

# Judge Falls for The Big Lie About NSA Spying

By [Washington's Blog](#)

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Even Before 9/11, NSA Knew In Real-Time Which Countries Both Parties to Phone Calls Were In

In finding the NSA's metadata collection program legal today, Judge William Pauley III [ruled](#):

The September 11th terrorist attacks revealed, in the starkest terms, just how dangerous and interconnected the world is. While Americans depended on technology for the conveniences of modernity, al-Qaeda plotted in a seventh-century milieu to use that technology against us. It was a bold jujitsu. And it succeeded because conventional intelligence gathering could not detect diffuse filaments connecting al-Qaeda.

Prior to the September 11th attacks, the National Security Agency ("NSA") intercepted seven calls made by hijacker Khalid al-Mihdhar, who was living in San Diego, California, to an al-Qaeda safe house in Yemen. The NSA intercepted those calls using overseas signals intelligence capabilities that could not capture al-Mihdhar's telephone number identifier. Without that identifier, NSA analysts concluded mistakenly that al-Mihdhar was overseas and not in the United States. Telephony metadata would have furnished the missing information and might have permitted the NSA to notify the Federal Bureau of Investigation ("FBI") of the fact that al-Mihdhar was calling the Yemeni safe house from inside the United States.

The Government learned from its mistake and adapted to confront a new enemy: a terror network capable of orchestrating attacks across the world. It launched a number of counter-measures, including a bulk telephony metadata collection program—a wide net that could find and isolate gossamer contacts among suspected terrorists in an ocean of seemingly disconnected data.

This blunt tool only works because it collects everything. Such a program, if unchecked, imperils the civil liberties of every citizen. Each time someone in the United States makes or receives a telephone call, the telecommunications provider makes a record of when, and to what telephone number the call was placed, and how long it lasted. The NSA collects that telephony metadata. If plumbed, such data can reveal a rich profile of every individual as well as a comprehensive record of people's associations with one another.

Judge Pauley is uninformed ... and he fell for the ["big lie"](#) behind NSA spying.

Bill Binney – the high-level NSA executive who *created* the agency's mass surveillance program for digital information, senior technical director within the agency who managed thousands of NSA employees, interviewed by [CBS](#), [ABC](#), [CNN](#), [New York Times](#), [USA Today](#), [Fox News](#), [PBS](#) and many others – told Washington's Blog:

[NSA chief Keith] Alexander wants you and everybody (including this clueless judge) to believe that caller ID does not work. First of all, all the calls that are made in the world are routed by machines. And, with machines, you have to tell them exactly what to do. Which means, the routing instructions calling nr and called nr have to be passed through the machines to route the call to get from point A to point B in the world.

So, he is feeding everyone a line of crap. If you buy into this, I have a bridge I would like to sell.

Also, all calls going from one region of the world to another are preceded by 01 or 011 in region "1" (US/Canada/some islands) or by "00" in the rest of the world. And that goes both ways on any call.

The Public Switch Telephone Network (PSTN) numbering plan is how we could eliminate all US to US calls right up front and never take them in.

In other words, while Binney headed NSA's global digital communications gathering efforts prior to 9/11, his team knew in *real-time* which countries calls were made from and received in. The NSA is lying if it claims otherwise.

ProPublica notes:

"There were plenty of opportunities without having to rely on this metadata system for the FBI and intelligence agencies to have located Mihdhar," says former Senator Bob Graham, the Florida Democrat who [extensively investigated](#) 9/11 as chairman of the Senate's intelligence committee.

These missed opportunities are described in detail in the joint congressional [report](#) produced by Graham and his colleagues as well as in the 9/11 Commission [report](#).

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Mihdhar was on the intelligence community's radar at least as early as 1999. That's when the NSA had picked up communications from a "terrorist facility" in the Mideast suggesting that members of an "operational cadre" were planning to travel to Kuala Lumpur in January 2000, according to the [commission report](#). The NSA picked up the first names of the members, including a "Khalid." The CIA identified him as Khalid al Mihdhar.

