, she knows whether military officers were involved in the NSA TSP targeting of Robert which resulted in wiretapped information being provided for the "Fraud Against the Government" investigation of Robert that was initiated by HHS General Counsel del Real, as a CIA covered agent, to eliminate Ruppert counsel because he was challenging the HHS "nonacquiescence" policy funding source for the "immaculate construction" and maintenance of the NSA TSP data banks. See 12-14-11 Robert II v CIA and DOJ Affidavit § G.

135. Former-NSA General Counsel-CIA General Counsel Parker has an affirmative duty to inform WH Chief of Staff Lew whether she had defended the FISA secret law that included the 1985-2012 implementation of the Mitchell v. Forsyth "nonacquiescence" policy without the

knowledge of the Article I "Gang of Eight", the Article II Presidents Reagan, Bush, Clinton, Bush, and Obama, and the Article III FISC, but with the knowledge of AGs Meese (1985-1988), Thornburgh (1988-1991), Barr (1991-1993), and Reno (1993-2001). She also has a duty to inform WH Chief of Staff Lew who made the decisions to use the 1985-2012 WH "stovepipe" to bypass Presidents Reagan, Bush, Clinton, Bush, and Obama in order to provide the Presidents with a "plausible deniability" to the fact that the AGs were implementing the FISA and SSI secret law in violation of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the PCA, and the Social Security Act. See 11-30-11 Robert VIII Petition Statement of the Case §§ A-H, and § E above and § H below.

136. On January 11, 2012, Associate AG Thomas Perrelli publicly announced that he would be resigning in March, 2012. http://www.mainjustice.com/tag/thomas-perrelli/. From 2009-2012 he was both the Associate AG in charge of the day to day running of the DOJ and President Obama's Chief FOIA Officer. He had been the 1997-1999 Counsel to AG Reno and knew whether AG Reno knew whether NSA Directors Lt. General Kenneth Minihan (1996-1999) and General Michael Hayden (1999-2005) were data mining the 1997-1999 NSA TSP data banks in violation of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, and the PCA limitations on domestic military law enforcement.

137. Associate AG Perrelli had been the 1999-2001 Civil DAAG supervising attorney during the 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), litigation. He knew whether DOJ attorneys had implemented the "Barrett nonacquiescence policy" and had intentionally withheld material facts from Judge Wexler, Judge Mishler, and the Second Circuit in order to protect the Top Secret fact that CIA Director Casey and DOD Secretary Weinberger had

conducted illegal domestic "black operations" at IMC and NSA in violation of the Boland Amendment, § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the PCA, and the Social Security Act.

138. Associate AG Perrelli as the 1999-2001 Civil DAAG supervising attorney, knew who ordered EDNY U.S. Attorney Lynch to file the 2000 Second Circuit Motions to extend the time for AG Reno to perfect the Ford Notice of Appeal of Judge Sifton's September 29, 1999 Order that established an April 9, 1994 class certification date for millions of SSI recipients whose due process rights had been violated because the SSI denial and reduction Notices did not cite to SSI regulations. He knew who made the decision that the May 1, 2000 Christensen v. Harris County, 529 U.S. 576 (2000), administrative law decision did not apply to the Ford class. He knew why then-DAG Holder made the October, 2000 decision not to perfect the Second Circuit Ford appeal. He also knew why thirteen years have passed and the 1994-2012 Ford due process violations continue unabated. Upon information and belief, he knew whether 1984-2012 Jackson "nonacquiescence" policy funds had been used to pay for the "immaculate construction" and maintenance of the 1984-2012 NSA TSP data banks that could not be funded with classified OMB Budget funds. See 11-30-11 Robert VIII Petition Statement of the Case §§ D, F.

139. Associate AG Perrelli from 1991-1992 had clerked for D.C.D.C. Judge Royce C. Lamberth who would become 1995-2002 FISC Presiding Judge. Upon information and belief, Associate AG Perrelli was sensitive to the fact that the CIA-DIA-FBI data mining of the NSA TSP had been conducted without FISC warrants based on the "Unitary Executive" theory that the FISA "exclusivity provision" was an "unconstitutional" encroachment of the President's Article II Commander in Chief duty to protect the nation from terrorists. He knew AG Meese and his successor AGs had implemented the Mitchell v. Forsyth "nonacquiescence" policy

before and after AG Gonzales' retroactive December 22, 2005 § 413 (a) Notification to the "Gang of Eight" of the data mining of the 2001-2005 NSA TSP data banks. He knew that President Obama had a § 413 (b) of National Security Act "shall" duty to cure the illegal intelligence activities that included retroactively informing the FISC that the AGs have implemented a 1985-2011 Mitchell v Forsyth "nonacquiescence" policy that could be cured when President Obama files a § 413 (b) "corrective action" plan that ends the Mitchell "nonacquiescence" policy. See § C above.

140. On January 13, 2012, the Robert VIII v. DOJ, HHS, and SSA petitioner appealed SSA FOIA Officer Wiggins December 16, 2011 decision. In his appeal letter, the Robert VIII petitioner placed the SSA FOIA Appeals Offer on Notice that he would be subsequently serving his OGIS NARA request for services along with a supporting White Paper to be placed in the SSA S9H: AH1789 Appeal Record. He requested that the SSA FOIA Officer consult with SSA General Counsel Black because the Robert VIII v DOJ, HHS, and SSA Petition for a writ of certiorari was pending in the Supreme Court and SG Verrelli had waived SSA Commissioner Astrue's right to file a Brief in opposition to the petition as to the Robert VIII issue of the "Ruppert" and "Christensen nonacquiescence policy" documents. He noted that the "Ruppert" documents were withheld pursuant to FOIA Exemption 5 and that the "Christensen nonacquiescence policy" documents were not located. See 11-30-11 Robert VIII Petition Statement of the Case §§ D, F and 12-14-11 Robert II v. CIA and DOJ Affidavit §§ C, D.

141. The Robert VIII petitioner also informed the SSA FOIA Officer that he was seeking the documents because the "Ruppert" documents was an admission of the 1985 Jackson "nonacquiescence" policy. He asserted that he was seeking the "Ruppert" documents to prove to President Obama that SSA Commissioner Nominee Astrue's sworn January 24, 2007 Senate

Finance Committee testimony that he had ended the "nonacquiescence" policy prior to his becoming the HHS General Counsel in 1989, was uncured false testimony. "I am particularly proud of having led the effort to terminate the agency's longstanding "nonacquiescence" policies, an achievement highlighted by Chairman Moynihan when I was last before you in 1989 during my confirmation hearing for General Counsel of HHS." S.Hrg. 110-222.

142. On January 13, 2012, ODNI Chief Management Officer FOIA Officer Mark W. Ewing denied the Robert II v. CIA and DOJ plaintiff's November 8, 2011 appeal of the October 6, 2011 ODNI "Glomar Response" denial decision of plaintiff's September 13, 2011 *de novo* FOIA request for the release of the "NCTC TSP and PSP data banks access guidelines" legacy document. "The Office of the Director of National Intelligence conducted a reasonable search for records responsive to your request and no records were located." Emphasis added. He also advised that NARA OGIS services were available. "Further assistance is also available from the Office of Information Services (OGIS), which was established in September 2009 and provides services to mediate disputes between FOIA requesters and federal organizations outside of the civil action process."

143. ODNI Chief Management Officer FOIA Officer Ewing's January 13, 2012 ODNI FOIA decision would take on greater significance when on March 22, 2012 ODNI Director Clapper, the 1992-1995 DIA Director, informed the public of the "Revised Guidelines For Access, Retention, Use, and Dissemination By The National Counterterrorism Center and Other Agencies of Information in Datasets Containing Non-Terrorism Information" document. Emphasis added. http://www.dni.gov/press_releases/20120322_Revised_Guidelines.pdf The Robert II v. CIA and DOJ plaintiff asserts that the FOIA requested "NCTC TSP and PSP data banks access guidelines" document exists and is the legacy ODNI Access Guideline upon which

was based the March 22, 2012 Unclassified "Revised" Guidelines that include 32 pages of elaborate and comprehensive internal Article II checks and balances to prevent intelligence community violations of the "exclusivity provision" of the FISA and PCA limitations on domestic military law enforcement. http://www.fas.org/sgp/othergov/intel/nctc_guidelines.pdf

144. On January 23, 2012, the Supreme Court in United States v. Jones, 565 U.S. ___ (2012), reviewed a modern police surveillance procedure that it had never reviewed before. This decision provides guidance as to the Court's review of fast changing societal expectation of privacy in a world in which electronic devices have omnipresent uses. The Jones decision provides a legal framework to review government's warrantless electronic surveillance of U.S. citizens that does not involve physical trespass of a U.S. citizen's property. The Robert VII v. DOJ and Robert VIII v. DOJ, HHS, and SSA petitioner asserts that the Clapper v. Amnesty Supreme Court should know the FISA secret law withheld in Robert VII and Robert VIII before it decides the FISA standing issue because this is the first modern electronic surveillance case that follows United States v. Jones and ODNI Clapper's release of new March 22, 2012 ODNI Guidelines. See 11-30-11 Robert VIII Petition Statement of the Case § H.

145. Justice Alito's Jones concurring opinion's dicta addressed the issue of the majority applying an antiquated trespass analysis, rather than a modern expectation of privacy analysis. His opinion was based on a recognition of an ever changing digital world that affects all U.S. citizens who could be the target of future government's warrantless electronic surveillance which does not involve any physical trespass of the U.S. citizens' property:

> In addition, the Katz test rests on the assumption that this hypothetical reasonable person has a well-developed and stable set of privacy expectations. But technology can change those expectations. Dramatic technological change may lead to periods in which popular expectations are in flux and may ultimately produce significant changes in popular attitudes. New technology may provide increased convenience or security at the

> expense of privacy, and many people may find the tradeoff worthwhile. And even if the public does not welcome the diminution of privacy that new technology entails, they may eventually reconcile themselves in this development as inevitable. Id. slip op. 10. Emphasis added.

146. Justice Alioto's Jones dicta and AG Holder's August 31, 2012 Jewell v. NSA Brief will provide NARA OGIS Director Nesbit with another reason why in September, 2012 she should grant the request for OGIS NARA, DOD, ODNI, and FBI, facilitation services. The FOIA requested 1985-2011 NARA, DOD, ODNI and FBI mosaic of connect-the-dots documents reveal who made the FISA secret law decisions that included the decision that the "exclusivity provision" of the FISA "unconstitutionally" violated the President's Article II Commander in Chief authority to wiretap U.S. citizens without warrants in order to protect the nation from terrorists. See See 11-30-11 Robert VIII Petition Statement of the Case § H.

147. NARA OGIS Director Nesbit knows that the Justices should know whether the March 18, 2011 reclassified May 6, 2004 FISA OLC Memo explains whether AG Meese made a 1985 Mitchell v. Forsyth decision that the Supreme Court had "incorrectly" decided Mitchell because the decision "unconstitutionally" encroached upon the President's Article II Commander in Chief authority to conduct warrantless domestic surveillance of U.S. citizens to protect the nation from terrorists. She knows the significance of the December 23, 2005 release of AAG of the Civil Division Willard's March 28, 1986 Personal Liability of Federal Officials: The Bivens Problem Memo to USG attorneys. http://www.archives.gov/news/samuel-alito/accession-060-90-220/Acc060-90-220-box12-Correspondence.pdf See 11-30-11 Robert VIII Petition pp 31-32.

148. On January 23, 2012, the Robert II .v CIA and DOJ plaintiff appealed the December 14, 2011 denial decision of NARA Deputy Archivist Debra Steidell Wall to CIA Acting Information and Privacy Coordinator Susan Viscuso. The plaintiff also added an appeal of the denial of the FOIA request for "c (3) exclusion" *ex parte* Declarations:

1) F-2011-00544- NARA project number RD-DC 34895
   1. 9/3/85 North-FBI Revell "North Notebook" log entry FOIA Exemptions 1 and 7
   2. 9/6/85 North-CIA-FBI Exemptions 1, 3 and NHAO
   3. 9/16/85 North-Call to Perot Exemptions 1 and 3
   4. 10/1/85 CIA-DOD FOIA Exemption 1 and 3 and reference to medivac helos

2) F-2010-01579 -All Robert II v CIA and DOJ "c (3) exclusion" *ex parte* Declarations

149. This appeal provided CIA Director Petraeus, as a PhD historian, with an opportunity to apply the E.O. 13526 § 3.3 Automatic Declassification 25 year standard to the four classified CIA 1985 "North Notebook" documents that will be subject to historians' future FOIA requests. The appeal would also provide CIA Director Petraeus with an opportunity to learn whether any Robert "c (3) exclusion" *ex parte* Declarations had been filed on behalf of 2002-2012 co-defendant CIA Directors Tenet (1997-2004), Goss (2004-2005), General Hayden (2006-2009), and Panetta (2009-), that had been based on the "Barrett nonacquiescence policy" whereby material facts re the domestic CIA "black operations" of CIA Director Casey at IMC and the NSA, were withheld from Judge Seybert. "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 11-30-11 Robert VIII Petition Statement of the Case §§ E, G, H and See 12-14-11 Robert II v. CIA and DOJ Affidavit §§ C and § H below.

150. On January 23, 2012, the Robert II v. CIA and DOJ plaintiff filed his OIGS NARA request for six connect-the-dots documents: three 1985 Robert II v. CIA and DOJ "North Notebook" documents, two NARA 1987 "Perot" and "Peter Keisler Collection" documents being withheld pursuant to the executive privilege assertion of the Estate of President Reagan, and the NARA "Robert v. National Archives 'Bulky Evidence File'" documents. He asserted these documents contained "smoking gun" evidence that prove that CIA Director Casey and

DOD Secretary Weinberger had conducted illegal domestic CIA-DIA "black operations" at IMC and NSA with the 1985 knowledge of FBI Director Judge Webster. He asserted that these NARA documents could be the basis for the long sought Robert II v. CIA and DOJ quiet settlement and be part of President Obama § 413 (b) "corrective action" plan that could be filed in 2012.

151. The Robert II v. CIA and DOJ plaintiff filed a 80 page January 23, 2012 White Paper (WP) in support of his request for facilitation services that he believed would lead to the long sought quiet settlement of Robert II v. CIA and DOJ. "1-23-12 White Paper in support of NARA OGIS Director Nesbit accepting jurisdiction of FOIA request for mediation services re six FOIA requested classified NARA documents." He included a copy of the plaintiff's 12-14-12 Robert II v. CIA and DOJ Affidavit to provide background facts that may assist NARA OGIS Director Nesbit make her decision to provide facilitation services that could lead to a 2012 Robert II v. CIA and DOJ quiet settlement so as not to further burden Judge Seybert.

