FACT-CHECKING 9/11 ANNIVERSARY REPORT ON INFO AND DRAGNETS WITH 9/11 REPORT

In Salon, I point out something funny about the report released on Tuesday to mark the 10 year anniversary of the release of the 9/11 Commission report. The report says we must fight the "creeping tide of complacency." But then it says the government has done almost everything the 9/11 Commission said it should do.

> There is a "creeping tide of complacency," the members of the 9/11 Commission warned in a report released on Tuesday, the 10-year anniversary of the release of their original report. That complacency extends not just to terrorism. "On issue after issue – the resurgence and transformation of al Qaeda, Syria, the cyber threat – public awareness lags behind official Washington's." To combat that "creeping tide of complacency," the report argues, the government must explain "the evil that [is] stalking us."
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> Meanwhile, the commissioners appear unconcerned about complacency with climate change or economic decline.
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> All that fear-mongering is odd, given the report's general assessment of counterterrorism efforts made in the last decade. "The government's record in counterterrorism is good," the report judged, and "our capabilities are much improved."

If the government has done a good job of implementing the 9/11 Commission recommendations but the terror threat is an order of magnitude

worse now, as the report claims, then those recommendations were not sufficient to addressing the problem. Or perhaps the 13 top security officials whom the Commission interviewed did a slew of other things — like destabilizing Syria and Libya — that have undermined the apparatus of counterterrorism recommended by the original 9/11 Commission?

Which is a polite way of saying the 10-year report is unsatisfying on many fronts, opting for fear-mongering than another measured assessment about what we need to do to protect against terrorism.

Perhaps that's because, rather than conduct the public hearings with middle-level experts, as it boasted it had done in the original report, it instead privately interviewed just the people who've been in charge for the last 10 years, all of whom have a stake in fear and budgets and several of whom now have a stake in profiting off fear-mongering?

Suffice it to say I'm unimpressed with the report.

Which brings me to this really odd detail about it.

The report takes a squishy approach to Edward Snowden's leaks. It condemns his and Chelsea Manning's leaks and suggests they may hinder information sharing. It also suggests Snowden's leaks may be impeding recruiting for cybersecurity positions.

But it also acknowledges that Snowden's leaks have been important to raising concerns about civil liberties — resulting in President Obama's decision to impose limits on the Section 215 phone dragnet.

> Since 2004, when we issued the report, the public has become markedly more engaged in the debate over the balance between civil liberties and national security. In the mid-2000s, news reports about the National Security Agency's

> surveillance programs caused only a slight public stir. That changed with last year's leaks by Edward Snowden, an NSA contractor who stole 1.7 million pages of classified material. Documents taken by Snowden and given to the media revealed NSA data collection far more widespread than had been popularly understood. Some reports exaggerated the scale of the programs. While the government explained that the NSA's programs were overseen by Congress and the courts, the scale of the data collection has alarmed the public.
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> [snip]
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> [I]n March, the President announced plans to replace the NSA telephone metadata program with a more limited program of specific court-approved searches of call records held by private carriers. This remains a matter of contention with some intelligence professionals, who expressed to us a fear that these restrictions might hinder U.S. counterterrorism efforts in urgent situations where speedy investigation is critical.

Having just raised the phone dragnet changes, the report goes on to argue "these programs" — which in context would include the phone dragnet — should be preserved.

> We believe these programs are worth preserving, albeit with additional oversight. Every current or former senior official with whom we spoke told us that the terrorist and cyber threats to the United States are more dangerous today than they were a few years ago. And senior officials explained to us, in clear terms, what authorities they would need to address those threats. Their case is persuasive, and we encountered general agreement about what needs to be

> done.
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> Senior leaders must now make this case to the public. The President must lead the government in an ongoing effort to explain to the American people—in specific terms, not generalities—why these programs are critical to the nation's security. If the American people hear what we have heard in recent months, about the urgent threat and the ways in which data collection is used to counter it, we believe that they will be supportive. If these programs are as important as we believe they are, it is worth making the effort to build a more solid foundation in public opinion to ensure their preservation.

This discussion directly introduces a bizarre rewriting of the original 9/11 Report.

Given how often the government has falsely claimed that we need the phone dragnet because it closes a gap that let Khalid al-Midhar escape you'd think the 9/11 Commission might use this moment to reiterate the record, which shows that the government had the information it needed to discover the hijacker was in the US.

Nope.

It does, however, raise a very closely related issue: the FBI's failure to discover Nawaf al Hazmi's identity. Here's a claim the 9/11 Anniversary report makes immediately after defending the NSA's dragnets, in a section defending information sharing.

