CROSSFIRE HURRICANE GLOSSARY

A glossary of some of the names, acronyms, and titles in the DOJ IG Report on Carter Page.

THE DISCUSSION OF WHITE SUPREMACIST TERROR IGNORES THE TRANSNATIONAL NATURE OF IT

As the national security establishment comes to grips with the threat of white supremacist terrorism, the goal should be to understand what actually occurring in the government's efforts to combat terrorism, and from that to learn what is necessary to protecting against terrorism.

EXIGENT LETTERS TIMELINE

July 2002: CAU formed

March 14, 2003: First exigent letter issued in NY

May 2003: First contract with telecom for onsite exigent assistance

March 2004: Last contract with telecom for onsite exigent assistance

February 2, 2005: Operation W NSL signed;

Tracker database attempted

February 2006: Procedures to verify factual accuracy of FISA applications

March 9, 2006: Bush signs PATRIOT extension with new Section 215 guidelines

May 12, 2006: First blanket NSL (for Company B)

May 17, 2006: Assistant General Counsel sends email regarding exigent letters (leads to OGC "learning" of practice)

May 24, 2006: First Section 215 order approved by FISC

July 5, 2006: Second blanket NSL

August 2, 2006: AGC sends follow-up on exigent letters blanket NSL for Company B

September 18, 2006: Youssef cancels hot number service from Company C

September 21, 2006: Third blanket NSL

October 10, 2006: Company B changes policy on exigent letters to require SSA to say it is emergency involving death or serious injury.

November 7, 2006: AGC sends email to Valerie Caproni on blanket NSL, heads up for IG investigation

February 22, 2007: AGC tells Youssef the blanket NSLs may be PIOBs, need to be reported within 14 days

March 1, 2007: FBI draws up new guidelines, requiring factual predicate and limiting people who can authorize exigent letters

March 9, 2007: IG Report on NSLs including "any illegal and improper use" in 2003 though 2005

June 1, 2007: FBI Guidance on who could sign NSLs

August 28, 2007: First OLC request to approve exigent letters.

October 31, 2007: FBI tells IOB it will send

letter on blanket NSLs and purge all illegally acquired information.

November 2007: FBI issues draft guidance on Community of Interest requests.

December 2007 to January 2008: Telecom personnel move out of CAU.

January 11, 2008: FBI issues new protocol for requesting phone records.

February 29, 2008: Bush guts the Intelligence Advisory Board, stripping it of investigative ability and oversight over IGs. http://www.boston.com/news/nation/washington/articles/2008/03/14/president_weakens_espionage_oversight/?page=1

March 13, 2008: IG Report on NSLs, assessing corrective actions of FBI and describing NSL usage in 2006

November 5, 2008: OLC issues opinion in response to August 28, 2007 request

January 16, 2009: OLC issues a response on whether Acting DADs and other Acting officials could sign NSLs

March 31, 2009: FBI formally informs IAB of NSL problems

August 17, 2009: Obama appoints Chuck Hagel to IAB.

October 29, 2009: Obama restores investigative ability to Intelligence Advisory Board

January 20, 2010: IG Report on exigent letters

June 5, 2013: Guardian publishes Section 215 order to Verizon calling for all call metadata on all customers over 3 month period. Dianne Feinstein makes it clear this is part of program in place since 2006.

ZOE LOFGREN DIDN'T VOTE TO LET PRESIDENTS WAGE UNLIMITED WAR, BUT JOHN YOO DID

As a series of Presidents continue to claim the September 18, 2001 Authorization to Use Military Force authorizes fairly unlimited power on an unlimited battlefield, I keep coming back to this Tom Daschle op-ed, in which he described how Congress refused to extend the AUMF to US soil.

> Just before the Senate acted on this compromise resolution, the White House sought one last change. Literally minutes before the Senate cast its vote, the administration sought to add the words "in the United States and" after "appropriate force" in the agreed-upon text. This last-minute change would have given the president broad authority to exercise expansive powers not just overseas – where we all understood he wanted authority to act – but right here in the United States, potentially against American citizens. I could see no justification for Congress to accede to this extraordinary request for additional authority. I refused.

