THE TOP UNMENTIONED OBAMA REPLACEMENT: ROBERT MUELLER

A slew of second-term cabinet speculation articles have come out (National Journal, first posted before the election, and NYT and USAT today).

And while they seem to indicate Jack Lew is likely to replace TurboTaxTimmeh Geithner and Secretary of State will be the subject of active speculation for some time (with intriguing speculation that Howard Berman, who lost to Brad Sherman in CA, might be under consideration), one key role—albeit not of cabinet level—is missing:

FBI Director.

After all, Robert Mueller is already 2 years beyond his sell by date; Obama extended his term to get past the election (he said). And regardless of rank, the FBI Director is one of the most important figures in the increasingly powerful surveillance state.

And there have been some very troubling names mentioned in discussions to replace him, including NYPD's Ray Kelly, who would really be the second incarnation of J Edgar Hoover's abusive power. There had been speculation that Patrick Fitzgerald wanted the job, but his decision to join Skadden Arps just before the election suggests he knew he wasn't going to get that job.

Particularly given Eric Holder's apparent increasing doubt that he'll stick around, we have the possibility of seeing something worse—all the capitulation we got from Holder in the first term, plus and FBI Director who has none of the claimed measure of Mueller (though I've always had my doubts about those claims).

A new FBI Director (which is guaranteed),

particularly if it came with a new Attorney General, could either set a dramatic new course or harden in the old course. And I fear it is most likely to be the latter.

MICHAEL HAYDEN, PRIVACY AND COUNTERTERRORISM FRUGALITY CHAMPION

Of 1,423 words in an article questioning whether deficit hawkery might cut the domestic spying budget, Scott Shane devotes over a sixth—roughly 260—describing what former NSA and CIA Director Michael Hayden thinks about the balances between funding and security.

Remarkably, none of those 260 words disclose that Hayden works for Michael Chertoff's consulting group, which profits off of big domestic spying. This, in an article that cites Chertoff's electronic border fence among the expensive counterterrorism duds that were subsequently shut down (Shane mentions "puffer" machines as well, but not the Rapiscan machines that Chertoff's group lobbied for, which are now being withdrawn as well).

And then there's a passage of Shane's article that touches on topics in which Hayden's own past actions deserve disclosure.

> Like other intelligence officials after 2001, Mr. Hayden was whipsawed by public wrath: first, for failing to prevent the Sept. 11 attacks, and then, a few years later, for having permitted the National Security Agency to eavesdrop on terrorism suspects in the United States without court approval.

> Perhaps, as a result, he often says that the American people need to instruct the government on where to draw the line. He told an audience at the University of Michigan last month, for instance, that while a plot on the scale of the Sept. 11 attacks was highly unlikely, smaller terrorist strikes, like the shootings by an Army psychiatrist at Fort Hood in Texas in 2009, could not always be stopped.
>
> "I can actually work to make this less likely than it is today," Mr. Hayden said. "But the question I have for you is: What of your privacy, what of your convenience, what of your commerce do you want to give up?"

To be fair, Shane counters Hayden's claims by noting that "secrecy … makes it tough for any citizen to assess counterterrorism programs."

But he doesn't mention one of the biggest examples where Hayden—where anyone—chose both the most expensive and most privacy invasive technology: the wiretap program Hayden outsourced to SAIC rather than use in-house solutions.

As Thomas Drake has made clear, by outsourcing to SAIC, Hayden spent 300 times as much as he would have with the in-house solution.

> One of them was Lieutenant General Michael Hayden, the head of the agency: he wanted to transform the agency and launched a massive modernization program, code named: "Trailblazer." It was supposed to do what Thin Thread did, and more.
>
> Trailblazer would be the NSA's biggest project. Hayden's philosophy was to let private industry do the job. Enormous deals were signed with defense contractors. [Bill] **Binney's Thin Thread program cost $3 million; Trailblazer**

> **would run more than $1 billion and take years to develop**.
>
> "Do you have any idea why General Hayden decided to go with Trailblazer as opposed to Thin Thread, which already existed?" Pelley asked.
>
> [snip]
>
> Asked to elaborate, Drake said, "Careers are built on projects and programs. The bigger, the better their career." [my emphasis]

Along the way, Hayden repeatedly blew off Congressional staffer Diane Roark's inquiries about privacy protection.

> When Binney heard the rumors, he was convinced that the new domestic-surveillance program employed components of ThinThread: a bastardized version, stripped of privacy controls. "It was my brainchild," he said. "**But they removed the protections, the anonymization process. When you remove that, you can target anyone.**" He said that although he was not "read in" to the new secret surveillance program, "my people were brought in, and they told me, 'Can you believe they're doing this? They're getting billing records on U.S. citizens! They're putting pen registers' "—logs of dialled phone numbers—" 'on everyone in the country!' "
>
> [snip]
>
> [Former HPSCI staffer Diane Roark] asked Hayden why the N.S.A. had chosen not to include privacy protections for Americans. She says that he "kept not answering. Finally, he mumbled, and looked down, and said, 'We didn't need them. We had the power.' He didn't even look me in the eye. I was flabbergasted." She asked him directly

> if the government was getting warrants for domestic surveillance, and he admitted that it was not. [my emphasis]

So it's not just disclosure of all the ways Hayden has and does profit off of continued bloated domestic surveillance that Shane owes his readers: he also should refute Hayden's claims about the relationship between cost, privacy, and efficacy.

Michael Hayden's SAIC-NSA boondoggle is one case where secrecy no longer hides how much money was wasted for unnecessary privacy violations.

Yet somehow, that spectacular example of the unnecessary waste in domestic spying doesn't make it into the 260 words granted to Hayden to argue we need continued inflated spending.

THE SENATE REPORT ON FUSION CENTER FAILS TO ASK OR ANSWER THE MOST BASIC QUESTION

As I suggested the other day, there is a lot to recommend the Permanent Subcommittee on Investigations report on fusion centers.

But while it meticulously supports its claims about the waste and inefficacy of fusion centers, it seems to miss what all that evidence suggests. That is that there is **no need for fusion centers**. The report clearly shows we have spent somewhere between $289 million and $1.4 billion to build a bunch of data sharing centers in the name of terrorism; yet in spite of the investment, the centers appear to never actually have contributed to finding a terrorist.

Fusion centers are supposed to be about

counterterrorism

This is made clear in the way the report meticulously lays out the purported purpose of fusion centers, then measures how they fulfill that purpose.

The report notes two moments in DHS' history when fusion centers were pointedly not authorized: the initial formation of DHS, the 9/11 Commission report. It notes that under Michael Chertoff, DHS aides were pushing for reasons to sell fusion centers to the Feds.

> Mr. Riegle said that he did not believe that access to state and local information was really a principal reason for the federal government to support fusion centers, but it was part of the pitch. "It was a selling point to the Feds," Mr. Riegle said. "I've got to tell them what the benefits are."

Only in 2007, at a time when there were already 37 fusion centers, many in states not likely to be targeted by foreign terrorism, did Congress specifically authorize fusion centers. At that time, Congress emphasized the fusion centers' counterterrorism function.

