



**U.S. Department of  
Defense**

Office of the Secretary  
Of Defense

**Office of Inspector General**

Daniel Marcus  
General Counsel  
National Commission on Terrorist Attacks  
Upon the United States  
301 Seventh St., SW, Room 5125  
Washington, DC 20407

Dear Mr. Marcus:

This is in response to your letter of July 29, 2004, to Inspectors General Joseph Schmitz and Kenneth Mead, referring, for appropriate action, issues involving certain public statements made by NORAD and FAA officials at a Commission hearing, and elsewhere, that were inaccurate.

Based on our review of the documentation you provided and preliminary inquiries within our departments, we have determined to undertake further inquiries to address the issues raised in your correspondence.

Thank you for affording us the opportunity to meet with you and other Commission staff earlier this week. We also appreciate your assistance in facilitating our access to Commission records through coordination with the National Archives and Records Administration. The ready availability of Commission records will be important for our review.

Thank you for bringing this matter to our attention.

Sincerely,

Thomas F. Gimble  
Deputy Inspector General  
for Intelligence  
U.S. Department of Defense  
(703) 604-8800



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

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AUG 20 2004

Todd J. Zinser  
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Washington, D.C. 20590

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Dear Mr. Schmitz and Mr. Mead:

Timothy J. Roemer

James R. Thompson

During the course of our investigation, the staff of the National Commission on Terrorist Attacks Upon the United States discovered evidence that certain public statements made by NORAD and FAA officials at a Commission hearing on May 23, 2003, and elsewhere, regarding the actions of NORAD and FAA officials in responding to the 9/11 attacks were not accurate. We did not, however, investigate whether these statements were knowingly false. Since we did gather evidence that may bear on this issue, we decided to refer this matter to each of you so that you may take whatever steps you believe are appropriate.

Philip D. Zelikow  
EXECUTIVE DIRECTOR

To assist you in examining this matter, we have included copies of the following:

- (1) A Commission staff memorandum regarding NORAD and FAA Statements Concerning Air Defense on 9/11.
- (2) An email from Col. Robert Marr to retired Col. William Scott dated June 2, 2003, which was forwarded to Commission staff.
- (3) The Final Report of the Commission released July 22, 2004; chapter 1 in particular pertains to this issue.
- (4) Commission Staff Statement No. 17, dated June 17, 2004.
- (5) Testimony of NORAD and FAA officials at the Commission's public hearing held on June 17, 2004.
- (6) Testimony of NORAD and FAA officials at the Commission's public hearing held on May 22-23, 2003.

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Hon. Joseph E. Schmitz  
Hon. Kenneth M. Mead  
July 29, 2004  
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If you have any questions about these materials, please call me at 202-331-4065. Please note that the Commission terminates, by statute, on August 26, 2004.

Yours sincerely,



*Daniel Marcus*

Daniel Marcus  
General Counsel

## MEMORANDUM FROM THE 9-11 COMMISSION STAFF

Date: July 29, 2004

Re: NORAD and FAA Statements Concerning Air Defense on 9/11

This memo reviews some of the evidence the staff of the National Commission on Terrorist Attacks Upon the United States (known as the 9-11 Commission) reviewed regarding statements by U.S. government officials relating to actions taken by NORAD and FAA officials on September 11, 2001. This memo should be read in conjunction with the Final Report of the Commission released on July 22, 2004, in particular chapter 1 of the Report, as well as Commission Staff Statement No. 17, released on June 17, 2004, and the testimony of NORAD and FAA witnesses at public hearings held by the Commission on May 22-23, 2003, and June 17, 2004.

### PRIOR STATEMENTS

On May 23, 2003, at the Commission's second public hearing, representatives of both the Federal Aviation Administration ("FAA") and the North American Aerospace Defense command ("NORAD") testified. Their testimony set forth the times at which the FAA became aware that each flight was hijacked on 9/11; the times at which the military was notified of the hijackings; and how the military responded. Representatives of both agencies have also testified about this subject before congressional committees. They have been interviewed numerous times for media accounts of the response on 9/11. The First Air Force has published an official history, *Air War Over America*, concerning the air defense effort on 9/11.

