jared t miller editing portfolio, *The Intercept*

personal vision

The Intercept_

UNOFFICIAL
_SOURCES

Hacked Audio Reveals Hillary Clinton Sees Herself Occupying "Center-Left to Center-Right"

Lee Fang, Alex Emmons

September 30 2016, 5:31 p.m.

441

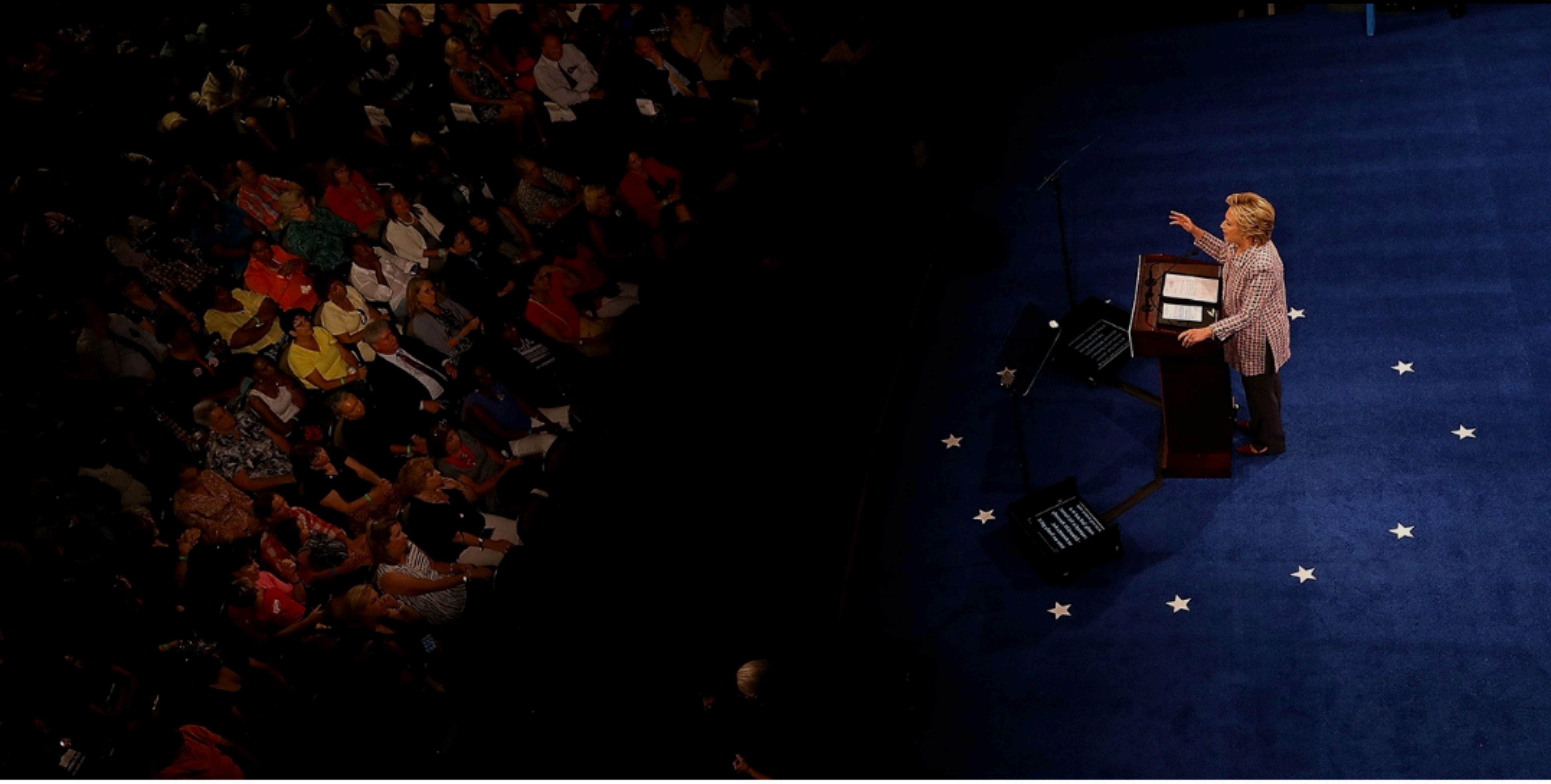


Photo: Justin Sullivan/Getty Images

IN THE HACKED recording of a private conversation with campaign donors in February, Hillary Clinton distanced herself from progressive goals like "free college, free healthcare" and described her place on the political spectrum as spanning from the center-left to the center-right.

Clinton has been inconsistent in the past about espousing political labels. She has at times touted herself as stalwart liberal. For instance, she said last July: "I take a backseat to no one when you look at my record in standing up and fighting for progressive values." But a few months later, she told a group in Ohio: "You know, I get accused of being kind of moderate and center. I plead guilty."

The newly disclosed comments came in audio, apparently from hacked emails, that was revealed this week by the Washington Free Beacon, a conservative blog run by a Republican communications strategist. Clinton was speaking at a Virginia fundraiser hosted

The Intercept_
UNOFFICIAL
_SOURCES

Donald Trump Leads the War on Truth — but He Didn't Start It

Mattathias Schwartz

September 26 2016, 11:56 a.m.

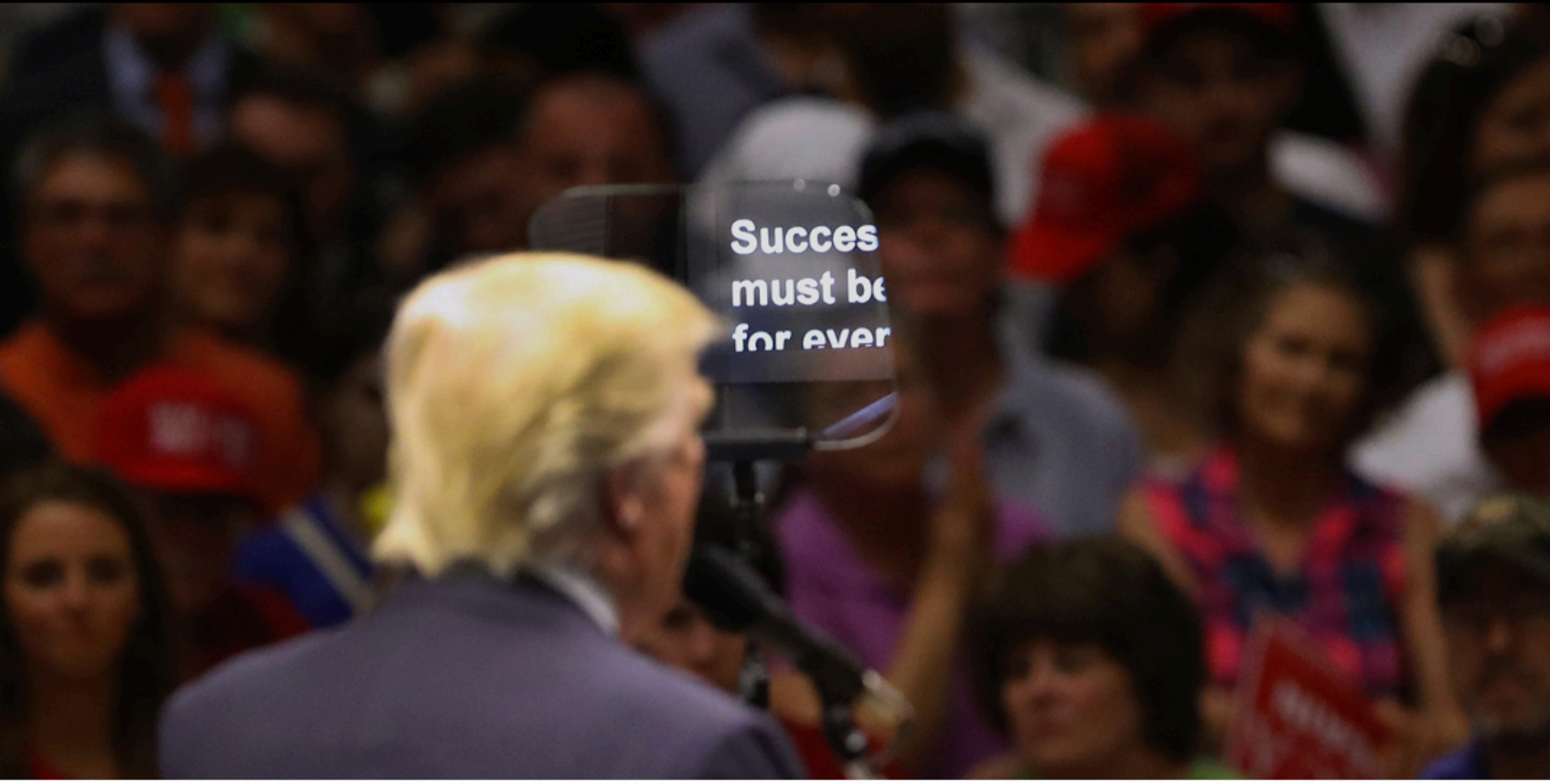


Photo: John Moore/Getty Images

AS THE FIRST presidential debate looms, the choice between Hillary Clinton and Donald Trump is being billed as something more than red versus blue, rich versus poor, or war versus peace. The election is being billed as something even larger – a national referendum on the nature of truth itself.

The choice, according to New York Times columnist Nicholas Kristof, is between a respected politician with some regard for the facts, and a "charlatan," "con man," and "duplicitous demagogue." The New York Times, Los Angeles Times, and New Yorker have all drawn up detailed anthologies of Trump's lies. Hopes that the debates' moderators might call Trump out on his bad facts are looking unlikely to be fulfilled. "What is a big fact? What is a little fact?" Janet Brown, the head of the Commission on Presidential Debates, asked CNN's Brian Stelter on Sunday afternoon. "I don't think it's a good idea to get the moderator into essentially serving as the Encyclopedia Britannica."

The Intercept_

OBAMA WORRIES FUTURE PRESIDENTS WILL WAGE PERPETUAL, COVERT DRONE WAR

Ryan Devereaux, Alex Emmons

October 3 2016, 4:42 p.m.

227

Photo: Saul Loeb/AFP/Getty Images

LEIA EM PORTUGUÊS ⟶

PRESIDENT OBAMA WARNS in a new interview of a future in which a U.S. president could engage in perpetual covert wars “all over the world.” But he claims that the accountability and transparency measures he is instituting will make that less likely.

In the interview, with New York magazine’s Jonathan Chait, Obama expressed agreement with one of the most salient critiques of his drone war, that it risks creating “institutional comfort and inertia with what looks like a pretty antiseptic way of disposing of enemies.”

Obama explained that he had looked at “the way in which the number of drone strikes was going up and the routineness with which, early in my presidency, you were seeing both DOD and CIA and our intelligence teams think about this.”

He continued: “And it troubled me, because I think you could see, over the horizon, a situation in which, without Congress showing much interest in restraining actions with authorizations that were written really broadly, you end up with a president who can carry on perpetual wars all over the world, and a lot of them covert, without any accountability or democratic debate.”

The Intercept_

EX-YAHOO EMPLOYEE: GOVERNMENT SPY PROGRAM COULD HAVE GIVEN A HACKER ACCESS TO ALL EMAIL

Sam Biddle

October 7 2016, 10:27 a.m.

ACH SEARCH
DOW JONES
VACANCY
YAHOO!
Where the world checks every da
You talked.
We listened.
Walgr
DO NOT ENTER

Photo: Spencer Platt/Getty Images

LEIA EM PORTUGUÊS ⟶

CONTRARY TO A denial by Yahoo and a report by the New York Times, the company's scanning program, revealed earlier this week by Reuters, provided the government with a custom-built back door into the company's mail service — and it was so sloppily installed that it posed a privacy hazard for hundreds of millions of users, according to a former Yahoo employee with knowledge of the company's security practices.

Despite this week's differing media accounts, this much isn't disputed: In 2015, Yahoo provided the U.S. government with the means to scan every single email that landed in every single Yahoo Mail inbox. The scanning was kept an absolute secret — and as this ex-Yahoo source describes, that meant keeping it a secret from security personnel who came to believe it endangered Yahoo's hundreds of millions of unwitting customers.

The employee, who worked at Yahoo before, during, and after the installation of the email-scanning program, requested anonymity because of a nondisclosure agreement formed when the individual quit several months after the program was discovered internally last summer. The source declined to share certain specific names for fear of

POLICE UNIONS REJECT CHARGES OF BIAS, FIND A HERO IN DONALD TRUMP

Alice Speri

October 9 2016, 7:45 a.m.

31

Photo: Jason Connolly/AFP/Getty Images

DURING THE FIRST presidential debate, Donald Trump answered a question about how to heal the country's racial divide by boasting of his law enforcement endorsements.

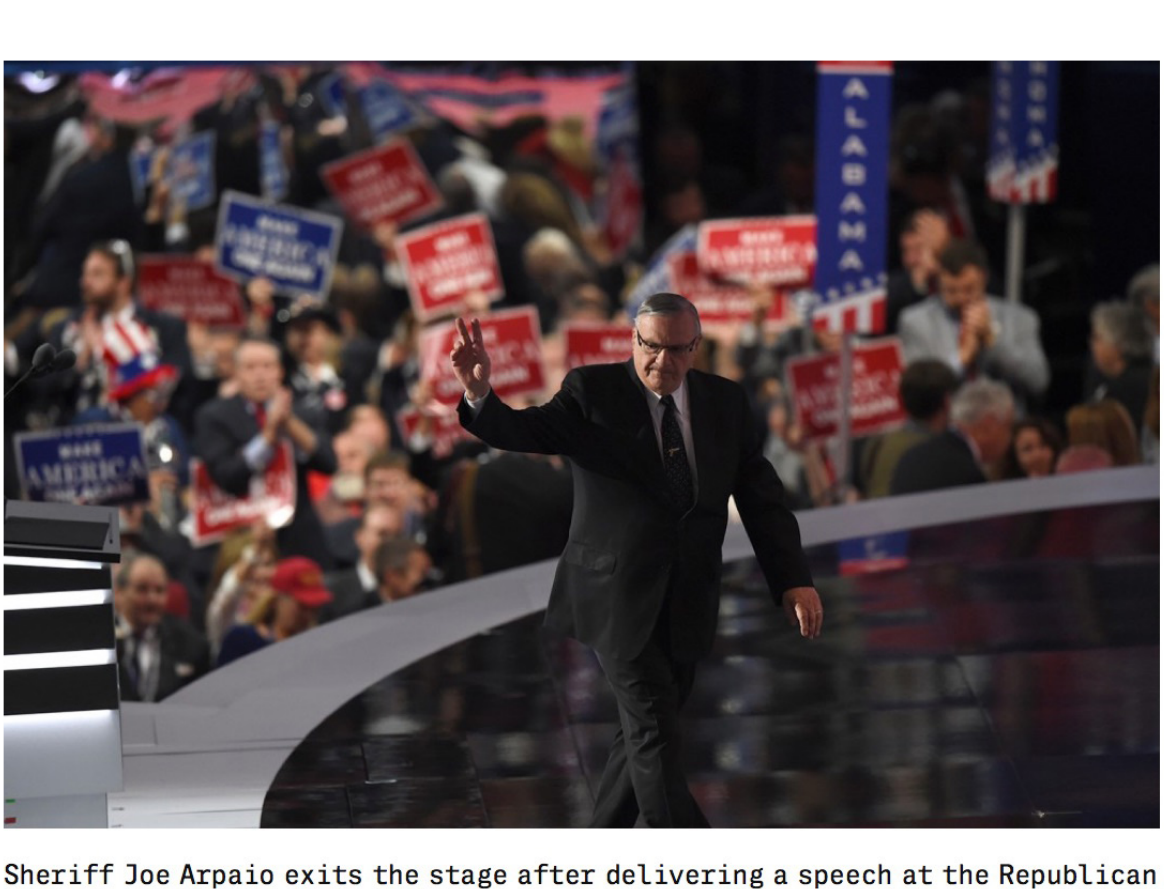
"We have endorsements from, I think, almost every police group," he said, before rephrasing to "a large percentage of them." Later in the debate, in response to a question about cybersecurity, he boasted again: "I was just endorsed by ICE. They've never endorsed anybody before on immigration. I was just endorsed by ICE."

As is often the case, the candidate's statements were hyperbolic in the first claim and plain incorrect in the second. U.S. Immigrations and Customs Enforcement, a federal agency operating under the Department of Homeland Security, did not, of course, endorse anyone, even though the National ICE Council, the union representing 7,600 of ICE's 20,000 employees, did endorse Trump. And while the Fraternal Order of Police, the largest police association in the country, as well as some local police unions, also endorsed Trump, that's hardly every police group in the country.

But Trump did have a point: At a time when law enforcement is perhaps the only issue that divides Americans more than the presidential election itself, a notable number of police and immigration officers are throwing their weight behind his candidacy — at least through their unions and associations.

In addition to the Fraternal Order of Police — which represents some 330,000 members, both active and retired, out of nearly 900,000 police officers nationwide — Trump won the endorsement of the New England Police Benevolent Association. Earlier this week, he also won the support of the Cleveland Police Patrolmen's Association — a notable endorsement in a city under a federal decree to rein in its police department's excessive use of force and struggling to restore relationships with black residents after a series of police killings.