152. On January 23, 2012, the Robert II v. CIA and DOJ plaintiff mail-served 2009-2012 CIA General Counsel Stephen Preston the January 23, 2012 CIA FOIA appeal and the request for OGIS NARA services. Because CIA General Counsel Preston had been the 1993-1995 DOD Principal Deputy General Counsel and 1995-1998 Civil Division DAAG responsible for appellate litigation, he would know from reading the December 14, 2011 Robert II v CIA and DOJ Affidavit and the January 23, 2012 CIA FOIA appeal filed with CIA Acting Information and Privacy Coordinator Viscuso, that he had a duty to sort out the facts and the law for CIA Director Petraeus. The Robert II v. CIA and DOJ plaintiff suggested that he provide a "heads up" memo for CIA Director Petraeus in order that CIA Director Petraeus knew whether the four classified CIA 1985 "North Notebook" documents subject to the E.O. 13526 § 3.3 Automatic Declassification 25 year standard, contained evidence that CIA Director Casey had

conducted illegal domestic "black operations" at IMC and NSA that corroborated the plaintiff's allegations. If so, then CIA Director Petraeus may agree to plaintiff's quiet settlement offer.

153. The Robert II v CIA and DOJ plaintiff's January 23, 2012 mail-service of the eighty page January 23, 2012 OGIS NARA WP to CIA General Counsel Preston, would become more important when on February 22, 2012 the plaintiff filed the OGIS FBI request for facilitation services. CIA General Counsel Preston knew the importance of contacting FBI General Counsel Weissmann because he knew that they both knew whether the September 13, 2011 *de novo* FBI FOIA requested July 27, 2010 FBI requested documents contained connect-the-dots facts that revealed whether CIA Director Judge Webster (1987-1991) had known in 1985 as FBI Director Judge Webster (1978-1987), that CIA Director Casey and DOD Secretary Weinberger were conducting domestic black operations at IMC and the NSA in serial impeachable violation of the Boland Amendment, § 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. See 12-14-11 Robert II v. CIA and DOJ Affidavit §§ C, D.

154. On January 23, 2012, the Robert II v. CIA and DOJ plaintiff mail-served 1998-2012 NARA General Counsel Gary Stern a copy of the January 23, 2012 request for OGIS NARA services and the WP. He had been the NARA lead counsel in Robert v. National Archives, 1 Fed. Appx. 85 (2d Cir. 2001) along with EDNY U.S. Attorney Lynch. He knew the NARA "Robert v. National Archives 'Bulky Evidence File'" documents contained the "FBI Agent Allison" documents that revealed whether the March 29, 1989 "command and control" officer of FBI Agent Allison, the FBI liaison assigned to IC Walsh, was IC Walsh or FBI Director Judge Sessions, or a *faux* "Commander in Chief" who was not President George H.W. Bush. He knows that historians and investigative reporters can file their own FOIA requests for the March 29,

1989 "FBI Agent Allison" documents and not be bound by Judge Garaufis Robert VIII v DOJ, HHS, and SSA pre-clearance Order as is the Robert VIII v DOJ, HHS, and SSA plaintiff. See 12-14-11 Robert II v CIA and DOJ Affidavit § C, § E above, and § H below.

155. NARA General Counsel Stern also knows why the Estate of President Reagan asserted executive privilege to withhold the FOIA requested NARA 1987 "Perot" and "Peter Keisler Collection" documents. He also knows whether AG Holder and/or WH Counsel Ruemmler have requested that President Obama make the final executive privilege decision by application of President Obama's "Presidential Records" E.O. 13489 Sec. 3. Claim of Executive Privilege by Incumbent President. "(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. He knows that the "FBI Agent Allison" documents will affect President Obama's decision. See 11-30-11 Robert VIII Statement of the Case § G.

156. On January 23, 2012, the Robert II v. CIA and DOJ plaintiff mail-served Acting HHS General Counsel William Schultz the January 23, 2012 request for OGIS NARA services and WP. He had been a 1999-2000 DAAG of the Civil Division during the Ford v. Shalala and Robert v. National Archives litigation. He knew why then-DAG Holder did not perfect EDNY U.S. Attorney Lynch's Ford Notice of Appeal and why the 2000 Christensen v. Harris County administrative law holding was not applied to HHS as part of the Ford v. Shalala due process remedy. He knew whether HHS General Counsel del Real had been CIA Director Casey's covered agent when he made his Jackson "nonacquiescence" policy decisions which continue to be applied to the 1994-2012 Ford class members because of "nonacquiescence" to Judge Sifton's September 29, 1999 Ford Order. See Robert VIII Petition Statement of the Case §§ D, F.

157. Acting HHS General Counsel Schultz also knows whether a HHS "stovepipe" bypasses HHS Secretary Sebelius in order that she not learn that HHS General Counsel del Real was CIA Director Casey's covered agent when he made his 1982-1985 Jackson "nonacquiescence" policy decisions. She would also not learn that she has not "acquiesced" to Judge Sifton's September 29, 1999 Ford order because the due process violations visited upon the millions of 1994-2012 Ford class members have continued during her 2009-2012 Constitutional watch. In the alternative, he knows whether HHS Secretary Sebelius is "defrauding" President Obama in violation of 18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States, as interpreted by IC Walsh in the March 21, 1991 "Memoranda on Criminal Liability of Former President Reagan and of Vice President Bush" and "Criminal Liability of President Bush" Memorandum.

158. On January 23, 2012, the Robert II v CIA and DOJ plaintiff mail-served SSA General Counsel David Black the January 23, 2012 request for OGIS NARA services and WP along with the January 13, 2012, appeal of SSA FOIA Officer Wiggins December 16, 2011 decision. He knows why SSA Commissioner Astrue had continued to program the SSA computer to apply the "Jackson" regulation, 20 C.F.R. § 416.1130(b), only in the Seventh Circuit states. He also knows why SSA Commissioner Astrue continues not to send to the millions of Ford v. Shalala class members the Ford remedy Notices so that the due process violations of SSA Commissioner Astrue would end in 2012.

159. SSA General Counsel Black also knows whether on September 24, 2007 SSA Commissioner Astrue had lied to the Senate Finance Committee that the "nonacquiescence" policy had ended prior to his becoming the HHS General Counsel in 1989. "I am particularly proud of having led the effort to terminate the agency's longstanding "nonacquiescence"

policies, an achievement highlighted by Chairman Moynihan when I was last before you in 1989 during my confirmation hearing for General Counsel of HHS." S.Hrg. 110-222. Emphasis added.

160. On January 27, 2012, the bi-partisan Constitution Project Liberty and Security Committee "Recommendations For the Implementation of a Comprehensive and Constitutional Cybersecurity policy" Report made recommendations to protect U.S. citizens' privacy rights. http://www.constitutionproject.org/pdf/TCPCybersecurityReport.pdf. This Report was in support of 2012 Cyber Security legislation to provide standards to protect private and public computer data banks. It was also in part a response to the July 19, 2010 Washington Post's "Top Secret America" series from which the public learned of the NSA domestic surveillance program.

161. The Committee's recommendations are significant because the Constitution Rights' Liberty and Security Committee Co-Chairs are David Keane, former Chairman American Conservative Union, and David Cole, Professor of Georgetown University Law Center. Its Members include former-Congressman Bob Barr, former-White House Counsel John Dean, ACLU representative-former-FBI agent Michael German, former-CIA Associate Deputy IG Mary Mc Carthy, former-General Counsel of the DOD Counterintelligence Field Activity James McPherson, former-CIA Deputy Chief of DCI Counterterrorism Center Paul Pillar, former-FBI Director Judge William Sessions, former-Watergate Prosecutor Earl Silbert, and DOD Secretary Powell's Chief of Staff Lawrence Wilkerson. Some of these Committee Members know the Top Secret fact of the existence of the pre-9/11 NSA TSP data banks and the fact that the NSA Directors have data mined these "do not exist" data banks without informing the FISC in serial violation of the "exclusivity provision" of the FISA. This is a "Past is Prologue" fact because the Committee Members know the importance of the universe of USG data banks being transferred into the 2013 ODNI-NSA Utah Data Center. See ¶¶ 198-204 below.

162. On February 1, 2012, in response to the e-mail of NARA OGIS Deputy Director Karen M. Finnegan, the OGIS NARA requester amended the January 23, 2012 request for mediation services to be a request for facilitation services for the NARA 1987 "Perot" and "Peter Keisler Collection" and "Robert v National Archives 'Bulky Evidence File'" documents. "In light of OGIS's statutory mission, it is not appropriate for OGIS to get involved with FOIA matters after litigation is filed in U.S. District Court." The requester withdrew his request for the three 1985 Robert II v. CIA and DOJ "North Notebook" documents.

163. On February 1, 2012, the Robert II v. CIA and DOJ plaintiff filed with DOD FOIA Officer James Hogan a 20 page appeal of the December 14, 2011 DOD denial decision of NARA Deputy Archivist Debra Steidell Wall as to the DOD 11-FC-0061-Project number RD-DC 34895 re the "North Notebook" "10/1/85 CIA-DOD FOIA Exemption 1 and 3 and reference to medivac helos" log document. He also included an appeal of the DOD FOIA denial decision re the NSA FOIA Case 62557-FOIA request for "NSA TSP and PSP data banks access guidelines" document. These are DOD connect-the-dots documents with the Robert VIII v DOJ, HHS, and SSA "Robert v Holz", "Barrett nonacquiescence policy," and "IMC Investigation Final Report" documents that had been reviewed by Chief FOIA Officer-Associate AG Perrelli. See 11-30-11 Robert VIII Petition Statement of the Case §§ C, E, G.

164. On February 3, 2012, the Robert VIII plaintiff mail-served SG Verrelli copies of the amended OGIS request seeking the facilitation services for the NARA "Perot", "Peter Keisler Collection", and "Robert v National Archives 'Bulky Evidence File'" documents to prove to SG Verrelli that he had committed déjà vu Supreme Court "fraud upon the court'" in Robert VIII when he did not file a Brief in opposition to the petition for a writ of certiorari. The petitioner cited to the November 3, 2011 letter from AAG of Legislative Affairs Ronald Weich to Senator

Grassley in response to the Senator's concerns re the March 11, 2011 NPRM establishing FOIA "exclusions" by announcing the withdrawal of 28 C.F.R. Part § 16.6 (f)(2), Use of record exclusions. "We believe that Section 16.6(f)(2) of the proposed regulations falls short by those measures, and we will not include that provision when the Department issues final regulations."http://www.leahy.senate.gov/imo/media/doc/110311WeichToGrassley-Leahy-FOIA.pdf. See 12-14-11 Robert II v. CIA and DOJ Affidavit § JJ.

165. On February 7, 2012, the Robert II v. CIA and DOJ plaintiff filed a 9 page OGIS DOD request for facilitation services re the DOD 11-FC-0061-Project number RD-DC 34895 re the "North Notebook" "10/1/85 CIA-DOD FOIA Exemption 1 and 3 and reference to medivac helos" log document. He included the appeal of the DOD FOIA denial decision re the NSA FOIA Case 62557-FOIA "NSA TSP and PSP data banks access guidelines" document. He requested that NARA OGIS Director Nesbit conduct DOD facilitation services with the February 1, 2012 request for OGIS NARA facilitation services and the February 7, 2012 request for OGIS ODNI facilitation services because ODNI Director Matthew Olsen had been the 2010-2011 NSA General Counsel after being the 2004-2005 Special Counsel for FBI Director Mueller, the 2005-2006 National Security Division Chief, the 2006-2009 DAAG in National Security Division, and the 2010 Associate DAG. This was an important fact because 2004-2005 FBI Special Counsel Olsen knew whether FBI Director Mueller knew in 2005 of the pre-9/11 NSA TSP and the data mining of the NSA TSP data banks without the knowledge of the FISC Judges.

166. This request for OGIS DOD facilitations services became more important when on March 22, 2012, ODNI Director Clapper informed the public of the ODNI "Revised Guidelines For Access, Retention, Use, and Dissemination By The National Counterterrorism Center and Other Agencies of Information in Datasets Containing Non-Terrorism Information." ODNI

Director knew that this "Revised" Access Guidelines was based on the legacy "NSA TSP and PSP data banks access guidelines" document that he had relied upon when he was the 1992-1995 DIA Director and had data mined the 1984-1995 NSA TSP data banks without FISC Orders.

167. ODNI Director Clapper knew that those legacy NSA Access Guidelines had been the NSA Guidelines that had been applied by the 2007 DOD Threat and Local Observation Notice ("TALON") analysts prior to his August 21, 2007 decision as Under Secretary of Intelligence Clapper to terminate the TALON program and transfer the TALON data banks to the FBI. " In the interim, until this new reporting program is adopted, DoD components will send information concerning force protection threats to the Federal Bureau of Investigation's Guardian reporting system."http://www.defenselink.mil/releases/release.aspx?releaseid=11251. See the 12-14-11 Robert II v. CIA and DOJ Affidavit § G.

168. ODNI Clapper knew that the "NSA TSP and PSP data banks access guidelines" document tracked back to the December, 1982 DOD 5240 1 R Procedures Governing the Activities of DOD Intelligence Components That Affect United States Persons, Those DOD Access Guidelines were approved by AG Smith and DOD Secretary Weinberger. "The purpose of these procedures is to enable DoD intelligence components to carry out effectively their authorized functions while ensuring their activities that affect U.S. persons are carried out in a reamer that protects the constitutional rights and privacy of such persons." Id. 1-1 Mastercopy http://www.cnss.org/DoD%20Intell%20Affecting%20US%20Persons%20Regs.pdf.

169. On February 7, 2012, the Robert II v CIA and DOJ plaintiff filed a 16 page request for OGIS ODNI facilitation services re the ODNI DF-2011-001144 –"NCTC TSP and PSP data banks access guidelines" withheld pursuant to the "Glomar Response" defense. He

requested that Director Nesbit conduct ODNI facilitation services along with the February 1, 2012 request for OGIS NARA and February 7, 2012 request for OGIS DOD facilitation services.

170. The request for OGIS DOD facilitation services for the "NCTC TSP and PSP data banks access guidelines" became a more important ODNI facilitation services request, when on March 22, 2012 ODNI Director Clapper released the ODNI "Revised" Guidelines that were approved by ODNI Director Clapper, AG Holder and NCTC Director Olsen, who had been the 2010-2011 NSA General Counsel. This is an important fact because NCTC Director Olsen had known as 2010-2011 NSA General Counsel whether 2011 DOD Secretary Panetta had known as 2009-2011 CIA Director Panetta about the CIA Counter Terrorism Center that without FISC Orders had conducted "dragnet" electronic surveillance of U.S. citizens as the public learned from the May 13, 2012 60 Minutes Report. Hank Crumpton: Life as a spy. See ¶ 235 below.

171. On February 8, 2012, ODNI Director Clapper and AG Holder sent a letter to Speaker of the House John Boehner, Senate Majority Leader Harry Reid, House Democratic Leader Nancy Pelosi, and Senate Republican Leader Mitch McConnell, in support of the reauthorization of the FISA Amendments of 2008 (FAA). ODNI Director Clapper informed the public of this letter in his May, 2012 Clapper v. Amnesty Reply Brief as being posted on the ODNI reading room. http://www.dni.gov/electronic_reading_ room/dni_ag_letter.pdf. ODNI Director Clapper and AG Holder informed the Congress that the FAA "provides a comprehensive regime of oversight by all three branches of Government to protect the privacy and civil liberties of U.S. persons." Id. 1. They informed the Congress that no U.S. citizen would be targeted without a court order. "Within this framework, *no* acquisition may intentionally target a U.S. person, here or abroad, or any other person known to be in the United States." Id. 1. Emphasis in the original. This ODNI and AG letter did not indicate that Congress had been

informed of the pre-9/11 1984-2001 NSA TSP data mining to supplement AG Gonzales' December 22, 2005 § 413 (a) Notice of the data mining of the post-9/11 NSA TSP data banks. There was no information re the FISA secret law that the AGs Gonzales and Holder defended in Robert VII v. DOJ and Robert VIII v. DOJ, HHS, and SSA.