After reviewing radar data and primary source material obtained via document requests and subpoenas, and after interviewing officials from FAA and NORAD at every level, the Commission staff concluded, as explained in Staff Statement No. 17 and in the Final Report, that significant aspects of the May 23, 2003, testimony before the Commission were incorrect.

**Timeline.** At the May 23 hearing, retired Col. William Scott presented the Commission with a NORAD timeline of the operational facts of 9/11. This timeline reflected:

- FAA notice to the military of the hijacking of United Airlines Flight 93 at 9:16 a.m. (forty-seven minutes prior to crash).
- FAA notice to the military of the hijacking of American Airlines Flight 77 at 9:24 a.m. (13 minutes prior to crash).
- Both the timeline and Col. Scott's testimony indicated that the fighters at Langley Air Force Base were scrambled at 9:24, seemingly in response to the hijacking of American 77.

**Objective.** The timeline and Col. Scott's testimony indicated that the fighters were scrambled to meet the threat to Washington posed by American 77.

The representation that the Langley fighters were scrambled to meet the threat posed by American 77 prompted questions from Commissioners Lehman and Ben-Veniste about the details of the Langley scramble. Retired General Larry Arnold explained: "9:24 was the first time that we had been advised of American 77 as a possible hijacked airplane. Our focus--you have got to remember that there's a lot of other things going on simultaneously here--was on United 93, which was being pointed out to us very aggressively I might say by the FAA. . . . We were advised [American 77] was possibly hijacked. And we had launched almost simultaneously with that, we launched the aircraft out of Langley to put them over top of Washington, D.C., not in response to American Airlines 77, but really to put them in position in case United 93 were to head that way." We believe each of the four sentences in this quotation was inaccurate.

**Inaccurate Statement #1: The FAA notified the military at 9:16 that United 93 was hijacked.**

NORAD's first publicly available timeline of the events of 9/11 was released on 9/18/01, one week after the attacks. Prior to the 9/18 release, NORAD Public Affairs prepared a draft release, dated 9/16/01. The draft release listed the time 9:16 as the notification time for United 93.

Between the 9/16 draft and the 9/18 final release, that time was changed. In the final release on 9/18, the 0916 notification time for United 93 is deleted, and is replaced with "N/A." The release explains that the notification time is "N/A" because the FAA informed NORAD of the hijacking of United 93 while on an open line discussing American 77.<sup>1</sup> The Public Affairs Director stated to Commission staff that he deleted the 0916 notification time because he "lost confidence" in its accuracy, although he could not remember why he lost confidence in the time.

An email obtained by Commission staff in response to the Commission's subpoena sheds some light on why NORAD may have lost confidence in the 9:16 notification time. The email, sent on September 16, 2001, at 11:06 p.m. to NEADS from Brigadier General Doug Moore at CONR, commends the person at NEADS "who dug up the requested information from your logs and tapes," and indicates that it has been passed to "the proper FAA office" which will be "using this data to brief the White House tomorrow" [i.e., September 17]. The e mail then asks for follow-up information about, among other data points, "United 93, 1408Z [i.e., 10:08], Which center calls with information that UA 93 ... is heading for Cleveland? ... 1415Z [i.e., 10:15], Who reported to NEADS that aircraft had crashed?"<sup>2</sup> [DOD bates number NCT 0053404]

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<sup>1</sup> Commission staff established that the earliest discussion of creating an open line occurred at approximately 9:50, and that the open line may not have been established until well after 10:00. NORAD now accepts that the notification of United 93 as a hijack did not occur over this open line.

<sup>2</sup> The NEADS log records the time as 10:07 for the entry described by Brigadier General Moore.