The U.S. got photos of those attending the January 2000 meeting in Malaysia, including of Mihdhar, and the CIA also learned that his passport had a visa for travel to the U.S.

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Using their true names, Mihdhar and Hazmi for a time beginning in May 2000 even [lived with](#) an active FBI informant in San Diego.

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Let's turn to the [comments](#) of FBI Director Robert Mueller before the House Judiciary Committee last week.

Mueller noted that intelligence agencies lost track of Mihdhar following the January 2000 Kuala Lumpur meeting but at the same time had identified an "Al Qaida safe house in Yemen."

He continued: “They understood that that Al Qaida safe house had a telephone number but they could not know who was calling into that particular safe house. We came to find out afterwards that the person who had called into that safe house was al Mihdhar, who was in the United States in San Diego. If we had had this [metadata] program in place at the time we would have been able to identify that particular telephone number in San Diego.”

In turn, the number would have led to Mihdhar and potentially disrupted the plot, Mueller argued.

([Media accounts](#) indicate that the “safe house” was actually the home of Mihdhar’s father-in-law, himself a longtime al Qaida figure, and that the NSA had been intercepting calls to the home for several years.)

The congressional 9/11 report sheds some [further light](#) on this episode, though in highly redacted form.

The NSA had in early 2000 analyzed communications between a person named “Khaled” and “a suspected terrorist facility in the Middle East,” according to this account. But, crucially, the intelligence community “did not determine the location from which they had been made.”

In other words, the report suggests, the NSA actually picked up the content of the communications between Mihdhar and the “Yemen safe house” but was not able to figure out who was calling or even the phone number he was calling from.

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Theories about the metadata program aside, it’s not clear why the NSA couldn’t or didn’t track the originating number of calls to Yemen it was already listening to.

Intelligence historian Matthew Aid, who wrote the 2009 NSA history [Secret Sentry](#), says that the agency would have had both the technical ability and legal authority to determine the San Diego number that Mihdhar was calling from.

“Back in 2001 NSA was routinely tracking the identity of both sides of a telephone call,” [9/11 Commission Executive Director Philip Zelikow] told ProPublica.

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There’s another wrinkle in the Mihdhar case: In the years after 9/11, [media reports](#) also suggested that there were multiple calls that went in the other direction: from the house in Yemen to Mihdhar in San Diego. But the NSA apparently also failed to track where those calls were going.

In 2005, the Los Angeles Times [quoted](#) unnamed officials saying the NSA had well-established legal authority before 9/11 to track calls made from the Yemen number to the U.S. In that more targeted scenario, a metadata program vacuuming the phone records of all Americans would appear to be unnecessary.

And see [this PBS special](#), and [this ACLU comment](#).

Indeed, the NSA and other U.S. government agencies had been spying on Midhar *for a long time* before 9/11.

Initially, an [FBI informant hosted and rented a room to Mihdhar and another 9/11 hijacker](#) in 2000.

Investigators for the Congressional Joint Inquiry [discovered](#) that an FBI informant had hosted and even rented a room to two hijackers in 2000 and that, when the Inquiry sought to interview the informant, the FBI refused outright, and then hid him in an unknown location, and that a high-level FBI official stated these blocking maneuvers were undertaken under orders from the White House.

As the New York Times [notes](#):

Senator Bob Graham, the Florida Democrat who is a former chairman of the Senate Intelligence Committee, accused the White House on Tuesday of covering up evidence ....The accusation stems from the Federal Bureau of Investigation's refusal to allow investigators for a Congressional inquiry and the independent Sept. 11 commission to interview an informant, Abdussattar Shaikh, who had been the landlord in San Diego of two Sept. 11 hijackers.