On the immigration enforcement front, Trump, who launched his presidential race calling Mexican immigrants "rapists" and "criminals," earned the support of both the ICE union and the National Border Patrol Council, which represents 16,500 of 21,000 Border Patrol agents. He also earned the endorsement of some high-profile, if controversial, sheriffs — including Joe Arpaio in Arizona, David Clarke in Milwaukee, and several others who have "murky legal histories" and a reputation for racist and anti-immigrant views.



Sheriff Joe Arpaio exits the stage after delivering a speech at the Republican National Convention on July 21, 2016. Photo: Toni L. Sandys/The Washington Post/Getty Images

In a way, these endorsements should hardly surprise. The law enforcement profession has traditionally attracted a more conservative crowd, and Trump has billed himself the "law and order" candidate at a time when the broader public is clamoring for police accountability and oversight. But the fact that these endorsements come at a time when trust in police is at a historic low, and that Trump's very response to questions on racial tensions was to position himself as the choice of police, reflects just how deeply the country's fractures run on these issues, and how hard they will be to repair, regardless of the election's outcome.

"There are some safe generalizations we can make about rank-and-file cops and Border Patrol agents and that's that they are generally conservative politically, and generally coming from male-dominated cultures — and I think sexism does play a role in this election," said Norm Stamper, a former chief of the Seattle Police Department and vocal advocate for police reform. "They're also inclined towards tough talk and promise of action, whether it's building a wall and kicking people out of the country or embracing a more aggressive stop-and-frisk policy in inner cities."

Trump's tough talk seemed to convince the Fraternal Order of Police, who in an endorsement statement marked by three exclamation points called Trump "a leader unafraid to make tough choices." The group noted that the candidate responded to a questionnaire it had put out — while Clinton didn't. In his responses, Trump indicated support, among other things, for a controversial federal bill known as the "Blue Lives Matter Act" that aims to expand the definition of hate crime to include law enforcement officers.

Republican presidential candidate Donald Trump speaks to officers while visiting the Manchester Police Department during a shift change on Feb. 4, 2016, in Manchester, New Hampshire. Photo: Joe Raedle/Getty Images

But critics, including some within the law enforcement community, say that Trump's aggressive attitude on law enforcement is informed by flawed understanding of public safety challenges and risks doing more damage than good. Earlier this year, a coalition of police chiefs and prosecutors representing some 30,000 law enforcement professionals published an open letter, addressed to both candidates but responding directly to Trump's calls for "zero tolerance" law and order. "Though this may sound counterintuitive, we know from our experience as law enforcement officials that over-relying on incarceration does not deter crime," they wrote. "Too many resources go toward arresting, prosecuting and imprisoning low-level offenders."

Stamper, the former Seattle police chief, put it more bluntly. "He does not know what he's talking about, the man does not know police work," he told The Intercept. "When he, without thinking, without researching, without developing facts, makes these assertions — for example about stop and frisk — not only is he fueling racism, he taps into a really ineffective and unconstitutional police tactic."

"He makes it up on the fly, and not only is it offensive to professional police officers, it's damaging to the community-police relationship," he added, noting that while rank-and-file officers may embrace Trump, few police chiefs would agree, "because they realize how much harm his presidency would cause to public safety and sound community relations."

Policing — whether the police reform and community-relations building advocated by liberals, or the return to tougher law and order clamored for by conservatives — has been a central issue in this election, propelled to the forefront of the national conversation by the grassroots movement for black lives that grew in response to a seemingly endless number of police killings. But for all the talk about police on the campaign trail, substantial discussion on how to address the crisis this country is facing has been lacking, said Stamper, who wishes candidates debated practical policies to end the war on drugs, set national operating standards to bring some conformity to the 18,000 law enforcement agencies in the country, and developed "true" citizen-driven community policing.

Instead, discussion of policing has been either "too timid and too fearful," or plain inflammatory, he said, as Trump has seized on the fears and frustrations of officers who have responded with vitriol to increased scrutiny of their profession. Stamper noted, for instance, that in the newsletters he receives daily from various police groups, activists for police accountability are invariably referred to as "BLM thugs."

"That's so demoralizing for those of us who are interested in progressive policing and helping cops understand what's in it for them in treating everyone with dignity and respect," he said.

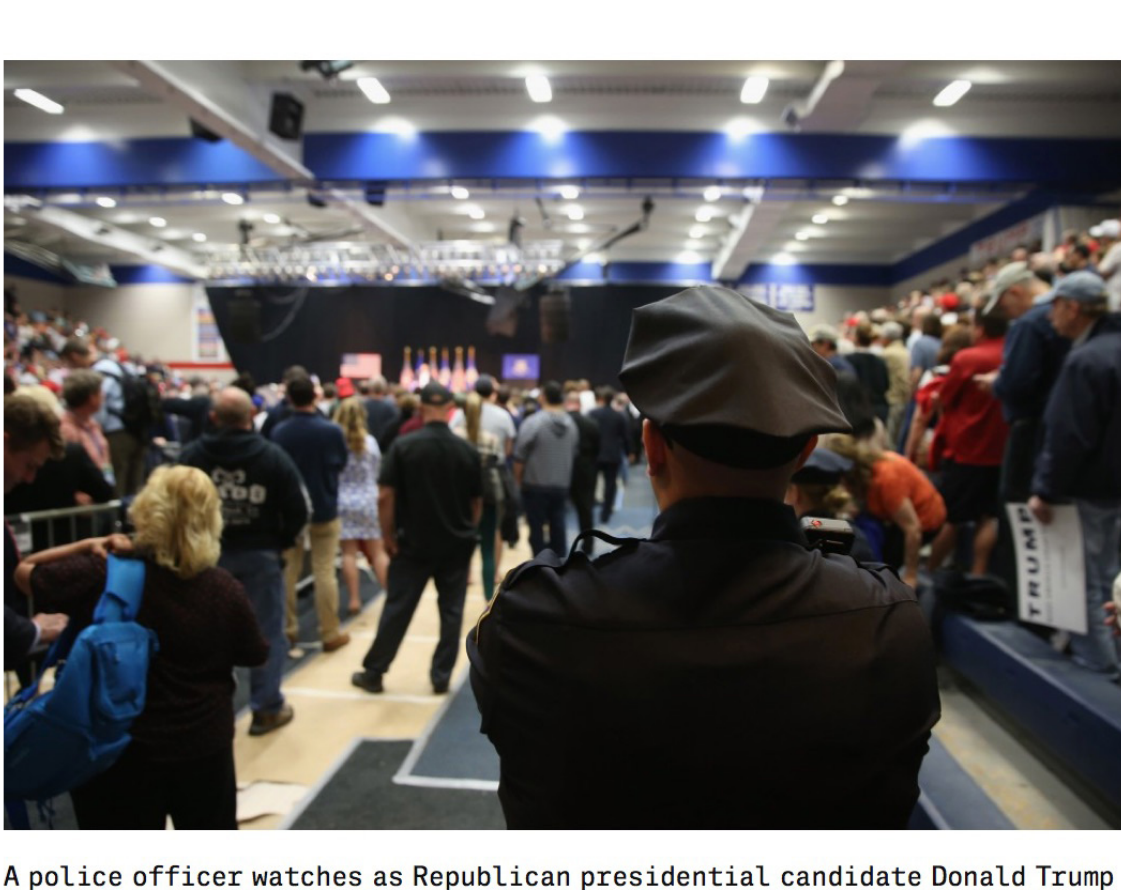
A Slap in the Face for Black Cops

In fact, if the FOP's endorsement of Trump has angered anyone, it's not so much activists as black, Latino, and Muslim officers across the country, for whom Trump's candidacy embodies not only a flawed approach to policing, but also a much broader problem with racism.

In Cleveland, for instance, a largely black and democratic city, the police union's endorsement of Trump is bound to "further polarize us and the community and cause more problems," said Lynn Hampton, president of the Black Shield union, which represents African-American officers. "You're giving police more authority to operate on their biases," he said, before warning, ahead of the announcement, "When the endorsement vote does come down, just know it's not the sentiments of a lot of police officers on the force."

That sentiment was echoed by black law enforcement officers across the country.

"The FOP endorsement is a slap in the face to both black cops and the black community," said Damon Jones, the New York representative of Blacks in Law Enforcement in America, one of a number of black law enforcement associations that have condemned the Trump endorsement. "A lot of black officers disagree."



A police officer watches as Republican presidential candidate Donald Trump speaks at a campaign rally on April 23, 2016, in Waterbury, Connecticut. Photo: John Moore/Getty Images

Jones, a corrections officer, said that Trump's nostalgia for Reagan-era "tough on crime" rhetoric is "dangerous," and the racist atmosphere his candidacy has helped fuel is already doing damage. At the Westchester county jail where Jones works, for example, a white officer was recently suspended after posting a series of racist messages on social media, mocking the Black Lives Matter movement.

"Now everybody's able to see what black law enforcement officers have been saying since we've been in this institution, that it's based on racism," Jones told The Intercept. Trump built on resentment among officers that was already on the rise in recent years, he acknowledged, but he's polarized the issue even further.

"What Donald Trump has raised up with is candidacy is something that's going to last and we are going to have to deal with long beyond this election," he said. "People are now emboldened to attack other people because of their race, or show a racial bias that was silent and now they're bold enough to share."

Jones added that while police unions don't speak for the departments themselves, they represent a large number of their members. He also noted that many of the officers endorsing Trump are closely aligned with the NRA — which also endorsed him, and whose pro-gun advocacy is damaging to both public safety and black communities.

But while slamming his colleagues' endorsement of Trump, Jones was no less critical of the alternative. "The Clintons established the base for the mass incarceration we see in America today, a lot of black people haven't forgotten that," he said. "But against Trump she's an angel now, because that's what we've got to choose from at this point."

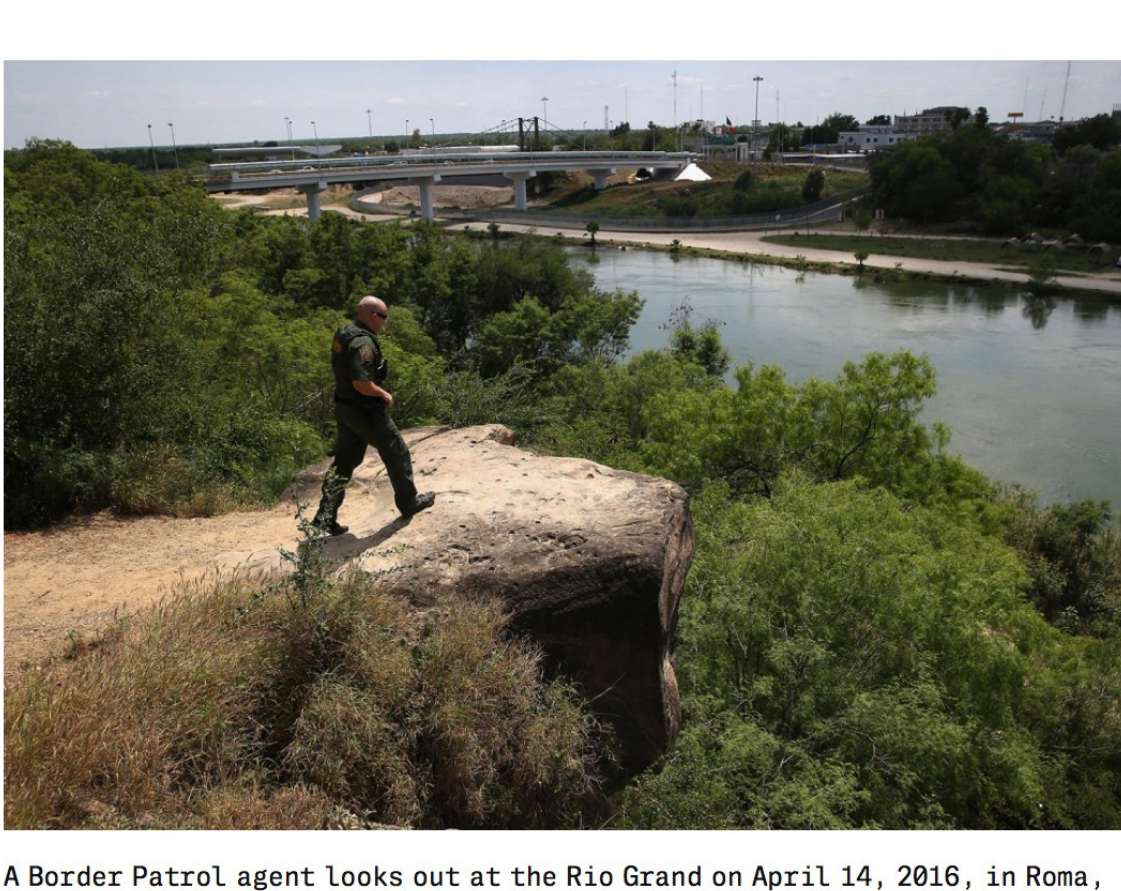
"Will she make the necessary changes after her husband laid the foundations to disrupt the black family and the black community? I really don't know," he added. "But right now, the only thing is no Trump."

Claims vs. Facts

Trump's endorsement by the two leading immigration enforcement unions in the country was also unsurprising, even though neither group had endorsed a presidential candidate before. But those endorsements suggest that immigration reform, like police reform, will continue to be a hard sell for many of the nation's law enforcement officers.

Shawn Moran, vice president of the National Border Patrol Council, said his group's endorsement was "really no brainer."

"He was the only candidate that was talking about taking a stronger stance on border security," he told The Intercept, criticizing what he saw as liberal asylum policies, including for the thousands of children and families that crossed the border in recent years. "We just see more and more areas of immigration law not being enforced and basically being carved out to the point that our agents feel like they're glorified greeters, as the vast majority of people they encounter are released into the country."



A Border Patrol agent looks out at the Rio Grand on April 14, 2016, in Roma, Texas. Photo: John Moore/Getty Images

But that claim — like many of Trump's own — is simply not true. Illegal immigration continues to decline, and Border Patrol agents apprehended 337,117 people in fiscal year 2015, according to the agency's own numbers — down 30 percent from the previous year. At the same time, officers turned back 225,342 inadmissible individuals from ports of entry and arrested another 8,246 wanted for serious crimes. In total, the Department of Homeland Security reported 406,595 apprehensions for immigration violations that year, with 462,463 removals and returns.

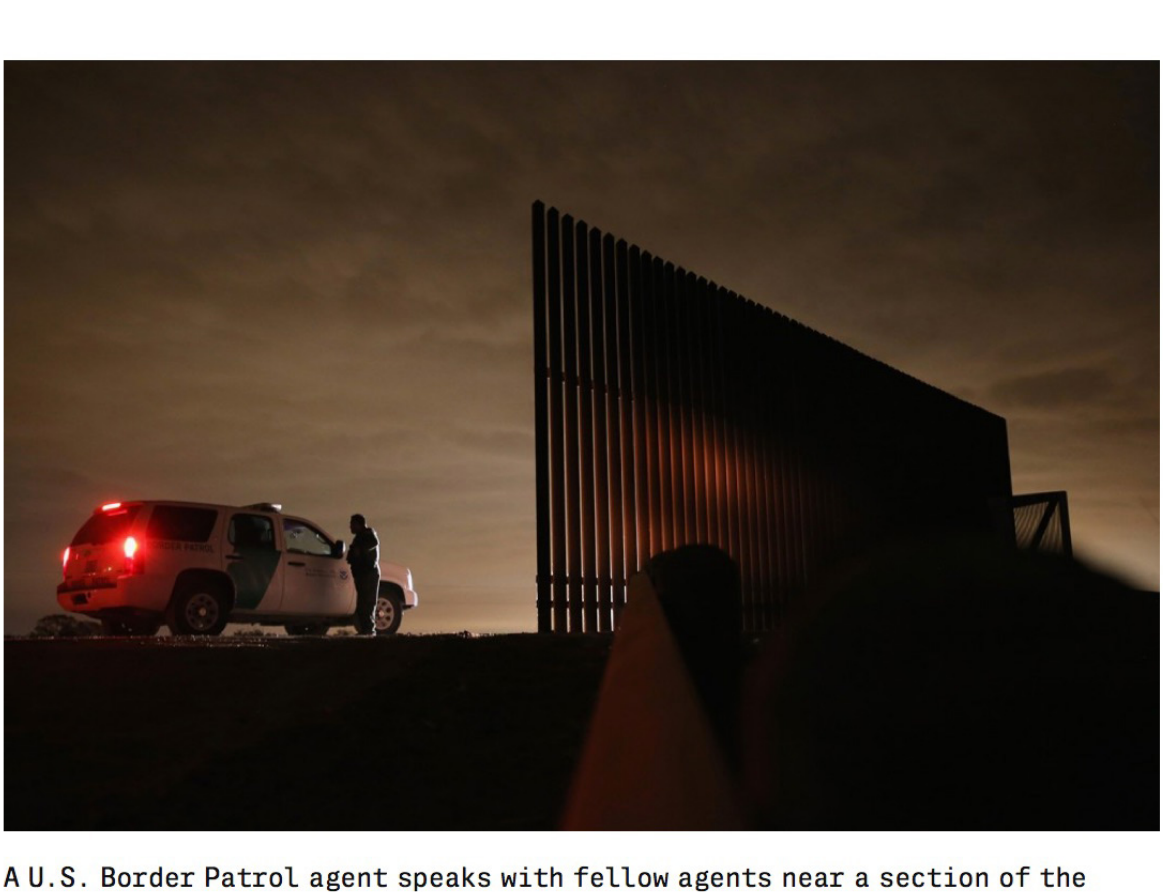
Criminal prosecutions for illegal entry are up 182 percent from 10 years ago. As for asylum seekers, the U.S. is bound by international law to review their cases.