The op-ed is, as far as I know, the only public statement describing how Congress narrowed a breathtakingly broad claim for military force.

Until Wednesday's drone hearing, that is.

In response to a comment from John Bellinger that it was appropriate for the Executive Branch to refuse to share its OLC memos with Congress, Zoe Lofgren suggested (1:36 and following) the President was exceeding the terms of the AUMF

(she comes very close to saying the President broke the law, but stops herself). She refers to – as Daschle did – negotiations leading up to the AUMF that actually did get passed.

> Lofgren: If you take a look at the Authorization to Use Military Force, which all of us voted for – those of us who were here (there was only one no vote in the House) – it says "the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks." Now, are we to believe that everyone on this list was responsible for the 9/11 attack? I mean, is that the rationale?
>
> Bellinger: No, your exactly right. All four of us agree with you that the 2001 AUMF, which was only about 60 words long – I was involved in drafting it literally almost on the back of an envelope while the World Trade Center was still smoldering – now is very long in the tooth. The good government solution, while extremely difficult and controversial, would be for Congress to work together with the Executive Branch to revise that AUMF. It's completely unclear about what it covers, who it covers, where it covers.
>
> Lofgren: If I may, I think it's not as unclear as you suggest. There are – this was a limitation, and there were big arguments about it as you're, I'm sure, aware, there was a prior draft that was much more expansive. There was a prior draft that was much more expansive and it was narrowed so we could get bipartisan consensus and it was narrowed for an important reason. And I guess I – yes, the Executive has the ability to keep his legal advice confidential,

> that's a long-standing principle, but since it looks like — at least, questions are raised — as to whether the executive is complying with the law, then if he feels he is, then I feel it would be a very positive thing for the Administration to share that legal advice with this committee and with the American people. [my transcript]

While I have not yet checked with Lofgren's office, this — also from Daschle's op-ed — seems to describe the more expansive AUMF the Bush Administration, advised in part by then Legal Advisor to the National Security Advisor John Bellinger, tried to get passed.

> On the evening of Sept. 12, 2001, the White House proposed that Congress authorize the use of military force to "deter and pre-empt any future acts of terrorism or aggression against the United States." Believing the scope of this language was too broad and ill defined, Congress chose instead, on Sept. 14, to authorize "all necessary and appropriate force against those nations, organizations or persons [the president] determines planned, authorized, committed or aided" the attacks of Sept. 11. With this language, Congress denied the president the more expansive authority he sought and insisted that his authority be used specifically against Osama bin Laden and al Qaeda.

That is, it seems (though I need to check with the Congresswoman's office) that she's reminding Bellinger that Congress refused to pass his napkin-back AUMF authorizing the use of military force to "deter and pre-empt any future acts of terrorism or aggression against the United States." And she also seems to be suggesting that's precisely the kind of broad claim reflected in the white paper.

Now, I think I've made it clear that I support Lofgren's case that the Administration should have to turn over its memos authorizing targeted killing.

But I also think she hasn't looked at the publicly available still active OLC memos that are out there. As I was reminded by Amnesty International's Zeke Johnson, among the fairly broad OLC memos written "while the World Trade Center was still smoldering" to authorize broad counterterrorism authority is this October 25, 2001 memo which has not been withdrawn.

It states, right from the beginning,

> The President may deploy military force preemptively against terrorist organizations or the States that harbor or support them, whether or not they can be linked to the specific terrorist incidents of September 11.

Eleven days after Congress refused to authorize military force against just any terrorist threat, John Yoo reasserted the authority to do so. And no one — not Jack Goldsmith, not Steven Bradbury, not any of Obama's OLC lawyers — has officially backed off that claim.

