

# The New York Times, “SWIFT” and National Security A Four Corners Debate

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**The Questions** (If time, debate two questions, to encourage more participation)

*#1 “Resolved: New York Times Publisher Arthur Sulzburger, Jr., Editor Bill Keller and reporters Eric Lichtblau, James Risen and Barclay Walsh are guilty of treason.”*

*#2 “Resolved: President George W. Bush, CIA Director Gen. Michael Hayden, FBI Director Robert Mueller and Attorney General Alberto Gonzales are guilty of illegal wiretapping.”*

**Before Class:**

Mark each corner of the room with one label/poster (available below)

- Strongly Agree
- Still Thinking/Can’t Decide
- Strongly Disagree

Students will arrive having written five talking points on each side of one or both of these questions about the New York Times’ decision to expose the SWIFT bank surveillance program.

**In Class:**

Read the Resolution/Debating Point aloud (and the applicable law, if you like) and post it where it’s visible.

Ask students to take about 5 minutes to decide if they Agree, Disagree or Can’t Decide. Then have them move to that corner. (Since they’ve written talking points, five on each side, you can direct students to populate each corner if any position is under-staffed.)

Start the clock. Each group gets 5-10 minutes to discuss the reasons they strongly agree, agree, disagree, or strongly disagree. One student in each group assembles the talking points and will present to the class.

Stand and Deliver. Each group’s representative argues the case the group put together.

Encourage Desertion. See if any of the arguments have motivated a student to actually change their mind.

Demand Answers. Once they have moved, ask deserters what changed their minds.

Process. Ask students to talk about what they learned by preparing both sides of the argument and what they think were the hardest arguments to counter.

Tie it up with a bow. Move the conversation back to Prior Restraint, The Watchdog Role and Freedom of WHOSE Press?

## The New York Times

June 23, 2006

# Bank Data Is Sifted by U.S. in Secret to Block Terror

By [ERIC LICHTBLAU](#) and [JAMES RISEN](#)

WASHINGTON, June 22 — Under a secret Bush administration program initiated weeks after the Sept. 11 attacks, counterterrorism officials have gained access to financial records from a vast international database and examined banking transactions involving thousands of Americans and others in the United States, according to government and industry officials. The program is limited, government officials say, to tracing transactions of people suspected of having ties to [Al Qaeda](#) by reviewing records from the nerve center of the global banking industry, a Belgian cooperative that routes about \$6 trillion daily between banks, brokerages, stock exchanges and other institutions. The records mostly involve wire transfers and other methods of moving money overseas and into and out of the United States. Most routine financial transactions confined to this country are not in the database.

Viewed by the Bush administration as a vital tool, the program has played a hidden role in domestic and foreign terrorism investigations since 2001 and helped in the capture of the most wanted Qaeda figure in Southeast Asia, the officials said. The program, run out of the [Central Intelligence Agency](#) and overseen by the Treasury Department, "has provided us with a unique and powerful window into the operations of the terrorist networks and is, without doubt, a legal and proper use of our authorities," Stuart Levey, an under secretary at the Treasury Department, said in an interview on Thursday.

The program is grounded in part on the president's emergency economic powers, Mr. Levey said, and multiple safeguards have been imposed to protect against any unwarranted searches of Americans' records.

The program, however, is a significant departure from typical practice in how the government acquires Americans' financial records. Treasury officials did not seek individual court-approved warrants or subpoenas to examine specific transactions, instead relying on broad administrative subpoenas for millions of records from the cooperative, known as Swift.

That access to large amounts of confidential data was highly unusual, several officials said, and stirred concerns inside the administration about legal and privacy issues.

"The capability here is awesome or, depending on where you're sitting, troubling," said one former senior counterterrorism official who considers the program valuable. While tight controls are in place, the official added, "the potential for abuse is enormous."

The program is separate from the [National Security Agency's](#) efforts to eavesdrop without warrants and collect domestic phone records, operations that have provoked fierce public debate and spurred lawsuits against the government and telecommunications companies.