> The law also directed DHS to detail intelligence personnel to the centers if the centers met certain criteria, several of which required a center to demonstrate a focus on and commitment to a counterterrorism mission. Among the criteria the law suggested were "whether the fusion center . . . focuses on a broad counterterror approach," whether the center has sufficient personnel "to support a broad counterterrorism mission," and whether the center is appropriately funded by non-federal sources "to support its counterterrorism mission."

Fusion centers have not found any terrorists

And on that basis, fusion centers have failed.

> The value of fusion centers to the federal government should be determined by tallying the cost of its investment, and the results obtained. Yet, despite spending hundreds of millions of dollars on state and local fusion centers, DHS has not attempted to conduct a comprehensive assessment of the value federal taxpayers have received for that investment.
>
> [snip]
>
> First, how well did DHS engage operationally with fusion centers to obtain useful intelligence, and share it with other federal agencies and its own analysts?
>
> [snip]
>
> On the first issue, the Subcommittee investigation found that DHS's involvement with fusion centers had not produced the results anticipated by statute, White House strategies and DHS's own 2006 plan. Specifically, DHS's involvement with fusion centers appeared not to have yielded timely, useful terrorism-related intelligence for the federal intelligence community.

Of particular interest is the report's objective measure of how well fusion centers are finding and sharing intelligence: the number of reports submitted.This passage is interesting not just for the results—which are damning—but also for the way the report assesses the results.

> As noted, the Subcommittee investigation reviewed every raw DHS intelligence report drafted on information from state and local fusion centers from April 1, 2009, to April 30, 2010. The period corresponds to the first year I&A implemented its multi-office review

process.

The Subcommittee investigation counted that, during that period, DHS intelligence officers at state and local fusion centers around the country filed 610 draft reports138 to DHS headquarters for dissemination.139 During that period, the **draft HIRs came from fusion centers in just 31 states; fusion centers in 19 states generated no reports at all**. In addition, **the vast majority of the 574 unclassified draft reports filed came from DHS detailees assigned to fusion centers in just three states – Texas (186 drafts), California (141) and Arizona (89). Meanwhile, fusion centers in most other states produced little to no reporting**.140

Of the 574 unclassified draft reports field officers filed, the Subcommittee investigation counted 188 marked by DHS reviewers as cancelled, nearly a third. Reviewers recommending cancellation of drafts faulted the reports for lacking any useful information, for running afoul of departmental guidelines meant to guard against civil liberties or Privacy Act protections, or for having no connection to any of DHS's many missions, among other reasons.

Of the 386 unclassified reports published, the Subcommittee investigation counted only 94 which related in some way to potential terrorist activity, or the activities of a known or suspected terrorist. Of those 94 reports, most were published months after they were received; more than a quarter appeared to duplicate a faster intelligence-sharing process administered by the FBI; and some were based on information drawn from publicly available websites or dated public reports. In one case, DHS intelligence

> officials appear to have published a report which drew from or repeated information in a Department of Justice press release published months earlier. In short, the utility of many of the 94 terrorism-related reports was questionable.
>
> The Subcommittee investigation found that **fusion center reporting that attempted to share terrorism-related information was more likely to be cancelled than reporting on other topics**. While the overall cancellation rate of draft intelligence reports from fusion centers during the period of review was around 30 percent, the cancellation rate for reports which alleged or indicated a possible connection to terrorism had a higher cancellation rate – over 45 percent.141
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> 140 This imbalance in reporting did not go unnoticed within the DHS Reporting Branch. Keith Jones, who headed the branch for part of 2009 and 2010, estimated that **most reporting from fusion centers during his time came from a half dozen DHS officers**. "In a couple cases there was a lot going on," he told the Subcommittee. "In a couple of others they were looking for stuff [to report] so they could wave their flag." Subcommittee interview of Keith Jones (4/2/2012).
>
> **Most draft HIRs that were accepted by DHS headquarters for dissemination relayed information from arrests or encounters relating to drug trafficking and, to a lesser extent, alien smuggling**.
>
> If reporting on drug running and human smuggling are not top priorities in DHS's counterterrorism effort, it is unclear how the bulk of published reporting from fusion centers

> contributes to DHS's antiterrorism mission. Conversely, if the most useful fusion center contributions come in these areas, it is unclear why DHS does not describe fusion centers as essential to its counterdrug and anti-human-smuggling efforts, rather than to its counterterrorism mission.

Elsewhere the report explains why reporting problems get worse when dealing with contractors.

So to sum up:

- Most of the reporting comes from three states which happen to be border states with significant drug and human trafficking issues but—except for CA—not really significant international terrorism issues
- Most of the reports that make it through a vetting process for privacy and relevance report on drugs and human trafficking
- Many of the reports come from 6 individuals who—a guy in DHS' reporting branch suggests—were reflecting their own issues, not actual issues of concern
- Most other states weren't reporting anything

What this says to me is in most places, where there is nothing resembling terrorism, fusion centers are just cashing FEMA checks to buy flatscreen TVs. In states where they have things

that are sort of like terrorism—in terms of the big money and networks involved—they have repurposed fusion centers to pursue those crimes.

But if that impression is true (the report itself doesn't talk about what this lack of reporting suggests), then it means there is likely nothing there that fusion centers can report anyway. Note, that's not to say there are no "terrorism issues" to report, but those take both classified information and also, I suspect, the ability to report on First Amendment issues that DHS' review process was deliberately weeding out. And the result is that with limitations on classified reporting and First Amendment reporting, the fusion centers have nothing to do.

Except report on drug crimes.

Obama and the fusion centers are shifting their focus so they can pretend to meet a need

As a result of the apparent fact that there's no actual need for fusion centers are they are currently defined both the Administration and fusion centers themselves are redefining their mission. For example, the report points out how Janet Napolitano distinguishes fusion centers from Joint Terrorism Task Forces (which are limited by neither of the classification or the First Amendment issues fusion centers are) by saying they're there for disasters.

> Despite President Obama's clear focus on fusion centers as counterterrorism tools, some Administration officials have at times shifted away from defending the centers' value to federal counterterrorism efforts. In recent years, they have emphasized other possible **fusion center functions, such as disaster recovery, or investigations of crime, sometimes even to the exclusion of any counterterrorism mission**.
>
> DHS Secretary Napolitano has alternated

> between describing fusion centers as a crucial part of the department's counterterrorism efforts, and also as centers which do "everything else."
>
> [snip]
>
> In testimony before the Senate in September 2009, DHS Secretary Napolitano was even more direct. "I think it's good to explain the difference between a JTTF and a fusion center. A JTTF is really focused on terrorism and terrorism-related investigations. Fusion centers are almost everything else," Ms. Napolitano said.

And more than a third of the fusion centers themselves have removed all mention of terrorism (including, incidentally, domestic terrorism, which exists more geographically broadly in this country than Islamic terrorism) from their mandate.