"The U.S. has obligations under international treaties to ensure people with valid claims are able to seek refuge," Grace Meng, a Human Rights Watch senior researcher focusing on immigration issues, told The Intercept. "It's really unfortunate that Border Patrol thinks its job is to deport people. Its job is to enforce U.S. immigration laws."

Trump has made some pretty boisterous claims on how to secure the border — and how to pay for that — but he has also been inconsistent on his stance on immigration. But the Border Patrol union dismissed those concerns. "Mr. Trump is correct when he says immigration wouldn't be at the forefront of this presidential campaign if months ago he hadn't made some bold and necessary statements," the union said in a brash statement that at times felt like it was written by the candidate himself. "When the withering media storm ensued, he did not back down one iota."

Moran said that Trump's repeated offenses directed at the Latino community "haven't been an issue" for the union, even though some 52 percent of Border Patrol agents are Latino, as are many in the communities they patrol. In fact, the council has faced criticism even from within the agency's decidedly conservative ranks. In El Paso, for instance, the union's local chapter narrowly failed to disavow the national endorsement. "One of the reasons that El Paso is the safest city in the United States is because of the trust developed between law enforcement and the El Paso community," a group of local agents wrote in a statement. "This trust is undermined by the endorsement of a candidate for president who demeans and degrades immigrants."

The endorsement was also harshly criticized by immigration advocates and some border residents. "Border Patrol's excess and tactics have transformed our communities into theaters of war," Astrid Dominguez, an advocacy coordinator with the ACLU of Texas, wrote in a scathing response to the council's statement, refuting several of their claims.



A U.S. Border Patrol agent speaks with fellow agents near a section of the U.S.-Mexico border fence on April 10, 2013, in La Joya, Texas. Photo: John Moore/Getty Images

Dominguez referenced the Border Patrol's history of misconduct, excessive force, and corruption — which earned it a reputation as the "most out-of-control law enforcement agency" in the country — and cited a former head of the agency's internal affairs operations who found that thousands of its own agents were "potentially unfit" to serve. Dominguez also criticized the immigration record of President Obama — whom the Border Patrol union essentially accused of "betraying this country" — by recalling the record number of deportations under his watch and the massive jump in Border Patrol funding that continued under his administration.

Moran dismissed that criticism and cited statistics claiming that Border Patrol agents resort to deadly force "seven percent less" than other agencies. "It is an extremely rare event for a police officer in this country to shoot and kill someone," he said. "It's going to be seven times more rare that it's going to be a Border Patrol agent."

At least 46 people have died in encounters with Border Patrol agents since 2010, and many more have been brutalized. And while that's undoubtedly far fewer than the 824 people killed by police in 2016 alone, it's hardly an achievement to boast about. If anything, it's further testimony to the depth of the disconnect that divides the country on law enforcement issues — a divide this election is not promising to close.

Top photo: A mounted officer watches as a crowd of supporters of Republican presidential nominee Donald Trump line up outside the Budweiser Events center in Loveland, Colorado, on Oct. 3, 2016.

RELATED

Harvey Weinstein Urged Clinton Campaign to Silence Sanders's Black Lives Matter Message

CONTACT THE AUTHOR:

Alice Speri
alice.speri@theintercept.com
@alicesperi

31 Comments

The Intercept_
Newsletter
Do
Enter your email address
Email list managed by MailChimp

commissioned photography

THE STRANGE CASE OF TENNIE WHITE

Did the EPA Prosecute and Jail a Mississippi Lab Owner Because of Her Activism?

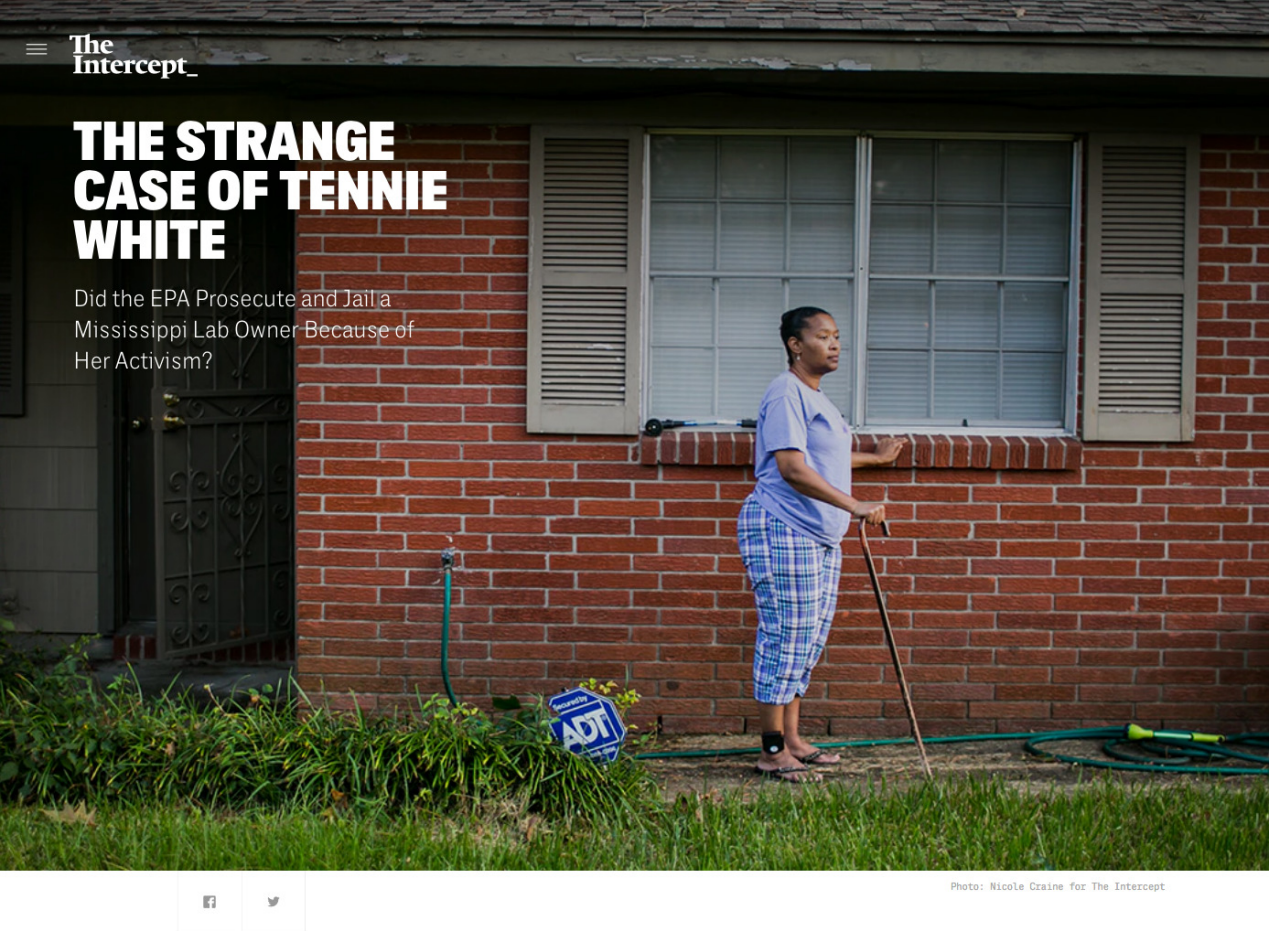


Photo: Nicole Craine for The Intercept

Sharon Lerner
November 25 2016, 8:00 a.m.

In partnership with
typeinvestigations

O N A MUGGY Thursday morning in June, I drove through the gates of the Federal Correctional Institute in Tallahassee to meet a convicted criminal who, as far as I can tell, is the only person connected to two huge environmental contamination cases in Mississippi to ever serve prison time.

Yet, strangely, the convicted felon I was on my way to meet wasn't a polluter. On the contrary, Tennie White, who was prosecuted by a joint team made up of attorneys from the Environmental Protection Agency and the environmental crimes division of the Justice Department, had spent her professional life exposing contamination. She was an environmental lab owner who was particularly vocal about protecting poor African-American communities. Before she was charged and prosecuted, White had spent much of her time volunteering for an organization she had co-founded to help these Mississippians contend with pollution.

Although White, who is 57, had spent years closely involved with dramatic cases that stood out even in a state with more than its share of the country's industrial pollution — two of which in particular resulted in severe harm to many people and millions of dollars in cleanup costs — White's prosecution wasn't obviously related to any of these incidents. Indeed, the crime White had been convicted of didn't seem to have any environmental consequences at all.

White was convicted in 2013 of "faking laboratory testing results and lying to federal investigators." Maureen O'Mara, the special agent in charge of the EPA's criminal enforcement program in Mississippi, explained in a press release that White's conviction was essential to safeguarding the public's health and that her "case demonstrates that individuals who falsify environmental records and try to mislead the government will be prosecuted and held accountable."

During White's trial, the federal prosecutor, Richard Powers, put it more simply: "This case is about lying." White hadn't been able to produce the original results for three wastewater tests an auto parts manufacturer named BorgWarner had hired her to perform, Powers explained to the jury at the start of her weeklong trial. He promised to convince them that she had never done the tests and had lied about them to EPA investigators. He successfully did so. On May 23, 2013, a jury found Tennie White guilty, and three months later, she was sentenced to 40 months in federal prison.

So when I heard White was being released to a halfway house after serving 27 months of her sentence, I decided to go down to meet her at the Federal Correctional Institute in Tallahassee to see for myself whether Tennie White was a fraud and a cheat, as the government attorneys contended, or perhaps, someone more complicated.

Reverend Steve Jamison in his office at Maranatha Faith Center in Columbus, Mississippi. The church sits on land polluted with creosote by the old Kerr-McGee site. Photo: Nicole Craine for The Intercept

R EV. STEVE JAMISON is a big presence, tall with broad shoulders, a square jaw, and a thin, regal mustache that frowns over his mouth. Listening to his slow, precise baritone, it's easy to understand how he wound up preaching.

In the mid-1980s, within a few years of founding the Maranatha Faith Center, Jamison was searching for a new building to accommodate his growing congregation. When he heard that a stone-faced A-frame church, complete with pews and stained-glass windows, was for sale on the north side of Columbus, Mississippi, he jumped at the chance.

Kerr-McGee Chemical Corporation was a giant energy and chemical company perhaps best known for operating the nuclear power plant where Karen Silkwood was poisoned by plutonium. But Jamison hadn't seen the Meryl Streep movie about Silkwood when he bought the church. He knew the company simply as the owner of the factory just down the road. He didn't even know what the plant made.

That changed in 1999, when Jamison decided to add a sanctuary onto his building to accommodate his growing congregation. His first step was to remove a culvert from the parking lot of the property so they could lay the foundation. Having worked many years in construction, Jamison didn't hesitate to get down in the ditch with his crew. After only a few hours of digging, a strange, greasy jelly began to accumulate in the ditch. It looked like shiny beads, droplets that would ooze up from the soil. And as he and his crew dug deeper, more of it pooled in the dirt.

Jamison called the city, which sent a worker to investigate, who advised him that the goo was likely creosote, and that Jamison ought to call Kerr-McGee. Jamison did and soon one of the plant's managers arrived at the site. "He said, 'Well, that's not our product,'" Jamison recently recalled. "And if it was, it wouldn't hurt you."

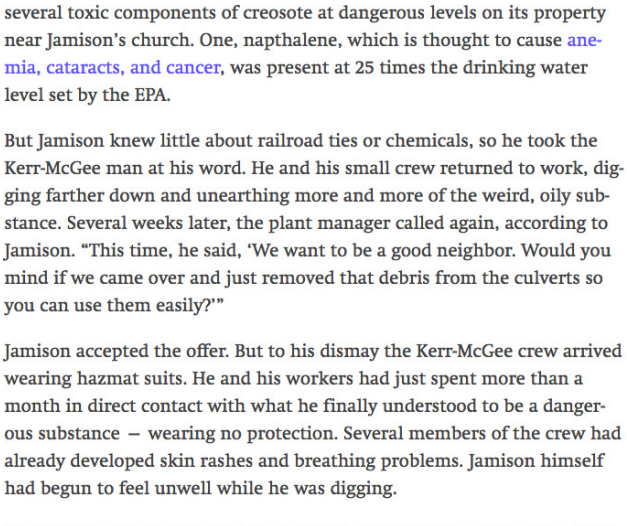
The plant had been using creosote, an oily mixture made with coal tar, as well as a toxic compound called pentachlorophenol, to preserve the wood of railroad ties since 1928, which also happens to be around the time that scientists were publishing the first studies linking creosote and cancer. Kerr-McGee acquired the plant from a company called Moss American in 1963. By the mid-1980s, Kerr-McGee was the country's second largest supplier of railroad ties. By the time the manager was paying his visit to Jamison, it was clear that contact with creosote could cause kidney and liver problems, chemical burns, convulsions, and even death. That same year, in a groundwater monitoring report Kerr-McGee was required to file with the state and EPA as a result of earlier contamination, it measured several toxic components of creosote at dangerous levels on its property near Jamison's church. One, napthalene, which is thought to cause anemia, cataracts, and cancer, was present at 25 times the drinking water level set by the EPA.

But Jamison knew little about railroad ties or chemicals, so he took the Kerr-McGee man at his word. He and his small crew returned to work, digging farther down and unearthing more and more of the weird, oily substance. Several weeks later, the plant manager called again, according to Jamison. "This time, he said, 'We want to be a good neighbor. Would you mind if we came over and just removed that debris from the culverts so you can use them easily?'"

Jamison accepted the offer. But to his dismay the Kerr-McGee crew arrived wearing hazmat suits. He and his workers had just spent more than a month in direct contact with what he finally understood to be a dangerous substance — wearing no protection. Several members of the crew had already developed skin rashes and breathing problems. Jamison himself had begun to feel unwell while he was digging.

"Before I went into that ditch to work, I had perfect blood pressure, I had good kidneys," said Jamison. "After six weeks of direct exposure, I came out, and my blood pressure was being controlled by four pills two times a day, and my kidneys were functioning at less than a third of their normal function."

Jamison hired a local attorney, Wilbur Colom, and in 1999, the company offered him a $3 million settlement, according to Jamison. He refused the offer, and a subsequent one for $4.5 million, he said, because the money came with a catch: He wouldn't be able to tell anyone what had happened. Keeping the toxic goo secret and leaving others in harm's way "didn't seem like the pastoral thing to do."



Rev. Steve Jamison walks alongside a polluted ditch that flows through the property of Maranatha Faith Center in Columbus, Mississippi. The ditch is where Jamison first discovered creosote flushed out from the old Kerr-McGee site. Photo: Nicole Craine for The Intercept

B UT PLENTY OF people involved in the Columbus mess didn't seem to be holding themselves to such high standards. According to Jamison, one of the deacons of the First Assembly of God of Columbus, the mostly white church that had sold him the property, later told him that several people in the congregation had known about the contamination and that it made the property essentially worthless.

The deacon has since died, and the current pastor of the First Assembly of God, Jody Gurley, disputed Jamison's account. "There was never any environmental testing done or required," said Gurley, who has only led the church for the past five years but has spoken about the sale with members of his congregation who remember it. "It wasn't like they were trying to dump the property off," he said. But Gurley added that Jamison might have expected the contamination. "Because of the location, I'm not surprised. You could see runoff from Kerr-McGee. You could always see the runoff."

Jamison also learned that Kerr-McGee had known for years about the dangers of its plant. In 1997, one of Kerr-McGee's environmental project managers, Steven Ladner, contacted the EPA's office of solid waste to report creosote contamination at seven of its plants, including the one in Columbus. Ladner told agency staffer C. Pan Lee that the sites had "quite extensive contaminated areas" that would make cleanup difficult, according to a transcript of the call.

Yet Kerr-McGee managers publicly downplayed or lied about the extensive contamination at the plant, according to more than a dozen former workers interviewed on tape by a local documentary filmmaker. Creosote spills occurred daily, they said. And many big spills that should have been reported to authorities were kept secret and covered up with soap powder, dirt, gravel, or sawdust. Plant workers also did extensive cleanups before visits and inspections.

Mark Finch, who worked at the Kerr-McGee plant for 10 years, was repeatedly warned that reporting leaks and spills to the EPA was "not a good career move." After accurately filling out reports and sending them to the federal agency, Finch was fired in 2002.

After Jamison filed his lawsuit over the contamination at Maranatha, Kerr-McGee attorneys instructed some of the plant workers not to speak to lawyers or the press. "They told us it was best for us to keep our mouths shut or we'd be in trouble," said Jerrie Lewis Brooks, who worked at the Columbus plant for 15 years.