172. The requester of OGIS NARA, DOD, ODNI, and FBI facilitation services cites to this February 8, 2012 letter because it highlights the importance of SG Verrelli's February 17, 2012 Clapper v. Amnesty Petition for a writ of certiorari that addressed the FISA standing issue. The Robert II v CIA and DOJ plaintiff asserts that this is a problematic letter because of its representation that the FAA "provides a comprehensive regime of oversight by all three branches of Government to protect the privacy and civil liberties of U.S. persons" when the "Gang of Eight" has never been informed of the existence and the data mining of the pre-9/11 NSA TSP data banks that is revealed in the Robert VII v. DOJ "FISC Robert" documents. Those documents reveal the reason why OIPR Counsel Baker ratified the CIA's use of FOIA Exemption 1 and the "Glomar Response" to withheld the documents that reveal whether Robert had been the target of the pre-9/11 NSA TSP, and whether AG Meese had provided false facts to the FISC that FBI Director Judge Webster had evidence that Robert was a terrorist or an agent of a foreign power. Those documents also contain facts which establish whether President Obama has a § 413 (b) "shall" duty to file a "corrective action" plan to cure the illegal intelligence activities that occurred when the NSA Directors data mined the pre-9/11 NSA TSP data banks without Notice to the FISC or the "Gang of Eight" and in violation of the "exclusivity provision" and § 1806 of the FISA. See § H below.

173. On February 8, 2012, CIA FOIA Officer Susan Viasco, on behalf of CIA Director Petraeus, rendered her decision that denied the January 23, 2012 FOIA CIA appeal. "You were

advised that the declarations you seek relate to an exclusion from FOIA records maintained by the Federal Bureau of Investigation and your initial request was not processed, therefore, there are no administrative appeal rights and we cannot accept your appeal." Emphasis added. There was no discussion of the Second Circuit's September 6, 2011 Order that amended the December 14, 2012 Robert VIII v. DOJ, HHS, and SSA Judgment to require a pre-clearance Order when Robert files a FOIA complaint, and not when Robert files a FOIA request. It is a problematic decision because of its reference to the "declarations" that CIA FOIA Officer Viasco indicates were maintained by the FBI. This CIA FOIA decision reveals the importance of CIA General Counsel Preston and Acting FBI General Counsel Weissmann determining who ordered FBI Chef FOIA Officer Hardy not to process the Robert v. Holz-Robert v. National Archives-Robert VII v. DOJ-Robert VIII v. DOJ, HHS, and SSA-Robert II v. CIA and DOJ plaintiff's September 13, 2011 *de novo* request for the July 27, 2010 FBI documents. See § E above.

174. This is also an important CIA FOIA decision given the February 8, 2012 letter from ODNI Director Clapper and AG Holder to Congress. CIA Director Petraeus should know the contents of the "declarations" that his CIA FOIA Officer Viasco references in her February 8, 2012 decision. The content of the documents in the custody of the FBI takes on greater importance because of the decision the FBI FOIA Officer to instruct NARA Deputy Assistant Wall to release the declassified FOIA requested "North Notebook # 1 "9/3/85 North-FBI Exemptions 1,7 and Buck Revell "North Notebook" log entry" with the unredacted "CHALOBI" reference. If this was a FBI-CIA reference to Mr. Ahmed Chalabi, then CIA Director Petraeus, as an historian, will understand the "Past is Prologue" importance of FBI documents as to the accuracy of the "Curveball" facts provided to President Reagan by CIA Director Casey and

DOD Secretary Weinberger re the CIA-DIA "black operations" conducted at IMC and the NSA without the knowledge of the "Gang of Eight" or the FISC.

175. CIA Director Petraeus should know who at the FBI authorized the declassification of the classified September 3, 1985 document with the "CHALOBI" log entry. This is a key CIA-FBI information sharing fact if the 2002-2012 CIA General Counsels had provided "Curveball" facts to CIA Directors Tenet (1997-2004), Goss (2004-2005), General Hayden (2006-2009), Panetta (2009-2011), and Petraeus (2011-) re CIA Director Casey's domestic "black operations" at IMC and NSA in order to provide the CIA Directors with a "plausible deniability" defense to the serial impeachable violations of the Boland Amendment, § 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. See §§ H below.

176. On February 14, 2012, the National Security Archive awarded its infamous Rosemary Award to the DOJ. "The U.S. Department of Justice has won the infamous Rosemary Award for worst open government performance over the past year, according to the citation posted on the Web today by the National Security Archive." The National Security Archive awarded one of its "dubious achievement" awards to OIP Director Pustay. "In the most ridiculed provision, Pustay's regulations would have formalized the practice – first enabled by Attorney General Edwin Meese in 1987 – of allowing the government to lie about the very existence of records sought in a FOIA case." http://www.gwu.edu/~nsarchiv/news/20120214/index.htm

177. The Robert VIII v. DOJ, HHS, and SSA/Robert II v. CIA and DOJ plaintiff does not cite to this DOJ Award to mock OIP Director Pustay. Rather, it is cited as an opportunity for CIA General Counsel Preston to consult with OIP Pustay and NARA OGIS Director Nesbit as to the Robert II v. CIA and DOJ plaintiff's request for OGIS NARA facilitation services.

178. OIP Director Pustay (2007-2012) has a 1983-2012 OIP institutional memory having been a 1983-1998 OIP Attorney-Advisor and then the 1999-2007 OIP Deputy Director. For the past 25 years she has been applying the "c (3) exclusion" standards established in AG Meese's December, 1987 Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act to FOIA requests for 5 U.S.C. 552 "(c)(3) exclusion" *ex parte* Declarations. http://www.usdoj.gov/04foia/86agmemo.htm. AG Meese's Memo provides Guidelines as to the content of "c (3) exclusion" *ex parte* Declarations filed with Article III Judges. "Where an exclusion was not in fact employed, the *in camera* declaration will simply state that fact, together with an explanation to the judge of why the very act of its submission and consideration by the court was necessary to mask whether that is or is not the case." Emphasis added. CIA General Counsel Preston knows whether the September 13, 2011 FOIA *de novo* requested "F-2010-01579 -All Robert II v CIA and DOJ "c (3) exclusion" *ex parte* Declarations" reveal that the CIA General Counsels knew that the *ex parte* Declarations were crafted for Judge Seybert to render a decision that "masks" the content of the *ex parte* Declarations.

179. The Robert VIII v. DOJ, HHS, and SSA/Robert II v. CIA and DOJ plaintiff also cites to this DOJ Award because it is the February 14, 2012 result of the AGs implementing "secret law" as framed by NARA Information Security Oversight Office (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. This is the "secret law" that will be tested if it is necessary for the plaintiff to file a Summary Judgment Motion to secure the release of the four 1985 CIA classified "North Notebook" documents.

G. The February 17, 2012 through August 13, 2012 facts that have occurred after the February 15, 2012 Robert II v. CIA and DOJ Order

180. The plaintiff reports to the Court the following chronology of facts that occurred after the Court's February 15, 2012 Order from February 17, 2012 through August 13, 2012. These facts are the basis for the plaintiff's renewed actions seeking to persuade NARA OGIS Director Nesbit to docket the requests for OGIS NARA, DOD, ODNI, and FBI facilitation requests that the plaintiff believes will lead to the long sought Robert II v. CIA and DOJ quiet settlement prior to the Supreme Court rendering its Clapper v. Amnesty decision.

181. On February 17, 2012, SG Verrelli filed the Clapper v. Amnesty Petition for a writ of certiorari with then-AAG of the Civil Division West on the Petition. The SG did not inform the Justices of the FISA secret law upon which the pre-9/11 1984-2001 and post-9/11 2001-2012 NSA TSP has been based included the implementation of AG Meese's Mitchell v Forsyth, 105 S.Ct. 2806 (1985), "nonacquiescence" policy. "We conclude that the Attorney General is not absolutely immune from suit for damages arising out of his allegedly unconstitutional conduct in performing his national security functions." Id. 2811. See 11-30-11 Robert VIII Petition H.

182. The fact that then-AAG of the Civil Division Tony West was on the February 17, 2012 Clapper Brief is a significant fact if he had known as 1993-1994 Special Assistant to DAGs Philip Heymann and Jamie Gorelick that 1992-1995 DIA Director Clapper had data mined the "do not exist" 1984-1995 NSA TSP data banks without the knowledge of the "Gang of Eight" or President Clinton or the FISC. If he did not know, then this is evidence of the compartmentalized 1993-1994 daisy-chain of "shadow government" attorney-patriots who knew of the illegal domestic data mining of the "do not exist" NSA TSP data banks as ordered by a *faux* "Commander in Chief" who was not President Clinton. Because now-ODNI Clapper is the Clapper v Amnesty petitioner, the Justices should know the fact of the DIA 1984-1995 data

mining of the 1984-1995 NSA TSP data banks without the knowledge of the Article I "Gang of Eight" or the Article II President Clinton or the Article III FISC.

183. On February 21, 2012, the Supreme Court denied the Robert VIII v. DOJ, HHS, and SSA Petition for a writ of certiorari. "The petition for a writ is denied. Justice Sotomayor took no part in the consideration or decision of this petition."

184. Upon information and belief, Justice Sotomayor recused herself because on January 12, 2001 she had been on the Second Circuit panel which decided Robert v. National Archives, 1 Fed. Appx. 85 (2d Cir. 2001). In that FOIA action, the plaintiff had sought the "FBI Agent Allison" documents which he asserted were connect-the-dots documents to the Robert v. Holz documents that revealed whether FBI Director Judge Webster knew in 1985 that Robert was the illegal target of an illegal domestic black operation conducted by CIA Director Casey and DOD Secretary Weinberger at the NSA to protect the illegal domestic CIA-DIA black operation at IMC. Those "FBI Agent Allison" documents are also connect-the-dots documents with the Robert VIII v. DOJ, HHS, and SSA "IMC Final Investigation Report" document. See 11-30-11 Robert VIII Petition Statement of the Case § G.

185. The Robert II v. CIA and DOJ plaintiff asserts that the February 21, 2012 decision denying the Robert VIII v. DOJ, HHS, and SSA petition for a writ of certiorari, became more important when on May 21, 2012 the Supreme Court granted SG Verrelli's February 17, 2012 Clapper v Amnesty Petition for a writ of certiorari. The Robert VIII v. DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff's amended February 1, 2012 OGIS NARA request seeks the release of the "Robert v National Archives 'Bulky Evidence File'" documents that he asserts reveal that DOJ attorneys had withheld material facts from Judge Wexler and Second Circuit Judge Sotomayor in Robert v. National Archives.

186. On February 22, 2012, the Robert VIII v. DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff filed his OGIS FBI request for facilitation services supported by a 44 page February 22, 2012 OGIS FBI White Paper. The OGIS FBI requester sought the September 13, 2011 *de novo* July 27, 2010 FOIA request for FBI documents that the plaintiff asserted revealed whether FBI Director Judge Webster knew in 1985 that CIA Director Casey and DOD Secretary Weinberger were conducting black operations at IMC and NSA in serial impeachable violations of federal laws without the 1985 knowledge of the Article I "Gang of Eight", the Article II President Reagan, and the Article III FISC.

187. In the request for OGIS FBI facilitation services, the Robert VIII v. DOJ, HHS, and SSA-Robert II v. CIA and DOJ plaintiff asserted that FBI Chief FOIA Officer Hardy's command and control officer ordered him not to process the FOIA request in violation of the Second Circuit's September 6, 2011 modification of the December 14, 2005 Judgment enjoining Robert from filing a FOIA complaint without Judge Garaufis' pre-clearance Order, and not when filing a FOIA request. He requested that this request for FBI facilitation services be conducted along with the February, 2012 requests for OGIS NARA, DOD, and ODNI facilitation services. He asserted that these were "Past is Prologue" FBI documents that reveal whether a FBI counter intelligence "plumber" unit had participated in the "Fraud Against the Government" investigation of Robert to eliminate an attorney challenging the Jackson "nonacquiescence" policy of HHS General Counsel del Real. He asserted that this was the off-OMB Budget funding source for the "immaculate construction" and maintenance of the 1984-2005 NSA TSP data banks that could not be funded with classified OMB Budget funds because of the serial impeachable violations of § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, and Posse Comitatus Act, and the Social Security Act.

188. On March 4, 2012, the 60 Minutes Report, "Stuxnet: Computer worm opens new era or warfare" informed the viewers of the offensive capability of using sophisticated algorithms to perform electronic warfare. http://www.cbsnews.com/video/watch/?id=7400904n. Former-CIA Director Hayden (2006-2009), the 1999-2005 NSA Director and 2005-2006 Principal Deputy Director of the ONDI, appeared and disclaimed any knowledge of the USG's involvement with the computer algorithm that attacked the Iranian power plant. See Report at 9.27 minutes.

189. The Robert v. Holz-Robert II v. CIA and DOJ plaintiff cites to former-CIA Director Hayden's disclaimer because he asserts that the # 8 "FBI Charles Robert documents including NSLs sent to banks and ISP" documents reveal how the Robert algorithm was offensively used to secure information re his law firm's escrow accounts. He asserted that these were FBI connect-the-dots documents with the # 4 "FBI copy of Robert v National Archives "FBI Agent Allison" documents", # 5 "FBI unredacted copy of Robert v DOJ "62-0 file" documents", # 7 FBI Robert VII v DOJ "FISC Robert" documents" in the Robert FBI case file which reveal whether FBI Director Judge Webster had known in 1985 that CIA Director Casey and DOD Secretary Weinberger were conducting illegal domestic black operations at IMC and the NSA.

190. The Robert v. Holz-Robert II v. CIA and DOJ plaintiff cites to his allegation of the FBI's offensive use of the Robert algorithm because on July 20, 2012 he would place CIA General Counsel Preston on Notice of his duty to consult with FBI General Counsel Weissmann as to FBI Chief FOIA Officer Hardy's decision not to process the September 13, 2011 *de novo* FOIA request for these documents. CIA General Counsel Preston knew from reading the Robert II v CIA and DOJ "c (3) exclusion" *ex parte* Declarations whether CIA General Counsels Scott Muller (2002-2004) and Acting John Rizzo (2004-2009) knew that the "c (3) exclusion" *ex parte* Declarations had withheld from Judge Seybert the material fact that the CIA domestic

Counter Intelligence Unit had worked in concert with the FBI counterintelligence "plumber" of FBI Director Judge Webster. See § E above and § H below.