But all the programs grew out of the Bush administration's desire to exploit technological tools to prevent another terrorist strike, and all reflect attempts to break down longstanding legal or institutional barriers to the government's access to private information about Americans and others inside the United States.

Officials described the Swift program as the biggest and most far-reaching of several secret efforts to trace terrorist financing. Much more limited agreements with other companies have provided access to A.T.M. transactions, credit card purchases and Western Union wire payments, the officials said.

Nearly 20 current and former government officials and industry executives discussed aspects of the Swift operation with The New York Times on condition of anonymity because the program remains classified. Some of those officials expressed reservations about the program, saying that what they viewed as an urgent, temporary measure had become permanent nearly five years later without specific Congressional approval or formal authorization.

Data from the Brussels-based banking consortium, formally known as the Society for Worldwide Interbank Financial Telecommunication, has allowed officials from the C.I.A., the [Federal Bureau of Investigation](#) and other agencies to examine "tens of thousands" of financial transactions, Mr. Levey said.

While many of those transactions have occurred entirely on foreign soil, officials have also been keenly interested in international transfers of money by individuals, businesses, charities and other groups under suspicion inside the United States, officials said.

A small fraction of Swift's records involve transactions entirely within this country, but Treasury officials said they were uncertain whether any had been examined.

Swift executives have been uneasy at times about their secret role, the government and industry officials said. By 2003, the executives told American officials they were considering pulling out of the arrangement, which began as an emergency response to the Sept. 11 attacks, the officials said. Worried about potential legal liability, the Swift executives agreed to continue providing the data only after top officials, including [Alan Greenspan](#), then chairman of the Federal Reserve, intervened. At that time, new controls were introduced.

Among the safeguards, government officials said, is an outside auditing firm that verifies that the data searches are based on intelligence leads about suspected terrorists. "We are not on a fishing expedition," Mr. Levey said. "We're not just turning on a vacuum cleaner and sucking in all the information that we can."

Swift and Treasury officials said they were aware of no abuses. But Mr. Levey, the Treasury official, said one person had been removed from the operation for conducting a search considered inappropriate.

Treasury officials said Swift was exempt from American laws restricting government access to private financial records because the cooperative was considered a messaging service, not a bank or financial institution.

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But at the outset of the operation, Treasury and Justice Department lawyers debated whether the program had to comply with such laws before concluding that it did not, people with knowledge of the debate said. Several outside banking experts, however, say that financial privacy laws are murky and sometimes contradictory and that the program raises difficult legal and public policy questions.

The Bush administration has made no secret of its campaign to disrupt terrorist financing, and President Bush, Treasury officials and others have spoken publicly about those efforts. Administration officials, however, asked The New York Times not to publish this article, saying that disclosure of the Swift program could jeopardize its effectiveness. They also enlisted several current and former officials, both Democrat and Republican, to vouch for its value.

Bill Keller, the newspaper's executive editor, said: "We have listened closely to the administration's arguments for withholding this information, and given them the most serious and respectful consideration. We remain convinced that the administration's extraordinary access to this vast repository of international financial data, however carefully targeted use of it may be, is a matter of public interest."

Mr. Levey agreed to discuss the classified operation after the Times editors told him of the newspaper's decision.

On Thursday evening, Dana Perino, deputy White House press secretary, said: "Since immediately following 9/11, the American government has taken every legal measure to prevent another attack on our country. One of the most important tools in the fight against terror is our ability to choke off funds for the terrorists."

She added: "We know the terrorists pay attention to our strategy to fight them, and now have another piece of the puzzle of how we are fighting them. We also know they adapt their methods, which increases the challenge to our intelligence and law enforcement officials."

Referring to the disclosure by The New York Times last December of the National Security Agency's eavesdropping program, she said, "The president is concerned that once again The New York Times has chosen to expose a classified program that is working to protect our citizens."

Swift declined to discuss details of the program but defended its role in written responses to questions. "Swift has fully complied with all applicable laws," the consortium said. The organization said it insisted that the data be used only for terrorism investigations and had narrowed the scope of the information provided to American officials over time.