Jamison even contacted Johnnie Cochran, the attorney famous for taking high-profile cases, including O.J. Simpson's. At first it seemed that Cochran was going to take the case, and he went down to Mississippi in 2001 to talk about how the plight of the Maranatha congregation fit into the larger pattern of environmental injustice in America. "Black communities make easy victims for careless corporations," he told the crowd that assembled to hear him. "If you continue looking the other way when the powerless are wronged, then nothing will ever change."

Cochran told Jamison that his was "the perfect case of Goliath and David." But about two months after Cochran agreed to represent the church, the pastor saw him on TV signing a contract with the NFL Players Association. "One of Kerr-McGee's lawyers that I knew was there as the NFL lawyer," said Jamison. And when he suggested to Cochran that getting a job through the lawyers representing his opponents might pose a conflict, Jamison said, Cochran dropped his case.

Just after he discovered the creosote, it seemed Jamison would get the help of the state environmental agency, the Mississippi Department of Environmental Quality, to whom he reported the discovery. In late 1999, the MDEQ issued an order requiring Kerr-McGee to clean his property. But for the next eight years, the ditch remained just as it was — half-dug in the lot outside the church. In 2004, the plant shut down, and still no one came to clean up his property, leaving Jamison unable to complete his extension. It wasn't until 2007 that the city of Columbus used money from a grant from the U.S. Department of Agriculture to pave it over.

From that point on, Kerr-McGee's lawyers contended that Jamison's property had been remediated. Jamison's attorney hired a consultant named Lois George to test the soil and she reported to him, and to the court, that there was no creosote on the land.

Kerr-McGee no longer exists as a company, but at the time a spokesperson named Debbie Schramm said, "Our environmental performance has been nationally recognized for environmental responsibility, and our plants operate safely and have not harmed anyone."

Jamison, though, remained convinced there was still creosote on the church property. He had seen how much of it had oozed from the ditch. And he had watched the workers from the city do their work. He knew that none of them had removed or processed the soil before paving it over, but he was unable to prove his suspicions. The city claimed he couldn't remove the concrete to dig in his own churchyard because the culvert was now government property.

It was only when Jamison hired Tennie White, someone his friend recommended as both knowledgeable about contamination and beyond the reach of his powerful neighbor, that he was able to get to the truth of what lay in the soil under his church.

Union Cemetery, a graveyard in Columbus, Mississippi, located between the old Kerr-McGee plant and the now-closed Sanderson Plumbing Products factory. Photo: Nicole Craine for The Intercept

W HILE KERR-MCGEE WAS fighting Rev. Jamison in court, the company was also working on a much bigger plan to avoid the consequences of its pollution. The pastor of the small church in Columbus, it turned out, was only a tiny part of the company's environmental troubles: The company had already settled some 15,000 suits over creosote contamination and Jamison's was just one of 9,450 more that were pending. Kerr-McGee also had many other businesses, including uranium mines, oil refineries, gas plants, offshore drilling operations, and plutonium pellet factories, and virtually all of them had left environmental messes behind.

After more than 70 years of operation, Kerr-McGee's toxic legacy took the form of agricultural chemicals, rocket fuel, decaying nuclear isotopes, and all manner of harmful substances spread over more than 2,700 contaminated sites in 47 states including Florida, New Jersey, Idaho, Illinois, Wisconsin, and North Carolina. The cost of cleaning these sites — and compensating all the people who had been harmed by them — was so great it threatened the giant energy company's very future.

The extent of the unpleasant financial consequences of the toxic messes was made clear to the company in 1999, when the EPA told Kerr-McGee it would have to pay more than $178 million to clean up a creosote factory in Manville, New Jersey. Soon after, the company began seeking advice on how to free itself from its unwanted environmental baggage. In 2000 one of its investment bankers, Lehman Brothers, came up with a plan.

The idea of "Project Focus" was to separate the profitable part of Kerr-McGee from the liabilities that were weighing it down. By early 2000, the company's board of directors had begun to put the plan into action by creating a new company into which they transferred their profitable assets, including oil and gas holdings worth billions of dollars.

What was left after the transfers was Kerr-McGee's moderately profitable business making a white pigment called titanium dioxide — that and responsibility for what turned out to be billions of dollars worth of environmental liabilities, $442 million in pension costs, and $186 million in "other post-employment benefits."

Kerr-McGee put this company — with only $40 million in cash and its titanium dioxide business to offset all those debts — up for sale in 2005. The liabilities were so great they threatened to drag the whole business under, as was made clear in a sketch Lehman Brothers Managing Director Chris Watson drew on a whiteboard to illustrate the structure of the deal. In the drawing, according to court documents, the titanium dioxide business was depicted as a flower sharing a pot with weeds that the banker labeled as "Kerr-McGee's environmental legacies."

Kerr-McGee tried to put a positive spin on the debt-laden enterprise when it announced its separation in 2005 with an upbeat press release: "Current market conditions for this industry now make it an ideal time to unlock this value for our stockholders." The market saw through the scheme, however, and no buyers stepped forward. So later that year, Kerr-McGee spun off its liabilities and debts into a new company called Tronox Inc.

It was 2009 when Tennie White first stumbled across the name Tronox. She had gone to the EPA's reading room in Washington, D.C., on behalf of Jamison to read the files relevant to the Columbus site. The name surprised her. Up to a certain point in time, all the documents listed Kerr-McGee as the party responsible for the contamination. Suddenly, in the most recent files, Tronox had appeared.

By the time White was puzzling over the significance of Tronox, the weeds had already won out. In 2009, overcome with debt less than three years after it was created, Tronox filed for bankruptcy, leaving Jamison and more than 7,000 others who lived on or near the contaminated sites with little hope of getting justice. They couldn't get compensation from Tronox because it was bankrupt. Nor could they turn to what was left of Kerr-McGee. In 2006, just six months after the spinoff relieved the company of its unappealing debt burden, Anadarko, another giant energy company, had snapped up the profitable part of Kerr-McGee for $18 billion.

Kerr-McGee, the Goliath Jamison had been battling for a decade, had disappeared.

A polluted ditch containing creosote runs along the property of the old Kerr-McGee site in Columbus, Mississippi. Photo: Nicole Craine for The Intercept

T ENNIE WHITE GOT her first environmental job in 1981 through an ad in the paper. Newly married with a young son, she would have been happy with almost any job. But she truly loved the one she found as a lab analyst for a Jackson-based company called Environmental Protection Systems. Though she knew nothing about the work when she started, the company taught her how to collect and prepare soil and water samples and run various tests on them. The work fascinated her. Each test had its own precise protocol and she never knew until she ran it what the results would be.

In 1995, after about 10 years with Environmental Protection Systems and several years working for a metal finishing company, White went out on her own, founding an environmental laboratory that did asbestos removal as well as tests for an ever-shifting cast of contaminants at different industrial sites. Over the years, even as the particulars of the work changed, White began to notice that certain things remained the same. A lot of the sites she was hired to test were in small towns that had been polluted by big companies. And the people who lived there were often poor and didn't understand the dangers the contamination posed.

By the time Jamison reached out to White to see if she would help him prove there was creosote contamination on his property, White had worked as a lab analyst on many similar cases, in which various industries had left chemicals in the soil and water.

For years, White had a straightforward role in these cases — to run tests. She had enjoyed letting the test results speak for themselves. But now she found herself in a different position. She had recently been to Hattiesburg, in southern Mississippi, where Kerr-McGee had also insisted there was no creosote contamination. While she was attending a community meeting there, she began to fully appreciate, for the first time, how the numbers she had been calculating for years affected actual men, women, and children.

"The people became real," was how she remembered it recently. Some of the Hattiesburg residents told her about the smells that used to waft down their streets from the plant and the rashes their children had suffered for years. In the late 1980s, she had done some testing on the site of a local Ford dealership and found creosote, and on that more recent visit, she saw children playing in what she was pretty certain was contaminated mud.

From reading through the state's files, White knew that Mississippi had handled other cases of creosote contamination differently. For instance, in Wiggins, Mississippi, a town that was about two-thirds white, both the EPA and the state environmental agency had designated a similar situation an emergency and remediated the contamination in less than a year. The neighborhoods affected by creosote contamination in Hattiesburg and Columbus, by contrast, were mostly black, and the problems there had gone unaddressed for many years.

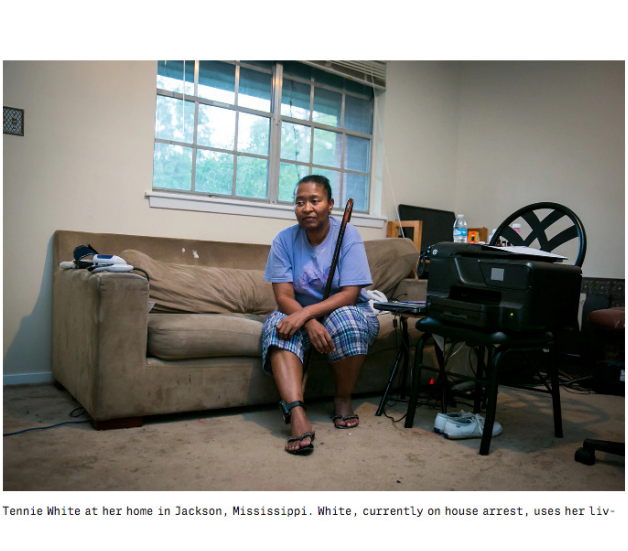
When she was growing up, White's parents used to tell her about their own childhoods in rural Mississippi towns during the Jim Crow era. She used to think that the indignities they suffered — having to get off the sidewalk when white people were coming and knowing you weren't supposed to look them in the eye — were relics of the past. But the disrespect she saw in the contamination of these poor black communities felt directly connected to the struggles of her parents' generation.

Cleaning up only contamination that affected white people — and knowingly leaving that found in poor black neighborhoods — was just another form of racism. And, as she told the city council of Hattiesburg in June 2008, it was criminal.

Grassroots Environmentalism in South Mississippi: A M...
Watch later
Share

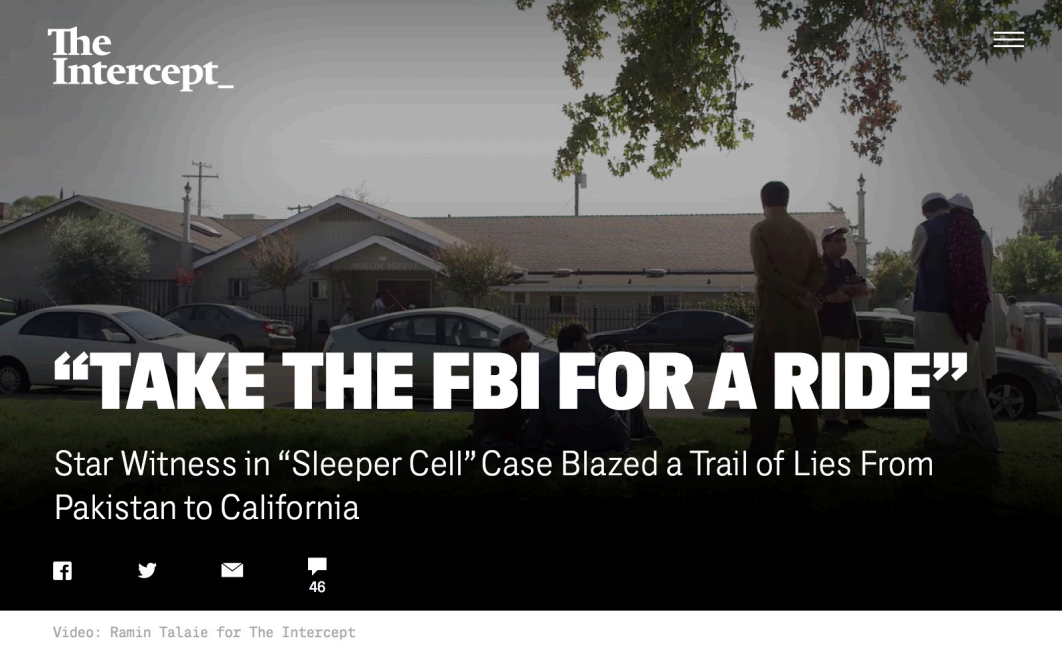
Tennie White testifies before the Hattiesburg, Mississippi, City Council in June 2008.

W HITE TOOK A CLOSE look at the report prepared by Lois George, the environmental consultant Jamison's lawyer had hired and realized that the detection levels for the contaminants had been set higher than the action levels the EPA had set for those chemicals. White says she



Tennie White at her home in Jackson, Mississippi. White, currently on house arrest, uses her liv-

W



“TAKE THE FBI FOR A RIDE”

Star Witness in “Sleeper Cell” Case Blazed a Trail of Lies From Pakistan to California

46

Video: Ramin Talaie for The Intercept

Abbie VanSickle
November 19 2016, 10:06 a.m.

DECEIT AND TERROR

Part 2

Hamid Hayat didn’t want to believe that his closest friend was a paid government agent. Then, awaiting trial, he learned Naseem Khan would be the star witness against him.

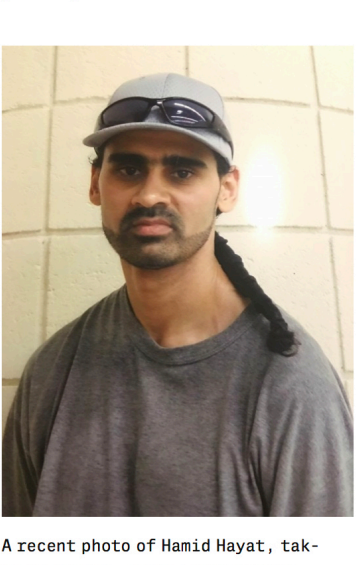
Part 1
The Infamous Post-9/11 California “Sleeper Cell” Case Continues to Unravel

THE PRISON WARDEN’S letter arrived three days before Christmas.

Last fall, I wrote a letter to a medium-security prison in Arizona, requesting an interview with an inmate named Hamid Hayat. He was serving a 24-year sentence after being convicted of receiving terrorist training in Pakistan. Although Hayat’s case made international headlines when he was arrested as part of an alleged al Qaeda “sleeper cell” in Lodi, a rural California town, he had never talked with a reporter before.

Prison interviews aren’t uncommon. Typically, a reporter fills out the required forms and then works with the facility to set a date and time. Hayat’s lawyer and his family assured me that Hayat was a model prisoner, so I was optimistic. I filled out the proper forms in October. A month later, the federal prison asked me to provide a letter from The Intercept, which I did. In early December, a prison staffer assured me that he was working to “clear up one last issue.” But on December 22, the prison warden denied my interview request because of “safety, security, and orderly management considerations.” The warden declined to talk with me, and there was no appeals process.

Stymied by the prison, I gave Hayat’s lawyer a list of questions about the specifics of his case and his life now. I had seen Hayat only in videos of his FBI interrogation — a decade old and a lifetime ago. When I got his answers and saw recent photos of him in prison, I was surprised. Gone was the thin, timid young man with the hunched shoulders and wispy beard. In his place was a muscular man with a tight ponytail and sunglasses who stared coolly into the camera.



A recent photo of Hamid Hayat, taken in prison. Photo: Hamid Hayat

Hayat didn’t say much about prison conditions, other than that he had little contact with the outside world — just one visit a year, from his family — and that his father hadn’t been granted permission to visit him in eight years. His phone time, too, was limited compared to other inmates.

Although the restrictions on phone calls and visits clearly irritated Hayat, he said the prison had, in an odd way, broadened his perspective by giving him his first exposure to people of diverse backgrounds and faiths. To an outsider, his childhood, split between California and Pakistan, sounds worldly. In reality, he grew up cloistered in a community of rural Pakistanis, who held tight to religious traditions and conservative culture regardless of whether they remained in an ancestral village or moved across the world to Lodi or London. “I was just in my community, so I really didn’t know much about what was going on around me,” he said. “I look back almost every day and think, ‘I wish I could have met more people out there.’”

His experience with other inmates had made him ashamed of some opinions he’d grown up with. As a teen, he’d celebrated the news that Pakistani terrorists had kidnapped and beheaded Wall Street Journal reporter Daniel Pearl. In recorded conversations introduced by prosecutors at his trial, the jury listened as Hayat gleefully told an FBI informant, “They killed him. So I’m pleased about that. They cut him into pieces and sent him back. That was a good job they did. Now they can’t send one Jewish person to Pakistan.” In prison, he has remained a devout Muslim, he said, but now takes a more inclusive view of his faith and others and is friendly with Christian and Jewish inmates. “I was wrong, what I said,” Hayat said of Pearl. “I totally disagree with myself. I didn’t know much then. I was pretty much not open-minded then about a lot of stuff.”