> The 2010 Subcommittee survey found that 25 of 62 responsive fusion centers, or more than one-third, did not mention terrorism in their mission statements. And the trend appeared to be moving in that direction: at least five fusion centers reported recently revising their **mission statements in ways that emphasized public safety and anti-crime efforts**, and diminished or removed mentions of counterterrorism. However, the Subcommittee investigation found some centers do not make terrorism a priority among their many efforts. 511
>
> In an interview, a DHS official who helps oversee the Department's support for and engagement with fusion centers acknowledged that some centers were not interested in focusing on counterterrorism. "**We have trouble getting smaller, less mature fusion centers to pay attention to things like**

> **counterterrorism analysis," said Joel Cohen, head of policy and planning for the DHS State and Local Program Office (SLPO). "They are more concerned with day-today crime."** 512
>
> But the trend away from prioritizing counterterrorism efforts does not appear isolated to smaller, "less mature" fusion centers. Indeed, statewide fusion centers and **fusion centers in major cities indicate that they emphasize anti-crime efforts and "all-hazards" missions over an explicit focus on counterterrorism**.

As a DIA report found, one of the reasons for this is that the people running the fusion centers have priorities that aren't counterterrorism.

> Indeed, the PM-ISE's 2010 Baseline Capabilities Assessment of fusion centers found that terrorism was a low priority for most of them. "Most [fusion] centers focus on the priority mission of the law enforcement agency that owns/manages them; **primarily analytical case support to drug, gang, and violent crime investigations for the geographic area of responsibility**," the report stated. "As a result many centers struggle to build the necessary capabilities required to support federal counterterrorism mission requirements, specifically in the areas of intelligence analysis and information sharing beyond their jurisdictions."

Again, let's take a moment to reflect what this suggests. Most fusion centers have ignored their original mandate, and even after taking money that purportedly supports counterterrorism, have instead applied it to fight drugs and gangs, priorities that the local law enforcement officials almost certainly find to be a more

pressing priority. And that use of counterterrorism money for other law enforcement priorities has been blessed by the Obama Administration—and indeed, was baked in from the time Michael Chertoff's aides were using CT to justify expanding and funding this redundant set of information sharing centers.

From all this, the report takes a relatively modest conclusion:

> Congress should require DHS to conform its efforts to match its counterterrorism statutory purpose, or redefine DHS' fusion center mission.

It doesn't consider a much more obvious answer, particularly at a time of budget constraints: just eliminate all the fusion centers.

It also doesn't consider a far more important issue.

As I'll explain at length in a future post, this entire report arose out of Tom Coburn's anger about DHS' report on right wing extremism (and the report points out a few of the more abusive instances of DHS reporting on purported right wingers).

That is, it arose out of Tom Coburn's unhappiness that reports about people like him were being entered into a vast new intelligence network yoking the power of the Federal government to localities.

And yet this entire process—which not only exposed breathtaking amounts of financial corruption but also revealed that there is no there there for the fusion centers to investigate—never posed the bigger questions implied by Coburn's anger: What threats are really so risky that we, as a society, believe local law enforcement should be deputized into a national network of intelligence gathering? For what crimes is such a networked intelligence approach constitutionally appropriate, and for what crimes is such a networked approach really

justified by the size of the threat?

This report, though it doesn't say it, actually shows that counterterrorism is not a significant enough threat to duplicate the JTTF structure to investigate. Yet, rather than advocating shutting down the entire network (I would put the fund to climate change preparedness), the Senate report suggests just revamping the mandate explicitly, without the necessary question of whether it's appropriate and necessary to do so.

FORD MOTOR COMPANY HAS A TIDE REPORT

I'll have plenty to say about the Pemanent Subcommittee on Investigation's report on how terrible DHS's fusion centers are. The short version: they're nearly worthless and a big waste of money.

But since DHS is so crappy, it says something that they find the National Counterterrorism Center's Terrorist Identities Datamart Environment database to be equally crappy.

> While reporting information on an individual who is listed in the TIDE database sounds significant, the Subcommittee found that **DHS officials tended to be skeptical about the value of such reporting, because of concerns about the quality of data contained in TIDE**.156
>
> 156 Although NCTC describes its TIDE database as holding information on the identities of known and suspected terrorists, DHS officials – who interacted with TIDE data on a daily basis, as they reviewed reporting not only from state and local law

> enforcement encounters but from encounters by DHS components — said they found otherwise. "Not everything in TIDE is KST," DHS privacy official Ken Hunt told the Subcommittee, using a shorthand term for "known or suspected terrorist."
>
> "**Would you buy a Ford?**" one DHS Senior Reports Officer asked the Subcommittee staff during an interview, when he was asked how serious it was for someone to be a match to a TIDE record. "**Ford Motor Company has a TIDE record**."

The report's footnote goes on to describe how DHS's crappy reporting and NCTC's crappy reporting reinforced each other.

> Ole Broughton headed Intelligence Oversight at I&A from September 2007 to January 2012. In an interview with the Subcommittee, Mr. Broughton expressed the concern DHS intelligence officials felt working with TIDE data. In one instance, **Mr. Broughton recalled he "saw an individual's two-year-old son [identified] in an HIR. He had a TIDE record.**" Mr. Broughton believed part of the problem was that intelligence officials had routinely put information on "associates" of known or suspected terrorists into TIDE, without determining that that person would qualify as a known or suspected terrorist. "We had a lot of discussion regarding 'associates' in TIDE," Mr. Broughton said.
>
> Mark Collier, who served as a Senior Reports Officer and briefly as chief of the Reporting Branch, recalled another case. An HIR was drafted concerning an incident with a TIDE match, but the TIDE record was based on an FBI inquiry. **Later on the FBI ended its inquiry and cleared the individual of any connection to terrorism — but because DHS had filed**

> **an HIR on the person, the individual's record was kept active in TIDE.**

This reinforcement process carried over into DHS reports that were quashed on First Amendment grounds. Repeatedly, fusion center staffers submitted reports on speech and religion related activities solely because there was some tie between them and TIDE.

> One draft reported on a list of reading suggestions by a Muslim community group, "Ten Book Recommendations for Every Muslim." The report noted that four of the titles were authored by individuals with records in a U.S. intelligence counterterrorism database, the Terrorist Identities Datamart Environment (TIDE).
>
> [snip]
>
> Another cancelled draft HIR reported on a U.S. citizen visiting and giving a lecture at a mosque. The draft contained no derogatory information on the speaker, or the mosque, although it noted that the speaker was once the head of a U.S. Islamic school that had a record in the TIDE database. "There is concern," the drafting officer wrote in his initial submission, "that [the subject's] visit . . . could be to strengthen ties with the . . . mosque as well as to conduct fundraising and recruiting for the sake of foreign terrorist organizations."

Now, as I said, a civil liberties and privacy review (which I'll discuss at more length in a later post) quashed these particular reports because they recorded protected speech. But imagine how many similar reports remain in NCTC or FBI's files, given that they have more leeway to record First Amendment protected activity?

Soon, we'll have the entire marketing plan of Ford Motor Company in our terrorist databases.

THE TRIP WIRES IN THE ANWAR AL-AWLAKI INVESTIGATION

Congressman Frank Wolf doesn't believe what the FBI told him during an August 1 hearing on the Webster report. He suspects that Anwar al-Awlaki was an informant for the FBI (or some other agency), something that FBI'd Executive Assistant Director for National Security denied. But evidence from the report about how the FBI dealt with the Awlaki wiretap as a "trip wire" makes it clear that even by 2009 the FBI wasn't using Awlaki's contacts as they had other extremists, like Hal Turner, to proactively generate new leads.