This email--and the response to it by NEADS--is significant because it reveals that someone at NEADS had searched the relevant logs and tapes during the first week after 9/11 and identified the notification time for United 93. It is a fair inference that, having identified the notification time for United 93, NORAD "lost confidence" in 9:16 and omitted it from the September 18 release.

The question, then, is why the discredited 9:16 notification time reappeared in NORAD's testimony before the Commission in May 2003. This question is highlighted by the subsequent Commission staff interview of [redacted] a data analyst at NORAD. Ms. [redacted] told us that a timeline she created based on the 9/18 press release, which reflected no notification time for United 93, was forwarded on May 13, 2003, a week prior to the Commission's hearing, in order to prepare officials for their testimony.

Why was 9:16 reintroduced? Commission staff has obtained an email sent from Col. Robert Marr, the Battle Commander at NEADS, to retired Col. William Scott after the Commission's hearing, which sheds light on the subject. During the May 2003 hearing, Commissioner Lehman asked several questions about the path of the Langley fighters, which traveled directly east, over the ocean, and then north toward Baltimore, before heading west to Washington. Why, the Commissioner wanted to know, didn't the fighters head more directly to Washington, if they had been scrambled to respond to American 77, the plane that struck the Pentagon? Col. Marr addressed this question in his response to retired Col. Scott:

"The answer on AA77 is not easy, nor is it pretty. At the time AA77 was occurring we were focused on UAL93 which was the only confirmed hijack that the FAA had identified to us. My records show UAL93 reported as hijacked at 0916L, once we found it and identified it's [sic] westerly heading, we scrambled Langley at 0924L just in case it turned around toward DC, which it did later. At 0924L we also received a call from the FAA about AA77 with a follow-up call at 0925L. It is easiest to explain the simultaneous scramble order with the AA77 notification as the scramble being against AA77 -- it takes a lot of time to explain to the public that you're scrambling fighters against a plane heading away from the possible target."

Col. Marr, in other words, attempted to explain the circuitous route of the Langley fighters in getting to Washington, D.C., by indicating that they were not in fact scrambled to respond to a report at 9:24 that American 77 was hijacked; they were scrambled in response to the earlier "report" that United 93 was hijacked. Thus, the reintroduction of the discredited 9:16 notification time enabled NORAD to explain to the Commission the odd route of the Langley fighters in reaching Washington.

There were two fundamental problems with the explanation. First, as at least some in the military have known since the week of 9/11, it is inaccurate. The plane had not been hijacked at 9:16; the hijacking did not occur until 9:28--after the Langley fighters were

ordered scrambled--and NEADS was not notified until after the plane had crashed. NORAD informed Commission staff at the close of Commission interviews at NORAD headquarters in Colorado Springs that it now accepts that notification did not occur until after the plane had crashed. Second, as we will now discuss, NEADS was not notified that American 77 was hijacked at 9:24.

**Inaccurate Statement #2: The FAA notified the military of the hijacking of American 77 at 9:24.**

Although American 77 disappeared from radar and radio contact at 8:56, the first notification to NEADS that American 77 was missing (there is no mention of its having been hijacked at this point) came at 9:34, ten minutes after the scramble had already been ordered at Langley Air Force Base.

One to two minutes later, NEADS received notice that an unidentified plane was six miles southwest of the White House. American 77 crashed into the Pentagon at 9:37:45.

Thus, NEADS did not receive notice that American 77 was hijacked at 9:24. In fact, NEADS never received notice that American 77 was hijacked at all, let alone at 9:24; it received reports (at 9:34) that American 77 was missing, and (at 9:35 or 9:36) that an unidentified plane was near the White House.