### A Crucial Gatekeeper

Swift's database provides a rich hunting ground for government investigators. Swift is a crucial gatekeeper, providing electronic instructions on how to transfer money among 7,800 financial institutions worldwide. The cooperative is owned by more than 2,200 organizations, and virtually every major commercial bank, as well as brokerage houses, fund managers and stock exchanges, uses its services. Swift routes more than 11 million transactions each day, most of them across borders.

The cooperative's message traffic allows investigators, for example, to track money from the Saudi bank account of a suspected terrorist to a mosque in New York. Starting with tips from intelligence reports about specific targets, agents search the database in what one official described as a "24-7" operation. Customers' names, bank account numbers and other identifying information can be retrieved, the officials said.

The data does not allow the government to track routine financial activity, like A.T.M. withdrawals, confined to this country, or to see bank balances, Treasury officials said. And the information is not provided in real time — Swift generally turns it over several weeks later. Because of privacy concerns and the potential for abuse, the government sought the data only for terrorism investigations and prohibited its use for tax fraud, drug trafficking or other inquiries, the officials said.

The Treasury Department was charged by President Bush, in a September 2001 executive order, with taking the lead role in efforts to disrupt terrorist financing. Mr. Bush has been briefed on the program and Vice President [Dick Cheney](#) has attended C.I.A. demonstrations, the officials said. The National Security Agency has provided some technical assistance.

While the banking program is a closely held secret, administration officials have held classified briefings for some members of Congress and the Sept. 11 commission, the officials said. More lawmakers were briefed in recent weeks, after the administration learned The Times was making inquiries for this article.

Swift's 25-member board of directors, made up of representatives from financial institutions around the world, was previously told of the program. The Group of 10's central banks, in major industrialized countries, which oversee Swift, were also informed. It is not clear if other network participants know that American intelligence officials can examine their message traffic.

Because Swift is based overseas and has offices in the United States, it is governed by European and American laws. Several international regulations and policies impose privacy restrictions on companies that are generally regarded as more stringent than those in this country. United States law establishes some protections for the privacy of Americans' financial data, but they are not ironclad. A 1978 measure, the Right to Financial Privacy Act, has a limited scope and a number of exceptions, and its role in national security cases remains largely untested.

Several people familiar with the Swift program said they believed that they were exploiting a "gray area" in the law and that a case could be made for restricting the government's access to the records on Fourth Amendment and statutory grounds. They also worried about the impact on Swift if the program were disclosed.

"There was always concern about this program," a former official said.

One person involved in the Swift program estimated that analysts had reviewed international transfers involving "many thousands" of people or groups in the United States. Two other officials placed the figure in the thousands. Mr. Levey said he could not estimate the number.

The Swift data has provided clues to money trails and ties between possible terrorists and groups financing them, the officials said. In some instances, they said, the program has pointed them to new suspects, while in others it has buttressed cases already under investigation.

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Among the successes was the capture of a Qaeda operative, Riduan Isamuddin, better known as Hambali, believed to be the mastermind of the 2002 bombing of a Bali resort, several officials said. The Swift data identified a previously unknown figure in Southeast Asia who had financial dealings with a person suspected of being a member of Al Qaeda; that link helped locate Hambali in Thailand in 2003, they said.

In the United States, the program has provided financial data in investigations into possible domestic terrorist cells as well as inquiries of Islamic charities with suspected of having links to extremists, the officials said.

The data also helped identify a Brooklyn man who was convicted on terrorism-related charges last year, the officials said. The man, Uzair Paracha, who worked at a New York import business, aided a Qaeda operative in Pakistan by agreeing to launder \$200,000 through a Karachi bank, prosecutors said.

In terrorism prosecutions, intelligence officials have been careful to "sanitize," or hide the origins of evidence collected through the program to keep it secret, officials said.

The Bush administration has pursued steps that may provide some enhanced legal standing for the Swift program. In late 2004, Congress authorized the Treasury Department to develop regulations requiring American banks to turn over records of international wire transfers. Officials say a preliminary version of those rules may be ready soon. One official described the regulations as an attempt to "formalize" access to the kind of information secretly provided by Swift, though other officials said the initiative was unrelated to the program.