> Before 9/11, the government had a weak system for processing and using the vast pool of intelligence information it possessed. One striking example of this inadequacy: In January 2000, the NSA acquired information that could have helped identify one of the eventual hijackers, Nawaf al Hazmi. This information was not shared with other

> agencies because no agency made a specific request for it. Such failures underscore that intelligence-sharing among agencies is critically important and will not happen without leadership driving it.

Here's what the original 9/11 Report had to say about this.

> On January 8, the surveillance teams reported that three of the Arabs had suddenly left Kuala Lumpur on a short flight to Bangkok.47 They identified one as Midhar. They later learned that one of his companions was named Alhazmi, although it was not yet know that he was "Nawaf."
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> [snip]
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> The Counterterrorist Center (CTC) had briefed the CIA leadership on the gathering in Kuala Lumpur, and *the information had been passed on to Berger and the NSC staff and to Director Freeh and others at the FBI (though the FBI noted that the CIA had the lead and would let the FBI know if a domestic angle arose)*.
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> [snip]
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> Several weeks later, CIA officers in Kuala Lumpur prodded colleagues in Bangkok for additional information regarding the three travelers. 52 In early March 2000, Bangkok reported that Nawaf al-Hazmi, now identified for the first time with his full name, had departed on January 15 on a United Airlines flight to Los Angeles. As for Khalid al Midhar, there was no report of his departure even though he had accompanies Hazmi on the United flight to Los Angeles.53 No one outside the Counterterrorist Center was told any of this. The CIA did not try to register

> Mihdhar or Hazmi with the State Department's TIPOFF watchlist—either in January, when word arrived of Mihdhar's visa, or in March, when word came that Hazmi, too, had a U.S. visa and a ticket to Los Angeles.54
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> None of this information—about Midhar's U.S. visa or Hazmi's travel to the United States—went to the FBI, and nother mroe was done to track any of the three until January 2001, when the investigation of another bombing, that of the USS Cole, reignited interest in Khallad. (181-182) [my emphasis]

Thus far, it overstates that none of the information about Hazmi's identity was shared. The January intelligence that he attended the meeting Kuala Lumpur was passed along at high levels to FBI, and FBI responded by stating that if the event came to have a domestic component, they should let FBI know.

That part — the intelligence obtained in March 2000 that showed there was a domestic component — did not get passed on right away.

But it is also not true that no one ever asked for this information, as the 9/11 Commission report makes clear. After a CIA officer accidentally copied USS Cole case officer Steve Bongardt on an email indicating Mihdhar (and by association Hazmi) was in the US, Bongardt asked for the intelligence (this also appears on pages 249-250 of Ali Soufan's *The Black Banners*).

> "Jane" sent an email to the *Cole* case agent explaining that according to the [FBI's National Security Law Unit], the case could be opened only as an intelligence matter, and that if Mihdhar was found, only designated intelligence agents could conduct or even be present at any interview. She appears to have misunderstood the complex rules that could apply in this situation.81

> [snip]
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> Because Mihdhar was being sought for possible connection to or knowledge of the *Cole* bombing, he could be investigated or tracked under the existing *Cole* criminal case. No new criminal case was needed for the criminal agent to begin searching for Mihdhar. And as NSA had approved the passage of its information to the criminal agent, he could have conducted a search using all available information. As a result of this confusion, the criminal agents who were knowledgeable about al Qaeda and experienced with criminal investigative techniques, including finding suspects and possible criminal charges, were thus excluded from the search.83

The 9/11 Report does show that CIA did not alert US law enforcement immediately upon finding a suspect moving into the US (but then again, FBI did not alert various agencies of Tamerlan Tsarnaev's movements, nor CIA and State of Umar Farouk Abdulmutallab's, the former of which the Anniversary report notes). But the January 2000 intelligence was shared with the FBI. And in August 2001, one of the people best prepared to search for Mihdhar and Hazmi specifically asked for more information, but was (contrary to the requirements of "the wall") denied.

All these issues, of course, are unrelated to the dragnet as it currently exists. The info sharing about leads (including the terror watchlist released yesterday, which I will return to) and the now-demolished wall between intelligence and law enforcement are the issues that prevented, correctly or not, wider sharing before 9/11. And the reference to it appears in the info sharing section, not the (immediately preceding) section defending the dragnet.

All that said, it would be more useful for this fear-mongering report to acknowledge that we

continue to have information sharing issues, especially of the dragnet intelligence it claims is so important.

Indeed, one thing the report doesn't note is that NSA had information on both Abdulmutallab and Tsarnaev before their attacks — incidents that raise questions about the efficacy of the dragnet. Rather than misrepresenting what it described in the earlier report, then, the Anniversary Report would be better served to challenge what Keith Alexander told it, to assess whether the dragnet in its current form really serves our counterterrorism purposes.

Alas, it chose instead to repeat Alexander's fear-monger claims.