What notification did occur at 9:24? The Mission Crew Commander's staff at NEADS maintains a handwritten contemporaneous log of information received and actions taken (known as the "MCC/T Log"). The 9/11 entry in the log at 9:24 records: "American Airlines #N334AA hijacked." This tail number refers not to American 77 but to American 11, the first hijacked aircraft that crashed into the North Tower of the World Trade Center. The subpoenaed tapes confirm that this time corresponds to NEADS's receipt of tail number information on American 11 and to reports that American 11 was still airborne and headed towards Washington, D.C.

**Inaccurate Statement #3: When the Langley fighters were scrambled, their objective was to respond to the reports at 9:16 that United 93 was hijacked and at 9:24 that American 77 was hijacked.**

Contrary to testimony before the Commission, the Langley fighters were ordered scrambled not because of United 93, which had not been hijacked, nor because of American 77, which had not been reported to NEADS, but because of the mistaken report that American 11--the first hijacked plane--had not hit the World Trade Center, but was heading south for Washington, D.C. The fighters were ordered scrambled initially toward New York, and then vectored toward Baltimore, in an effort to intercept that mistakenly reported aircraft. The best evidence for both this inaccurate report and the resulting scramble is the subpoenaed NEADS tape, which records that at approximately 9:21, the Mission Crew Commander spoke the following to the Battle Cab (where the Battle Commander, Colonel Marr, was located):

“Okay. American Airlines is still airborne, 11, the first guy. He’s headed towards Washington, okay? I think we need to scramble Langley right now, and I’m going to – I’m going to take the fighters from Otis and try to chase this guy down if I can find him. Yeah. You sure? Okay. He’s heading towards Langley, or I should say Washington. American 11, the original guy. He’s still airborne . . . .”

Seconds later, the Mission Crew Commander ordered the scramble of the Langley fighters.

This report of American 11 heading south--the cause of the Langley scramble--is reflected not just in taped conversations at NEADS, but in taped conversations at FAA centers, on chat logs compiled at NEADS, CONR, NORAD, and the National Military Command Center, and in other records. It is the opening report on the Significant Event Conference Call. The mistaken report was also readily acknowledged in interviews of operational personnel.

But in October 2001, for instance, NORAD Commanding General Ralph Eberhart testified before the Senate Armed Services Committee on the sequence of events on 9/11. General Eberhart did not mention the mistaken report about American 11 as a cause for the Langley scramble. Instead, he provided a timeline chart and verbal testimony that listed 9:24 as the notification time for American 77 and implied that this notification prompted the scramble of the Langley fighters.

The General elaborated, in responses submitted after his testimony for the record: “The FAA notified the NEADS that American Airlines Flight 77 was headed towards Washington, DC. NEADS then passed this information to NORAD’s Air Warning Center . . . . At 0925, the NMCC convened a Significant Event Conference and during that conference, at 0933, NORAD reported one more aircraft en route to Washington, D.C.”

NORAD’s own Headquarters Intel Chat Log is inconsistent with this testimony, recording at 9:24:39 “original aa flt hijack is now headed to Washington scrambled lfi [i.e., Langley]” and then at 9:25:13 “2 acft that hit wt bldg not repeat not the original hjk aa acft.” Furthermore, the Air Warning Center log at NORAD, to which General Eberhart refers, records, at 9:27, that “The original hijack a/c is still a/b and head for Washington, D.C. Otis F15 are trying to intercept the flight.” It then records, at 9:36, that CONR has advised of the scramble at Langley: “LFI A/B Quit 25/26/27 3 A/B at time 1333 [i.e., 9:33].” The NORAD Headquarters chat log states, at 9:28: “R[eal] W[orld] Hijacking (original notification) assessed by Intel as headed to Washington DC/2XF-15s in tail chase.” [DOD bates number NCT 0005098]

General Eberhart’s submission for the record to the Senate Armed Services Committee, moreover, that NORAD reported “one more aircraft en route to Washington, D.C.,” on the Significant Event Conference at 9:33 may have been literally true. Consistent, however, with NORAD’s own records and the transcript of the Conference, the aircraft that NORAD reported to the Conference was *not* American 77, as the submission for the record implied, but American 11.