191. The Robert v. Holz-Robert II v. CIA and DOJ plaintiff cites to 2006-2009 CIA Director Hayden's knowledge whether CIA black operations had included the offensive use of algorithms, because as the April 21, 2005-May 26, 2006 Principal Deputy Director of the ODNI he knew why AG Gonzales had provided retroactive § 413 (a) Notification to the "Gang of Eight" of the post-9/11 2001-2005 NSA TSP, but not of the pre-9/11 1984-2001 NSA TSP. He knew as the 1999-2005 NSA Director whether he had data mined the pre-9/11 NSA TSP data banks in reliance upon the legal advice of NSA General Counsel Robert Deitz (1998-2006). He knew whether he had been advised of the FISA secret law and AG's absolute immunity to wiretap U.S. citizens without warrants because AG Meese determined the Supreme Court had "incorrectly" decided Mitchell. See 11-30-11 Robert VIII Petition Statement of the Case § H.

192. On March 8, 2012, OIP Associate Director MacLeod denied the plaintiff's appeal of the December 13, 2011 Civil FOIA denial decision of Civil Attorney-in-Charge Kovakas that used the "Glomar Response" defense to withhold the September 13, 2011 *de novo* requested documents that included the DOJ Robert v. Holz, Robert v. National Archives, Robert VII v. DOJ and Robert VIII v. DOJ, HHS, and SSA case file documents. "After carefully reviewing your appeal, I am affirming the Civil Division's action on your request."

193. The plaintiff asserts that OIP Associate Director MacLeod affirmed the use of the "Glomar Response" defense to deny the FOIA request with the knowledge that these Robert FOIA case files exist and contain DOJ case file notes that corroborate Robert's almost incredible allegation that he was the illegal target of an illegal NSA TSP with the knowledge of FBI Director Judge Webster. The plaintiff also asserts that these Robert Civil FOIA documents and

the DOJ case file notes withheld pursuant to the "Glomar Response" documents, are connect-the-dots documents with the four classified CIA 1985 Robert II v. CIA and DOJ "North Notebook" documents. He asserts the documents prove whether HHS General Counsel del Real was CIA Director Casey's covered agent when he initiated the "Fraud Against the Government" investigation of Robert seeking Robert's incarceration and disbarment. He further asserts that the command and control officer of CIA General Counsel Preston has ordered him not to inform CIA Director Petraeus of facts contained in these Civil DOJ documents that corroborate the plaintiff's almost incredible allegations.

194. On March 9, 2012, AAG of the Civil Division West became the Acting Associate AG succeeding Associate AG Perrelli who had resigned for personal reasons. Acting Associate AG West is also now President Obama's Chief FOIA Officer who is tasked with coordinating the Chief FOIA Officers of all of the Executive Branch agencies.

195. On March 9, 2012, AG Holder's August 2010-March 2012 Senior Counselor to the Attorney General Stuart Delery succeeded AAG of the Civil Division West and became the Acting AAG of the Civil Division. He had been the 2009 Chief of Staff and Counselor to DAG Ogden who had been the 1999-2001 AAG of the Civil Division during the Robert v. National Archives, 1 Fed. Appx. 85 (2d Cir. 2001), Robert v. U.S. Department of Justice, 2001 WL 34077473 (EDNY), 26 Fed. Appx. 87 (2d Cir. 2002), and Ford v. Shalala, 87 F. Supp 2d 163 (E.D.N.Y. 1999), litigation. In 2010 he was an Associate DAG along with Associate DAG James Baker who had been the OIPR Counsel 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) and the Counsel for the National Security Division of Intelligence Policy during Robert VIII v. DOJ, HHS, and SSA, 439 Fed. Appx 32 (2d Cir. 2011), cert. den. 132 S. Ct. 1549 (2012). See § H below.

196. These are important DOJ chain of command facts because Acting Associate AG West and Acting AAG of the Civil Division Delery have a duty to report to AG Holder their knowledge of the September 13, 2011 *de novo* Civil FOIA requested July 27, 2010 connect-the-dots documents reviewed by FOIA Civil Attorney-in-Charge Kovakas, OIP Associate Director MacLeod, and their command and control officer. These documents reveal whether Robert was a 50 U.S.C. § 1806 (f) "aggrieved person" by application of the Second Circuit's Robert VII v DOJ March 9, 2006 Order contrary to AG Gonzales' April 3, 2006 letter-Brief that did not inform the Second Circuit of the content of the "FISC Robert" documents. The Robert v. Holz-Robert v. National Archives-Robert v. DOJ-Robert VII v. DOJ-Robert VIII v. DOJ, HHS, and SSA-Robert II v CIA and DOJ plaintiff asserts that that AG Holder should know the Civil FOIA facts prior to SG Verrelli filing the USG's Clapper v Amnesty Brief in September, 2012.

197. The fact that as AAG of the Civil Division West, Acting Associate AG West was on the SG Verrelli's February 17, 2012 Clapper v Amensty petition for a writ of certiorari, takes on greater importance because of now-Acting Associate AG West's supervisory duty to review for accuracy AG Holder's Jewell v NSA Brief that is to be filed by August 31, 2012 as to AG Holder's continued use of the state secrets defense. He has the supervising attorney task of reconciling the AGs' use of the states secret defense in Jewell v NSA involving plaintiffs with a FISA § 1806 cause action, that was not used in the Robert VII v DOJ, Robert VIII v DoJ, HHS, and SSA, and Clapper v Amnesty litigation. Hence, the importance of Acting Associate AG West knowing the content of the Civil FOIA # 2 "1985-1988 Robert v Holz "Fraud Against the Government" DOJ case file notes and e-mails", # 11 "2004-2007 Robert VII v DOJ ex parte Declarations, case file notes, and e-mails", and # 12 "2004 Robert VII v DOJ "uncorrected" Declaration of OIPR Baker" documents, that reveal the existence of the pre-9/11 NSA TSP that

was based on AG Meese's FISA secret law that was conducted without the knowledge of the Article I "Gang of Eight" or the Article III FISC. See § A above and § H below.

198. On March 15, 2012, the Wired magazine published NSA historian James Bamford's "Inside the Matrix" article re the NSA's Stellar Wind algorithm and construction of the Utah Data Center. http://www.wired.com/threatlevel/2012/03/ff_nsadatacenter/all/1. NSA historian Bamford added extensive details to the July 1, 2009, Salt Lake Tribune reporter Matthew D. Laplante news story that first informed the public that the Congress had appropriated the money for President Obama to build the Utah Data Center as a super server for the NSA surveillance program. "The years-in-the-making project, which may cost billions over time, got a $181 million start last week when President Obama signed a war spending bill in which Congress agreed to pay for primary construction, power access and security infrastructure." Spies like us: NSA to build huge facility in Utah, Salt Lake Tribune, http://www.sltrib.com/ci_12735293.

199. The fact that Congress appropriated 2009 funds for the Utah Data Center super server is a key fact given the size of the NSA domestic surveillance program revealed in the Washington Post's July 19, 2010 "Top Secret America" series with its Orwellian-Hooveresque Location Map. http://projects.washingtonpost.com/top-secret-america/map/. That series triggered the Robert II v CIA and DOJ plaintiff's July 27, 2010 FOIA request for the NARA, DOD, ODNI, and FBI documents that are the subject of his February, 2012 requests for OGIS facilitation services. Those documents reveal the off-OMB Budget source for funding the NSA TSP data banks that were not funded with classified OMB Budget funds.

200. On March 22, 2012, ODNI Director Clapper informed the public of the new and comprehensive "Revised Guidelines For Access, Retention, Use, and Dissemination By The National Counterterrorism Center and Other Agencies of Information in Datasets Containing

Non-Terrorism Information" document that replaced the legacy ODNI Access Guideline This "Revised" ODNI Guidelines was an important fact for the public to know if these "Revised" ODNI Guidelines are applied to the universe of USG data banks that are transferred into the 2013 Utah Data Center, and to the universe of USG data banks that are not transferred into the Utah Data Center. ODNI Director Clapper's "Revised" Guidelines Press release is posted on the ODNI website at http://www.dni.gov/index.php/newsroom/press-releases/96-press-releases-2012/528-odni-and-doj-update-guidelines-for-nctc-access,-retention,-use,-and-dissemination-of-information-in-datasets-containing-non-terrorism-information.

201. The March 22, 2012 OGNI Guidelines provide National Security Act background information upon which the ODNI Guidelines are based that includes having access to data banks which are under the jurisdiction of the other Intelligence Community (IG) agencies:

> Congress recognized that NCTC must have access to a broader range of information than it has primary authority to analyze and integrate if it is to achieve its mission. The Act thus provides that NCTC "may consistent with applicable law, the direction of the President and the guidelines referred to in section 102A(b), receive intelligence pertaining exclusively to domestic counterterrorism from any Federal, State, or local government or other source necessary to fulfill its responsibilities and remain and disseminate such intelligence." National Security Act of 1947, as amended § 199(e). Further, the Act envisions that NCTC, as part of the Office of the Director of National Intelligence (ODNI), Id. § 119(a), would have the broadest possible access to national intelligence relevant to terrorism and counterterrorism Section 102A(b) of the National Security Act of 1947, as amended, provides that "(u)nless otherwise directed by the President, the Director of National Intelligence shall have access to all national intelligence and intelligence related to the national security which is collected by any federal department agency or other entity, except as otherwise provided by the law, or, as appropriate, under guidelines agreed upon by the Attorney General and the Director of National Intelligence. Id. 2. Emphasis Added. https://www.documentcloud.org/documents/327629-nctc-guidelines.html.

202. The March 22, 2012 OGNI Guidelines provide a list of legal resources upon which the ODNI Guidelines are based that should have been applied by the NSA analysts who targeted

Robert during the "Fraud Against the Government" investigation of Robert, and which were available during the Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA litigation:

> e) 18 U.S.C. 2332b(f) (Acts of terrorism transcending national boundaries—investigative ` authority)
> f) Executive Order 12333 of December 4, 12333 of December 4, 1981, as amended, United States Intelligence Activities"
> g) Executive Order 13388 of October 25, 2005, "Further Strengthening the Sharing of Terrorism Information to Protect Americans"
> h) Intelligence Community Directive (ICD) 501 of January 21, 2009, "Discovery and Dissemination or Retrieval of Information within the Intelligence Community"
> i) ICD 503 of September 15, 2008, "Intelligence Community Information Technology Systems Security Risk Management, Certification and Accreditation"
> j) Director of Central Intelligence Directive (DCID) 6/3 of June 5, 1999, "Protecting Sensitive Compartmented Information within Information Systems," appendix E (or successor ICD and {Polices) Emphasis Added
> k) DCID 6/6 of July 11, 2001, Security Controls on the Dissemination of Intelligence Information" (or successor ICD and Policies) Emphasis Added
> l) December 4, 2006 Guidelines to Ensure that the Information Privacy and Other Legal Rights of Americans are Protected in the Development
> m) March 4, 2003 Memorandum of Understanding Between the Intelligence Community, Federal law enforcement Agencies, and the Department of Homeland Security Concerning Information Sharing
> n) September 27, 2007 Memorandum of Agreement on the Establishment and Operation of the Interagency Threat Assessment and Coordination Group
> o) The Attorney General-approved procedures promulgated through Central Intelligence Agency Headquarters Regulation 7-1 of December 23, 1987, "Law and Policy Governing the procedures (hereafter "NCTC's EO 12333, § 2.3 Procedures") Emphasis added.
> p) National Counterterrorism Center Information Sharing Policy of February 27, 2006, "Rules of the Rod" (NCTC Policy Document 11.2 (or successor Policy)
> q) National Counterterrorism Center Role-Based Access Policy of July 13, 2009 (NCTC Policy Document 11.7)(or successor Policy)
> r) ODNI Instruction 80.05, Implementation of Privacy Guidelines for Sharing Protected Information, September 2, 2009 (hereinafter "ODNI ISE Privacy Instruction")
> s) ODNI Instruction 80.02, Managing Breaches of Personally Identifiable Information, February 20, 2008. Id. 3-4.

203. The March 22, 2012 OGNI Guidelines contain the X. Interpretation and Departures provision whereby all Intelligence Community (IC) interpretations questions are to be presented

to the IC General Counsels who "shall" refer all questions relating to the interpretations of these Guidelines to the ODNI General Counsel and the DOJ AAG for National Security:

> A The IC element shall refer all questions relating to the interpretation of these Guidelines to the IC element's Office of General Counsel other legal advisor. The IC element's General Counsel shall consult with ODNI General Counsel regarding any novel or significant interpretations, and the ODNI General Counsel shall then consult with the Assistant Attorney General for National Security to the extent required by the NCTC Guidelines. Id. Appendix 11-12.

204. The fact that ODNI Director Clapper has denominated the March 22, 2012 ODNI Guidelines as "Revised" ODNI Guidelines is a recognition of the existence of the legacy "NCTC TSP and PSP data banks access guidelines" that were the subject of ODNI Chief Management FOIA Officer's January 13, 2012 "Glomar Response" denial decision and his recommendation that the ODNI appellant consider OGIS services. This is the ODNI legacy document upon which the March 22, 2012 ODNI "Revised" Access Guidelines are based. This was the DOD legacy Access Guidelines that 1992-1995 DIA Director Clapper used to access the 1984-1995 NSA TSP data banks that tracks back to the December, 1982 DOD 5240 1 R Procedures Governing the Activities of DOD Intelligence Components That Affect United States Persons. http://www.cnss.org/DoD%20Intell%20Affecting%20US%20Persons%20Regs.pdf .

205. On March 29, 2012, the Senate confirmed President Obama's IG Nominee Michael Horowitz to succeed IG Glen Fine (2000-2011). On October 26, 2011, the Nominee had responded to a question by Chairman Leahy and Ranking Member Grassley by committing to completing IG Fine's audits of government surveillance programs and to review OLC opinions as they affect USG officials access to U.S. citizens' information:

> Answer: If confirmed, I am committed to completing these audits which I understand are already underway in the Inspector General's office. http://www.judiciary.senate.gov/nominations/112thCongressExecutiveNominations/upload/MichaelHorowitz-QFRs.pdf

206. Those DOJ IG audits were follow up audits to the July 10, 2009 Report of the five Intelligence Community IGs CIA IG Helgerson, DOJ IG Fine, ODNI IG Maguire, and NSA IG Ellard: Unclassified Report on the President's Surveillance Program. This report was limited to the post-9/11 PSP and did not cover "Other" Intelligence Activities. "The specific details of the Other Intelligence Activities remain highly classified, although the Attorney General publicly acknowledged the existence of such activities in August, 2007." Id. 6. Emphasis Added. http://www.usdoj.gov/oig/special/s0907.pdf.

207. On March 30, 2012, NSA Central Security Service Chief Declassification Services Kristina Gerin denied the Robert v. Holz-Robert VII v DOJ-Robert VIII v. DOJ, HHS, an SSA plaintiff's July 29, 2011 request that there be a Mandatory Declassification Review (MDR) of the "NSA TSP and PSP data banks access guidelines" document pursuant to President Obama's December 29, 2009 E.O. 13525 § 3.5 Mandatory Declassification Review. "Your MDR request is denied in accordance with Section 3.5 (d) of Executive Order 13526 which provides that MDR requests must pertain to information that has not been reviewed for declassification within the past years." She did not provide any information as to the NSA's "within the past years" declassification decisions or how those decisions related to Robert's MDR request.