Frank Wolf suggests Awlaki was approached to be an informant

Now, Wolf's questions about Awlaki generally are based, in part, on intelligence sources—like the NYPD and Andrew McCarthy—that are suspect. And he seems confused about the line between loathsome radical speech and evidence of terrorist intent.

But he does ask worthwhile questions, notably the lunexplained treatment of Awlaki after 9/11, particularly about suggestions that Awlaki may have been approached as an informant. Wolf starts by noting that in the last installment of Inspire [safe PDF courtesy of Jihadology], an article attributed to Awlaki revealed he had been approached to be an informant in 1996, shortly after San Diego authorities busted him in a—he claims—trumped up prostitution sting.

> However, Aulaqi's own words could potentially indicate otherwise. In his final column for Inspire, Aulaqi wrote: "I was visited by two men who introduced themselves as officials with the US

> government (they did not specify which government organization they belonged to) and that they are interested in my cooperation with them. When I asked what cooperation did they expect, they responded by saying that they are interested in having me liaise with them concerning the Muslim community in San Diego."

Wolf then notes that—at a time when Awlaki was under investigation, was on a terrorist watch list, and had a Diplomatic Security warrant out for his arrest for passport fraud—he was allowed to enter the country in October 2002.

> The unclassified version of the Webster Commission report confirmed that around 2001, "WFO opened a full investigation" on Aulaqi, and it remained open until May 2003, after Aulaqi again fled the U.S. for the U.K. and, later, Yemen.
>
> As noted above, NYPD reported that Aulaqi was placed on the federal government's Terror Watchlist in Summer 2002. Please explain why and how Aulaqi was permitted to board a flight to the U.S. in October 2002 if he was already included on the watchlist?
>
> Additionally, if, as Mr. Giuliano testified, the FBI "knew [Aulaqi] was coming in" before he landed at JFK, what information was communicated to the U.S. attorney's office that would set off this strange series of events early in the morning of October 10? Please provide for the record the full series of communications between the FBI and the U.S. attorney's office and the customs office?
>
> During the hearing, I raised the question of whether the FBI requested that Aulaqi be allowed into the country, without detention for the outstanding

> warrant, due to a parallel investigation regarding Aulaqi's former colleague al Timimi, a radical imam who was recruiting American Muslims to terrorism. Notably, the Timimi case was being led by the same WFO agent who called the U.S. attorney's office and customs on the morning of October 10. Did WFO want Aulaqi released to assist in its investigation of Timimi?
>
> Public records demonstrate a nexus between these cases. According to Schmidt's article, after flying to Washington on October 10, Aulaqi visited Timimi. Timimi's own attorney in a court filing wrote, "Aulaqi attempted to get al Timimi to discuss issues related to the recruitment of young Muslims," for jihad. "Timimi was sentenced in 2005 to life in prison for inciting young Muslims to go to Afghanistan after 9/11 and to wage war against the United States. Eleven of his followers were convicted of charges including weapons violations and aiding a terrorist organization."

Here's the Sue Schmidt article he references (which came out just weeks before the wiretap on Awlaki started); see also this article for background).

Wolf clearly suggests that Awlaki was (in spite of his denials in Inspire) an informant, at least in the years both before and after 9/11.

The Awlaki wiretap was not used as a "trip wire" until after the Hasan (and Abdulmutallab?) attacks

Now, I confess I've had similar suspicions about Awlaki's ties to the government, particularly in the years around 9/11. I've also wondered whether he—and to an even greater degree, Samir Khan—were used the way Hal Turner was with the right win: as a radical propagandist the FBI

could use to identify potential terrorists.

But the Webster report seems to confirm Awlaki didn't play such a role, In fact, potentially radicalized people communicating with Awlaki were only incidentally tracked until after the attack(s) in 2009; the wiretap on Awlaki was not considered primarily a source of leads.

The report explains that when the Nidal Hasan emails were first intercepted the wiretap (which appears to have started on March 16, 2008) occasionally served as a "trip wire" identifying persons of potential interest. (Remember that bracketed comments are substitutions for redactions provided in the report itself.)

> The Aulaqi [investigation] [redacted] also served as an occasional "trip wire" for identifying [redacted] persons of potential interest [redacted]. When SD-Agent or SD-Analyst identified such a person, their typical first step was to search DWS-EDMS [their database of intercepts] and other FBI databases for additional information [redacted]. If the [redacted] [person] was a U.S. Person or located in the U.S., SD-Agent might set a lead to the relevant FBI Field Office. If the information was believed valuable to the greater intelligence community and met one of the FBI's intelligence-collection requirements, SD-Analyst would disseminate it outside the FBI in an IIR.
>
> [snip]
>
> On December 17, 2008, Nidal Hasan tripped the wire. (40-41)

But all of the "trip wire" leads that came from this wiretap up to this point were set as "Routine Discretionary Action" leads. (44) That's how Hasan's initial emails were also treated.

That said, at this point, the wiretap was not considered primarily as a source of leads; it was primarily about investigating the target, Awlaki.

> San Diego's principal target was Aulaqi, and SD-Agent did not view the Hasan information as important to, or something that would further, the Aulaqi investigation. (45)
>
> [snip]
>
> San Diego's quarry was a known inspiration for violent extremists. SD-Agent and SD-Analyst believed he had [ambitions beyond radicalization] [redacted]. [Redacted] [Their] primary purpose was to use [redacted] [the investigation] to gather and, when appropriate, disseminate intelligence about Aulaqi [redacted]. The "trip wire" effect of [redacted] [the investigation in identifying other persons of potential interest] was, in SD-Agent's words, a "fringe benefit." Certainly it was not the purpose or focus of the [redacted] investigation. (75)

The Hasan attack (and presumably subsequent investigations, as well as the Umar Farouk Abdulmutallab attack) appears to have brought about a change in the way wiretaps like Awlaki's are treated. Now, such wiretaps—deemed Strategic Collections—will have additional follow-up and management oversight.

> The Hasan matter shows that certain [redacted] [intelligence collections] [redacted] serve a dual role, providing intelligence on the target while also serving as a means of identifying otherwise unknown persons with potentially radical or violent intent or susceptibilities. The identification and designation of Strategic Collections [redacted] will allow the FBI to focus

> additional resources—and, when appropriate, those of [redacted] [other government agencies]—on collections most likely to serve as "trip wires." This will, in turn, increase the scrutiny of information that is most likely to implicate persons in the process of violent radicalization—or, indeed, who have radicalized with violent intent. This will also provide Strategic Collections [redacted] with a significant element of program management, managed review, and quality control that was lacking in the pre-Fort Hood [review of information acquired in the Aulaqi investigation] [redacted].
>
> If implemented prior to November 5, 2009, this process would have [redacted] [enhanced] the FBI's ability to [redacted] identify potential subjects for "trip wire" and other "standalone" counterterrorism assessments or investigations. (99)

Let me be clear: I'm not saying I think this is why Hasan escaped attention (though it may be why Abdulmutallab did). We missed Hasan largely because we missed the DOD knowledge about him personally that would have exposed how dangerous he had become. And I actually suspect I'd think the government was doing too much follow-up on people contacting radicalized Muslims now, if I knew the extent of it.