The mistaken report that the original American 11 flight was still airborne and heading for Washington prompted the Langley scramble. Because American 11 was reportedly heading south from the Boston/New York areas, and not east, the fighters were scrambled initially north, and then vectored toward Baltimore, in order to intercept the flight before it reached Washington. The fighters were directed to go to Washington directly when NEADS received the report that an unidentified aircraft was six miles southwest of the White House. To a large degree, those circumstances--not the asserted 9:16 and 9:24 notification times for United 93 and American 77--explain the circuitous route of the Langley fighters.<sup>3</sup>

**Inaccurate Statement #4: Officials were tracking United 93 and intended to intercept the aircraft if it approached Washington, D.C.**

At the Commission's hearing in May 2003, Vice Chairman Hamilton expressed concern that the detailed timeline presented by NORAD omitted a significant time sequence: when the shoot-down authorization was passed from the President through the chain of command to the pilots. General Arnold backed away from the claim that the order was received prior to the crash of United 93, indicating his belief that it had been received a few minutes later. Because the NORAD witnesses had testified that they had been tracking United 93 for some forty-five minutes when it crashed, however, General Arnold was able to state with assurance that the flight would have been intercepted prior to reaching Washington, D.C.

The issue of whether the military had been tracking United 93, and was therefore in position to intercept the flight if it approached Washington, DC, arose within days of the 9/11 attacks. On September 15, 2001, General Paul Weaver, overall commander of the Air National Guard which provided the fighters used to scramble Otis and Langley, told reporters that no fighters were scrambled or vectored to chase United 93: "There was no notification for us to launch airplanes. We weren't even close."

That same day, however, Deputy Secretary Wolfowitz stated in a television interview that Defense Department officials had been "following" United 93 and were prepared to shoot it down if it approached Washington, D.C.

Officials have been steadfast since in stating that the military had been tracking United 93 and were in position to intercept and, if necessary, to shoot down the flight. Notably, Col. Robert Marr, NEADS Battle Commander, states in the U.S. Air Force's official history of 9/11, *Air War Over America*: "As United Airlines Flight 93 was going out [west toward Chicago], we received the clearance to kill if need be." Leslie Filson, *Air War Over America* (USAF, 2003), p. 68. Similarly, on an ABC News Special marking the one-year anniversary of 9/11, Colonel Marr made inaccurate statements about the interception of United 93.

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<sup>3</sup> Human error also contributed. The fighters were sent directly east on take-off, rather than north, and continued east for some sixty miles before turning north.

It is true that Langley fighters were posted high over Washington, D.C. But NORAD now acknowledges that the relevant headquarters--NEADS, CONR, and NORAD headquarters --were completely unaware of United 93 as it was "going out" toward the west. NEADS never learned of the flight until five minutes after it had crashed. NEADS never followed or was able to find the flight on radar, and was in fact still searching for the flight at 10:15, when the MCC/T Log and the subpoenaed tapes record FAA notification that the flight had crashed.

Furthermore, NORAD did not receive any form of shoot-down authority until 10:31. Even then, that instruction was not communicated to the pilots. There were Air National Guard pilots over Washington with rules of engagement allowing them to engage. But they had received their direction outside of the usual military chain of command and did not get into the skies over Washington until after 10:40. In short, the representation that the military had been following United 93 as it progressed, and was by virtue of this awareness in position to intercept the plane, was inaccurate.

#### **KNOWLEDGE OF INACCURACIES**

We have focused on finding out what happened on 9/11, not on investigating potential misconduct in the way those facts have been characterized. The following evidence may bear on the issue whether there was knowledge of the inaccuracy of the statements discussed above.