Along the way, Yoo invokes inherent authority, cites a bunch of Attorneys General, a Poppy Bush signing statement, and ends here:

> In both the War Powers Resolution and the Joint Resolution [the AUMF], Congress has recognized the President's authority to use force in circumstances such as those created by the September 11 incidents. Neither statute, however, can place any limits on the President's determinations as to any terrorist threat, the amount of military force to be used in response, or the method, timing, and nature of the response. These decisions, under our Constitution, are for the President alone to make.

So Lofgren doesn't even have to get that memo authorizing the killing of an American citizen based on the word of an "informed, high-level officer" (though by all means, she should). Because this memo, readily available on DOJ's website, asserts that the limitation she and Daschle believed they voted for on September 14, 2001 doesn't limit the Executive Branch in the least.

"These decisions, under our Constitution," John Yoo says, "are for the President alone to make."

That AUMF, the one everyone keeps pointing to as imposing limitations on the President's authority to (among other things) kill Americans in America? The Executive Branch, for over 11 years, has maintained that it cannot place any limits on the President's determinations about the scope or method of fighting terrorists, broadly defined.

MORE ON THE YEAR-LONG PURSUIT OF MOHAMED MOHAMUD

Teddy did a diary this morning on a newly-reported detail in the case of Mohamed Mohamud—the Portland man accused of attempting to set off a bomb. The FBI had contacted him a year earlier than originally disclosed. The first contact with Mohamud the complaint describes took place in June 2010, after Mohamud was prevented from boarding a flight to Alaska.

> On June 14, 2010, MOHAMUD was contacted at Portland, Oregon International Airport after he attempted to board a flight to Kodiak, Alaska. MOHAMUD was not allowed to board the aircraft. Shortly thereafter, MOHAMUD was interviewed by the FBI.

Shortly thereafter, an undercover agent contacted Mohamud, leading up to the July 30, 2010 meeting that was not taped.

> An FBI Undercover Employee (UCE1) contacted MOHAMUD in June 2010 under the guise of being affiliated with UA1 and UA1's associates. MOHAMUD and UCE1 ultimately agreed to meet in Portland on July 30,2010.

But a filing submitted yesterday shows that the Oregon State Police got a report on him in November 2009, after which an FBI agent named Bill Smith started contacting Mohamud.

> As noted above, the government seeks to characterize a November 2009 interaction withMohamed as "an unrelated matter." Resp. at 17. While the direct contact with Mohamed appeared to involve only the Oregon State Police (OSP), the FBI was clearly involved behind the scene. As the government has only provided minimal discovery related to the FBI's involvement, with much of it redacted, Mohamed cannot assess the extent of the information the FBI gathered andsubsequently used in crafting its sting operation.
>
> What the discovery does show is that the OSP immediately notified the FBI upon receiving a complaint about Mohamed, despite the fact that the substance of the report would ordinarily not result in FBI involvement. Although the redactions in the FBI report prevent the defense from understanding the full scope of the FBI's role, it appears that agents met with OSP officers prior to contact with Mohamed and were involved with the subsequent interview. OSP then requested consent to image Mohamed's computer, which was provided to an FBI analyst within hours. Seven days later, agent Bill Smith began contacting

> Mohamed and soliciting his participation in violence against the West. A short time later, the FBI analyst copied specific information from Mohamed'scomputer and provided it to a fellow agent. The analyst did not write a report of his actions until ayear later.

Other filings make it clear that the OSP polygraphed Mohamud at this point and suggests the search of his computer was consensual.

At first, the government didn't admit that "Bill Smith" worked for the government (and it remains unclear who he works for). Only after the defense confronted them with that fact did they concede he was, but they claimed these earlier contacts have no connection to this case.

> The discovery provided up to [the discovery deadline of February 15] and after included no indication that Bill Smith was a government agent. The government must possess the paperwork and reports that are necessarily generated by a government agent who contacts a citizen for such investigative purposes. If not for fortunate defense work, this exculpatory fact would have continued to be suppressed. It was only by backtracking through voluminous emails, and clearing out hundreds of lines of distracting code, that the defense was able to understand Bill Smith's apparent connection to the government. Once confronted with the defense conclusions,the government admitted Bill Smith acted as a government agent. However, the conscious determination by the agency that Bill Smith should not be disclosed to the defense as an agent,purportedly because the government does not believe the information is helpful to the defense,establishes that the government alone should not be

> permitted to determine what is exculpatory without this Court's supervision and instruction.