A car drives by a park in a residential section of Lodi, California. Video: Ramin Talaie for The Intercept

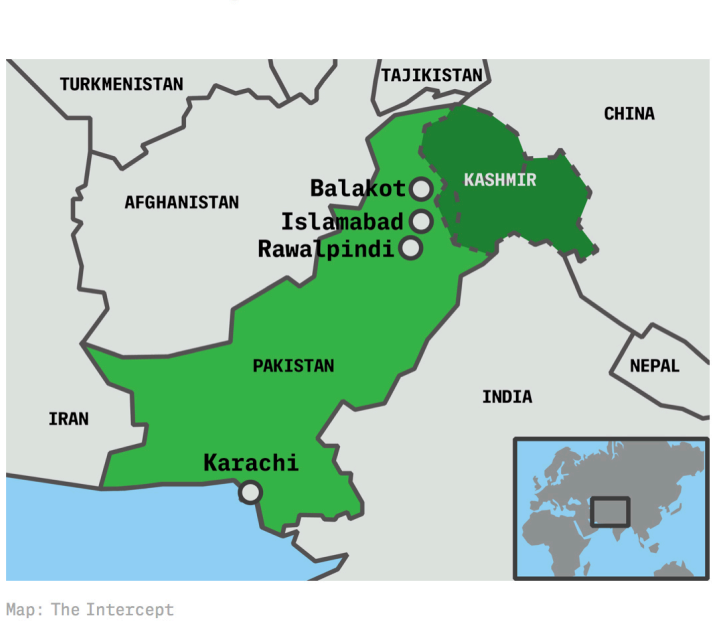
AT 19, HAYAT had just returned to the United States after a decade of studying at a religious school in Pakistan. He had suffered a nearly fatal brain infection and needed a place to recover. He had only an elementary school education and hadn’t spoken English in years. He tried to enroll in high school, but he had aged out. He dabbled in community college, taking a single course in English grammar. He slept on a mattress in his parents’ garage. Most days, he hung out around the mosque. That’s where, in 2002, he first met an undercover FBI informant named Naseem Khan, the man who would befriend him and then betray his trust.

Hayat’s father was the first to catch on — something in one of Khan’s conversations struck him as odd. “He had a bad feeling about him,” Hayat recalled. But even after Hayat’s parents warned their son about his friend, Hayat kept talking with him. He didn’t want to believe that his closest friend was really a paid government agent. But he didn’t get proof of Khan’s involvement in the case until he was already in jail, waiting for his trial, and his lawyer told him that Khan would be the star witness against him. That’s when Hayat realized he’d never really known Khan, that his parents had been right all along.

Hayat remembered their conversations. At first, they talked about movies and cricket — cricket is one of Hayat’s favorite topics, but Khan always wanted to talk politics. They’d hang around their imam’s house or drive to a local park. Khan was frequently at Hayat’s house, even spending the night. When Hayat returned to Pakistan for a visit in the spring of 2003, Khan often called him. At first, Hayat was glad to hear from his friend, but he grew annoyed that Khan aggressively steered their conversations toward jihad.

“Every time he’d call, he always wanted to talk about politics,” Hayat said. “I was like, ‘Why does he always want to talk about this?’ … I started having a different view, thinking different about him.”

Eventually, Hayat got so frustrated by the conversations that he stopped answering Khan’s calls. It’s during this time period, roughly from October 2003 to November 2004, that the FBI claimed Hayat left his village to attend a terrorist training camp in Pakistan. Hayat said he’d mostly hung out around his small village, playing video games and taking care of his mother, who suffered from hepatitis. A couple of times a month, he’d venture to the nearest big city, Rawalpindi, for a weekend. Once, he went to a wedding in the southern part of the country, the opposite direction from the alleged camp. In the answers he provided to his lawyer, Hayat remained adamant that he never attended a jihadi camp or received any kind of terrorist training.



Map: The Intercept

WHILE KHAN WAS pretending to be Hayat’s confidant in Lodi, he was living a dual life in a town 500 miles to the north in the foothills of the Cascades.

Khan shared a home near Bend, Oregon, with his then-girlfriend, Josée Hennane, who was in the dark about much of what he was doing in Lodi. Hennane, a tall woman with a kind smile and a mane of curly dark hair, agreed to meet me in a coffee shop in early May. She remembered her time with Khan fondly and still struggled to understand its ending.

Hennane and Khan had met around 2000 through Match.com. Hennane fell for Khan immediately. He was good-looking and a great cook. They lived a quiet life. He worked as a clerk at the K Market convenience store. She worked in sales. She envisioned their time together stretching far into the future — kids, a house, an ordinary life. He seemed to be looking forward, too, she said, away from rocky relationships with his family and past heartache.

Then, the September 11 attacks happened. One of only a handful of Muslims in Bend, Khan kept a Quran in his apartment, but Hennane didn’t think of him as devout and certainly not radical. Somehow, Khan’s name and social security number came up during an FBI investigation into an Islamic charity accused of funding terrorist groups. FBI agents showed up in Bend to question him. During their conversation, the agents determined that Khan had nothing to do with the terrorist financing case, but he caught their attention with a fabricated story about seeing terrorist leaders at a mosque he used to attend in rural California.

Intrigued by his story, the agents hired him as an informant. He told Hennane he was going to California for a while to help out on a case. He also said that if he impressed the FBI, perhaps he could work as an agent or get a job with the CIA. Although he didn’t have an American high school degree, he spoke Urdu and Pashto and understood Pakistan’s culture and politics, important and rare skills in a post-9/11 world.

“I think he got drawn in,” Hennane told me. “It fed him, and it fed his ego. Helping out, making this place safer.”

Khan didn’t give her details about his work. He disappeared for long stretches of time and didn’t say much about where he’d been or what he was doing. He began carrying a locked briefcase. She assumed he kept his case paperwork inside. His work strained their relationship, so much so that he invited her to Portland to meet with FBI agents so he could prove he actually worked for the agency. Hennane said she remembered meeting the agents at a coffee shop.

Her boyfriend’s secretive behavior continued until the Lodi case became public in the summer of 2005. As Hayat’s trial neared, Khan told her that he feared for their safety. The FBI paid to install a security system on the couple’s house. Shortly before the trial, Hennane went out to her car in the morning and found a note. In it, Khan apologized and said that he needed to end their romance. Hennane was so devastated and confused that she drove to the Sacramento FBI office, where she begged the agents to tell her Khan’s whereabouts.

“I went to their office, and they said, ‘Let it go, it’s over,’” Hennane said.

Khan vanished from her life. Years later, she said, she received a ticket for a toll violation on the East Coast and assumed that Khan still listed their old address in Oregon. She thought perhaps he’d moved to the East Coast and started over. She never heard from him again.

“Looking back, I think he thought of it as his family, his law enforcement family,” Hennane said. “From the sound of it, I think he wasn’t going to look back.”

NAAN KABOB
Gyros

A man walks past the window of Rice and Spice, a Pakistani restaurant in Lodi, California. Video: Ramin Talaie for The Intercept

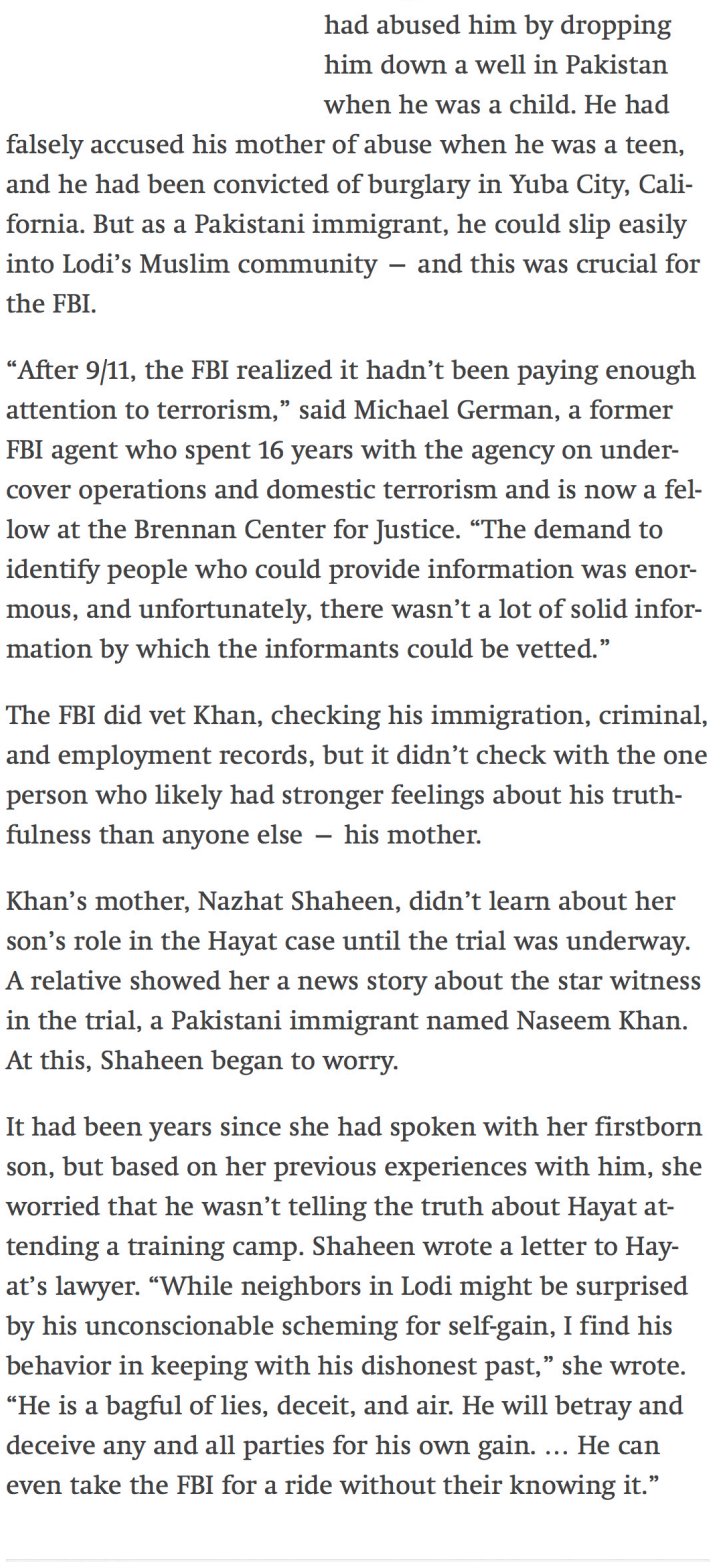
IN MANY WAYS, Khan fits the profile of the type of dubious informant the FBI has used in the aftermath of 9/11. He had a troubled past and a rocky relationship with family — he told his ex-girlfriend that relatives had abused him by dropping him down a well in Pakistan when he was a child. He had falsely accused his mother of abuse when he was a teen, and he had been convicted of burglary in Yuba City, California. But as a Pakistani immigrant, he could slip easily into Lodi’s Muslim community — and this was crucial for the FBI.

“After 9/11, the FBI realized it hadn’t been paying enough attention to terrorism,” said Michael German, a former FBI agent who spent 16 years with the agency on undercover operations and domestic terrorism and is now a fellow at the Brennan Center for Justice. “The demand to identify people who could provide information was enormous, and unfortunately, there wasn’t a lot of solid information by which the informants could be vetted.”

The FBI did vet Khan, checking his immigration, criminal, and employment records, but it didn’t check with the one person who likely had stronger feelings about his truthfulness than anyone else — his mother.

Khan’s mother, Nazhat Shaheen, didn’t learn about her son’s role in the Hayat case until the trial was underway. A relative showed her a news story about the star witness in the trial, a Pakistani immigrant named Naseem Khan. At this, Shaheen began to worry.

It had been years since she had spoken with her firstborn son, but based on her previous experiences with him, she worried that he wasn’t telling the truth about Hayat attending a training camp. Shaheen wrote a letter to Hayat’s lawyer. “While neighbors in Lodi might be surprised by his unconscionable scheming for self-gain, I find his behavior in keeping with his dishonest past,” she wrote. “He is a bagful of lies, deceit, and air. He will betray and deceive any and all parties for his own gain. … He can even take the FBI for a ride without their knowing it.”



May 29 06 10:40p p.2

Establishing a Pattern of Deceit for Self-gain

1. Naseem Khan lied about his father being dead, and lied about his mother raising him. Wonder why?
2. Arrival in Kentucky: One of the chores he was assigned early on was to rake leaves. He would pump the bag up with a handful of leaves and air, and create an impressive row of 20 such bags. A few hours later, the deflated bags would sit morosely testifying to the deceit. But he would walk around completely unfazed by the discovery or the betrayal.
3. Within two months of his arrival in Kentucky, he began colluding with two cousins in Indianapolis to move out of my house – he didn’t like the discipline. But because of his recent arrival, he had not gauged the physical and economic landscape accurately enough, and therefore, he was not a very suave liar yet. Upon the advice of the cousins, he called the local Social Services Agency. He sat facing me and lied brazenly to the representatives, claiming that he was living in deprived conditions and not getting enough to eat. (Needless to say, the surprise that registered on the representatives’ faces as they entered the house was lost on Naseem -- at the time, I lived in a 4-bedroom house in an upper middle-class neighborhood. But, in retrospect, some of his other questions and comments also had begun to make sense – he was trying to line up evidence for his claim to the Social Services representatives. For example, one day he commented that the neighborhood appeared to be “poor”; when I asked why he thought so, he replied that no one had a TV antenna. I didn’t explain why no one was allowed to have one. On another occasion, he asked why everyone had that “tower” on the side of the house. When I identified it as a chimney, he said he had thought it was a grain elevator and everyone around here was a farmer.)
4. Earlier, he had painted some graphic pictures of abuse by his father, father’s relatives, and his father’s wife – after he lied brazenly to my face about my treatment of him in the present situation, I quit believing a word of what he had ever said. I realized he had taken me for a ride by evoking sympathy with these tales of abuse. He had accomplished his purpose of getting me to do the paperwork for him to come to the U.S.
5. While neighbors in Lodi might be surprised by his unconscionable scheming for self-gain, I find his behavior in keeping with his dishonest past. The bagging of leaves in Kentucky serves as an apt metaphor: he is a bagful of lies, deceit, and air. He will betray and deceive any and all parties for his own gain. He can even take the FBI for a ride without their knowing it.

Submitted by [redacted]

A letter from Naseem Khan’s mother to Hamid Hayat’s trial lawyer. Review the whole document here.

It was too late, however. By the time the letter was written on May 10, 2006, the jury had convicted Hayat. Shaheen’s letter was never presented in court or in the appeal.

It was not easy to find Shaheen. I wanted to find Khan’s family because I thought they might be able to tell me about Khan’s side of this story, but every address and number proved a dead end. When I mentioned to one of Hayat’s lawyers that I wanted to understand more about Khan, the lawyer said that years before, someone on the legal team had gotten a phone call from a man who claimed he was related to Khan. That man turned out to be Khan’s half-brother, who told me the person I really needed to talk to was Khan’s mother.

Shaheen, 67, lives in a quiet suburb in Ohio. I agreed to use her maiden name and not mention the town where she lives because community members don’t know that her son worked as an FBI informant, and she is ashamed of his role. We sat at her dining room table and, over several hours, she told me her story.

Shaheen grew up in a conservative family in Pakistan. Her family supported her ambition for education, and she received a master’s degree before her parents decided it was time to find a match for their daughter. She had a disastrous marriage to a Pakistani military officer that lasted only three months before the couple divorced. By then, though, she was pregnant.

Her parents decided that Shaheen would give her child, Naseem, to be raised by her ex-husband’s parents. Shaheen, meanwhile, moved to the United States, where she settled in the Midwest. Eventually, she married a doctor, had two sons, and became an English teacher. She was living a comfortable, upper-middle-class life when, in 1988, she heard from relatives in Pakistan that Naseem, then 16, wanted to join her.

Shaheen went to Pakistan, sponsored his green card, and brought him to America. The problems began immediately. Khan complained that he didn’t fit into their family. At first, Shaheen pitied her son because he’d told her wild stories that his family in Pakistan abused him, shocking him with electricity, beating him with sticks, locking him in a bathroom, and hanging him upside down in a well.

Then, she said, the lies began. He lied to her about trivial things, like pretending to rake leaves but really just filling garbage bags with air. She thought it was typical teenager stuff. Things turned serious about two months into his stay, when social services knocked on Shaheen’s door. Khan had made a claim of abuse against his mother, telling his high school that he wasn’t getting enough to eat and was being kept in poor conditions. Shaheen said she took the workers through her four-bedroom home and showed them the well-stocked refrigerator and a freezer full of halal meat. No charges were filed, and the social workers determined that “the youth is neither a neglected nor abused child,” and his mother was taking “proper and responsible measures” to care for him, according to a letter from the local social services agency.

The relationship between Shaheen and her son never recovered.

“It was all about tricks,” Shaheen said. “It was all about lying and deceit. I could see that I could not trust him.”

She made arrangements for her son to return to Pakistan. She took Khan’s green card and mailed it to immigration officials with a letter explaining that she would no longer sponsor him. Then, she took him to New York and watched him get onto a plane. “I was devastated,” Shaheen told me. “I went through so much to get him.”

Two or three months later, she heard from her son. He’d somehow managed to get a ticket back to the United States and to convince immigration authorities to let him re-enter. He sent her a cassette tape on which he apologized for his behavior, she said. He tried calling. He told his mother that he had no desire to live with her, but he did want money, a monthly allowance. She refused. He wrote her letters, apologizing for his behavior. None of his efforts swayed her.

