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## **F.B.I. Accused of Corrupting Computer Surveillance**

**By BENJAMIN WEISER**

A defense lawyer in a New York terrorism prosecution has accused the government of mishandling the computerized surveillance records of thousands of phone calls, faxes and computer data collected in the case, a secret filing shows.

The lawyer, Michael E. Tigar, has asked for a hearing on whether such evidence should be declared inadmissible. He contends that the Federal Bureau of Investigation used computer techniques that altered or corrupted the surveillance files. Mr. Tigar also cites a government acknowledgment that it cannot retrieve audio files of about 480 intercepted calls, saying that raises "questions about the entire system of record-keeping of all files, not just audio files of voice conversations."

The allegations were made in a court filing by Mr. Tigar, the lawyer who represents Lynne F. Stewart, the prominent attorney who faced charges of supporting terrorism before a federal judge dismissed them against her and two co-defendants last month. Ms. Stewart and her co-defendants still face trial on other charges in the long-running legal battle, in which the government has said that it intercepted more than 85,000 calls since the mid-1990's.

"The government has conceded that a great deal of electronic evidence is missing," Mr. Tigar wrote to the judge, John G. Koeltl, of Federal District Court in Manhattan. "It has also conceded using file transfer methodologies that, as we show below, alter and destroy data."

Mr. Tigar concluded, "If a private litigant — individual or corporate — came to court with such a sorry record of file destruction, that litigant would justly fear sanctions that might include prosecution for obstruction of justice."

Judge Koeltl has ordered Mr. Tigar's filing placed under a court seal, or confidentiality order, along with a letter from prosecutors that was attached to it detailing how the F.B.I. intercepts, stores and retrieves such evidence. The New York Times found the documents in the public court file late last week, and sought comment on them. (The court later removed the documents from the file.)

In the prosecutors' July 1 letter, they say that the F.B.I. followed necessary procedures in intercepting the calls, and that no changes were made to the contents of files during processing. The government acknowledged in the letter that of about 4,800 calls pertinent to the investigation, the F.B.I. had been unable to retrieve the computer files of 10 percent, or about 480 calls.

"Approximately 450 of these audio files are on electromagnetic tapes, which apparently have degraded over time," prosecutors wrote. They said the bureau was seeking outside assistance in the retrieval effort.

The government has previously cited in open court the F.B.I.'s difficulties in retrieving the calls.

The government's letter does not reveal the content of those calls, but it suggests that in deeming them pertinent to the case, federal investigators had reached a tentative conclusion that they included relevant and possibly incriminating information.

Prosecutors and the F.B.I. in New York had no comment yesterday. The government is scheduled to

respond formally to Mr. Tigar's court filing later this week, but also under seal, records show.

The dispute, no matter how it is resolved, is the latest twist in an investigation that has long relied on sophisticated technology, and shows how defense lawyers are now trying to use the high-tech surveillance methods against the government, by arguing that such computer techniques as compression and file transfers render such evidence tainted and unreliable.

The government has said in public court documents that it intercepted more than 85,000 audio recordings of voice calls, fax-machine sounds, and computer modem sounds under court orders from the nation's secret intelligence court, known as the Foreign Intelligence Surveillance Court.

The surveillance was conducted on phone numbers belonging to two of Ms. Stewart's co-defendants, Ahmed Abdel Sattar, who the indictment contends was an operative for an Egyptian terrorist organization called the Islamic Group, and Mohammed Yousry, a translator. The Islamic Group was once led by Sheik Omar Abdel Rahman, who was Ms. Stewart's client. Ms. Stewart's voice was picked up on some of the intercepted calls, the government has said. (All three defendants have pleaded not guilty.)

The government also collected about 1,300 pages of Mr. Sattar's faxes, and about 10,000 pages of e-mail messages and attachments through surveillance of an America Online e-mail account used by Mr. Sattar, the government has said.

Prosecutors said in the sealed letter that pursuant to one of the orders of the surveillance court, AOL "provided the F.B.I. with a `cloned' account that received an exact copy of all e-mail to or from" the e-mail account used by Mr. Sattar. "The `cloned' account was password protected and only a very limited number of F.B.I. personnel had access to the account," the prosecutors said.

Lawyers for Mr. Sattar and Mr. Yousry declined comment on the filing yesterday, as did Mr. Tigar, citing the court's confidentiality order. An AOL spokesman, Nicholas Graham, said the company does not comment on pending investigations or litigation. But, he said, speaking generally, the company "absolutely complies" with requests for information from law enforcement agencies in criminal investigations "under the proper legal guidelines and procedures."