1. *Accurate information was readily apparent in documents, tapes, and other records available to the FAA and the military in the aftermath of 9/11.*

The fact that the Langley fighters were scrambled in response to the report that American 11 was heading to Washington is unmistakably apparent. Its prominence on the morning of 9/11 is reflected throughout the primary source material. It is set forth explicitly in NORAD's Headquarters Intel chat log at 9:24:39, in NORAD's Air Warning Center log at 9:27, and in the NORAD Headquarters chat log at 9:28. It is reflected in chat logs at CONR and at the NMCC. It is corroborated by the tapes from the NEADS operational floor. As noted above, at 9:21 the Mission Crew Commander reports to his superiors: "Okay. American Airlines is still airborne, 11, the first guy. He's headed towards Washington, okay? I think we need to scramble Langley right now . . ." The mistaken report is also the first substantive matter discussed on the Significant Event Conference Call, and is reflected in conversations at FAA Headquarters and FAA Command Center. In short, it is hard for us to understand how anyone seeking to reconstruct the events of 9/11 could miss this information.

Since this information was not mentioned in explaining why the Langley fighters were scrambled and why they were not sent directly to Washington, DC, officials had to seek an alternative explanation. They represented that the military was notified of the hijacking of United 93 at 9:16, and of the hijacking of American 77 at 9:24. We tried to understand if such a misunderstanding was reasonable.

We do not understand the use of a 9:16 notification time for the hijacking of United 93. The 9:16 notification time for United 93 and the 9:24 notification time for American 77 appear to have been derived from the same source: the "MCC/T Log." At 9:16 the log records: "United tail #N612UA/75 50B/." But this tail number corresponds not with United 93 but with United 175, which had crashed into the World Trade Center. A corresponding conversation on the subpoenaed tapes confirms that at 9:16, NEADS was receiving confirmation of the tail number of United 175.

NORAD's removal of the 9:16 United 93 time from its 9/18/01 press release because it "lost confidence" reinforces the question of why the time reemerged before the Commission in May 2003.

The 9:24 notification time for American 77 was theoretically possible. The plane had been hijacked by then. But the tapes from the NEADS operational floor, read together with the MCC/T's log entries, spell out clearly that NEADS received notification that the flight was "lost" ten minutes after the Langley fighters were ordered scrambled, and that NEADS received notice of a plane six miles southwest of the White House a minute later.

Again we believe the 9:24 is derived from an entry in the MCC/T log. It records, at 9:24: "American Airlines #N334AA hijacked." This tail number refers not to American 77 but to American 11, the first hijacked aircraft. The subpoenaed tapes confirm that this time corresponds to the receipt of the tail number information on American 11 and to reports that American 11 was still airborne and headed towards Washington, D.C.

It is possible that officials who reviewed the matter did not attempt to check the tail numbers to see what United and American flights were being mentioned. Since the Air Force relies on tail numbers as an aircraft identifier, such an omission would be unusual. But given the fact that officials also omitted any mention of the mistaken information about the southward progress of American 11, mentioned in so many other sources, such a failure to check the tail numbers of the reports is even harder for us to understand.

*2. There is evidence that the FAA and NORAD engaged in an aggressive effort in the aftermath of 9/11 to reconstruct the events of the day, and that this review entailed examining the records that would have established the truth.*

There are several indications of the initial FAA and NORAD efforts to understand what had happened. The September 16, 2001, email mentioned above from Brigadier General Moore to NEADS, for instance, commends the person at NEADS "who dug up the requested information from your logs and tapes," and indicates that the information has been passed to the FAA, which "will be using the information to brief the White House tomorrow." The email then asks follow-up questions about which FAA Center notified the military at 10:08 about United 93, and which center notified the military at 10:15 about the crash of United 93.

We have not obtained the documents referred to in Brigadier General Moore's email. We have, however, obtained a document from the FAA entitled "Summary of Air Traffic

Hijack Events,” dated September 17, 2001, the day of the White House briefing and the day after the exchange of emails between Brigadier General Moore and NEADS. This was reportedly one of the documents used to brief the White House.