While the government claims this contact was discontinued in May 2010 (a month before the contact they claim started this investigation), Mohamud continued to email "Smith" until August 2010.

> Bill Smith had e-mail contact with defendant beginning in late 2009 and continuing through May 2010. The contact with Smith did not relate to the facts of this case, and was discontinued by the government. Defendant, however, on his own continued to contact Smith through August 2010, after the government had ceased contact with him, by forwarding Smith e-mails, including one that supported violent jihad.

The fact that the government delayed admission of these earlier contacts also means the government has not disclosed the extent to which this earlier contact was used to tailor conversations with Mohamud.

> [T]he undercover agents clearly used information from surveillance activities in approaching Mohamed. One obvious example is that agent Bill Smith attempted to ingratiate himself with Mohamed by recommending an online publication based on the government's belief that Mohamed had connections to the publication.

While it appears that Mohamud was under surveillance before the first contact with the OSP (the complaint cites some emails he had with someone in Yemen August 2009), the earlier contact raises a whole bunch of questions about what led the government to pretend to follow-up on his emails in June 2010.

OPR REPORT TIMELINE

In response to the news that David Margolis spiked the misconduct conclusion in the OPR Report on OLC justifications for torture, I wanted to put together a timeline of its construction. Two things stick out. First, the role of Mary Patrice Brown—who replaced Marshall Jarrett at a time when OPR was backing off its offer of transparency—deserves further scrutiny in this report. When she presented the report to Holder in August, she apparently recommended that he reopen investigations into torture.

Also, I still think the timing suggests DOJ delayed its release to protect Yoo in the Padilla suit.

January 4, 2008: Padilla sues Yoo.

February 12, 2008: Senators Durbin and Whitehouse request that OPR investigate torture authorizations

February 18, 2008: Marshall Jarrett informs Durbin and Whitehouse that torture authorizations included in OPR investigation of OLC, agrees to share report with them and—possibly—release an unclassified public version

Late December 2008: Draft of OPR submitted, Michael Mukasey and Mark Filip demand that Yoo, Bybee, and Bradbury get to respond

February 14, 2009: Isikoff reports that OPR report came to harsh conclusions of OLC lawyers' work; reports Mukasey and Filip allowance for lawyer response

February 16, 2009: Whitehouse and Durbin inquire about process used with OPR report

March 6, 2009: Hearing in Padilla-Yoo law suit

March 25, 2009: OPR response (signed by M. Faith

Burton, Acting AAG) to Whitehouse and Durbin states Mukasey/Filip comments already integrated, OLC lawyer counsel in process of reviewing report; it doesn't mention "career prosecutor" review:

> When the review and comment [from Yoo, Bybee, and Bradbury's lawyers] is concluded, OPR intends to review the comments submitted and make any modifications it deems appropriate to the findings and conclusions. OPR will then provide a final report to the Attorney General and Deputy Attorney General. After any additional review they deem appropriate, the department will determine what disclosures should be made.

The letter backs off Jarrett's earlier promise to release the report:

> In determining appropriate disclosures, we will be mindful of the considerable interest that Congress has previously expressed in connection with this matter and will seek to accommodate the information needs of our oversight committees in response to requests from their chairmen. While we appreciate your request for a disclosure commitment, we can only fully evaluate the scope of appropriate disclosures once the review process is completed. We trust you understand that those decisions depend in part on the content and conclusions of the OPR final report and the outcome of any further Departmental review.