Moreover, Wikipedia [notes](#):

Mihdhar was placed on a CIA watchlist on August 21, 2001, and a note was sent on August 23 to the Department of State and the Immigration and Naturalization Service (INS) suggesting that Mihdhar and Hazmi be added to their watchlists.

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On August 23, the CIA informed the FBI that Mihdhar had obtained a U.S. visa in Jeddah. The FBI headquarters received a copy of the Visa Express application from the Jeddah embassy on August 24, showing the New York Marriott as Mihdhar's destination.

On August 28, the FBI New York field office requested that a criminal case be opened to determine whether Mihdhar was still in the United States, but the request was refused. The FBI ended up treating Mihdhar as an intelligence case, which meant that the FBI's criminal investigators could not work on the case, due to the barrier separating intelligence and criminal case operations. An agent in the New York office sent an e-mail to FBI headquarters saying, "Whatever has happened to this, someday someone will die, and the public will not understand why we were not more effective and throwing every resource we had at certain 'problems.'" The reply from headquarters was, "we [at headquarters] are all frustrated with this issue ... [t]hese are the rules. NSLU does not make them up."

The FBI contacted Marriott on August 30, requesting that they check guest records, and on September 5, they reported that no Marriott hotels had any record of Mihdhar checking in. The day before the attacks, the New York office requested that the Los Angeles FBI office check all local Sheraton Hotels, as well as Lufthansa and United Airlines bookings, because those were the two airlines Mihdhar had used to enter the country. Neither the Treasury Department's Financial Crimes Enforcement Network nor the FBI's Financial Review Group, which have access to credit card and other private financial records, were notified about Mihdhar prior to September 11.

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Army Lt. Col. Anthony Shaffer and Congressman Curt Weldon alleged in 2005 that the Defense Department data mining project Able Danger identified Mihdhar and 3 other 9/11 hijackers as members of an al-Qaeda cell in early 2000.

We [reported](#) in 2008:

As leading NSA expert James Bamford – the Washington Investigative Producer for ABC’s World News Tonight with Peter Jennings for almost a decade, winner of a number of journalism awards for coverage national security issues, whose articles have appeared in dozens of publications, including cover stories for the New York Times Magazine, Washington Post Magazine, and the Los Angeles Times Magazine, and the only author to write any books (he wrote 3) on the NSA – [reports](#), the NSA was also tapping the hijackers’ phone calls inside the U.S.

Specifically, hijackers Khalid al-Mihdhar and Nawaf al-Hazmi lived in San Diego, California, for 2 years before 9/11. Numerous phone calls between al-Mihdhar and Nawaf al-Hazmi in San Diego and a high-level Al Qaeda operations base in Yemen were made in those 2 years.

The NSA had been tapping and eavesdropping on all calls made from that Yemen phone for years. So NSA recorded all of these phone calls.

Indeed, the CIA knew as far back as 1999 that al-Mihdhar was coming to the U.S. Specifically, in 1999, CIA operatives tailing al-Mihdhar in Kuala Lumpur, Malaysia, obtained a copy of his passport. It contained visas for both Malaysia and the U.S., so they knew it was likely he would go from Kuala Lumpur to America.

NSA veteran Bill Binney previously told Washington’s Blog:

Of course they could have and did have data on hijackers before 9/11. And, Prism did not start until 2007. But they could get the data from the “Upstream” collection. This is the Mark Klein documentation of Narus equipment in the NSA room in San Francisco and probably other places in the lower 48. They did not need Prism to discover that. Prism only supplemented the “Upstream” material starting in 2007 according to the slide.

Details [here](#) and [here](#).

Another high-level NSA whistleblower – Thomas Drake – [testified](#) in a declaration last year that an NSA pilot program he and Binney directed:

Revealed the extent of the connections that the NSA had within its data prior to the [9/11] attacks. The NSA found the array of potential connections among the data that it already possessed to be potentially embarrassing. To avoid that embarrassment, the NSA suppressed the results of the pilot program. I had been told that the NSA had chosen not to pursue [the program] as one of its methods for combatting terrorism. Instead, the NSA had previously chosen to delegate the development of a new program, named “Trailblazer” to a group of outside contractors.