But I have to say I was surprised that the FBI wasn't already using this wiretap to more proactively generate leads of potential threats. Then again, it seems clear there was (and presumably still is) such a flood of material that may not be possible.

EVEN LIARS GET TO INVOKE STATE SECRETS

As the LAT first reported, Judge Cormac Carney has dismissed a suit, Fazaga v. FBI, brought by Southern California Muslims against the FBI for illegal surveillance. Carney actually made two rulings, one dismissing most of the suit on state secrets grounds and one dismissing part of the suit against the government—but not individual FBI officers—on FISA grounds.

The rulings are interesting for four reasons:

- Carney has basically accepted the government's claims in a case that is closely related to one where—three years ago—he called out the government for lying to him personally
- Carney overstates the degree to which the Administration appears to be adhering to its own state secrets policy
- The case is an interesting next step in FISA litigation
- Carney suggests the FBI now investigates people for radicalization

Liars get to invoke state secrets

Three years ago, Carney caught the government lying to him about what documents it had collected on Southern Californian Muslims in this and related investigations. In an unclassified version of his ruling released last year, he revealed part of the government's breathtaking claim.

> The Government argues that there are

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

Yet in finding the government's state secrets invocation here, he is effectively accepting the government's word—which in some way claims to have a real predicate for its investigation into Southern Californian mosques—over the word of their former informant, Craig Monteilh, who says he was instructed to collect information indiscriminately because "everybody knows somebody" who knows someone in the Taliban, Hamas, or Hezbollah.

Now, I'm not surprised by this outcome. Carney's earlier ruling basically held, correctly, that the government needs to share its top secret information with judges even if it plans to withhold it from ordinary citizens. So now that the government has started sharing classified information with him, I bet it puts more pressure on him to keep all this information secret by approving the state secrets invocation.

But Carney's plaintive insistence that this ruling doesn't amount to rubber-stamping abusive federal powers make it sound like he doubts his own decision.

> In struggling with this conflict, the Court is reminded of the classic dilemma of Odysseus, who faced the challenge of

> navigating his ship through a dangerous passage, flanked by a voracious six-headed monster, on the one side, and a deadly whirlpool, on the other. Odysseus opted to pass by the monster and risk a few of his individual sailors, rather than hazard the loss of his entire ship to the sucking whirlpool. Similarly, the proper application of the state secrets privilege may unfortunately mean the sacrifice of individual liberties for the sake of national security. El-Masri, 479 F.3d at 313 ("[A] plaintiff suffers this reversal not through any fault of his own, but because his personal interest in pursuing his civil claim is subordinated to the collective interest in national security.");
>
> [snip]
>
> Plaintiffs raise the specter of Korematsu v. United States, 323 U.S. 214 (1944), and protest that dismissing their claims based upon the state secrets privilege would permit a "remarkable assertion of power" by the Executive, and that any practice, no matter how abusive, may be immunized from legal challenge by being labeled as "counterterrorism" and "state secrets." (Pls. Opp'n to Gov't, at 20, 41–42.) But such a claim assumes that courts simply rubber stamp the Executive's assertion of the state secrets privilege. That is not the case here. The Court has engaged in rigorous judicial scrutiny of the Government's assertion of privilege and thoroughly reviewed the public and classified filings with a skeptical eye. The Court firmly believes that after careful examination of all the parties' submissions, the present action falls squarely within the narrow class of cases that require dismissal of claims at the outset of the proceeding on state secret grounds.

Carney, having been brought into the government's secret club is now complicit in choosing to sacrifice Muslims' First Amendment rights for the security of the nation.

Carney overstates the degree to which the government appears to be adhering to its own state secrets policy

That's made more interesting because Carney bases his acceptance of the government's state secrets invocation on part on their purported adherence to their own state secrets policy.

> Second, even before invoking the privilege in court, the government must adhere to its own State Secrets Policy, promulgated by the Obama administration in a memorandum by the Attorney General in September 2009, effective October 1, 2009.

It's not at all clear the government does adhere to this policy. As a threshold matter, the policy "commits not to invoke the privilege for the purpose of concealing government wrongdoing." But this case almost certainly involves activities—the surveillance of Americans in part because of First Amendment protected activities—that were not permitted until the FBI's Domestic Investigations and Operations Guide made them permissible at the end of 2008. Thus, the state secrets invocation serves, in part, to cover up the fact that FBI officers were spying on Muslims because they were Muslims at a time when that was prohibited by the department.

The policy also promises to refer credible allegations of wrong-doing—as this case involves—to Inspectors General for investigation. Maybe they are doing that. If so, they're not telling. DOJ wouldn't even tell Sheldon Whitehouse whether or not they were really following that practice, and the absence of any report on this matter suggests they didn't do so.

> "The Department's policy is not to disclose the existence of pending IG investigations. Consistent with that policy, we could not provide the number of cases, if any, that may have been referred to an IG pursuant to the Department policy on state secrets privilege."
>
> "However, to the extent IG investigations are undertaken, the Government has typically released public versions of final IG reports," the DoJ reply stated.
>
> No such public versions of final IG reports have been released in the Obama Administration, as far as could be determined.

Now, whether Carney is aware of these developments or not, he doesn't say. But he does admit that, even if DOJ violated its own state secrets policy (as they appear to have done), there's nothing he could do about it.

> The Court cannot and does not comment on whether the Government has properly adhered to its State Secrets Policy, as this is internal to the Executive branch, and the Policy does not create a substantive or procedural right enforceable at law or in equity against the Government. (See Holder Decl., Exh. 1 ¶ 7.)

Which says all you need to know about how much judges—particularly those who have been lied to on related issues—ought to take the state secrets policy requirements.

This case is the next step in FISA litigation

Carney may not have cited these recent developments in state secrets, but he is well aware of the latest developments in FISA law, because he points to the 9th Circuit's recent

decision in al-Haramain in throwing out the plaintiffs' suit against the government on FISA grounds. Based on the 9th Circuit's holding that the government enjoys sovereign immunity even when it illegally wiretaps someone, Carney threw out the part of the suit against the government for all the allegedly illegal wiretaps used here. The part of the case that remains is against the FBI officers for illegal wiretapping people. We shall see what becomes of that.

Carney suggests the FBI now investigates people for radicalization

Finally, I wanted to point to one passage in which Carney speaks in very general terms about what Eric Holder said about the surveillance program. Speaking in hypotheticals, Carney explains the scope of what might be an adequate predicate for an investigation.

> In the context of a counterterrorism investigation, subject identification may include information about persons residing in the United States or abroad, such as Afghanistan, Lebanon, the Palestinian Territories, Yemen, and other regions in the Middle East, whom law enforcement has and has not decided to investigate depending on their nexus to terrorist organizations, such as al Qaeda, the Taliban, Hezbollah, and Hamas. **Subjects and their associates may also be investigated because they are suspected of or involved in the recruitment, training, indoctrination, or radicalization of individuals for terrorist activities or fundraising for terrorist organizations**. More directly, individuals subjected to counterterrorism investigations may be involved in plotting terrorist attacks. [my emphasis]

Recruiting, training, and fundraising terrorists are all crimes, especially under Holder v. HLP.

But is “radicalization”? I don’t know the answer to that. But that seems to push the limits of even Holder v. HLP’s limits on First Amendment activities further than we’ve known.