She said she believes that once, while she was back in Pakistan for her mother’s funeral, Khan tried to get inside her house, and that he might have been looking for his green card, which she’d already turned over to authorities. When she returned from Pakistan, she noticed that someone had broken in and searched through paperwork. She filed a report with the police, but nothing came of it. The last time she heard from Khan was around 1992 or 1993, when he told her he was living in Texas, she said, and again tried to apologize. She didn’t believe the apologies he offered were sincere. “I was done with him, I really was,” she said.

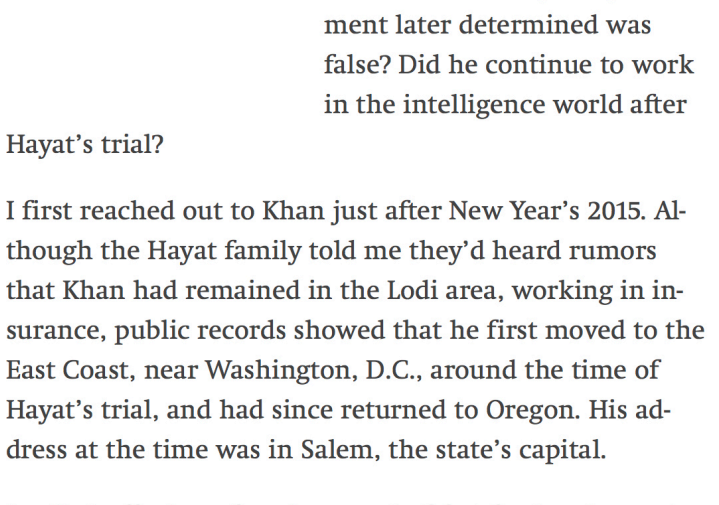
At the end of our interview, Shaheen said that she wanted to know the truth from her son. She wanted him to promise on the Quran that he believed Hayat really had attended a terrorist training camp. But when we talked again a few months later, she’d changed her mind. She said she didn’t think that promising on the Quran would ensure her son’s honesty.

A car drives through an intersection in Lodi, California. Video: Ramin Talaie for The Intercept

LIKE KHAN’S MOTHER, I wanted to hear the truth, whatever it was. Did Khan really believe his claims about Hayat? What prompted Khan to tell the FBI that he’d seen al Qaeda leaders in Lodi, something the government later determined was false? Did he continue to work in the intelligence world after Hayat’s trial?

I first reached out to Khan just after New Year’s 2015. Although the Hayat family told me they’d heard rumors that Khan had remained in the Lodi area, working in insurance, public records showed that he first moved to the East Coast, near Washington, D.C., around the time of Hayat’s trial, and had since returned to Oregon. His address at the time was in Salem, the state’s capital.

I pulled off a busy four-lane road of fast-food restaurants and chain stores, down a side street and into an apartment complex of bland, two-story gray condominiums. I walked up the short sidewalk to his door and rang the bell. A few seconds later, the door opened slightly and a thin man in his late 30s or early 40s wearing a white T-shirt answered.



Naseem Khan enters his store in Oregon. Photo: Kathleen Seccombe

“Hi, I’m looking for Naseem Khan,” I said.

He nodded slightly.

I quickly said that I was a reporter, and as soon as I mentioned Hayat, he began to close the door.

“Can you tell me if you’re still involved with the FBI?” I asked.

“No, I’m not,” he said. He took my business card before closing the door.

I followed up by sending a letter explaining that I hoped to sit down and talk with him, that I wanted his perspective. I heard nothing.

In March 2015, I tried again. This time, as I stood at his door and rang the bell, I noticed a small security camera in the window. No one answered. I wrote a note, once again saying that I was writing a story and hoped to hear his perspective. I left it on his door, and I again heard nothing.

All of that happened before I talked with Khan’s mother and his ex-girlfriend, before I’d heard Hayat’s version of events. I felt it was important to try to reach Khan one more time, to give him another chance to respond. Before heading to Oregon, I checked public records and found that he had registered a new company, a tourist shop selling Pakistani fabrics, sunglasses, and earrings in a small beachside town in the state.

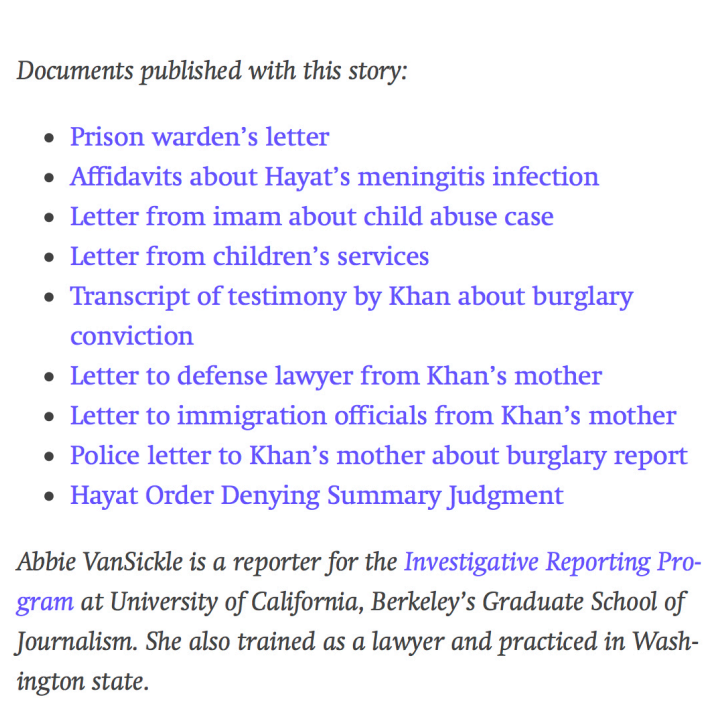
In late June, I arrived at his shop. I got there before it opened and waited on a bench outside. Just before 10 a.m., Khan walked past me, clean-cut and athletic-looking in a red T-shirt and dark pants. He unlocked the door to his small shop, which had a sweeping view of the ocean. After he went inside, I knocked on the glass door. When he came to the door, I explained, yet again, that I was a reporter working on a story about the Hayat case.

He shook his head no.

I told him that I’d talked with his mother, who said she didn’t think he’d told the truth about Hayat attending a terrorist camp. He looked directly at me and shrugged his shoulders.

“I’m not interested,” he said.

He tried to close the door, but my boot was blocking the doorway. He tried again, and I moved out of the way. He closed the door and turned the lock.



A freight train passes through the town of Lodi, California. Video: Ramin Talaie for The Intercept

THE LIFE THAT Hayat lost when he went to prison no longer exists.

His parents sold their house in Lodi to pay their legal bills. They moved about 20 minutes away to a neighborhood in disrepair. When I visited them one morning, the neighbor across the street was sitting on a car hood, drinking a can of beer and staring with a vacant look. Trash blew across the pavement.

Hayat is no longer a newlywed — far from it. Tired of waiting for him, his wife divorced him in 2012. His mother told him about the divorce during a prison visit. His life is on hold until his scheduled release in 2026.

Hayat says that he won’t agree to a plea deal that might cut his sentence if he drops his appeal and admits guilt.

“I’m not gonna plead guilty to something I didn’t do,” Hayat told his lawyer in response to the questions I submitted.

Hayat continues to fight. In 2014, he asked a federal judge to overturn his conviction, accusing his trial lawyer of ineffective assistance of counsel and claiming that the government failed to disclose evidence that would have helped his case. In August, his case was assigned to a new federal judge, Deborah Barnes, for further proceedings, which are ongoing.

Even if wins his appeal, prosecutors could decide to try the case again. Hayat is ready for that.

“I’ve been through it once, and I’ll do it again,” he said.

Documents published with this story:

- Prison warden’s letter
- Affidavits about Hayat’s meningitis infection
- Letter from imam about child abuse case
- Letter from children’s services
- Transcript of testimony by Khan about burglary conviction
- Letter to defense lawyer from Khan’s mother
- Letter to immigration officials from Khan’s mother
- Police letter to Khan’s mother about burglary report
- Hayat Order Denying Summary Judgment

Abbie VanSickle is a reporter for the Investigative Reporting Program at University of California, Berkeley’s Graduate School of Journalism. She also trained as a lawyer and practiced in Washington state.

Top video: Men stand across the street from the Lodi Muslim Mosque in Lodi, California, on Nov. 4, 2016.

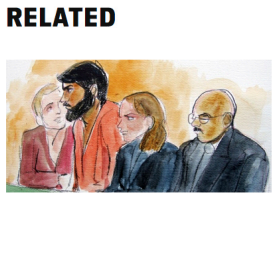
WAIT! BEFORE YOU GO on about your day, ask yourself: How likely is it that the story you just read would have been produced by a different news outlet if The Intercept hadn’t done it?

Consider what the world of media would look like without The Intercept. Who would hold party elites accountable to the values they proclaim to have? How many covert wars, miscarriages of justice, and dystopian technologies would remain hidden if our reporters weren’t on the beat?

The kind of reporting we do is essential to democracy, but it is not easy, cheap, or profitable. The Intercept is an independent nonprofit news outlet. We don’t have ads, so we depend on our members — 24,000 and counting — to help us hold the powerful to account. Joining is simple and doesn’t need to cost a lot: You can become a sustaining member for as little as $3 or $5 a month. That’s all it takes to support the journalism you rely on.

Become a Member →

RELATED



Judge In Infamous “Sleeper Cell” Case Agrees to Hear New Evidence That Could Help Convicted Terrorist

DECEIT AND TERROR

In the years after 9/11, the case of an alleged terrorist “sleeper cell” in small-town California caused a national panic. A young Pakistani-American man was convicted — then the case began to fall apart.

CONTACT THE AUTHOR:

Abbie VanSickle
@AbbieVanSickle

46 Comments (closed)

The Intercept_
Join Our Newsletter
Original reporting.
Fearless journalism.
Delivered to you.

Enter your email address

Email list managed by MailChimp

Subscribe to the podcast.
Get it on Apple Podcast. Get it on Google Play.

INTERCEPTED

WITH JEREMY SCAHILL

SMALL-TOWN "TERRORISTS"

The Infamous Post-9/11 California "Sleeper Cell" Case Continues to Unravel

Video: Ramin Talaie for The Intercept

Abbie VanSickle
November 19 2016, 10:05 a.m.

DECEIT AND TERROR

Part 1
The government's case against Hamid Hayat relied on the testimony of a troubled FBI informant — whose own mother said he was "a bagful of lies."

Part 2
Star Witness in "Sleeper Cell" Case Blazed a Trail of Lies From Pakistan to California

NAZHAT SHAHEEN HAS twice endured the loss of her first son.

The first time she lost him, he was a newborn. Soon after she gave birth in her native Pakistan, her in-laws took her son, Naseem, during a contentious divorce from her husband. Her own parents then sent her to the United States, to begin a new life.

The second time she lost Naseem, he was a young man who had moved to the United States and reunited with her. But she began to suspect that Naseem could not be trusted, and after a few months, he left her home in the Midwest and drifted to the West Coast.

He would not disappear from her life, however.

Shortly after 9/11, the FBI hired Naseem to spy on a mosque in California, and he subsequently became the government's star witness in the trial of Hamid Hayat, a hapless cherry packer accused of being a member of an al Qaeda sleeper cell in rural America. When Naseem's mother read about her son's role as an informant, she wrote a letter to Hayat's lawyer saying that Naseem was "a bagful of lies."

Shaheen has never spoken publicly about her son and his crucial role in one of the most infamous terrorism trials of the post-9/11 era, but not long ago she agreed to talk with me. We met at her home, and because her community does not know what her son did in the case, I agreed to use only her maiden name.

"I'm convinced that Naseem is a deceitful character," she told me. "What he did with Hayat is so deceitful. It's an injustice, the fact that it seems to me that he again deceived a family by taking them into his trust."

In_
So why don't you tell me
so I know where you're coming from

Hamid Hayat is interrogated by FBI agents in Sacramento, California, on June 4, 2005.

A MOSQUE UNDER SURVEILLANCE. An FBI informant with a troubled past. A young American Muslim accused of traveling to a far-off place to train for terrorism. The Hayat case began in the fragile weeks after 9/11. Now, as President-elect Donald Trump prepares to take office, the case has new resonance. Trump has demanded that Muslims inform on one another. He has threatened to kill terrorists' families. He has promised to waterboard and torture terrorism suspects.

The country first heard the story of Hamid Hayat in the summer of 2005, when the FBI announced that it had broken up an al Qaeda sleeper cell in Lodi, California. Hayat was the son of an ice cream truck driver, and he was repeatedly described by family and acquaintances as an idle young man whose mental capacity had been slowed by a nearly fatal bout of meningitis. His arrest immediately brought the national media to the small city, choking its usually calm streets with television trucks. A CNN headline blared "FBI: Al Qaeda plot possibly uncovered," and warned that the plotters were "trained on how to kill Americans." It was one of the most frightening cases of terrorists in America since 9/11, and much of the media treated the FBI's charges with little skepticism.

At Hayat's trial the following spring, a jury heard testimony by Naseem Khan, who was paid to inform on Lodi's mosque. The jury deliberated for nine days before convicting Hayat of material support to terrorism and lying to the FBI. At the start of a press conference, U.S. Attorney McGregor Scott celebrated the conviction by pumping his fist in the air, local press reported. A federal judge sentenced Hayat to 24 years in prison. The Hayat case was a test for a controversial new government strategy of preemptive prosecution — a strategy that centered on using paid informants to coax terror suspects into making statements about what they might do someday — and it appears to have been deeply flawed.

Almost as soon as the spotlight shifted away from the conviction, the case began unraveling. Two days after the verdict, a juror gave a sworn statement that other jurors had bullied her into convicting Hayat, inflicting such severe pressure on her that she had to be treated for migraines during the trial. She said the jury foreman had made "racial slurs," including saying of Muslims, "If you put them in the same costume then they all look alike." She added that on the second day of the trial, the foreman had made a hangman's gesture, as if he were tying rope around his neck, and said, "Hang him."

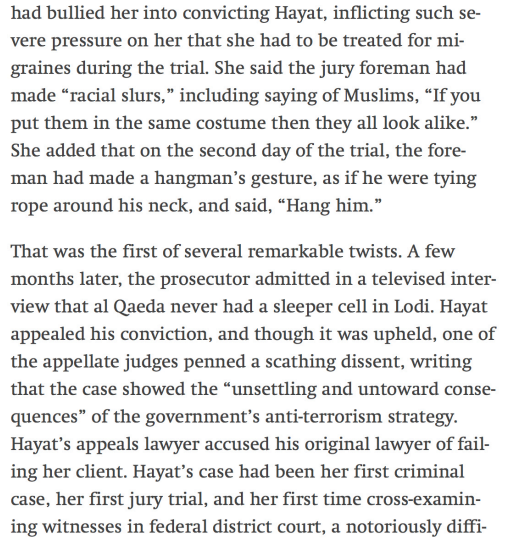
That was the first of several remarkable twists. A few months later, the prosecutor admitted in a televised interview that al Qaeda never had a sleeper cell in Lodi. Hayat appealed his conviction, and though it was upheld, one of the appellate judges penned a scathing dissent, writing that the case showed the "unsettling and untoward consequences" of the government's anti-terrorism strategy. Hayat's appeals lawyer accused his original lawyer of failing her client. Hayat's case had been her first criminal case, her first jury trial, and her first time cross-examining witnesses in federal district court, a notoriously difficult skill.

Most surprising to legal experts and even the trial judge, Hayat's lawyer never applied for national security clearance, which meant she couldn't see any of the classified evidence against him. As a result, the prosecutor and judge evaluated, on their own, the classified evidence that the jury heard. This appears to have resulted in the jury not being told about information in a classified government memo I obtained through the Freedom of Information Act that undermines the government's case against Hayat.

Since I began researching this case in 2014 for the Investigative Reporting Program and The Intercept, I've uncovered a number of reasons to doubt whether Hayat received a fair trial. The key concerns surround the informant, Naseem Khan, whose own mother now attests to his untrustworthiness. The government's case was based largely on Khan's testimony and the conversations he recorded, even though his integrity was questionable and he was incentivized to find or suggest something that could be used against Hayat.

There is also fresh doubt about a key issue at the heart of this case: Did Hayat receive training at a terrorist camp in Pakistan? At trial, prosecutors tried to buttress Hayat's equivocal statements with satellite images of a mountaintop facility where they alleged he had trained. But the memo I obtained shows the government's intelligence experts disagreed about what camp he attended. This casts doubt on the government's confident assertion that Hayat had indeed attended a terrorist training camp.

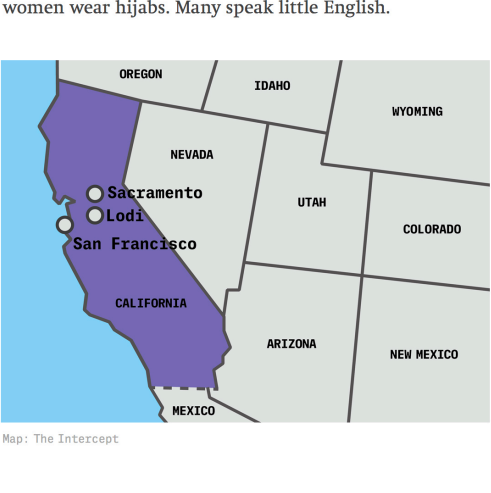
In response to these new questions, prosecutors declined to comment, other than to describe outreach efforts in the Muslim community where Hayat grew up.