### The Scramble for New Tools

Like other counterterrorism measures carried out by the Bush administration, the Swift program began in the hectic days after the Sept. 11 attacks, as officials scrambled to identify new tools to head off further strikes.

One priority was to cut off the flow of money to Al Qaeda. The 9/11 hijackers had helped finance their plot by moving money through banks. Nine of the hijackers, for instance, funneled money from Europe and the Middle East to SunTrust bank accounts in Florida. Some of the \$130,000 they received was wired by people overseas with known links to Al Qaeda.

Financial company executives, many of whom had lost friends at the World Trade Center, were eager to help federal officials trace terrorist money. "They saw 9/11 not just as an attack on the United States, but on the financial industry as a whole," said one former government official.

Quietly, counterterrorism officials sought to expand the information they were getting from financial institutions. Treasury officials, for instance, spoke with credit card companies about devising an alert if someone tried to buy fertilizer and timing devices that could be used for a bomb, but they were told the idea was not logistically possible, a lawyer in the discussions said. The F.B.I. began acquiring financial records from Western Union and its parent company, the First Data Corporation. The programs were alluded to in Congressional testimony by the F.B.I. in 2003 and described in more detail in a book released this week, "The One Percent Doctrine," by Ron Suskind. Using what officials described as individual, narrowly framed subpoenas and warrants, the F.B.I. has obtained records from First Data, which processes credit and debit card transactions, to track financial activity and try to locate suspects.

Similar subpoenas for the Western Union data allowed the F.B.I. to trace wire transfers, mainly outside the United States, and to help Israel disrupt about a half-dozen possible terrorist plots there by unraveling the financing, an official said.

The idea for the Swift program, several officials recalled, grew out of a suggestion by a Wall Street executive, who told a senior Bush administration official about Swift's database. Few government officials knew much about the consortium, which is led by a Brooklyn native, Leonard H. Schrank, but they quickly discovered it offered unparalleled access to international transactions. Swift, a former government official said, was "the mother lode, the Rosetta stone" for financial data.

Intelligence officials were so eager to use the Swift data that they discussed having the C.I.A. covertly gain access to the system, several officials involved in the talks said. But Treasury officials resisted, the officials said, and favored going to Swift directly. At the same time, lawyers in the Treasury Department and the Justice Department were considering possible legal obstacles to the arrangement, the officials said.

In 1976, the Supreme Court ruled that Americans had no constitutional right to privacy for their records held by banks or other financial institutions. In response, Congress passed the Right to Financial Privacy Act two years later, restricting government access to Americans' banking records. In considering the Swift program, some government lawyers were particularly concerned about whether the law prohibited officials from gaining access to records without a warrant or subpoena based on some level of suspicion about each target.

For many years, law enforcement officials have relied on grand-jury subpoenas or court-approved warrants for such financial data. Since 9/11, the F.B.I. has turned more frequently to an administrative subpoena, known as a national security letter, to demand such records.

After an initial debate, Treasury Department lawyers, consulting with the Justice Department, concluded that the privacy laws applied to banks, not to a banking cooperative like Swift. They also said the law protected individual customers and small companies, not the major institutions that route money through Swift on behalf of their customers.

Other state, federal and international regulations place different and sometimes conflicting restrictions on the government's access to financial records. Some put greater burdens on the company disclosing the information than on the government officials demanding it.

Among their considerations, American officials saw Swift as a willing partner in the operation. But Swift said its participation was never voluntary. "Swift has made clear that it could provide data only in response to a valid subpoena," according to its written statement.

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Indeed, the cooperative's executives voiced early concerns about legal and corporate liability, officials said, and the Treasury Department's Office of Foreign Asset Control began issuing broad subpoenas for the cooperative's records related to terrorism. One official said the subpoenas were intended to give Swift some legal protection.