208. This was an important NSA decision because it was after ODNI Director Clapper issued the March 22, 2012 ODNI "Revised" Access Guidelines. Since the March 22, 2012 ODNI Access Guidelines are public and the December, 1982 DOD 5240 1 R Procedures Governing the Activities of DOD Intelligence Components That Affect United States Persons are public, the February 7, 2012 request for OGIS DOD facilitation services should result in the release of this legacy DOD-NSA Access Guideline without the Robert VIII v. DOJ, HHS, and SSA plaintiff having to file a Motion with Judge Garaufis seeking a pre-clearance Order to file a FOIA

complaint to seek the release of this legacy "NSA TSP and PSP data banks access guidelines" document after the release of the March 22, 2012 ODNI Revised Access Guidelines.

209. On April 4, 2012, SSA Acting Executive Director Office of Privacy and Disclosure Daniel F. Callahan affirmed SSA's use of the "Glomar Response" defense to withhold the September 13, 2011 *de novo* FOIA requested SSA documents. "After considering all the facts of the case, I agree that we do not have any responsive records with the scope of your request." Emphasis Added. See 11-30-11 Robert VIII Petition Statement of the Case §§ C, D, F.

210. The Robert VIII "Robert v Holz" and "Ruppert" documents being withheld pursuant to FOIA Exemption 5, are connect-the-dots documents with the following SSA *de novo* FOIA requested documents which reveal who made the decision to continue the 1982 Jackson "nonacquiescence" policy that continues to be applied to the 1994-2012 Ford class members:

1. Ford-Ruppert-Jackson nonacquiescence policy documents
2. 1982-1986 "Jackson nonacquiescence policy" documents
3. 1982-1990 Ruppert remand documents
4. April 21, 1986 public comments for the amendment of the "Jackson" regulation
5. January 12, 1990 public comments for the SSI nonacquiescence policy
6. June 14, 1991 unredacted June 14, 1991 "Rental Subsidies Decision" and Tabs
7. 1991 "Navarro nonacquiescence policy" documents
8. 1996 SSA General Counsel Fried SSR-96-1p supporting documents
9. SSA v Robert "Blum exculpatory" documents**,** case file notes, and e-mails

211. On April 5, 2012, AG Holder informed the Fifth Circuit in a letter filed in Physician Hospitals of America v Sebelius, No. 11-40631, that AG Holder followed the Marbury v Madison, 5 U.S. 1 (Cranch) 137 (1803) separation of powers holding that the Supreme Court makes the final decision as to the Constitutionality of a statute, and not the President:

> It is emphatically the province and duty of the Judicial Department [the judicial branch] to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each. Id. at 177. Emphasis Added.

Letter posted at FindLaw http://www.scribd.com/doc/88167754/AG-Eric-Holder-s-Letter-to-Fifth-Circuit-on-Court-s-Authority-to-Rule-on-Obamacare.

212. The Robert VIII v DOJ, HHS, and SSA plaintiff cites to the AG Holder's Marbury v Madison letter because the plaintiff sought the release of documents that reveal a FISA and SSI secret law whereby the AGs have been implementing Mitchell v Forsyth, 105 S.Ct. 2806, 2811 (1985), and Christensen v. Harris County, 120 S. Ct. 1655, 1663 (2000), "nonacquiescence" policies. He asserts that if AG Meese had acquiesced to Mitchell, then Robert would not have been the target of the NSA TSP. He also asserted that if AG Holder had acquiesced to Christensen, then the Ford v. Shalala remedy Notices would have included the Jackson regulation, 20 C.F.R. § 416.1130 (b), that would have been applied equally in all 50 States. See 11-30-11 Robert VIII Petition Statement of the Case §§ F, H.

213. This is an important April 5, 2012 letter because it is an admission by AG Holder that the Supreme Court makes the final decision as to statutory construction. Based on AG Holder's reaffirmation of the Marbury v. Madison separation of powers principle, it would appear that he had abandoned the "Unitary Executive" theory as applied to the duty of the AG to implement the Supreme Court's holdings in Mitchell v. Forsyth and Christensen v. Harris County. If so, then AG Holder should end the litigation policy of implementing an Article II FISA secret law and an SSI secret law that was not known to the Justices when they made the February 21, 2012 decision denying the Robert VIII petition for a writ of certiorari.

214. April 9, 2012 was the eighteenth (18) anniversary of the April 9, 1994 filing of the Ford v. Shalala, 87 F. Supp 2d 163 (E.D.N.Y. 1999), complaint seeking a nationwide class certification of SSI recipients whose due process rights were violated by HHS Secretary Shalala. Over thirteen (13) years have passed since Judge Sifton issued his September 29, 1999 Order

certifying a Ford v. Shalala nationwide class of millions of SSI recipients whose due process rights were violated because the SSI Notices terminating or reducing their benefits did not include citations to the SSI regulations upon which the SSA Commissioner made those decisions. Over three and a half (3 ½) years have passed and AG Holder continues to breach his Article II "take Care that the Laws be faithfully executed" by not enforcing the Social Security Act SSI program requirement that the SSI regulations be equally enforced in all 50 states. AG Holder could comply with Judge Sifton's September 29, 1999 Ford Order by acquiescing to the Christensen administrative holding and including the SSI regulations, including the "Jackson" regulation, 20 C.F.R. § 416.1130 (b), in the Ford Notices sent to cure the due process violations.

215. The Robert II v. CIA and DOJ plaintiff asserts that with the 2009 Congressional appropriation of funds to pay for the Utah Data Center data banks, there is no longer a need to continue to implement the SSI secret law as there is now a source of classified OMB Budget funds to pay for the construction and the maintenance of the NSA TSP data banks. As a result, the Robert II v CIA and DOJ quiet settlement would include a City of New York v Bowen remedy to cure the "clandestine" policy of the Jackson and Christensen "nonacquiescence" policies. This would mean that the "Jackson" regulation 20 C.F.R. § 416.1130 (b) would be equally applied in all 50 states. The Ford "Notices" would include citations to the SSI regulation upon which monthly benefits are terminated or reduced. This Ford remedy would end the due process and equal protection violations that continue in August, 2012 to be visited upon the 1994-2012 Ford class members by AG Holder and President Obama.

216. On April 10, 2012, CIA General Counsel Preston delivered his speech "CIA and the Rule of Law" to the Harvard Law School American Constitution Society. He explained how his clients, CIA Director Panetta and Petraeus, have followed the rule of law regarding CIA

covert intelligence activities because they are subject to Article I Congressional Oversight reviews. "And that is the central point of my remarks this afternoon: Just as ours is a nation of laws, the CIA is an institution of laws and the rule of law is integral to Agency operations." Id. 1. Emphasis added. http://www.lawfareblog.com/2012/04/remarks-of-cia-general-counsel-stephen-preston-at-harvard-law-school/.

217. The Robert II v CIA and DOJ quiet settlement offer is based in part on CIA General Counsel Preston's "rule of law" speech. When CIA General Counsel Preston provides a "heads up" memo for CIA Director Petraeus that explains how the E.O. 13526 § 3.3 Automatic Declassification 25 year standard applies to the four 1985 "North Notebook" documents, then CIA Director Petraeus will know that based on the "rule of law" those classified documents are to be released. If the documents reveal that CIA Director Casey and DOD Secretary Weinberger had conducted illegal domestic "black operations" at IMC and the NSA, then CIA General Counsel Preston knows that President Obama has § 413 (b) of the National Security Act "shall" duty to file a corrective action to cure the illegal intelligence activities. See § C (2) above.

218. On April 11, 2012, FOIA OLC Special Counsel James Colborn used the "Glomar Response" defense to deny the Robert VIII v. DOJ, HHS, and SSA plaintiff's September 13, 2011 *de novo* July 27, 2010 FOIA request for the release of the OLC documents which reveal the legal basis for the FISA and SSI secret law that was withheld from the Supreme Court. "We have searched OLCs files and have found no responsive documents, either unclassified or classified." Emphasis Added. This OLC decision was made with OLC Special Counsel Colborn's knowledge of the content of the Top Secret March 18, 2011 reclassified May 6, 2004 Memorandum for the Attorney General: Review of the Legality of the (redacted b1,b3) Program. https://webspace.utexas.edu/rmc2289/OLC%2054.FINAL.PDF.

219. This was a key decision because OLC Special Counsel Colborn would have reviewed the classified "nonacquiescence" cases that had been made pursuant to President Bush's November 2, 2002 Presidential Signing Statement exception to the 28 U.S.C. § 530D requirement that the AG report all "nonacquiescence" decisions to the Congress:

> Furthermore, section 202(a) requires that the President report to the Congress the issuance of any "unclassified Executive Order or similar memorandum or order" that establishes or implements a policy of intra-circuit non-acquiescence or of refraining from enforcing, applying, or administering a Federal statute, rule, regulation, program, or policy on the ground that it is unconstitutional. Based upon the text and structure of this section, the executive branch shall construe this reporting obligation to cover only unclassified orders in writing that are officially promulgated and are not included in the reports of the Attorney General or other Federal officers to whom this section applies. Emphasis Added.
> http://www.presidency.ucsb.edu/ws/index.php?pid=73177

220. Upon information and belief, prior to rendering his April 11, 2012 OLC FOIA decision, OLC Special Counsel Colborn consulted AAG of the OLC Virginia Seitz to determine whether the following "nonacquiescence" policy documents were classified or unclassified:

1) 1985 "Mitchell v Forsyth nonacquiescence policy" document
2) 1982 "Jackson nonacquiescence policy" document
3) 1990 "Ruppert nonacquiescence policy" document
4) 1986 "Barrett nonacquiescence policy" document
5) 2001 "Christensen nonacquiescence policy" document
6) 2007 "Ford v Shalala nonacquiescence policy" document
7) 2005 "National Council nonacquiescence policy" document
8) 1991 "Navarro nonacquiescence policy" document
9) 2006 "Ahlborn nonacquiescence policy" document

221. On April 18, 2012, the Senate Judiciary Committee held a hearing re President Obama's Nominees for the Privacy and Civil Liberties Oversight Board (PCLOB). http://www.judiciary.senate.gov/hearings/hearing.cfm?id=c5f564eb42b71ff0b9d7d26d8c30bdc6. The plaintiff has placed NARA OGIS Director Nesbit on Notice that after the Nominees are confirmed, the Robert VIII v. DOJ, HHS, and SSA plaintiff will file a complaint with the

PCLOB re the DOJ use of the "Glomar Response" to prevent the Robert v. Holz-Robert v. National Archives-Robert v. DOJ-Robert VII v. DOJ-Robert VIII v. DOJ, HHS, and SSA-Robert II v. CIA and DOJ plaintiff from securing the release of the documents that he needs to prove that he was an "aggrieved person" by application of 50 U.S.C. §1806 (f) as per the Second Circuit's March 9, 2006 teed up question. He will assert that AG Gonzales had committed a "fraud upon the court" in his Second Circuit April 3, 2006 letter-Brief by not informing the Second Circuit of the content of the Robert VII v. DOJ "FISC Robert" documents that were withheld by the CIA pursuant to FOIA Exemption 1 and the "Glomar Response" defense.

222. The fact that a functioning PCLOB may be in existence in 2012 and prior to the Supreme Court rendering its Clapper v Amnesty decision, is another reason why a Robert II v CIA and DOJ quiet settlement could occur in 2012. The PCLOB Members will understand the due process unfairness of the USG FOIA Officers using the "Glomar Response" defense to withhold documents that AG Holder and the Intelligence Community General Counsels know the plaintiff needs to survive the 2013 AG's Ashcroft v Iqbal, 129 S.Ct. 1937 (2009), "implausibility" Motion to Dismiss the plaintiff's putative FISA and Bivens actions. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." Id. 1950. Plaintiff Robert will be alleging that USG officials and attorneys had illegally wiretapped him, violated his First Amendment right of access to the Courts, and used the FOIA "Glomar Response" to cover up these facts. See §§ B, C above.

223. On April 19, 2012, President Obama's WH Staff Secretary Rajesh De became the NSA General Counsel. He had been a 9/11 Commission staffer and then an attorney for the Senate Homeland Security Committee. In 2009 he was the Principal DAAG for AAG of the Office of Legal Policy Schroeder before in 2010 becoming the WH Staff Secretary. As reported

by Al Kamen in an April 19, 2012 Washington Post blog, NSA General Counsel De as the White House Staff Secretary had read all classified documents presented to President Obama. "…the low-key senior staffer who reviews every single piece of paper before it goes to President Obama, is moving on to become general counsel for the National Security Agency." Report available at http://www.washingtonpost.com/blogs/in-the-loop/post/white-house-personnel-moves/2012/04/19/gIQAMGCPTT_blog.html

224. The Robert II v. CIA and DOJ plaintiff cites to this fact because NSA General Counsel De's client is now NSA Director General Alexander. NSA General Counsel De knows whether DOD Cyber Commander-NSA Director General Alexander knows whether President Obama has decided whether the March 22, 2011 ODNI "Revised" Access Guidelines should apply to the universe of USG data banks. He knows whether the universe of USG data banks that will be subject to the March 22, 2012 ODNI "Revised" Access Guidelines includes the NSA domestic surveillance data banks that the public learned about from the July 19, 2010 Washington Post "Top Secret America" series that were identified in the mind-boggling, eye-opening-jaw-dropping Locater Map. http://projects.washingtonpost.com/top-secret-america/map/

225. On May 2, 2012, SG Verrelli, on behalf of ODNI Director Clapper, NSA Director General Alexander, and AG Holder, filed the USG's Clapper v. Amnesty Reply Brief in response to the respondents' April 18, 2012 Brief in opposition to SG Verrelli's February 17, 2012 Petition for a writ of certiorari. SG Verrelli again did not inform the Supreme Court of the FISA secret law that was applied in Robert VIII v. DOJ and Robert VIII v. DOJ, HHS, and SSA. http://www.justice.gov/osg/briefs/2011/2pet/7pet/2011-1025.pet.rep.pdf.

226. With the knowledge that AG Holder was implementing the FISA secret law as explained in the Top Secret March 18, 2011 reclassified May 6, 2004 OLC FISA Memorandum,

SG Verrelli argued that the respondents' argument was speculative and that the Second Circuit Judges who rendered decisions as to the Clapper petition of the rehearing, had no knowledge of any concrete facts of NSA surveillance of U.S. citizens:

> As in Laird, the important Article III question now presented warrants review at the threshold to safeguard the constitutional separation of powers in this critical national-security context. Pet. 32-34. No judge on the equally divided court of appeals that denied rehearing en banc questioned that question's exceptional importance, and five specifically suggested that this Court grant review. Pet. 32. Moreover, the assertion (Br. 29) that the record in this case contains "concrete facts" on which judicial review of an Act of Congress could proceed is illusory. Although respondents' evidence provides speculation about government surveillance purportedly authorized by Section 1881a, it provides no specific facts upon which such merits review might properly rest. See pp. 4-5, supra. Id. 10. Emphasis added.