March 31, 2009: Durbin and Whitehouse reply to OPR letter

April 8, 2009: Holder names Mary Patrice Brown to replace former OPR head, Marshall Jarrett

April 29, 2009: Leahy invites Bybee to testify to Senate Judiciary Committee; Bybee panics in

response

May 4, 2009: According to AAG Ronald Welch, deadline for Yoo, Bybee, and Bradbury response to OPR report; on that day, Welch responds to Durbin and Whitehouse laying out the following as "normal" process for OPR reports:

> In the past, former Department employees who were subjects of OPR investigations typically have been permitted to appeal adverse OPR findings to the Deputy Attorney General's Office. A senior career official usually conducted that appeal by reviewing submissions from the subjects and OPR's reply to those submissions, and then reaching a decision on the merits of the appeal. Under this ordinary procedure, the career official's decision on the merits was final. This appeal procedure was typically completed before the Department determined whether to disclose the Report of Investigation to the former employees' state bar disciplinary authorities or to anyone else. Department policy usually requires referral of OPR's misconduct findings to the subject's state bar disciplinary authority, but if the appeal resulted in a rejection of OPR's misconduct findings, then no referral was made. This process afforded former employees roughly the same opportunity to contest OPR's findings that current employees were afforded through the disciplinary process. While the Department has previously released public summaries of OPR reports under some circumstances, public release of the reports themselves has occurred only rarely. In the past, the release of a public summary occurred only after the subjects were afforded an opportunity to appeal any adverse findings.

The May 4 letter also informed the Senators of

the CIA review.

May 6, 2009: WaPo reports OPR report still recommends sanctions against Yoo and Bybee

June 12, 2009: Judge rules Padilla suit can move forward

June 17, 2009: Whitehouse reveals that CIA conducting "substantive comment and classification review"

July 9, 2009: Yoo appeals decision on Padilla suit—and DOJ stops representing Yoo; Miguel Estrada would take on that role

July 12, 2009: Scott Horton reports that reading OPR Report was one thing that convinced Eric Holder to launch criminal review of torture

Prior to August 24, 2009: OPR submits report to Holder, recommends reopening criminal investigation into torture

August 24, 2009: Holder announces criminal investigation, citing (among other things) OPR report

November 16, 2009: Yoo submits opening brief in Padilla suit appeal

November 18, 2009: Holder announces OPR report due out "this month;" Court grants government extension to December 3 to submit amicus brief

November 20, 2009: Padilla requests extension—because of delay in government brief—until January 15

December: Margolis, purportedly reviewing OPR report, out sick (though reports say Yoo's lawyer making last appeal for changes)

December 3, 2009: DOJ submits amicus brief claiming that OPR can address Padilla's concerns

December 29, 2009: Yoo starts book publicity

January 18, 2010: Padilla submits response to appeal

January 29, 2010: Klaidman and Isikoff report

OPR conclusions have been altered

HASSAN GHUL TIMELINE

The known dates pertaining to Hassan Ghul's capture and subsequent OLC memos pertaining to his torture.

January 22, 2004: Hassan Ghul detained by Kurds

February 21, 2004: Directorate of Intelligence document, "US Efforts Grinding Down al-Qa'ida," says Ghul was captured while on a mission "to establish contact" with Zarqawi

February 24, 2004:

THE APRIL 22, 2005 FAX ON TORTURE

There's an April 22, 2005 fax that Steven Bradbury relied on for his May 10, 2005 "Combined" memo that totally dismantles the premise of the May 10, 2005 "Techniques" memo.

VAUGHN WALKER'S CHESS GAME: SUE THE TELECOMS PART ONE

Here are the potential areas under which EFF might be able to sue the telecoms going forward.

THE TERRORISM INTELLIGENCE AND THE BRIEFING SCHEDULE

I suggested yesterday that one of the explanations for the CIA's unreliable record of briefings on torture and terrorism in 2002 and 2003 might reflect an attempt to hide certain information.

Did CIA not reveal they were torturing detainees to dodge any question about the accuracy of claims about Iraq intelligence?

While we don't know the full schedule of briefings on Iraq intelligence, the schedule of intelligence documents pertaining to Iraqi ties