Underlying the government's legal analysis was the International Emergency Economic Powers Act, which Mr. Bush invoked after the 9/11 attacks. The law gives the president what legal experts say is broad authority to "investigate, regulate or prohibit" foreign transactions in responding to "an unusual and extraordinary threat."

But L. Richard Fischer, a Washington lawyer who wrote a book on banking privacy and is regarded as a leading expert in the field, said he was troubled that the Treasury Department would use broad subpoenas to demand large volumes of financial records for analysis. Such a program, he said, appears to do an end run around bank-privacy laws that generally require the government to show that the records of a particular person or group are relevant to an investigation.

"There has to be some due process," Mr. Fischer said. "At an absolute minimum, it strikes me as inappropriate."

Several former officials said they had lingering concerns about the legal underpinnings of the Swift operation. The program "arguably complies with the letter of the law, if not the spirit," one official said.

Another official said: "This was creative stuff. Nothing was clear cut, because we had never gone after information this way before."

Treasury officials said they considered the government's authority to subpoena the Swift records to be clear. "People do not have a privacy interest in their international wire transactions," Mr. Levey, the Treasury under secretary, said.

### Tighter Controls Sought

Within weeks of 9/11, Swift began turning over records that allowed American analysts to look for evidence of terrorist financing. Initially, there appear to have been few formal limits on the searches.

"At first, they got everything — the entire Swift database," one person close to the operation said.

Intelligence officials paid particular attention to transfers to or from Saudi Arabia and the United Arab Emirates because most of the 9/11 hijackers were from those countries.

The volume of data, particularly at the outset, was often overwhelming, officials said. "We were turning on every spigot we could find and seeing what water would come out," one former administration official said. "Sometimes there were hits, but a lot of times there weren't."

Officials realized the potential for abuse, and narrowed the program's targets and put in more safeguards. Among them were the auditing firm, an electronic record of every search and a requirement that analysts involved in the operation document the intelligence that justified each data search. Mr. Levey said the program was used only to examine records of individuals or entities, not for broader data searches.

Despite the controls, Swift executives became increasingly worried about their secret involvement with the American government, the officials said. By 2003, the cooperative's officials were discussing pulling out because of their concerns about legal and financial risks if the program were revealed, one government official said.

"How long can this go on?" a Swift executive asked, according to the official.

Even some American officials began to question the open-ended arrangement. "I thought there was a limited shelf life and that this was going to go away," the former senior official said.

In 2003, administration officials asked Swift executives and some board members to come to Washington. They met with Mr. Greenspan, [Robert S. Mueller III](#), the F.B.I. director, and Treasury officials, among others, in what one official described as "a full-court press." Aides to Mr. Greenspan and Mr. Mueller declined to comment on the meetings.

The executives agreed to continue supplying records after the Americans pledged to impose tighter controls. Swift representatives would be stationed alongside intelligence officials and could block any searches considered inappropriate, several officials said.

The procedural change provoked some opposition at the C.I.A. because "the agency was chomping at the bit to have unfettered access to the information," a senior counterterrorism official said. But the Treasury Department saw it as a necessary compromise, the official said, to "save the program."

Barclay Walsh contributed reporting for this article.

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## **U.S. Constitution**

### **Article III.**

#### **Section. 3.**

*"Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."*

## **§ 2381 U.S. Code**

### **Treason**

*"Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$10,000; and shall be incapable of holding any office under the United States."*

## **§ 2511 U.S. Code**

### **Interception of wire, oral, or electronic communications prohibited**

*"Any person who intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication...without a court order granted under Section 704 of the Foreign Intelligence Surveillance Act of 1978, may be enjoined by the courts, fined by the courts...and subject to civil suit." (Simplified for this exercise)*

**Resolved: The New York Times Publisher, Editor and Reporters who exposed the SWIFT bank should be tried for treason.**

**Resolved: President  
George W. Bush, CIA  
Director Gen. Michael  
Hayden, FBI Director  
Robert Mueller and  
Attorney General  
Alberto Gonzales are  
guilty of illegal  
wiretapping**



Agree

Disagree

Undecided