Moreover, widespread spying on Americans began [before 9/11](#) (confirmed [here](#), [here](#), [here](#), [here](#) and [here](#)).

And U.S. and allied intelligence [heard the 9/11 hijackers plans from their own mouths](#):

- According to Le Monde, the intelligence services of America's close ally France and of other governments had [infiltrated the highest levels of Al-Qaeda's camps, and actually listened to the hijackers' debates about which airlines' planes should be hijacked, and allied intelligence services also intercepted phone conversations between Al-Qaeda members regarding the attacks](#)
- According to journalist Christopher Ketcham, America's close ally Israel [tracked the hijackers' every move prior to the attacks, and sent agents to film the attack on the World Trade Centers](#)
- The [National Security Agency](#) and the [FBI](#) were each independently listening in on the phone calls between the supposed mastermind of the attacks and the lead hijacker. Indeed, the FBI built its own antenna in Madagascar specifically to listen in on the mastermind's phone calls
- According to various sources, on the day before 9/11, the mastermind [told](#) the lead hijacker "tomorrow is zero hour" and gave final approval for the attacks. The NSA intercepted the message that day and the FBI was likely also monitoring the mastermind's phone calls
- Shortly before 9/11, the NSA also intercepted [multiple phone calls to the United States from Bin Laden's chief of operations](#)
- The CIA and the NSA had been [intercepting phone calls by the hijackers](#) for years (see also [this](#))
- According to the Sunday Herald, two days before 9/11, Bin Laden [called](#) his stepmother and told her "In two days, you're going to hear big news and you're not going to hear from me for a while." U.S. officials later [told CNN](#) that "in recent years they've been able to monitor some of bin Laden's telephone communications with his [step]mother. Bin Laden at the time was using a satellite telephone, and the signals were intercepted and sometimes recorded." Indeed, before 9/11, to impress important visitors, NSA analysts would occasionally play audio tapes of bin Laden talking to his stepmother.
- And according to [CBS News](#), at 9:53 a.m on 9/11, just 15 minutes after the hijacked plane had hit the Pentagon, "the National Security Agency, which monitors communications worldwide, intercepted a phone call from one of Osama bin Laden's operatives in Afghanistan to a phone number in the former Soviet Republic of Georgia", and secretary of Defense Rumsfeld learned about the intercepted phone call in real-time (if the NSA monitored and transcribed phone calls in real-time *on* 9/11, that implies that it did so in the months leading up to 9/11 as well)

But even with all of that spying, the government didn't stop the hijackers ... even though 9/11 was [entirely foreseeable](#). Moreover, [the entire "lone wolf" theory](#) for mass surveillance is false. In reality, 9/11 was [state-backed terror](#).

As such, blaming 9/11 on a lack of ability of the NSA to spy is wholly false.

As TechDirt [notes](#):

The [court's] footnote refers to the 9/11 Commission Report whose findings directly contradict this narrative. The problem was not that the information wasn't there. It was that it wasn't shared. It was the fact that the CIA lost al-Mihdhar, but rather than issue an alert or place him on a watch list, it chose to do nothing. Many things went wrong, but not having the intel wasn't the issue.

Indeed, the Boston Bombing proves that mass surveillance isn't what's needed. Even though the alleged [Boston bombers' phones were tapped](#) - and NBC News [reports](#), "under the post-9/11 Patriot Act, the government has been collecting records on every phone call made in the U.S." - mass surveillance [did not stop](#) the other terror attack on U.S. soil since 9/11.

In reality - despite the government [continually grasping at straws](#) to justify its massive spying program - top security experts say that mass surveillance of Americans [doesn't keep us safe](#). Indeed, they say that mass spying [actually hurts U.S. counter-terror efforts](#) (more [here](#) and [here](#)).

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