227. SG Verrelli also did not inform the Justices of the Ninth Circuit Jewell v NSA, 673 F. 3d 902 (9th Cir. 2011), decision and AG Holder's assertion that the state secrets privilege applied in a FISA § 1806 action alleging illegal NSA surveillance of U.S. citizens. The fact that AG Holder asserted the state secrets defense re the NSA TSP, is a concrete fact that SG Verrelli affirmatively decided in Clapper v Amnesty not to present to the Justices. This was notwithstanding his knowledge of the content of the Robert VII v DOJ "FISC Robert" documents that OIPR Baker had read on March 1, 2004 when he ratified the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense. See §§ A, B above and § H below.

228. On May 7, 2012, OIP Associate Director McLeod affirmed FOIA Civil Attorney-in- Charge Kovakas' December 13, 2011 decision, AP-2012-01437, re the July 27, 2010 Civil FOIA request 145-FOI-10283 Civil items ## 1, 3 and 6 Ruppert and Gordon documents. She affirmed the denial decision's use of the "Glomar Response" defense. "I have determined that the Civil Division's action was correct and that it conducted adequate, reasonable search for responsive records." This was an important decision because it was rendered with the knowledge

that SG Verrelli had made his January 4, 2012 decision not to file a Brief in opposition to the Robert VIII v. DOJ, HHS, and SSA Petition for a writ of certiorari. This was with the knowledge of the content of the Robert VIII September 4, 1985 "Ruppert" documents in the custody of AG Holder withheld pursuant to FOIA Exemption 5 and not the "Glomar Response" defense. See 11-30-11 Robert VIII Petition Statement of the case §§ D, F and Issue III.

229. The September 4, 1985 Robert VIII v. DOJ, HHS, and SSA "Ruppert" documents now in the custody of AG Holder, are connect-the-dots documents to the four 1985 classified classified Robert II v. CIA and DOJ "North Notebook" documents because they reveal whether AAG of the Civil Division Willard knew that HHS General Counsel del Real was CIA Director Casey's covered agent when he made his 1982-1985 Jackson "nonacquiescence" policies decisions during the 1982-1985 Ruppert litigation. If so, then this is a fact that the Second Circuit and the Supreme Court should have known when rendering the Gordon v. Shalala, 55 F.3d 101 (2d Cir. 1995), cert. den, 517 U.S. 1103 (1996), decisions. If so, then this is a reason why the NARA OGIS FBI facilitation services should include the application of the 1986 Bowen v. City of New York, 106 S. Ct. 2022 (1986), "clandestine" policy standard. "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.

230. On May 9, 2012, NSA Central Security Service FOIA/Privacy Act Appeal Authority Officer Deborah A. Bonanni, on behalf of DOD Secretary Panetta and DOD Cyber-Commander-NSA Director General Alexander, affirmed the September 8, 2010 decision to deny the request for the "NSA TSP and PSP data banks access guidelines" by the use of the "Glomar Response" defense. As per the March 30, 2012 decision of NSA Central Security Service Chief Declassification Services Kristina M. Gerin denying the Robert VIII v. DOJ, HHS, and SSA

plaintiff's July 29, 2011 request for NSA MDR of the "NSA TSP and PSP data banks access guidelines" document, that decision was the condition precedent decision for the Robert VIII v. DOJ, HHS, and SSA plaintiff's *de novo* request to declassify the "NSA TSP and PSP data banks access guidelines" by application of President Obama's December 29, 2009 E.O. 13526 § 3.5 Mandatory Declassification Review (MDR) standard. This NSA FOIA decision was made with the knowledge that ODNI Director Clapper had released to the public the March 22, 2012 ODNI the documents upon which the "Revised" Access Guidelines were based.

231. In her May 9, 2012 decision, NSA Appeal Authority Officer Bonanni explained to Robert VIII v. DOJ, HHS, and SSA/Robert II v. CIA and DOJ plaintiff-OGIS DOD requester, why she had affirmed the NSA FOIA decision to use the "Glomar Response' defense:

> This replies to your letter dated 29 October 2010, appealing the National Security Agency's (NSA's) denial of your request under the Freedom of Information Act (FOIA) for records concerning "the 'NSA TSP and PSP data banks access guidelines "that NSA Director General Alexander's staff applies when accessing information from the DoD Cyber Command Terrorist Surveillance (TSP) and Presidential Surveillance Program (PSP) data banks." I have reviewed your request, the Chief of the FOIA/PA Office's response to you, and your appeal letter. Based on my review, I am confident that a reasonable search was conducted and that no records responsive to your request could be located." Emphasis added.

232. This is an important NSA May 9, 2012 "I am confident that a reasonable search was conducted" answer. This is a fact answer that is subject to Article III review as to the reasonableness of the search given the release of the March 22, 2012 ODNI Access Guidelines citing the legal resources upon which the ODNI "Revised" Guidelines are based. This is an especially important reasonableness search fact issue because the ODNI "Revised" Access Guidelines were effective upon the March 22, 2012 sign-off by AG Holder, ODNI Director Clapper, and NCTC Director Olsen. This was prior to SG Verrelli filing his May 2, 2012 Clapper v Amnesty Reply Brief that did not inform the Justices of the FISA secret law.

233. This also was an important NSA May 9, 2012 decision because NCTC Director Olsen who signed off on the March 22, 2012 ODNI "Revised" Guidelines, had been NSA Director General Alexander's 2010-2011 NSA General Counsel. He had been the 2004-2005 Special Counsel for FBI Director Mueller when OIPR Counsel had filed his October 1, 2004 corrected Robert VII v. DOJ Declaration explaining the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense. He had been the 2005-2006 National Security Division Chief when AG Gonzales had provided the December 22, 2005 § 413 (a) of the National Security Act Notice to the "Gang of Eight" of the existence of the post-9/11 NSA TSP, but not of the pre-9/11 NSA TSP. He was a 2006-2009 DAAG in National Security Division during the Robert VIII v. DOJ, HHS, and SSA FOIA litigation. He was one of AG Holder's 2010 Associate DAGs along with Associate DAG Baker. He knows whether the FOIA requested "NSA TSP and PSP data banks access guidelines" existed because he applied that standard as the NSA General Counsel.

234. On May 13, 2012, 60 Minutes presented a Report on former-CIA Chief of the National Resources Division Hank Crumpton that revealed how the CIA clandestine services had conducted a domestic black operation to protect the national security. Hank Crumpton: Life as a spy. http://www.cbsnews.com/8301-18560_162-57433105/hank-crumpton-life-as-a-spy/. The public learned about the CIA's domestic Counter-Terrorism Center and the fact that CIA analysts had performed domestic surveillance, but not against U.S citizens who were not considered to be terrorists or agents of foreign powers. The Robert II v. CIA and DOJ plaintiff asserts that, upon information and belief, the FISC and the "Gang of Eight" were not notified of this CIA domestic Counter-Terrorism Center in the 1980s when Robert was a NSA TSP target.

235. Former Chief of the National Security Resources Division Crampton, who had been on loan to the FBI for one year, explained the CIA domestic surveillance program:

> Lara Logan: Doesn't that go against the public perception of what the CIA is tasked with doing? I mean, under your charter, most people think of the CIA's responsibilities as lying outside of America's borders.
>
> Hank Crampton: Yes, I agree. I think many Americans view it that way. The CIA's responsibility in the U.S., though, is very specific. While inside the U.S., the mission is exclusively and totally focused on the collection of foreign intelligence.
>
> Lara Logan: So you can recruit foreign agents on U.S. soil?
>
> Hank Crampton: Yes.
>
> Clandestine CIA officers also run so-called "technical operations" against enemy spies in the U.S.
>
> Hank Crampton: You can eavesdrop. You can bug. You can intercept their communications.
>
> Lara Logan: But you can't do that to Americans?
>
> Hank Crampton: Absolutely not. Again, the focus of National Resources Division is the collection of foreign intelligence that happens to be inside the U.S. Id. Emphasis added.

236. The Robert II v CIA and DOJ plaintiff asserts that the four one-page classified 1985 classified CIA "North Notebook" documents are connect-the-dots to the Robert VII v DOJ "FISC Robert" and Robert VIII v. DOJ, HHS, and SSA "Robert v. Holz" documents because they reveal whether CIA Director Casey and DOD Secretary were conducting illegal domestic black operations at IMC and the NSA with the 1985 knowledge of FBI Director Judge Webster. His evidence to support his assertion that he was the 1985 illegal electronic surveillance target of the CIA-DIA-FBI domestic NSA TSP, is contained in the Robert VII v DOJ "FISC Robert" documents that on March 1, 2004 OIPR Counsel Baker reviewed and ratified the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense, and the Robert VIII "Robert v. Holz" documents that AG Holder withheld pursuant to FOIA Exemption 5. See 11-30-11 Robert VIII Petition Statement of the Case §§ B, C, H and Issues I, II, § E above and § H below.

237. On May 21, 2012, the Supreme Court granted SG Verrelli's Clapper v. Amnesty petition for a writ of certiorari. The Justices will be deciding whether to reverse the Second Circuit's Amnesty v. Clapper, 638 F. 3d 118 (2d Cir. 2011), standing holding. "Because standing may be based on a reasonable fear of future injury and costs incurred to avoid that injury, and the plaintiffs have established that they have a reasonable fear of injury and have incurred costs to avoid it, we agree that they have standing." Id. 121. Emphasis Added.

238. The Robert II v CIA and DOJ plaintiff asserts that when rendering the Clapper v Amnesty decision, the Justices should know the FISA secret law that AGs Gonzales and Holder had withheld from the Second Circuit in Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA. The Justices should know whether the CIA continues to use a CIA's Counter-Terrorism Center that conducts domestic electronic surveillance of U.S. citizens without FISC Orders and without § 413 (b) Notification to the "Gang of Eight." This will be an especially timely Clapper v Amnesty FISA standing decision because the Utah Care Center will be operational in 2013. A lurking FISA secret law issue is whether there can be 2013 Article III checks and balances over CIA-DIA-FBI domestic electronic surveillance pursuant to the Article II March 22, 2012 ODNI "Revised" Access Guidelines, if those March 22, 2012 ODNI Guidelines do not apply to USG data banks that are not transferred into the Utah Data Center super server. This would include the pre-9/11 NSA TSP data banks to which the Article II FISA secret law has been applied without the Supreme Court being informed of this Article II FISA secret law.

239. On June 11, 2012, WH Counsel Kathryn Ruemmler sent to Acting Associate AG West a "Memorandum for Agency General Counsels and Chief FOIA Officers of Executive Departments and Agencies" encouraging each agency to review each agency's oldest pending FOIA requests and taking affirmative steps to resolve them:

> To further ensure that FOIA is administered in a way consistent with the President's Memorandum and that agencies provide timely response to FOIA requests, we request that you review your oldest pending FOIA requests, and take affirmative steps to resolve them. While you may be able to provide the requested information for some of your most longstanding requests, others may require denials or partial denials of requested information. Still others might require requesters to clarify or refine their requests. Obviously, your longstanding FOIA requests should be resolved according to the appropriate criteria, but our request is that you take affirmative steps to resolve longstanding requests. We leave it to you, however, to determine how many longstanding requests warrant your priority. Emphasis Added.
> http://www.justice.gov/oip/docs/asg-counsel-president-foia.pdf

240. The Robert II v CIA and DOJ plaintiff-requester of OGIS NARA facilitation services cites to WH Counsel Ruemmler's Memorandum because he seeks the release of the September 28, 2007 FOIA requested NARA 1987 "Perot" and "Peter Keisler Collection" documents that continue to be the subject to the executive privilege assertion of the Estate of President Reagan. The OGIS NARA requester asserts that WH Counsel Ruemmler could resolve the plaintiff's FOIA request by presenting the executive privilege issue to President Obama for his decision by application of President Obama's January 21, 2009 Executive Order 13489 Presidential Records Sec. 3. Claim of Executive Privilege by Incumbent President:

> (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://edocket.access.gpo.gov/2009/pdf/E9-1712.pdf44.

241. The Robert II v CIA and DOJ plaintiff-requester of OGIS NARA facilitation services asserts that by application of E.O. 13489, Section 3 (c), WH Counsel Ruemmler can secure a final FOIA decision re the NARA 1987 "Perot" and "Peter Keisler Collection" documents by presenting these documents directly to President Obama in order that he can make his decision whether he will ratify the executive privilege decision of the Estate of President Reagan. WH Counsel Ruemmler can provide President Obama with a "heads up" memo as to

the effect of the release of the four classified CIA "North Notebook" documents by application of President Obama's E.O. 13526 § 3.3 Automatic Declassification twenty-five standard. She knows the significance of those documents because she had been a WH Associate Counsel to President Bill Clinton from 2000-2001, before becoming the 2009 Principal Associate Counsel for DAG Ogden and a 2010 Associate WH Counsel to President Obama.

242. On June 19, 2012, AG Holder sent a letter to President Obama requesting that the President assert executive privilege to the House Committee on Oversight and Government Reform Chairman Issa's subpoena seeking the release of Fast and Furious confidential DOJ documents after February 4, 2011. "It would inhibit the candor of such Executive Branch's ability to respond independently and effectively to congressional oversight." Id. 2. Emphasis Added. https://www.eff.org/sites/default/files/Holder%20Letter%20to%20Obama.pdf.

243. The Robert II v CIA and DOJ plaintiff asserts that if WH Counsel Ruemmler and AG Holder recommend that President Obama ratify the executive privilege assertion of the Estate of President Reagan to continue to withhold the NARA 1987 "Perot" and "Peter Keisler Collection" documents, then they should provide detailed "head up" analysis of the "inhibit candor" argument. This is a timely issue because of the Committee on Oversight and Government Reform v. Holder complaint was filed on August 13, 2012 in D.C.D.C, Case no. 1:12-cv 1332, in which the parameters of the use of execute privilege will be tested as to documents that are alleged to reveal whether there had been false Congressional testimony. http://oversight.house.gov/wp-content/uploads/2012/08/Complaint-08-13-12-1.pdf Hence the importance of CIA Director Petraeus providing the facts to President Obama that are revealed in the four classified CIA 1985 "North Notebook" documents if they reveal that CIA-DIA-FBI domestic black operations had been conducted without the knowledge of the "Gang of Eight."

244. On June 25, 2012, the Supreme Court decided Arizona v. U.S, 567 U.S. __ (2012). AG Holder issued a Statement re the federalism decision that the federal government had exclusive authority to regulate immigration. "I welcome the Supreme Court's decision to strike down major provisions of Arizona's S.B. 1070 on federal preemption grounds. Today's ruling appropriately bars the State of Arizona from effectively criminalizing unlawful status in the state and confirms the federal government's exclusive authority to regulate in the area of immigration." http://www.justice.gov/opa/pr/2012/June/12-ag-801.html.