IT’S NOT JUST WHETHER NIDAL HASAN’S EMAILS STUCK OUT, IT’S WHETHER ABDULMUTALLAB’S DID

I’ve been meaning to return to the Webster report on Nidal Hasan’s conversations with Anwar al-Awlaki. This conversation between Gunpowder & Lead and Intelwire about how alarming those emails were will be a start provides a good place to start.

Hasan’s emails should have raised more concern—but probably didn’t because of the sheer volume of Awlaki intercepts

G&L notes that certain details from the emails—such as his invocation of Hasan Akbar, a Muslim-American soldier who killed two officers in Kuwait—as an example that should have raised more concern than it did.

> But more significant, his question to Awlaki didn’t actually deal with the valid question that he raised, the feeling of inner conflict between one’s faith and serving in the U.S. military. Instead, he leaped right to a question that should rightly trigger alarm: *if Hasan Akbar died while attacking fellow soldiers, would he be a martyr*? Hasan skipped over questions about whether serving in the U.S. military is religiously acceptable; whether going to

> war against fellow Muslims is a violation of religious principles. Instead, in addressing "some" soldiers who felt conflicted about fighting fellow Muslims, Hasan right away asked whether it was permissible to kill other U.S. soldiers in the way Hasan Akbar.

After a close analysis of a number of the emails, G&L refutes the representation of these emails as "fairly benign."

I agree with that assessment (and would add that the suggestion, in a February 22, 2009 email, that Hasan was donating to entities that his mosque would not is another troubling detail). But I also agree with Intelwire. These emails, from an Army officer, surely merited more attention. But these emails, as they likely appeared among the stream of Anwar al-Awlaki communications, probably did not stick out.

> Based on who Hasan was (a military officer), who he was talking to (a suspected 9/11 accomplice), and the fact he repeatedly tried to get Awlaki's attention using a variety of stratagems, the case should have been escalated and Hasan's superiors should have been informed.
>
> But when you place the *content* of Hasan's messages alongside all the other raw intelligence that counterterrorism investigations generate, it's extremely hard to argue from a subjective, non-psychoanalytical reading that they represented a red flag.

Which is why this report has seemed poorly scoped to me. Because not only did Nidal Hasan's emails fail to trigger further attention, but Umar Farouk Abdulmutallab's contacts with Awlaki before Fort Hood did too.

In spite of the fact that the FBI had two people spending a significant chunk of each day (they

claimed it took 40% or 3 hours of their work day; 88) reviewing communications tied to Awlaki, in spite of the fact that two men about to attack the US were in contact with Awlaki, "the FBI's full understanding of Aulaqi's operational ambitions developed only after the attempted bombing of Northwest Airlines Flight 253 on Christmas Day 2009." (72)

The government also failed to respond to Abdulmutallab intercepts leading up to the Fort Hood attack

Consider: according to the report itself, Robert Mueller formally asked William Webster to conduct this inquiry on December 17, 2009 (though Webster's appointment was reported over a week before then). Just 8 days later, another terrorist who had been in contact with Awlaki struck the US. Just 5 days after that, sources started leaking details of NSA intercepts from 4 months earlier (so around August) that might have warned about the attack.

> Intelligence intercepts from Yemen beginning in early August, when Abdulmutallab arrived in that country, contained "bits and pieces about where he was, what his plans were, what he was telling people his plans were," as well as information about planning by the al-Qaeda branch in Yemen, a senior administration official said. "At first blush, not all these things appear to be related" to the 23-year-old Nigerian and the bombing attempt, he said, "but we believe they were."

It's unclear how many of these intercepts were directly between Abdulmutallab and Awlaki, and therefore presumably reviewed by the FBI team in San Diego. But at least according to the sentencing materials submitted in the Abdulmutallab case (there are reasons to treat this with a bit of skepticism), there were substantive communications between Awlaki and Abdulmutallab.

> Defendant provided this individual [who offered to connect him with Awlaki] with the number for his Yemeni cellular telephone. Thereafter, defendant received a text message from Awlaki telling defendant to call him, which defendant did. During their brief telephone conversation, it was agreed that defendant would send Awlaki a written message explaining why he wanted to become involved in jihad. Defendant took several days to write his message to Awlaki, telling him of his desire to become involved in jihad, and seeking Awlaki's guidance. After receiving defendant's message, Awlaki sent defendant a response, telling him that Awlaki would find a way for defendant to become involved in jihad.

Now, it's possible this communication didn't show up in the San Diego stream. Maybe the NSA didn't share all its Awlaki intercepts with the San Diego team. The report notes that Awlaki and his allies were using means to hide their contacts (127). The report notes some forms of VOIP are not included under CALEA, which may have affected Abdulmutallab's call. (128) And the month after the Abdulmutallab attack and after Pete Hoekstra revealed the NSA intercepts on Awlaki, he allegedly implemented a sophisticated encryption system with Rajib Karim. But if the Awlaki collection, as it existed in 2009, failed both because of volume and because of technical reasons, shouldn't those be part of the same inquiry?

By the end of December 2009, the FBI and NSA knew they had collected, reviewed, and failed to adequately respond to intercepts from two future terrorists. Why not include both in this study?

Hasan's contacts (and presumably Abdulmutallab's) were dissociated needles in an Awlaki haystack

The Webster report doesn't provide exact details

of how much intelligence was coming in on the Awlaki investigation. They redact the number of leads, investigations, and Information Intelligence Reports the intercepts produced—though they appear to be 3-digit numbers (see page 35). The report suggests that the San Diego team focused attention on Awlaki-related intercepts starting on March 16, 2008 (87; interestingly, in the extension period for PAA and before FAA imposed new protections for Americans overseas). Between March 2008 and November 2009, the JTTF team in San Diego reviewed over 29,000 intercepts. And the volume was growing: in earlier phases of the Hasan investigation, the San Diego team was averaging 1,420 intercepts a month; that number grew to 1,525 by the time of the Fort Hood attack. The daily average went from 65-70 intercepts a day to 70-75, though some days the team reviewed over 130 intercepts. And while he obviously had reasons to play up the volume involved, the Analyst on the San Diego team considered it a "crushing volume" of intercepts to review. Discussions of the volume of intercepts appear on page 35, 36, 46, 61, 87, 88, 92.

In any case, the emails between Hasan and Awlaki made up just one quarter of one percent of the volume the FBI reviewers reviewed over this period. While we don't know how these emails compared to the rest of the traffic (a point the Webster report makes, (88) it is clear they made up just a tiny fraction of what the FBI reviewed.

There are two factors that must have made this review process more difficult.

First, the FBI's database of intercepts sucked. When the first Hasan intercepts came in, it allowed only keyword searches; tests the Webster team ran showed it would have taken some finesse even to return all the contacts between Hasan and Awlaki consistently. More importantly, it was not until February 2009 that the database provided some way to link related emails, so the Awlaki team in San Diego relied on spreadsheets,

notes, or just their memory to link intercepts. (91) But even then, the database only linked formal emails; a number of Hasan's "emails" to Awlaki were actually web contacts, (100) which would not trigger the database's automatic linking function. In any case, it appears the Awlaki team never pulled all the emails between Hasan and Awlaki and read them together, which would have made Hasan seem much more worrisome (though when the San Diego agent set the alert for the second email, he searched and found the first one).