Men talk outside the Lodi Muslim Mosque in Lodi, California, on Nov. 4, 2016.
Video: Ramin Talaie for The Intercept

TO UNDERSTAND HAYAT'S case, it's essential to get a sense of his community. Driving in, Hayat's hometown of Lodi looks like a typical Central Valley town. Fields of wheat, corn, and grapes give way to a Walmart and a Target, car dealerships, and strip malls of Panera Bread, Starbucks, and In-N-Out Burger. Downtown, leafy sycamore trees shade wide boulevards. The building facades look like the set of a western frontier film. Several restaurants offer tastings of local zinfandel wines. A restored, bright yellow train station hints at the town's origins as a stop on the Central Pacific Railroad.

But drive a mile southeast of downtown, and Hayat's world comes into view. Tucked next to a city park is the Lodi Muslim Mosque, a low building ringed by a black fence and rose bushes. It's here, in a series of streets named for trees — Poplar, Maple, Cypress — where Hayat lived with his parents, brother, and two sisters in a tiny yellow house on Acacia Street, a five-minute walk from the mosque. Here, men in traditional Pakistani robes arrive each day for prayers. The houses are modest. Many women wear hijabs. Many speak little English.



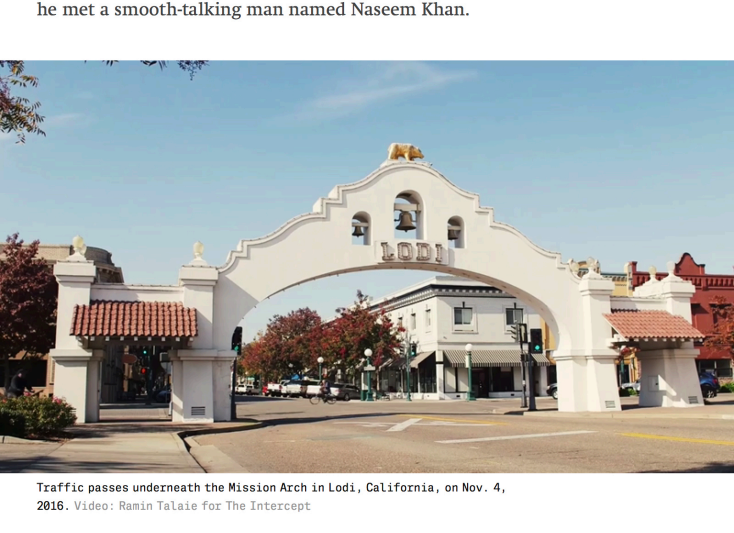
Map: The Intercept

Pakistanis began arriving in Lodi more than a century ago, lured by agricultural and railroad jobs. Many came from a cluster of rural villages in what is now the country's Punjab province. Hayat's great-grandfather was one of these immigrants, arriving in the Central Valley from rural Pakistan in 1918. He made his living raising chickens near Sacramento. In the early 1900s, racist backlash to Asian immigration blocked newcomers, but the Immigration and Nationality Act of 1965 opened the door once more. In 1978, a group of Pakistani men in Lodi joined together to buy a former Jehovah's Witnesses hall and converted it into the town's first mosque.

Hamid Hayat's father, Umer, had joined this stream of immigrants in 1976, leaving his ancestral village, a farm town of a few thousand people called Behboodi. He found work as the local ice cream seller in Lodi, driving the streets in a van that tooted "Pop Goes the Weasel." He returned to Pakistan briefly, where he married the daughter of a revered Islamic scholar, and brought his bride back to Lodi, where they raised four children. Like others in Lodi's Pakistani community, though, the Hayat family lived between two worlds — their new American life and their Pakistani homeland.

Umer Hayat hoped his eldest son, Hamid, would become an Islamic scholar like his grandfather. In 1991, when Hamid was in elementary school, his father plucked him out of Lodi and sent him to live with his grandparents in Pakistan to study the Quran. He remained there until 2000, when he contracted meningitis, a brain infection that left him comatose. His family said he never fully recovered and remained mentally disabled and weak. Shortly afterward, his parents brought him back to Lodi.

At 19, Hamid seemed headed for a low-wage job and an ordinary life in small-town America. He spent his days watching cricket and wrestling on television. He slept on a mattress in his parent's garage and worked part time at a mosque in a nearby town. But his path changed the day he met a smooth-talking man named Naseem Khan.



Traffic passes underneath the Mission Arch in Lodi, California, on Nov. 4, 2016. Video: Ramin Talaie for The Intercept

THE CASE AGAINST Hayat began with a mistake and a lie.

On October 17, 2001 — barely a month after the September 11 terrorist attacks — two FBI agents got a tip that a Pakistani immigrant in the ski town of Bend, Oregon, might be involved in terrorist financing. There, they found the man they thought they were looking for, Naseem Khan.

Khan, a 28-year-old Pakistani immigrant, worked at a convenience store. The agents questioned him in his apartment and quickly realized they had the wrong Naseem Khan; the surname "Khan" is the "Smith" of Pakistan, and Naseem is a common first name. But during the questioning, Khan broke some incredible news. He turned to the television, which was showing an image of Osama bin Laden and other top al Qaeda leaders. He pointed at the screen and told agents he knew one of the men, Ayman al-Zawahiri. Khan told the agents that he and the al Qaeda leader used to pray at the same mosque in rural California.

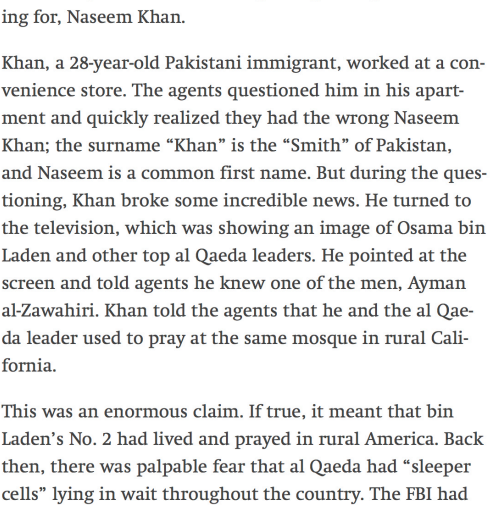
This was an enormous claim. If true, it meant that bin Laden's No. 2 had lived and prayed in rural America. Back then, there was palpable fear that al Qaeda had "sleeper cells" lying in wait throughout the country. The FBI had issued a $25 million reward for information about al-Zawahiri's whereabouts. Khan told the agents that he was 100 percent sure and could still picture the priest-like al-Zawahiri speaking to the congregation. The agents thought they'd stumbled onto something big. They asked Khan to infiltrate the mosque and gave him a cover story and a code name: Wildcat.

There was just one problem: The story about al-Zawahiri was a fabrication.

It's not clear why Khan lied. Years later, on the witness stand, he stuck to his story, even as FBI agents testified it wasn't true. It is clear that Khan stood to gain professionally and financially from the lie. After years of working at Taco Bell, McDonald's, and making $7 an hour at the K Market convenience store, Khan suddenly landed a full-time job in federal law enforcement. Over three years, the FBI paid Khan nearly $230,000, picking up the tab for all of his expenses, even regular car washes.

Wildcat arrived in Lodi in November 2001. He rented an apartment near the mosque and began sending detailed dispatches to his FBI handlers. He suggested that a local Pakistani grocer was suspect because he was well-connected in the mosque. Another man fell under suspicion because he owned a house where Muslim men gathered on weekends to drink tea and gossip. Khan homed in on two imams, both charismatic scholars from Pakistan who'd caused controversy in the mosque with a proposal to build a new Islamic school. He began hanging around the mosque, offering up his computer services and secretly recording the imams.

That's how Khan first met Hayat.



Hamid Hayat wears a garland of flowers in pictures from his wedding in Pakistan in March 2005. Photo: FBI

HAYAT COULDN'T BELIEVE his luck when Khan befriended him. Hayat, gangly and meek, wasn't part of the popular crowd. Khan, square-jawed and confident, pretended to take the teen into his confidence. Hayat should have been suspicious — Why would a man nearly 10 years his senior, an educated man with an apparently well-paying job and a flashy sports car, want to spend time with a 19-year-old loafer? Instead, Hayat spilled his feelings to Khan and invited him into his parents' home, where Hayat's mother cooked Khan homemade beef curry and his father treated Khan as a surrogate son.

Hayat and Khan talked for hours, mostly in Urdu and Pashto, and Khan recorded at least seven of these conversations. I obtained copies of these tapes and FBI translations. Much of their meaning depends on the listener. Are these the dark innermost thoughts of a jihadi or the ramblings of a troubled teen desperate to impress? What is clear is this: Khan posed as a radical Islamist, and he flattered and encouraged his target, praising Hayat's wisdom and knowledge of Islam.

Hayat easily fell into the trap. He bragged about his family's political ties, telling Khan that his grandfather was so influential that Pakistan's president sent him to Afghanistan after 9/11 to negotiate with the Taliban to turn over Osama bin Laden. He claimed to know several jihadi fighters because they'd studied at his grandfather's school. He bluffed about being a seasoned fighter himself, concocting an apparent tall tale that he'd helped throw stones to smash windows in a Taliban attack. He told another seeming lie about being held in a Pakistani jail for passing counterfeit money. He gleefully celebrated the gruesome beheading of Wall Street Journal reporter Daniel Pearl, who had been kidnapped by Pakistani militants, declaring, "Now they can't send one Jewish person to Pakistan."

During their conversations, Khan probed Hayat for information about terrorist training camps. He gave Hayat a hypothetical. Suppose Khan wanted to go to Pakistan to get jihadi training. How would he do that? Hayat replied that he'd watched a video online about training. He said he'd heard that there were camps near Pakistan's disputed Kashmir region. He suggested that Khan could make contact with Hayat's grandfather. Hayat said he'd like to go for training, too. It remained a hypothetical until the Hayat family decided to return to Pakistan in 2003 with plans to find a husband for one of their daughters and a bride for their oldest son.

By the time the family left for Pakistan, Khan had woven himself even deeper into their lives. When Hamid's younger brother, Arslan, wanted to buy a laptop to take to Pakistan, Khan offered to help and took him shopping. Khan learned that the family planned to take a lot of cash to Pakistan — remittances from other Lodi families as well as money that Hayat's family had stashed away for the weddings, close to $28,000. Khan secretly notified federal officials about it, and at Washington Dulles International Airport, U.S. Customs and Border Protection officers pulled the family out of the security line and confiscated the cash. Unsure what to do, Hayat made a call for help to a trusted friend — Naseem Khan.

When Hamid Hayat arrived in Pakistan, Khan waited for him to get terrorist training. Khan called Hayat's cellphone and the family's landline to check in with him. Throughout that summer, Hayat offered up excuses about why he hadn't yet gone to a camp. It was too hot, he told Khan. The political climate in Pakistan had changed, and it was too difficult to go, he said. Khan began to get frustrated. Stop wasting time, he told Hayat, after the teen said he was staying in the village to care for his ailing mother. Eventually, having had enough, Khan threatened Hayat.

"God willing, when I come to Pakistan and I see you, I'm going to fucking force you to, get you from your throat and fucking throw you in the madrassa, in your grandfather's madrassa," Khan said in one of the recorded conversations.

"I'm not going to go with that," Hayat said.

"Oh yeah, you will go," Khan told him. "Yeah, you will go. You know what? Maybe I can't fight with you in America, but I can beat your ass in Pakistan, so nobody's going to come to your rescue."

While Hamid lazed around the village that summer, playing cricket video games, Khan cozied up to his father, who had returned to Lodi from Pakistan. Khan pretended to empathize with the father's fears that his son would never become an Islamic scholar. Finally, in a conversation in July, Hamid's father told Khan that he had good news. That November, after Ramadan, Hamid would enroll in a religious school and get "training." Here, again, the narrative diverges. Hamid's father later said that he meant his son would receive religious training at school. Khan testified at the 2006 trial that the father meant jihadi training at a militant camp.

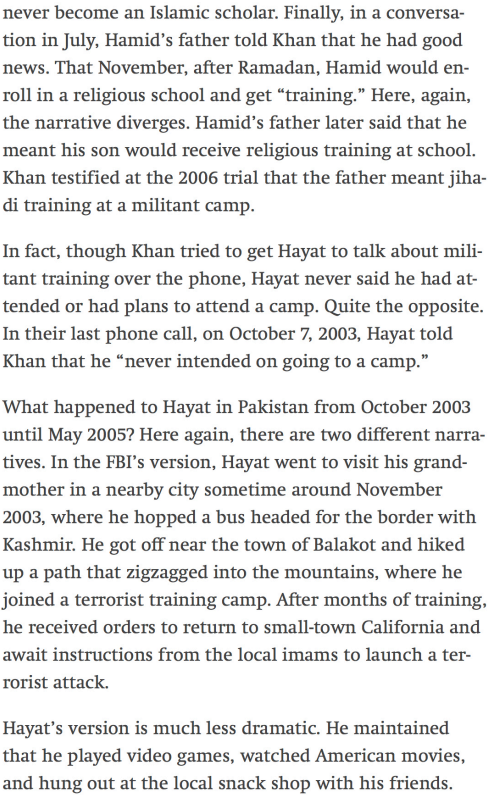
In fact, though Khan tried to get Hayat to talk about militant training over the phone, Hayat never said he had attended or had plans to attend a camp. Quite the opposite. In their last phone call, on October 7, 2003, Hayat told Khan that he "never intended on going to a camp."

What happened to Hayat in Pakistan from October 2003 until May 2005? Here again, there are two different narratives. In the FBI's version, Hayat went to visit his grandmother in a nearby city sometime around November 2003, where he hopped a bus headed for the border with Kashmir. He got off near the town of Balakot and hiked up a path that zigzagged into the mountains, where he joined a terrorist training camp. After months of training, he received orders to return to small-town California and await instructions from the local imams to launch a terrorist attack.

Hayat's version is much less dramatic. He maintained that he played video games, watched American movies, and hung out at the local snack shop with his friends. Each night, he joined other village men to gossip. He accompanied his mother to doctor's appointments, went to a friend's wedding, and briefly attended a religious revival meeting of a Muslim missionary group called Tablighi Jamaat.

In March 2005, Hayat took his first major step toward adulthood. In a large ceremony, he married a woman from his village. He wore a garland of yellow, red, and white flowers, a flowing white robe, and an intricately stitched red cap. His bride wore a sparkling red and gold ensemble. Two months later, Hayat and his mother boarded a flight to the United States with plans for Hayat's new bride to come to Lodi once he'd settled back in and arranged immigration papers for her.

But that ordinary life never happened for Hayat. He'd been added to the U.S. government's no-fly list, created after the 9/11 attacks for people banned from flying into or out of the United States on commercial aircraft. When U.S. officials learned he'd boarded a plane heading for America, they notified the airline, which quickly diverted the flight to Tokyo. There, an FBI agent questioned him, and Hayat denied attending a terrorist training camp. Hayat was then allowed to board a different flight to San Francisco. He thought the ordeal was over.



Interview of Hamid Hayat, 6/4-5/05

00:50:15
Legend
HH: Hamid Hayat
GS: Gary Schaaf
TH: Timothy M. Harrison
HS: Harry Sweeney
LL: Leticia Lucero
PA: Pedro T. Aguilar
UI: Unintelligible

Beginning of Video Tape 1 of 4
16:47:10 (6/4/05)
GS: Um I just got called in here so I'm a little behind the curve a bit but uh I understand you have some information that you've been providing about some things of uh importance to us.
HH: Uh huh.
GS: And so I want to thank you initially for that.
16:47:28
HH: Oh that's my job for my country you know.
GS: Uh huh, I appreciate that. In that regard where um I'm gonna, we'd like we we're probably going to monitor this (HH nodding) just just to, it will make it easier to go back and take notes (HH nodding) and all that kind of stuff if you're Ok with that, so. Is that alright?
16:47:40
HH: Yes. (Nodding yes)
GS: Ok.
HS: Hey Gary so you know we've talked about it a little bit and I've explained some of the things that Hamid has has talked about and what I asked him before you came in uh is to talk about those things (HH nodding), to tell the one hundred percent truth and and I know you know that you're going to do that and we'll help you uh certainly uh with with in going over some of those things but but again the important factor is uh is even those things that you may not have talked about up to this point real important that you you talk (HH nodding) about to help you and to help us.
48:13
HH: Uh huh. (Nodding Head)
GS: And we appreciate that.
GS: Now my understanding uh Hamid is that you uh you

1

GOVERNMENT EXHIBIT 22

Hamid Hayat interrogation transcript. Review the whole document here. Document: FBI

WHEN HAYAT ARRIVED in Lodi, he set about getting his life in order to prepare for his new bride to join him. Through a friend, he found work at a local fruit-packing plant. His efforts to create stability abruptly ended on June 3, 2005, when FBI agents knocked on his door and asked if he'd mind answering a few questions.

