

# THE NEW YORKER

COMMENT

## THE AL QAEDA SWITCHBOARD

BY LAWRENCE WRIGHT

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Edward Snowden has started a critical debate about the legality and the effectiveness of the N.S.A.'s practice of collecting unlimited records of telephone calls made to, from, and within the United States. Last month, two federal judges came to opposing conclusions about these issues. On December 16th, Judge Richard J. Leon, in Washington, D.C., ruled that the indiscriminate hoarding violates the Fourth Amendment right to privacy and its prohibition of unreasonable searches. Two weeks later, in New York, Judge William H. Pauley III ruled that the metadata-collection program was lawful and effective.

Judge Pauley invoked the example of Khalid al-Mihdhar, a Saudi jihadist who worked for Al Qaeda. On 9/11, he was one of the five hijackers of American Airlines Flight 77, which crashed into the Pentagon. In early 2000, Mihdhar made seven calls from San Diego to an Al Qaeda safe house in Yemen. According to Pauley, the N.S.A. intercepted the calls, but couldn't identify where Mihdhar was calling from. Relying on testimony by Robert Mueller, the former director of the F.B.I., Pauley concluded that



metadata collection could have allowed the bureau to discover that the calls were being made from the U.S., in which case the bureau could have stopped 9/11.

If he is right, advocates of extensive monitoring by the government have a strong case. But the Mihdhar calls tell a different story about why the bureau failed to prevent the catastrophe. The C.I.A. withheld crucial intelligence from the F.B.I., which has the ultimate authority to investigate terrorism in the U.S. and attacks on Americans abroad.

In August, 1998, truck bombs destroyed two American Embassies, in Kenya and Tanzania, killing two hundred and twenty-four people. Three days later, F.B.I. investigators captured a young Saudi named Mohammad al-‘Owhali at a hotel outside Nairobi. He had fresh stitches in his forehead and bloody bandages on his hands. In his pocket were eight brand-new hundred-dollar bills. Two skilled interrogators, Steve Gaudin and John Anticev, persuaded ‘Owhali to write down the number he called after the bombing. It belonged to Khalid al-Mihdhar’s father-in-law, Ahmed al-Hada, and was one of the most important pieces of information ever obtained in the effort to prevent terrorist acts in the U.S. It became known as the Al Qaeda switchboard.

The N.S.A.’s tracking of calls to and from the Hada household allowed the F.B.I. to map the global network of Al Qaeda. But not all the information was shared. In 1999, Mihdhar’s name surfaced in one of the recorded calls, linking him to Al Qaeda. “Something nefarious might be afoot,” an N.S.A. analyst wrote, but Mihdhar’s name was not passed on to the F.B.I.

Saudi intelligence also alerted the C.I.A. that Mihdhar and his friend Nawaf al-Hazmi, another future hijacker, were members of Al Qaeda. In December, 1999, the C.I.A. learned through the Al Qaeda switchboard that the two would be travelling to Malaysia for a meeting in early January. The agency broke into Mihdhar’s hotel room in Dubai and photographed his passport, which had a multi-entry visa to the U.S. That information was not given to the F.B.I.; nor was the State Department told to revoke his visa, or Immigration to place Mihdhar and Hazmi on the list of people forbidden to enter the U.S. The C.I.A. evidently had begun an operation, and it wanted no interference from other government agencies.

The meeting in Malaysia turned out to be an Al Qaeda summit to discuss plans for 9/11 and the bombing of the U.S.S. Cole, which took place in October, 2000. The C.I.A. had its Malaysian counterparts conduct surveillance of the meeting, but did not show that information—mainly photographs of the participants—to the F.B.I., in effect obstructing its investigation into the deaths of seventeen American sailors.

When the cable about Mihdhar’s U.S. visa and the Malaysia meeting arrived at the C.I.A.’s Counterterrorism Center, an F.B.I. officer sought permission to transmit the findings to the bureau. Although there was a protocol to allow the C.I.A. and the F.B.I. to exchange critical information, he

was told, “This is not a matter for the F.B.I.”

Three months later, the C.I.A. learned from Thai intelligence that Hazmi had arrived in Los Angeles on January 15, 2000. If the agency had checked the flight manifest, it would have found that Mihdhar was travelling with him. Mihdhar and Hazmi moved to San Diego and began taking flying lessons. And Mihdhar began calling Yemen.

Judge Pauley cites the 9/11 Commission Report for his statement that telephone metadata “might have permitted the N.S.A. to notify the [F.B.I.] of the fact that al-Mihdhar was calling the Yemeni safe house from inside the United States.” What the report actually says is that the C.I.A. and the N.S.A. already knew that Al Qaeda was in America, based on the N.S.A.’s monitoring of the Hada phone. If they had told the F.B.I., the agents would have established a link to the embassy-bombings case, which “would have made them very interested in learning more about Mihdhar.” Instead, “the agents who found the source were being kept from obtaining the fruits of their work.”

The N.S.A. failed to understand the significance of the calls between the U.S. and Yemen. The C.I.A. had access to the intelligence, and knew that Al Qaeda was in the U.S. almost two years before 9/11. An investigation by the C.I.A.’s inspector general found that up to sixty people in the agency knew that Al Qaeda operatives were in America. The inspector general said that those who refused to cooperate with the F.B.I. should be held accountable. Instead, they were promoted.

Yes, the F.B.I. could have stopped 9/11. It had a warrant to establish surveillance of everyone connected to Al Qaeda in America. It could follow them, tap their phones, clone their computers, read their e-mails, and subpoena their medical, bank, and credit-card records. It had the right to demand records from telephone companies of any calls they had made. There was no need for a metadata-collection program. What was needed was cooperation with other federal agencies, but for reasons both petty and obscure those agencies chose to hide vital clues from the investigators most likely to avert the attacks.

The intelligence community has since been reorganized to prevent such closeting of information. Many terrorist schemes have been discovered and prevented. But questions remain about how the C.I.A. handled events leading up to 9/11. What did the agency intend to do about the Al Qaeda operatives in America? The former national-security adviser Richard Clarke believes that the C.I.A. hoped to recruit them.

Edward Snowden broke the law, and the Obama Administration has demanded that he be brought to justice. No one has died because of his revelations. The C.I.A.’s obstruction of justice in the Cole investigation arguably also was a crime. Its failure to share information from the Al Qaeda switchboard opened the door to the biggest terrorist attack in history. As long as we’re talking about accountability, why shouldn’t we demand it of the C.I.A.? ♦

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