245. The Robert VIII v DOJ, HHS, and SSA plaintiff cites this federalism holding because in 1972 the Congress and President Nixon federalized the care for the aged, blind, and disabled. The Supplemental Security Income (SSI) program, 42 U.S.C. § 1381, was to be implemented on January 1, 1974. Congress intended that President Nixon's HEW Secretaries Elliot Richardson (June 24, 1970-January 29, 1973) and Caspar Weinberger (February 12, 1973-August 8, 1975) would promulgate uniform federal regulations equally applied in all 50 States. This was to eliminate the 50 different standards being used by the States. Based on AG Holder's defense of the federalism principle, he should be in support of a Robert II v. CIA and DOJ quiet settlement that included the enforcement of the "Jackson" regulation, 20 C.F.R. 416.1130 (b), equally in all 50 states given that the construction and maintenance of the Utah Data Center data banks now has a Congressionally appropriated classified OMB Budget funding source.

246. On June 28, 2012, Chief Justice Roberts wrote the National Federation of Independent Business v Sebelius, 567 U.S. __ (2012) majority opinion that the Patient Protection and Affordable Care Act was constitutional. The Chief Justice explained that the controversial individual mandate provision may be unconstitutional by application of the Commerce Clause and the Necessary and Proper Clause, but was constitutional by application of the Congress'

power to "lay and collect Taxes" Clause. "(T)he rule is settled that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, our plain duty is to adopt that which will save the Act." Id. slip. op. 31. Emphasis Added.

247. The Robert VIII v DOJ, HHS and SSA plaintiff cites this rule of constitutional interpretation because that same rule applies to the implementation of the "Unitary Executive" theory when it is determined that a statute "unconstitutionally" encroaches upon the President's Article II Commander in Chief power to protect the nation from terrorists. The plaintiff asserts that AG Meese's 1985 Mitchell v Forsyth "nonacquiescence" policy decision violated the construction rule that it is "our plain duty to adopt that which will save the Act" standard. If so, then Supreme Court's June 19, 1985 Mitchell v Forsyth, 105 S.Ct. 2806 (1985) holding should have been applied from 1985-2012. "We conclude that the Attorney General is not absolutely immune from suit for damages arising out of his allegedly unconstitutional conduct in performing his national security functions." Id. 2811.

248. On July 2, 2012, the Jewell v NSA plaintiffs filed the Plaintiffs' Motion for Partial Summary Judgment Rejecting the Government Defendants' State Secret Defense" Brief. The Jewell plaintiffs challenged AG Holder's FISA § 1806 assertion of the state secrets defense:

> The ground for this motion is that Congress has displaced the state secrets privilege in this action by the statutory procedure of 50 U.S.C. § 1806(f) of the Foreign Intelligence Surveillance Act. Under section 1806(f), which applies to electronic surveillance lawsuits like this one, Congress explicitly provided for courts to determine the legality of electronic surveillance, and provided for the discovery and use of national security evidence under secure conditions. Plaintiffs' motion is based on the accompanying memorandum, the declarations of Mark Klein, J. Scott Marcus, James W. Russell, William Binney, Thomas Drake, J. Kirk Wiebe, and Cindy A. Cohn, the filings and pleadings of record in this action and the related action of Hepting v. AT& T (U.S.D.C. N.D. Cal. No. 06-CV-0672),2 and the argument and evidence presented at the hearing of this motion. Id. 1. Emphasis added.
> https://www.eff.org/sites/default/files/filenode/jewelmotion070212.pdf

249. AG Holder's Jewell v NSA Brief is to be filed by August 31, 2012. AG Holder will have to decide whether he will maintain the state secrets privilege defense given the Ninth Circuit's August 7, 2012 Al-Haramain Islamic Foundation v. Obama, __F.3d __(9th Cir. 2012), decision that makes the sovereign immunity distinction between FISA § 1806 and FISA § 1810. That decision will be made with the knowledge of the content of the plaintiffs' Declarations by former NSA "whistleblowers" William Binney and Thomas Drake who know that NSA Directors had data mined the 1984-2005 NSA TSP data banks without the knowledge of the FISC or the "Gang of Eight." See the May 22, 2011 60 Minutes Report: U.S. v Whistleblower Thomas Drake. http://www.cbsnews.com/video/watch/?id=7366912n&tag=related;photovideo

250. AG Holder will be making his Jewell v NSA litigation decision after consulting with NSA General Counsel De who was the 2009 Principal DAAG for AAG of the Office of Legal Policy Schroeder before becoming President Obama's 2010 WH Staff Secretary and privy to the state secrets documents that were sent to President Obama for his review. AG Holder knows that NSA General Counsel De knows whether President Obama had been presented with any facts or "heads up" memo from AG Holder and WH Counsel Ruemmler on the issue of whether the President should ratify the executive privilege assertion of the Estate of President Reagan as to the release of the NARA 1987 "Perot" and "Peter Keisler Collection" documents.

251. On July 9, 2012, DOD Cyber-Commander-NSA Director General Keith Alexander (2005-2012) delivered his speech "Cyber Security Threats to the United States" to the American Enterprise Institute (AIE) which was moderated by Paul Wolfowitz, the 2001-2005 Deputy Defense Secretary. http://www.c-spanvideo.org/program/ThreatstotheU. He explained that he must plan to protect the nation from cyber attacks and at the same time protect the privacy and civil liberties of the U.S. citizens. He advised that he uses cyber audits. "Nice part of

cyber, everything we do in cyber you can audit with 100 % reliability. Seems to me there is a great approach there." Id. 32.47 Minutes. Emphasis added.

252 The Robert II v CIA and DOJ plaintiff cites to DOD Cyber Commander-NSA Director General Alexancder's cyber audit quote because he now has available exponentially more powerful algorithms that can be used to cyber audit the Robert VIII v. DOJ "FISC Robert" documents that contain the information that was secured when Robert was the target of the NSA TSP analysts' 1980s electronic surveillance of Robert. DOD Cyber Commander-NSA Director General Alexancder can use 2012 Robert and Snowflake 5391 algorithms and perform a cyber audit of the 1980s Robert electronic surveillance and learn the names of the USG officials and attorneys who provided information from the Robert electronic surveillance to HHS General Counsel del Real for his use in the "Fraud Against the Government" investigation of Robert that was conducted to secure the incarceration and disbarment of Ruppert's counsel who was challenging the HHS Jackson "nonacquiescence" policy.

253. On July 20, 2010, the Robert II v. CIA and DOJ plaintiff placed FBI Director Mueller's Chief FOIA Officer Hardy on Notice that he had not yet received a docket number for the September 13, 2011 *de novo* FOIA requested for July 27, 2010 FBI FOIA requested documents. He made a specific request that the FBI Chief FOIA Officer docket by August 10, 2012 the Robert II v. CIA and DOJ plaintiff's FOIA request. He placed FBI Chief FOIA Officer Hardy on Notice that the plaintiff intended to include his response in the plaintiff's Robert II v CIA and DOJ Affidavit that was to be filed by August 15, 2012.

254. On July 20, 2012, the Robert II v. CIA and DOJ plaintiff placed FBI General Counsel Andrew Weissmann, who was FBI Director Mueller's Special Counsel in 2005, on Notice of the July 20, 2012 Notice to FBI Director Mueller's Chief FOIA Officer Hardy. He

also placed FBI General Counsel Weissmann on Notice that NARA OGIS Director Nesbit had not docketed the plaintiff's February 22, 2012 request for OGIS FBI facilitation services to secure the same September 13, 2011 *de novo* July 27, 2010 FOIA requested FBI documents.

255. On July 20, 2012, the Robert II v. CIA and DOJ plaintiff placed NARA OGIS Nesbit on Notice that he had not yet received docket numbers for the February, 2012 requests for OGIS NARA, DOD, ODNI, and FBI facilitation services. He made a specific request that she docket by August 10, 2012 the Robert II v. CIA and DOJ plaintiff's February, 2012 requests for OGIS facilitation services. He placed her on Notice that he intended to include her response in the plaintiff's Robert II v. CIA and DOJ Affidavit that was to be filed by August 15, 2012.

256. The Robert II v. CIA and DOJ plaintiff also informed NARA OGIS Director Nesbit of his belief that an OGIS "stovepipe" may exist in order that requests for OGIS facilitation services re classified documents bypass OGIS Director Nesbit. He informed her that if the Robert II v CIA and DOJ plaintiff did not receive the requested OGIS NARA, DOD, ODNI, and FBI facilitation docket numbers by August 10, 2012, that he would be including in this fact in his Robert II v CIA and DOJ Affidavit as evidence of the existence of an OGIS "stovepipe." He would assert that this would be consistent with the existence of NARA, DOD, ODNI, FBI, DOJ, OMB, HHS, SSA, and WH "stovepipes" that provide President Obama with a "plausible deniability" defense to 1982-2012 facts that established that the President has had an ongoing 2009-2012 § 413 (b) "shall" duty of the National Security Act to file a corrective action plan to cure the illegal intelligence activities that have been result of the 1985 violations of the Boland Amendment, § 413 (a) of the National Security Act, the "exclusivity provision" of the FISA, the PCA violations of the limitations on domestic military law enforcement, and the Social Security Act without President Reagan's knowledge.

257. On August 2, 2012, the Clapper v. Amnesty Amicus Brief was filed in support of the petitioners by former AGs John D. Ashcroft, William P. Barr, Benjamin R. Civiletti, Edwin Meese III, Michael B. Mukasey and Dick Thornburgh and the Washington Legal Foundation. http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-1025_petitioner_amcu_ashcroft-etal.authcheckdam.pdf. The Amicus Brief discusses the FISA procedures and relies upon the expertise of the former AGs in implementing the FISA with all of the checks and balances that Congress provided. "Each of the *amici curiae* has appeared previously in litigation concerning nation security interests, and desires to provide this Court with the perspective of those who have undertaken sensitive national security activities." Id. 1.

258. However, the Amicus Brief does not inform the Justices of the FISA secret law that is explained in the Top Secret March 18, 2011 reclassified May 6, 2004 Memorandum for the Attorney General: Review of the Legality of the (redacted b1,b3) Program. https://webspace.utexas.edu/rmc2289/OLC%2054.FINAL.PDF. The Amicus Brief also does not cite or discuss Mitchell v Forsyth, 472 U.S. 511 (1985). "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.

259. On August 7, 2012, the Ninth Circuit decided Al-Haramain Islamic Foundation v. Obama, __F.3d __(9th Cir.2012), and reversed the District Court's decision that had held that the FISA preempts the government's state secrets privilege assertion as a defense to the domestic electronic surveillance of a foreign charity and its attorneys. However, the Ninth Circuit make clear the distinction between FISA § 1810 and FISA § 1806. AG Holder will be addressing this distinction in his Jewell v NSA Brief that is to be filed on August 31, 2012 with the knowledge of AG Gonzales' Robert VII v DOJ April 3, 2006 letter-Brief.

260. On August 10, 2012, the Robert II v. CIA and DOJ plaintiff did not receive from FBI Director Mueller's FBI Chief FOIA Officer Hardy a docket number for the September 11, 2011 *de novo* FOIA request for the July 27, 2010 FOIA requested FBI documents. Upon information and belief, Chief FOIA Officer Hardy's command and control officer ordered him not to provide the plaintiff with a FBI docket number notwithstanding the Second Circuit's September 6, 2011 modification of the December 14, 2005 Robert VII Judgment.

261. On August 10, 2012, the Robert II v. CIA and DOJ plaintiff did not receive from OGIS Director Nesbit a docketing letter for the February, 2012 requests for OGIS NARA, DOD, ODNI, and FBI facilitation services. This fact is evidence of the existence of an OGIS "stovepipe" that bypasses OGIS Director Nesbit when there are FOIA classified documents.

262. On August 13, 2012, the Committee on Oversight and Government Reform v. Holder complaint, case no. 1:12-cv 1332, was filed. The parameters of the use of execute privilege will be tested as to documents that are alleged to reveal whether there had been false Congressional testimony. This complaint also raises the issue of the credibility of AG Holder. http://oversight.house.gov/wp-content/uploads/2012/08/Complaint-08-13-12-1.pdf

263. The Robert II v CIA and DOJ plaintiff cites to this complaint because it challenges President Obama's first executive privilege assertion. If WH Counsel Ruemmler and AG Holder comply with E.O. 13489 Presidential Records Sec. 3. Claim of Executive Privilege by Incumbent President, then the President could make his second executive privilege decision re the "Past is Prologue" 1980s documents that present Article I-Article II Separation of Powers issues that are also at issue in Committee on Oversight and Government Reform v. Holder. The NARA 1987 "Perot" and "Peter Keisler Collection" documents reveal whether Executive Branch officials provided false facts to the joint Senate-House Iran-Contras Affairs Committee.

H. AG Holder's 2009-2011 Associate DAG Baker knew whether the 1985-2011 AGs have implemented a FISA secret law and whether the four 1985 Robert II v. CIA and DOJ "North Notebook" documents were misclassified documents by application of the E.O. 13526 § 1.7, Classification Prohibitions and Limitations, standards

264. AG Holder's 2009-2011 Associate DAG Baker knew whether the Clapper v Amnesty *amici curiae* AGs Meese (1985-1988), Thornburgh (1988-1991), Barr (1991-1993), Ashcroft (2001-2005), and Mukasey (2007-2009) had implemented the FISA secret law explained in the Top Secret May 6, 2004 Memorandum for the Attorney General: Review of the Legality of the (redacted b1,b3) Program, without informing the FISC or the "Gang of Eight" or their Presidents Ronald Reagan, George H.W. Bush, or George W. Bush. He also knows whether AG Holder has implemented the FISA secret law that is explained in March 18, 2011 reclassified May 6, 2004 OLC FISA Memorandum without informing the FISC or the Supreme Court or the "Gang of Eight" or President Obama.

265. As one of AG Holder's supervising attorneys of classified documents, he knew whether the four classified CIA 1985 Robert II v. CIA and DOJ "North Notebooks" were misclassified after the December 29, 2009 E.O. 13526 § 3.3 Automatic Declassification 25 year standard had passed (1985+25=2010). He knew that the E.O. 13526 § 1.7 (a) (4) Classification Prohibitions and Limitations, standard applied. "(4) prevent or delay the release of information that does not require protection in the interest of the national security."

265. As a result, there is no need for CIA General Counsel Preston and EDNY U.S. Attorney Lynch to dance around the issue of presenting the Robert II v CIA and DOJ quiet settlement to their clients CIA Director Petraeus and AG Holder. They have a duty to ask former-Associate DAG Baker whether the "FISC Robert" documents that he reviewed on March 1, 2004 when Robert II v CIA and DOJ was pending, prove that Robert had been the target of the CIA-DIA domestic black operation that CIA Director Casey and DOD Secretary

Weinberger had established at the NSA without the knowledge of the Article I "Gang of Eight" or Article II President Reagan or the Article III FISC. If so, then they have a duty to so inform CIA Director Petraeus and AG Holder when they present the plaintiff's quiet settlement offer with a "heads up" memo advising the effect of continuing to withhold the four classified 1985 "North Notebook" documents after the Supreme Court decides Clapper v Amnesty.