The next morning, Hayat and his father headed to the FBI's Sacramento office for an interview. They went voluntarily and without a lawyer. Agents walked Hayat back to an interrogation room, and his father waited in the lobby. It was about 11:30 a.m. Hours went by. No one recorded that part of Hayat's interrogation, but agents later said they questioned him about whether he'd attended a terrorist training camp. When he said he'd never received training, they asked him to take a polygraph, which investigators said he failed. (Although often portrayed in films and television as infallible, polygraphs, popularly known as lie detectors, are typically not admissible as evidence in court because of doubts about their accuracy.) At the time, Hayat's father, still in the lobby, knew none of this. Nonetheless, when he didn't hear anything, he started to worry, smoking cigarettes to calm his nerves.

It was nearly 5:00 p.m. before agents turned on the video camera and recorded any of their conversation with Hayat. The camera peered down on Hayat from a perch in the corner. The room looked small and austere, a carpeted office with a cluttered desk. No artwork or windows appeared in the frame. Two agents, both with close-cropped hair and both wearing button-down shirts, faced Hayat, who sat against the wall in a cushioned chair of the sort found in a dentist's waiting room. Hayat's shoulders hunched forward, his arms threaded tightly under his left leg. When he spoke, his voice sounded soft and timid, his accent thick. He still wore a visitor's badge clipped to his T-shirt. Throughout the interview, he seemed confused about what to do with his hands. He sat on them, then bit his nails, then grabbed at his neck. He seemed both nervous and eager to please.

The agents tried to build a rapport. They told Hayat that they knew a lot about training camps, and that they understood it was common for people to go for training in Pakistan. They tried to make it seem casual and no big deal. The agents did much of the talking. Hayat mostly nodded his head and gave short answers.

He tripped over simple words and idioms, his English rusty after two years of speaking Urdu and Pashto, and there was no translator. What is "martyr"? he asked. What are "marching orders"? What is "GPS"?

Hayat gave multiple, conflicting stories about attending a training camp. He told the agents that he'd gone to the training camp twice — once in 2000 and again sometime in 2003 or 2004 — something he'd never mentioned to Khan. He gave the agents several locations for the camp — first he said it was hidden in a forest near Balakot (the place he'd told Khan he'd seen in an online video), but later he said it was hundreds of miles away in Afghanistan's Tora Bora region, and then he told them that it was actually hidden just a few miles from his family's village in northern Pakistan. He also gave conflicting stories of the time of year he trained and said it was both the hot season and the cold season.

At one point, the agents pulled out a map of Pakistan. They began to be visibly frustrated.

"I'm trying to make the stories come together here," one agent said. "So be, be very descript [unintelligible] in the places that you're talking about and make sure, make sure you're, you got this right."

Hayat made himself out to be a dismal jihadi. He said he only saw four weapons at the camp — one shotgun, two pistols, and a machine gun. He said he shot a pistol, but that his aim was so bad that camp workers never taught him to reload and instead assigned him to the camp's kitchen, where he spent his days washing vegetables and chopping onions. The training usually lasted five months, but after three months, he'd had enough and ran away.

As the agents questioned Hayat, he didn't know that his father had been brought from the lobby to another interrogation room for questioning. The room was identical to Hamid's interrogation quarters. Two agents sat just a few inches from his father in swivel chairs. One agent leaned in close. The other slouched back, his legs stretched toward Umer Hayat. The agents said his son had admitted attending a training camp, but they tried to downplay the seriousness of the situation. They told Umer that they understood that attending a training camp was a normal part of life in Pakistan. One compared Umer's visit to the camp to a parent inspecting a potential college campus.

In_
My understanding, Hamid,
is that you attended some camps.

Hamid Hayat gives FBI agents conflicting information about the location of terrorist training camps.

Unlike his reserved son, Umer spoke animatedly, waving his arms and talking loudly as he described a visit to the training camp. He described how he watched as 1,000 fighters wearing masks like "ninja turtles" pole-vaulted "like 50 feet" in the air and sliced swords through dummies decorated with photos of President George W. Bush and other American leaders. He contradicted his son's story when he told the agents that the camp was hidden in a large underground basement near his father-in-law's religious school near Rawalpindi, a metropolis of close to 2 million people.

Meanwhile, the other agents continued to question his son, focused on what types of targets he had received orders to attack. When he didn't give them an answer, they asked what type he might attack, if he ever got such an order.

"Like buildings, and I'll say buildings," Hayat said.

"What kind of buildings?" the agent asked.

"Bigger buildings, you know, buildings," Hayat said.

"OK, financial buildings? Ah, private buildings? Commercial buildings?" the agent said.

"You know, commercial projects and like those kind of buildings, I'll say," Hayat said.

This exchange continued until the agent, sounding frustrated, said, "But I need to you tell me details about targets, what they said, you know. And, this is where I need your memory to come back."

"Like I said, sir, you know, big buildings, and, you know, like hospitalities [sic] and, you know, finance buildings, banks and, what's it called, ah, hmm, maybe like, you know, uh, stores, stores," Hayat said.

"What kind of stores?" the agent asked.

"Stores, like food stores, anything like that," Hayat replied.

The interrogation ended around 3 a.m. Hayat complained that his head hurt, and he said he wanted to go home to get some sleep.

"No, no you're not going to go, you're going to jail," one agent said.

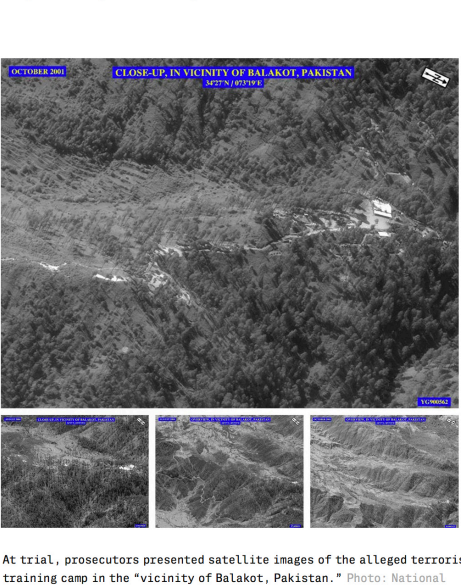
Confused, Hayat asked the agents if the jail had a place for him to sleep. At that, the tape ended.

The house at 302 Acacia Street in Lodi, California, where Hayat lived with his parents. Video: Ramin Talaie for The Intercept

HAYAT WAS BOOKED into the Sacramento County Jail. Meanwhile, the agents hatched a plan to use Hayat's father, Umer Hayat, as bait to try and hook their main targets, the two Lodi imams. The FBI believed that the imams, Muhammad Adil Khan and Shabbir Ahmed, posed a danger because they planned to create an Islamic school in Lodi, but the FBI didn't have evidence to criminally charge them. In the middle of the night, agents attached a body wire to Hayat's father and sent him to talk with the imams. He showed up, unannounced, at each imam's residence and began crying and talking frantically about Hayat and training camps. The plan failed. Neither imam said anything incriminating. Agents brought Umer Hayat back to the FBI and arrested him. Later that day, both imams were taken into custody on immigration charges, but they never faced any terrorism charges.

By then, the Hayat family in Lodi hadn't heard from the father or son since they left for Sacramento to talk to the FBI. The family and community leaders grew so concerned that they contacted the local office of CAIR, the Council on American-Islamic Relations, a civil liberties group that advocates for Muslims. CAIR reached out to one of its volunteers, a lawyer named Wazhma Mojaddidi. She was 31 years old and had only been a lawyer for about a year and a half — after passing the bar exam on her third try — and took mostly family and immigration cases. She'd never had a criminal case or a jury trial.

But she was a refugee from Afghanistan, an Urdu-speaker from the same Pashtun tribe as the Hayats, and she wanted to help. It's a decision that would haunt her — and the Hayat family — in the years ahead.



At trial, prosecutors presented satellite images of the alleged terrorist training camp in the "vicinity of Balakot, Pakistan." Photo: National Geospatial-Intelligence Agency

A SUMMARY OF HAYAT'S trial reads like a law school exam question, a litany of issues at every turn, from allegations of jury misconduct to a possible false confession to whether his lawyer was equipped to represent him. But, at its core, the Hayat case was about one thing: Did Hayat receive terrorist training in Pakistan in preparation for an attack in America?

At trial, prosecutors offered no physical evidence that he attended a terrorist camp. They had no eyewitnesses, no video, no photographs of him at the camp. They zeroed in on four satellite images of the alleged camp. That sounds clear, simple. But, according to a government memo about its witness preparations that I obtained through a Freedom of Information Act request, just a few weeks before trial, the government's own experts still couldn't agree on what camp Hayat attended, something Hayat's lawyers say they were never told.

About two weeks before trial, prosecutors met in Sacramento with an analyst from the National Geospatial-Intelligence Agency, which works closely with the CIA to analyze satellite imagery. The NGA analyst planned to testify about satellite images of a location that matched the coordinates for the Kalas Camp, a militant training facility that seemed to fit Hayat's first description of the camp. It was located a few miles outside of Balakot, up a zigzagging road through a dense forest. An intelligence report by the NGA claimed the camp had closed in 2002 but that it reopened in the spring of 2003.

However, a CIA analyst believed that Hayat had attended a different camp, a place called the Ichrian Camp. Ichrian is a small village located in roughly the same region as Balakot. A disagreement among experts may not seem that unusual, except for one thing: The defense never knew about the disagreement and neither did the jury, because the prosecution never disclosed it to the defense.

Instead, at trial, prosecutors presented satellite images that showed the Kalas Camp. They did not name it, labeling it only as in the "vicinity of Balakot, Pakistan," but they provided coordinates that matched Kalas. The images were not available in the public court file because prosecutors presented them as large exhibits at the trial and took them away afterward, but I received them through a Freedom of Information Act request to the NGA.

The images revealed a landscape of mountains and valleys. Two of the images showed an expansive view, while two zoomed in close. The dates on the photographs seemed arbitrary — two were taken in October 2001, and two were taken in August 2004. No people were visible in any of the images. Each showed a road snaking along a mountain ridge. The road ended at a clearing near a large building. The 2001 images were labeled to show clusters of tents in the forest around the clearing. The 2004 images showed several new small buildings and no tents.

It's possible that the disagreement about the camps came up in pre-trial hearings about classified evidence, but Hayat would not have heard about it. Because his lawyer did not apply for a national security clearance, she couldn't view any secret evidence or attend closed hearings about it. In a deposition later, she said she didn't get a security clearance because it was part of her trial strategy to push the prosecutors to go to trial as quickly as possible. She believed they didn't have enough evidence to make their case, and that the trial's start would be delayed by her application for a security clearance — a long, cumbersome process. It's a move that bewildered the legal experts I interviewed because it meant she couldn't see the evidence against her client.

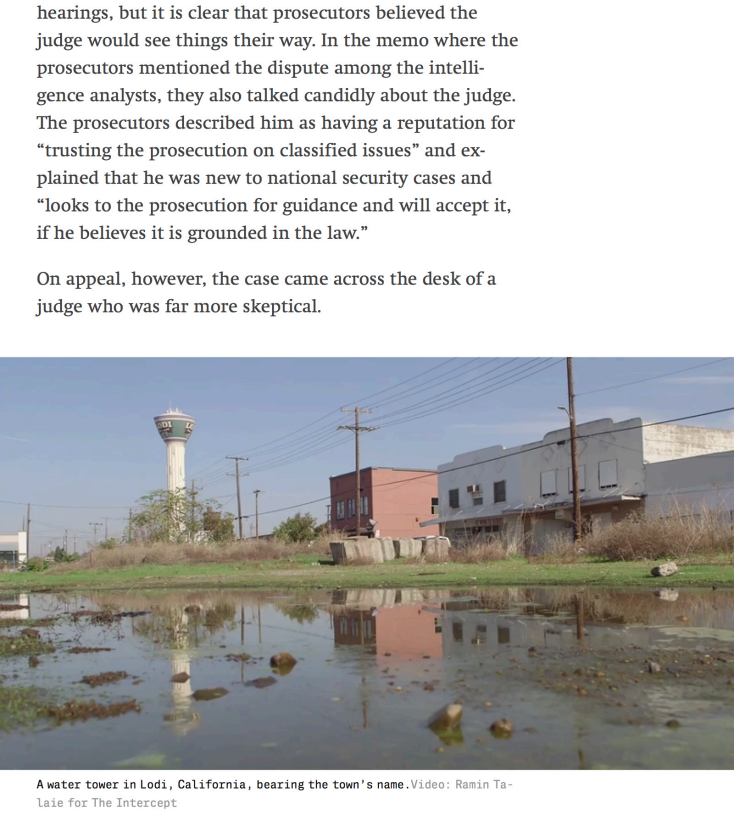
Her decision even bewildered the trial judge, Garland E. Burrell Jr., who publicly admonished her during pre-trial hearings, saying, "One has to wonder why you would accept this case, since to litigate in CIPA proceedings everybody knows, just by reading the law, that you have to have such a clearance." CIPA, the Classified Information Procedures Act, is legislation that lays out the process for using secret information in criminal cases.

When Hayat's lawyer told the judge that she didn't apply for a security clearance because the government "never offered and never told us about any specific classified information, [so] we felt there was no need," the judge responded by berating her, describing her response as "incredible." After all, she knew that the judge and prosecutors had been participating in classified hearings to discuss this secret evidence.

"Why do you think the government has been conducting CIPA hearings?" the judge asked. "What do you think we've been doing at CIPA hearings?"

It's impossible to know what happened at those secret hearings, but it is clear that prosecutors believed the judge would see things their way. In the memo where the prosecutors mentioned the dispute among the intelligence analysts, they also talked candidly about the judge. The prosecutors described him as having a reputation for "trusting the prosecution on classified issues" and explained that he was new to national security cases and "looks to the prosecution for guidance and will accept it, if he believes it is grounded in the law."

On appeal, however, the case came across the desk of a judge who was far more skeptical.



A water tower in Lodi, California, bearing the town's name. Video: Ramin Talaie for The Intercept

JUDGE A. WALLACE TASHIMA came of age during another fearful time in America. A child during World War II, Tashima and his family joined the thousands of other Japanese-Americans forced into internment camps. After his release, he excelled in school, eventually graduating from Harvard Law School and becoming the first Japanese-American on the United States Courts of Appeals.

In a 1995 interview, he told the New York Times that his internment had a profound effect. "I'm still keenly aware that the government can make mistakes, and probably more conscious than I otherwise would have been of the persecution of minorities," he said.

Tashima, who works from the 9th Circuit's court in Pasadena and is known for a stern but grandfatherly presence on the bench, has been openly critical of the impact of the war on terror, particularly for the rights of the accused. "The war on terrorism threatens to destroy the very values of a democratic society governed by the rule of law," he said at a 2004 conference at the Japanese American National Museum in Los Angeles.

A panel of three judges heard Hayat's appeal. Two upheld his conviction, but Tashima wrote a scathing 26-page dissent. He called the case "a stark demonstration of the unsettling and untoward consequences of the government's use of anticipatory prosecution as a weapon in the 'war on terrorism.'" He chastised the trial judge for the "patent unfairness" of preventing testimony on Hayat's statement to Khan that he never attended a training camp.

Most of all, he gave Hayat and his new legal team a reason for hope.

Documents published with this story:

- Letter from Khan's mother to the defense lawyer
- Affidavit from juror alleging juror misconduct
- 9th Circuit Court of Appeals opinion
- Ineffective assistance of counsel claims by Hayat's appeals lawyers
- National-Geospatial Intelligence Agency memo
- Khan's threat to Hayat

Abbie VanSickle is a reporter for the Investigative Reporting Program at University of California, Berkeley's Graduate School of Journalism. She also trained as a lawyer and practiced in Washington state.

Top photo: A man walks through a residential area in Lodi, California, on Nov. 4, 2016.

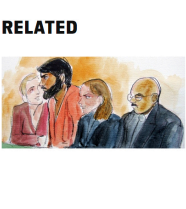
WAIT! BEFORE YOU GO on about your day, ask yourself: How likely is it that the story you just read would have been produced by a different news outlet if The Intercept hadn't done it?

Consider what the world of media would look like without The Intercept. Who would hold party elites accountable to the values they proclaim to have? How many covert wars, miscarriages of justice, and dystopian technologies would remain hidden if our reporters weren't on the beat?

The kind of reporting we do is essential to democracy, but it is not easy, cheap, or profitable. The Intercept is an independent nonprofit news outlet. We don't have ads, so we depend on our members — 24,000 and counting — to help us hold the powerful to account. Joining is simple and doesn't need to cost a lot: You can become a sustaining member for as little as $3 or $5 a month. That's all it takes to support the journalism you rely on.

Become a Member →

RELATED



Judge In Infamous "Sleeper Cell" Case Agrees to Hear New Evidence That Could Help Convicted Terrorist

PART 2
Star Witness in "Sleeper Cell" Case Blazed a Trail of Lies From Pakistan to California

DECEIT AND TERROR

In the years after 9/11, the case of an alleged terrorist "sleeper cell" in small-town California caused a national panic. A young Pakistani-American man was convicted — then the case began to fall apart.

CONTACT THE AUTHOR:

Abbie VanSickle
@AbbieVanSickle

No comments (closed)

The Intercept_
Join Our Newsletter
Original reporting. Fearless journalism. Delivered to you.
Enter your email address
Email list managed by MailChimp