In addition, the Agent in charge of the investigation took on a supervisory role in mid-July 2009, just before Abdulmutallab came on the scene. (45) Given that the computer didn't allow for any institutional memory, losing an investigative team member would effectively lose the work on any given investigation.

One more factor would have made it harder to respond appropriately to early Abdulmutallab intercepts. At least some of those reportedly needed to be translated (this also suggests that some of the most interesting intercepts involving Abdulmutallab weren't between Awlaki and the Nigerian, as English would be the natural language for the two to converse in).

Even tracking the communications of one terrorist radicalizer, we're drowning in data

All of which suggests we're still collecting more information than we can even analyze. Whatever else I've said about the government's evidence against Awlaki, I absolutely believe he was an obvious target for collection. But if we don't have the technical capabilities to exploit even that one stream, what does that say about our intelligence gathering?

The Webster report does say that many of the problems with FBI's intercepts database were fixed with a September 2011 update. And FBI changed training and access rules before that point to make sure key members of the JTTFs can use the database. But several of the

recommendations made by the Webster team pertain to enhancing the database with both hardware and software improvements.

One of the big takeaways from the Webster report, it seems to me, is we were asking FBI officers to analyze a flood of data using the most archaic tools. Sure, there was reason enough they should have escalated the investigation into Nidal Hasan. But far more attention needs to be focused on our continued data failures, particularly among the belief more data is a cure-all.

IF FBI BELIEVES NYPD SPYING VIOLATES AMERICANS' RIGHTS, WHY NOT STOP IT?

It has long been clear that the AP series on the NYPD's spying on NYC's Muslims relied, in part, on FBI sources who believed the program to be problematic. Now a new edition of Ronald Kessler's book on the voices that belief explicitly.

> "What never came out is that the FBI considers the NYPD's intelligence gathering practices since 9/11 not only a waste of money but a violation of Americans' rights," wrote Kessler, who in April broke news of Colombian sexcapades by Secret Service agents doing advance work for President Obama.
>
> "We will not be a party to it," an FBI source told Kessler.

This anonymous leaking comes not from some ACLU hippies—it comes from the FBI. So why don't

these leakers go arrest Ray Kelly?

Aside from the endorsement of the program Robert Mueller and John Brennan have given, I mean?

> The White House added its stamp of approval a month later when President Obama's top counterterrorism adviser John Brennan visited police headquarters.
>
> "I have full confidence that the NYPD is doing things consistent with the law, and it's something that again has been responsible for keeping this city safe over the past decade," he said.

Remember, Brennan—who was Deputy Executive Director of CIA when CIA helped to set up the CIA-on-the-Hudson—has boasted of intimate familiarity with the program.

Speaking of John Brennan, today is the 10 year anniversary of the torture memos. You know, torture? Another abuse that has never been prosecuted under Obama?

DEFYING THE RULES OF GRAVITY, OBAMA DIRECTS SANCTIONS SOLELY AGAINST ISRAEL'S ENEMIES

In conjunction with his speech at the Holocaust Museum yesterday and announcement of the Atrocities Prevention Board, President Obama also rolled out sanctions against those who use IT to repress human rights. The Treasury Department named the sanctions GRAHVITY (I think they get it from "GRAve Human rights abuses Via

Information TechnologY" or some such Orwellian acronym).

There's a problem with that. We are all subject to gravity.

But only Israel's enemies—Iran and Syria—are subject to GRAHVITY.

This exclusive application was set up in yesterday's speech when Elie Wiesel suggested the point of remembering the Holocaust was to guarantee the strength of Israel and ensure its enemies—in this case, Syria and Iran—are removed from office (and deprived of the same weapons Israel stockpiles against them).

> Have you learned anything from it? If so, how is it that Assad is still in power? How is it that the Holocaust Number 1 denier, Ahmadinejad, is still a President, he who threatens to use nuclear weapons—to use nuclear weapons—to destroy the Jewish state?
>
> [snip]
>
> Now, I hope you understand, in this place [the Museum], why Israel is so important, not only to the Jew that I am and the Jewish people, but to the world. Israel cannot not remember. And because it remembers, it must be strong, just to defend its own survival and its own destiny.

Obama's focus was broader. In his speech, he listed Cambodia, Rwanda, Bosnia, Darfur, Côte d'Ivoire, Libya (with no mention of the civilian casualties NATO caused), the Lords Resistance Army.

But Obama, too, focuses primarily on Syria.

In this speech, the sole reason to ensure internet freedom, according to Obama, is to bring about regime change in Syria.

> And when innocents suffer, it tears at

> our conscience. Elie alluded to what we feel as we see the Syrian people subjected to unspeakable violence, simply for demanding their universal rights. And we have to do everything we can. And as we do, we have to remember that despite all the tanks and all the snipers, all the torture and brutality unleashed against them, the Syrian people still brave the streets. They still demand to be heard. They still seek their dignity. The Syrian people have not given up, which is why we cannot give up.
>
> And so with allies and partners, we will keep increasing the pressure, with a diplomatic effort to further isolate Assad and his regime, so that those who stick with Assad know that they are making a losing bet. We'll keep increasing sanctions to cut off the regime from the money it needs to survive. We'll sustain a legal effort to document atrocities so killers face justice, and a humanitarian effort to get relief and medicine to the Syrian people. And we'll keep working with the "Friends of Syria" to increase support for the Syrian opposition as it grows stronger.
>
> Indeed, today we're taking another step. I've signed an executive order that authorizes new sanctions against the Syrian government and Iran and those that abet them for using technologies to monitor and track and target citizens for violence. These technologies should not empower – these technologies should be in place to empower citizens, not to repress them. And it's one more step that we can take toward the day that we know will come – the end of the Assad regime that has brutalized the Syrian people – and allow the Syrian people to chart their own destiny.

Two things were lacking from this presentation.

There was no mention—not a peep—of the equally urgent repression targeted at Shias, notably those America's ally Bahrain is brutally repressing. With the Formula 1 fiasco, Bahrain is actually the subject of more intense news coverage right now. But not, apparently, the subject of protections against atrocities.

Also lacking from Obama's speech was any application of the rules of GRAHVITY to the United States itself. When Wiesel invoked the innocent children who were victims of the Holocaust, did he also ask about the children killed in America's drone strikes? Did Obama promise not to spy on Americans who participate in Occupy Wall Street, Muslims who practice their faith, or journalists and whistleblowers seeking to hold the government accountable?

We used to believe in human rights that—like gravity—applied equally to all people. But Obama is rolling out something new, GRAHVITY, targeted solely at those who threaten Saudi hegemony, Israel's dominance of the Middle East, and with both of those, America's empire. It is a sick perversion of universal rights wielded selectively as a weapon, not a protection.

"CRACKPOTS DON'T MAKE GOOD MESSENGERS"

For the record, I have no intention of voting for Ron Paul in the General election (though depending on how the GOP primary rolls out, I might consider crossing over to vote for Paul in the MI primary, for similar reasons as I voted for John McCain in the 2000 primary: because I knew my vote wouldn't matter in the Democratic primary and I hoped a McCain win might slow down

George Bush's momentum and focus some attention on campaign finance reform, McCain's signature issue at the time).