267. OIPR Counsel Baker also knew on March 1, 2004 that on March 28, 1986, AAG of the Civil Division Richard Willard., who was on the Mitchell v Forsyth USG Brief that made the AG's absolute immunity argument that the Supreme Court rejected, sent a Mitchell v Forsyth memo to USG attorneys explaining the government attorney personal liability law. Personal Liability of Federal Officials The Bivens Problem. AAG Willard advised DOJ attorneys who knew that after Mitchell they could be sued if they approved wiretaps without FISC orders, that there would be no right of indemnification from the DOJ. He recommended that USG attorneys purchase a professional liability policy. "A decision on professional liability insurance is personal and I am attaching a copy of a brochure and application should you wish to explore the matter further." Willard, at. 2. National Archives Files of Richard Willard 1985-1988 Accession 060-90-220, Box 12 Folder: Correspondence to Other Division and DOJ Components. http://www.archives.gov/news/samuel-alito/accession-060-90-220/Acc060-90-220-box12-Correspondence.pdf. See 11-30-11 Robert VIII Petition pp. 31-32.

268. AG Holder's 2009-2011 Associate DAG Baker had been a 1996-1998 Office of Intelligence Policy and Review (OIPR) staff attorney. From 1998-2001 he was the OIPR Deputy Counsel. In May 2001 he was the Acting OIPR Counsel and in January, 2002 became the OIPR Counsel. In September 2006 he became the first National Security Division (NSD) of Intelligence Policy Counsel which continues to represent the DOJ in the FISC. "The creation of

the NSD consolidated the Justice Department's primary national security operations: the former Office of Intelligence Policy and Review and the Counterterrorism and Counterespionage Sections of the Criminal Division." http://www.justice.gov/nsd/about-nsd.html.

269. In December, 2006, CIA Director Hayden awarded then-Counsel for the National Security Division of Intelligence Policy Baker, the George H.W. Bush Award for Excellence in Counterterrorism. On January 19, 2007, AG Gonzales awarded him the Edmund J. Randolph Award. These are the highest CIA and DOJ awards. As a result, based on his March 1, 2004 OIPR Counsel FOIA decision to ratify the CIA's use of FOIA Exemption 1 and the "Glomar Response" defense, 2009-2011 Associate DAG Baker had a 1985-2011 institutional memory of the legal basis for the implementation of the FISA secret law without the FISC's knowledge, but with the knowledge of CIA Director Hayden and AG Gonzales.

270. AG Holder's 2009-2011 Associate DAG Baker was a 2007 Fellow at the Institute of Politics at the John F. Kennedy School of Government at Harvard University. He was the 2011 Harvard Law School Henry L. Shattuck Lecturer on Law. In Fall Term 2012, he will teach National Security Law. http://www.law.harvard.edu/faculty/directory/index.html?id=703.

271. As AG Gonzales' 2006-2007 National Security Division (NSD) of Intelligence Policy Counsel, he was a supervising attorney of the classified documents in Robert II v. CIA and DOJ and Robert VII v. DOJ, 2005 U.S. Dist. LEXIS 39616, 193 Fed. Appx. 8 (2d Cir. 2006), cert. den. 127 S.Ct. 1133 (2007). As AG Holder's 2009-2011 Associate DAG, he was a supervising attorney of the classified documents in Robert II v. CIA and DOJ and Robert VIII v. DOJ, HHS, and SSA, 439 Fed. Appx 32 (2d Cir. 2011), cert. den. 132 S. Ct. 1549 (2012).

272. As one of supervising attorneys for AGs Gonzales and Holder in Robert II v. CIA and DOJ, Robert VII v. DOJ, and Robert VIII v. DOJ, HHS, 2006-2007 NSD Counsel Baker

and 2009-2011 Associate DAG Baker had a K & A Radiologic Technology Services, Inc. v. Commissioner of the Department of Health and of the State of New York, 189 F. 3d 273 (2d Cir. 1999), duty to cure any misrepresentations of fact that were made by USG attorneys to Judge Seybert, Judge Garaufis, the Second Circuit, and the Supreme Court in Robert II v. CIA and DOJ, Robert VII v. DOJ, and Robert VIII v. DOJ, HHS and SSA. "(2) failed to remedy the alleged deprivation after learning of it." Id. 27.

273. As one of supervising attorneys for AGs Gonzales and Holder in Robert II v CIA and DOJ, Robert VII, and Robert VIII, 2006-2007 NSD Counsel Baker-2009-2011 Associate DAG Baker also had a duty to prevent DOJ attorneys from making Judge Seybert, Judge Garaufis, the Second Circuit, and Supreme Court Justices the "handmaiden of the Executive" by DOJ attorneys withholding facts from the Article III Judges for the purpose of deceiving the Judges. "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).

274. On February 9, 2006, Washington Post reporter Carol Leonnig had reported that in 2004, OIPR Counsel Baker had warned FISC Presiding Judge Colleen Kollar-Kotelly that there may be violations of the FISA as to information provided to the FISC Judges:

> James A. Baker, the counsel for intelligence policy in the Justice Department's Office of Intelligence Policy and Review, discovered in 2004 that the government's failure to share information about its spying program had rendered useless a federal screening system that the judges had insisted upon to shield the court from tainted information. He alerted Kollar-Kotelly, who complained to Justice, prompting a temporary suspension of the NSA spying program, the sources said.
>
> Yet another problem in a 2005 warrant application prompted Kollar-Kotelly to issue a stern order to government lawyers to create a better firewall or face more difficulty obtaining warrants.
>
> The two judges' discomfort with the NSA spying program was previously known. But this new account reveals the depth of their doubts about its

> legality and their behind-the-scenes efforts to protect the court from what they considered potentially tainted evidence. The new accounts also show the degree to which Baker, a top intelligence expert at Justice, shared their reservations and aided the judges.
>
> Both judges expressed concern to senior officials that the president's program, if ever made public and challenged in court, ran a significant risk of being declared unconstitutional, according to sources familiar with their actions. Yet the judges believed they did not have the authority to rule on the president's power to order the eavesdropping, government sources said, and focused instead on protecting the integrity of the FISA process.
> Emphasis added. Leonnig, Secret Court's Judges Were Warned About NSA Spy Data, Washington Post Staff Director, 2-9-06. http://www.washingtonpost.com/wp-dyn/content/article/2006/02/08/AR2006020802511_pf.html

275. The plaintiff suggests that the Court read this February 9, 2006 Washington Post article in its entirety because it reveals the impact of the implementation of the FISA secret law that is explained in the March 18, 2011 reclassified May 6, 2004 Top Secret OLC FISA Memorandum from AAG of the OLC Goldsmith to AG Ashcroft. This article reveals an internal USG dispute that raises the fact issue of whether the CIA General Counsels Muller (2002-2004) and (Acting) CIA General Counsel Rizzo (2004-2009) had filed half-truth Robert II v CIA and DOJ "c (3) exclusion" *ex parte* Declarations with this Court in response to the plaintiff's allegations that the "North Notebook" documents would reveal that CIA Director Casey and DOD Secretary Weinberger had conducted illegal domestic "black operations" at IMC and the NSA in serial impeachable violation of the Boland Amendment, § 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. Upon information and belief, the CIA General Counsels knew the four classified CIA 1985 "North Notebook" documents were connect-the-dots documents that reveal that CIA Director Casey had conducted domestic "black operations" at IMC and NSA. If so, then the CIA General Counsels intended to make Judge Seybert the

"handmaiden" of the Executive Branch attorneys as did the DOJ attorneys intend to make Judge Garaufis, the Second Circuit, and the Supreme Court their Executive Branch "handmaidens" throughout the Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA litigation.

276. AG Gonzales' NSD Counsel Baker was the subject of a March 2, 2007 Frontline Report: On Spying on the Home Front: Interview James Baker. In this Frontline interview NSD Counsel Baker provided extraordinary details as to how the FISC works and the process by which DOJ attorneys seek FISC warrants. These are important "Past is Prologue" facts because the tens of thousands of FISC orders and decisions continue to remain as classified documents. The interviewer asked NCD Counsel Baker a question that was grounded on the fact that the FISC, the "Gang of Eight," and the public did not know of the NSA domestic surveillance program until December, 2005, more than four years after September 11, 2001:

> Q. But if we take that lengthy process and we take your description and others' that it was two years, that takes us back to 2005. That doesn't take us back to 2001. My question was whether or not there was an approach made or the court was asked, as opposed to being informed, whether or not this program could have been done under the FISA statute and under the FISA process.
>
> A. Well, I guess that I understand your question. The best answer I can give you, I think, is that the FISA court was asked to consider this when we filed the application. That was later in 2006, so the court really had nothing formally before it until it had a formal application signed by appropriate executive branch officials. Id. 12.
> http://www.pbs.org/wgbh/pages/frontline/homefront/interviews/baker.html.

277. NSD Council Baker's answer contains an historic admission that from September 11, 2001 until late 2006, DOJ attorneys had not filed any application for FISC warrants to wiretap U.S. citizens. This was an admission that for almost five years the post-9/11 NSA TSP (2001-2006) was being implemented without the approval of the FISC. This answer provides contextual meaning to the infamous March 10, 2004 confrontation between then-WH Counsel

Gonzales and AG Ashcroft, DAG Comey, and FBI Director Mueller in AG Ashcroft's hospital room when AG Ashcroft refused to sign off on the recertification of the NSA TSP that was being implemented as approved by the FISC. On March 10, 2004 it was a "known-known" fact to DOD Secretary Rumsfeld (2001-2006) and CIA Director Tenet (1997-2004) that the NSA TSP was conducting domestic surveillance of U.S. citizens without warrants. However, on March 10, 2004, this was an "unknown-unknown" fact to the FISC and the "Gang of Eight" because WH Counsel Gonzales continued to withhold the Top Secret fact that the NSA was conducting the warrantless NSA TSP based on the 1985-2004 Top Secret FISA secret law that was explained to AG Ashcroft in AAG of the OLC Goldsmith's Top Secret May 6, 2004 Memorandum for the Attorney General: Review of the Legality of the (redacted b1,b3) Program. https://webspace.utexas.edu/rmc2289/OLC%2054.FINAL.PDF.

278. NSD Council Baker's answer also highlights the importance of the *mens rea* of OIPR Counsel Baker on March 1, 2004 when he ratified the CIA's use FOIA Exemption 1 and the "Glomar Response" defense to withhold the FOIA requested "FISC Robert" documents at issue in Robert VII v DOJ. On March 1, 2004, OIPR Counsel Baker knew that Robert had been the target of the 1985 pre-9/11 NSA TSP that had been conducted without the knowledge of the Article I "Gang of Eight", Article II President Reagan, and the Article III FISC Judges. He also knew whether HHS General Counsel Juan del Real was CIA Director Casey's covered agent when he initiated the "Fraud Against the Government" investigation of Robert to secure his incarceration and disbarment. He knew this fact from reading the DOJ case file notes upon which AG Meese based his Robert FISC petition which is one of the "FISC Robert" documents that the CIA FOIA Officer and OIRP Baker withheld pursuant to FOIA Exemption 1 and the 'Glomar Response" defense. See 11-30-11 Robert VIII Petition § C and Issues I and II.

279. The plaintiff continues to assert that the four classified CIA 1985 "North Notebook" documents are connect-the-dots documents with the 1985 Robert VIII v DOJ, HHS, and SSA "Robert v Holz" documents now being withheld pursuant to FOIA Exemption 5. In 2006 as AG Gonzales' NSD Counsel Baker and a supervising attorney in Robert II v CIA and DOJ, he knew not only whether Robert had been the illegal target of an illegal NSA TSP, but also whether CIA General Counsels Muller (2002-2004) and (Acting) Rizzo knew that this "smoking gun" fact had been intentionally withheld from Judge Seybert in the "c (3) exclusion" *ex parte* Declarations that had been filed with the Court. As AG Holder's 2009-2011 Associate DAG, he knew whether CIA General Counsel Preston knew CIA General Counsels Muller and Rizzo had a litigation purpose to make Judge Seybert the "handmaiden" of the CIA attorneys while DOJ attorneys in Robert VII v DOJ and Robert VIII v DOJ, HHS, and SSA had made Judge Garaufis, the Second Circuit, and the Supreme Court the "handmaiden" of USG attorneys re the NSA TSP. See 11-30-11 Robert VIII Petition Statement of the Case §§ A-E, G, H.

280. Thus, CIA General Counsel Preston can ask former-Associate DAG Baker whether the four classified 1985 Robert II v CIA and DOJ "North Notebook" documents are connect-the-dots documents with the Robert VII "FISC Robert" and the Robert VIII "Robert v Holz" documents. If so, then CIA General Counsel Preston knows that CIA Director Casey conducted domestic 1985 "black operations" at IMC and at the NSA and that Robert, a/k/a Snowflake 5391 to the DOJ, was the target of an illegal domestic NSA TSP that was conducted by NSA Directors Lt. General Faurer (1981-1985) and General William Odom (1985-1988), without the knowledge of the FISC or the "Gang of Eight." If so, then it is not a difficult decision for CIA General Counsel Preston and U.S. Attorney Lynch to recommend to their clients, CIA Director Petraeus and AG Holder, that they accept plaintiff's quiet settlement offer.

Summary

281. The plaintiff reports that his original December 14, 2011 prosecution plan to secure NARA OGIS facilitation services to secure a quiet settlement of this FOIA action has failed because NARA OGIS Director Nesbit has not docketed his request for OGIS NARA, DOD, ODNI and FBI facilitation services. However, he believes that NARA OGIS Director Nesbit will docket his FOIA requests because of 2012 facts that have occurred that were foreshadowed by the four classified CIA 1985 "North Notebook documents that are now subject to President Obama's December 29, 2009 E.O. 13526 § 3.3 Automatic Declassification 25 year rule.

282. The plaintiff also believes that the Ninth Circuit's August 7, 2012 Al-Haramain Islamic Foundation v. Obama, __F.3d __(9th Cir. 2012), decision that explains that Congress waived the USG's sovereign immunity when it enacted the FISA Section 1806, will increase the probability that NARA OGIS Director Nesbit will docket the request for OGIS facilitation services. This is because NARA OGIS Director Nesbit knows that the Supreme Court will be rendering a Clapper v Amnesty FISA standing decision in the first quarter of 2013 that will provide plaintiff Robert with an opportunity to file his complaint that he was the illegal target of illegal NSA TSP wiretapping and his First Amendment rights of access to the Courts were violated. NARA OGIS Director Nesbit knows that if the 2013 AG files an Ashcroft v Iqbal Motion to Dismiss Robert's complaint, that Robert will oppose that Motion by citing to the documents that are the subject of his requests for OGIS facilitations services.

283. Therefore, the plaintiff reports that he is continuing his efforts to secure OGIS facilitation services to secure a quiet settlement in 2012. If he is unsuccessful in securing OGIS facilitation services in 2012, then within the month after the Supreme Court renders its Clapper v Amnesty decision he will request a Summary Judgment Pre-motion conference.

WHEREFORE, plaintiff files this Status Report and respectfully requests that the Court allow the plaintiff the remainder of 2012 to continue his efforts to secure NARA OGIS facilitation services based on the fact that the Supreme Court will be rendering a Clapper v Amnesty decision. If he is not able to secure NARA OGIS facilitation services in 2012, then within the month after the Supreme Court renders its Clapper v Amnesty decision, the plaintiff will request a Summary Judgment Pre-motion conference.

Dated: August 15, 2012

_____
Charles Robert, pro se

Sworn to before me this
15 th day of August, 2012

_____
Notary Public