I don't want Ron Paul to be President and, for all my complaints with Obama, he is a less bad presidential candidate than Paul.

But that's an entirely different question then the one Kevin Drum purports to address with this post:

> Should we lefties be happy he's in the presidential race, giving non-interventionism a voice, even if he has other beliefs we find less agreeable? Should we be happy that his non-mainstream positions are finally getting a public hearing?

Drum doesn't actually assess the value of having a non-interventionist in the race, or even having a civil libertarian in the race (which he largely dodges by treating it as opposition to the drug war rather than opposition to unchecked executive power), or having a Fed opponent in the race.

Instead, he spends his post talking about what a "crackpot" Paul is, noting (among other things), that Paul thinks climate change is a hoax, thinks the UN wants to confiscate our guns, and is a racist.

Views, mind you, that Paul shares in significant part with at least some of the other crackpots running for the GOP nomination.

Of course, Paul does have views that none of the other Republicans allowed in Presidential debates share. And that's what Drum would need to assess if he were genuinely trying to answer his own question: given a field of crackpots, several of whom are explicit racists, several of whom make claims about cherished government programs being unconstitutional, most of whom claim to believe climate change doesn't exist, is it useful that one of the candidates departs

from the otherwise universal support for expanded capitulation to banks, authoritarianism, and imperialism? Is it useful to do so leading up to a General election with a Democrat who has been weak against banks, expanded executive authority, and found new Muslim countries to launch drone strikes against?

Before I get into the reasons why it is, let me address a completely false claim Drum makes.

> Ron Paul has never once done any of his causes any good.

Paul, of course, succeeded in getting a limited audit of the Fed's bailout done. That hasn't resulted in the elimination of the Fed, but it has educated a lot of people about the vast power of the Fed and showed how far government efforts to prop up the banks really went in 2008 and 2009. Of course, he did so in partnership with Alan Grayson, someone who doesn't embrace all of Paul's views but nevertheless demonstrates why Drum's advice that those who share some views with Paul, "should run, not walk, as fast as you can to keep your distance from Ron Paul" is bad advice. We live in a democracy, and it's far easier to get laws passed if members of both parties support them.

And it's not just the Fed. By providing space to support civil liberties and oppose the war on the right, Paul slowed the steam roll in support of the PATRIOT Act, SOPA, the detainee provisions of the NDAA, and the wars. In these areas, he may not have had the limited but notable success he had with the Fed, but if—for example—Dianne Feinstein's effort to specifically exclude Americans from indefinite military detention has any success, it will in part be because Paul and his son mobilized opposition to indefinite detention on the right.

But all that explains why it has been useful to have Paul—bolstered by his 2008 campaign, which seems to disprove Drum's promise that, "in a

couple of months he'll disappear back into the obscurity he so richly deserves"—in the House. That doesn't explain why it is useful to have him polling at almost 20% in the GOP race in IA.

Because that is, after all, what we're talking about. So when Drum scoffs at those who have, "somehow convinced yourself that non-interventionism has no other significant voices except Ron Paul," **when we're talking about the Presidential race**, I want to know what race he's been watching? While Gary Johnson supports non-interventionism, he's not a significant voice. In this presidential race, which is what Drum purports to be talking about, there are no other significant voices supporting non-interventionism or championing civil liberties.

And without a such a candidate—without someone playing the role Obama sort of did until July 9, 2008—then the focus of the billion-dollar political debate in the next 11 months will focus primarily on who will more aggressively crack down on Iran and how many more civil liberties the President must dissolve to wage war against significantly weakened terrorists. Ron Paul's presence in the race not only exposes voters to commonsense but otherwise impermissible observations—such as that the detainees we're holding are, with just a handful of exceptions, suspects, never proven to be terrorists in a trial. But his presence also raises the cost for Obama for not addressing his past claims and promises on civil liberties.

And then, of course, we lefties are supposed to be trying to defeat these right wing nutjobs. Drum may think Paul toxic, but his views are equally toxic to the rich donors paying for these Republican candidates. And while Paul doesn't threaten to become a viable anti-Mitt, he can (and did, in 2008) stay in this race long enough to be an annoyance to GOP claims to unity. All the time by differentiating himself with issues—anti-imperialism, civil libertarianism, and anti-banksterism—for which Paul is the only significant voice in this

election. Twelve years ago, my support for a policy that I supported, championed by a flawed messenger, contributed in a small way to making Bush spend more money and reveal his loathsome (if transactional) racism in South Carolina. That didn't make Al Gore the winner, but it didn't hurt. Why would we categorically oppose something similar to happen to Mitt Romney?

As Drum himself notes, there's no danger that by calling out those areas where Paul is good, he's going to be elected President and implement his more loathsome ideas. "Ron Paul is not a major candidate for president." But for those guarding the DC common sense, support for Paul in these areas does seem to present real danger.

It's telling, ultimately, that Drum's piece, which doesn't prove what it purports to (that having Paul in the Presidential race is bad for lefties) but does call him a crackpot crackpot crackpot, is a near mirror image to this Michael Gerson column, which points towards the very same repulsive stances—as well as some downright commonsense ones—as Drum to call Paul a scandal.

> No other recent candidate hailing from the party of Lincoln has accused Abraham Lincoln of causing a "senseless" war and ruling with an "iron fist." Or regarded Ronald Reagan's presidency a "dramatic failure." Or proposed the legalization of prostitution and heroin use. Or called America the most "aggressive, extended and expansionist" empire in world history. Or promised to abolish the CIA, depart NATO and withdraw military protection from South Korea. Or blamed terrorism on American militarism, since "they're terrorists because we're occupiers." Or accused the American government of a Sept. 11 "coverup" and called for an investigation headed by Dennis Kucinich. Or described the killing of Osama bin Laden as "absolutely not necessary." Or affirmed that he would not have sent American

> troops to Europe to end the Holocaust. Or excused Iranian nuclear ambitions as "natural," while dismissing evidence of those ambitions as "war propaganda." Or published a newsletter stating that the 1993 World Trade Center attack might have been "a setup by the Israeli Mossad," and defending former Ku Klux Klan Grand Wizard David Duke and criticizing the "evil of forced integration."
>
> Each of these is a disqualifying scandal. Taken together, a kind of grandeur creeps in.

Neither wants to deal with the downright logic (and deserved widespread support) of some of Paul's views. They both seem to want to, instead, suggest that any deviation from the DC consensus is lunacy (and lunacy of a kind not exhibited by Bachmann, Perry, Newt, and Santorum).

The question of whether it is good to have Paul audibly in the Presidential race—which is fundamentally different from whether we want him to be President—is ultimately a question of whether it is good to have a diversity of views expressed in our democratic debates. Neither Drum nor Gerson object here to the lunacy espoused by the other GOP candidates, per se—the ones that espouse lunacy embraced by the DC consensus, what Drum approvingly calls the "mainstream." So what is so dangerous in having Paul's ideas—both sound and repulsive—expressed?

I'm perfectly comfortable having Paul exposed—as he has been—as a racist over the course of this race. Why are Drum and Gerson so upset that the other candidates might be exposed as authoritarians and imperialists in turn?