The FAA Summary corroborates the representation in Brigadier General Moore’s email that information from NEADS’ “logs and tapes” had been forwarded to the FAA. The FAA summary refers, accurately, to the times shown in NEADS logs for the initial notifications from FAA about the hijacking of American 11 and the possible hijacking of United 175.

With respect to American 77 and United 93, oddly, there is no mention in the FAA’s “Summary of Air Traffic Hijack Events” of the NEADS notification times. General Moore’s prior email implied that NEADS had forwarded this information to FAA. FAA’s omission of these particular notification times is suspicious, because these are the two flights where FAA’s notification to NEADS was significantly delayed. (The FAA Center learned of the hijacking of United 93 as early as 9:34. NEADS was not notified for more than half an hour--at 10:08. And the notification was performed by the FAA’s Cleveland Center on its own initiative--and not by FAA Headquarters.)

Interviews with senior FAA officials have confirmed that the adequacy of the notification to the military was a “topic of hot debate” in the days after September 11 between the FAA and the military. Jeff Griffith, the senior air traffic manager on duty at FAA Headquarters on September 11, recalled having heated discussions with General Arnold and others on the subject. He specifically recalled being told by the military that their position was that no notice had been passed regarding the hijacking of United 93 before it crashed. (This was true.) Because General Arnold was Griffith’s point of contact that day and for the next few weeks, moreover, Griffith believes, but is not certain, that General Arnold told him this.

In addition, senior FAA officials have confirmed that FAA Administrator Jane Garvey and Deputy Administrator Monte Belger instructed a group of FAA employees (an “after-action group”) to reconstruct the events of 9/11. This after-action group began its work immediately after 9/11 and reviewed tape recordings, transcripts, handwritten notes, logs, and other documents in an effort to create an FAA chronology of events.

One witness, [redacted] recalled that the group was specifically asked to determine exactly when the FAA notified the military that each of the four planes had been hijacked on 9/11. Several people worked on determining correct times for FAA notifications to the military. [redacted] said the FAA realized this question would be asked by Congress and members of the media. According to [redacted] the issue of military notifications was of great “interest to the Deputy Administrator.” [redacted] stated the Deputy Administrator wanted to know when the FAA told the military that each plane was hijacked and when the military claimed it received notification from the FAA.

[redacted] recalled that NORAD issued a press release--the release of 9/18--on the subject that “caught the FAA by surprise” because they were still working on determining

the correct notification times. She recalls that the Deputy Administrator instructed her to compare the notification times from the NORAD press release with the FAA's times. The FAA then prepared an "internal" briefing document that first week concerning military notifications. The internal briefing document includes a chart that lists the times for FAA notifications to the military.

The chart lists "10:08 a.m." as the military notification time for United 93 and references the NEADS logs as the source for the entry. The document is explicit that the FAA could not have notified the military that United 93 was hijacked at 9:16 a.m. because the plane was not hijacked until 9:28 a.m. No notification time for United 93 was given in either the FAA Summary used to brief the White House on September 17 or the NORAD Press Release of September 18. The 9:16 time was deleted from NORAD's draft press release and replaced, despite the NEADS log entry, with "N/A."

During the week after 9/11, NORAD also detailed an officer with technical expertise from McGuire Air Force Base to begin the process of transcribing the operational tapes from NEADS on 9/11. This officer recalls having been visited personally by General Eberhart during the week or so that he worked on the transcription. His work was suspended when, on September 21, 2001, the tape experienced a malfunction.<sup>4</sup> He had, however, by that date transcribed the portion of the Mission Crew Commander position on which, at 9:21, the news is received that American 11 is heading south to Washington and the Langley scramble order is issued in response.

We therefore believe both FAA and NORAD made a significant effort, with high level backing, to get accurate information. We can understand initial confusion and uncertainty in the first week, and even the unfortunate reflection of that uncertainty in press materials prepared on 9/17 and 9/18. But, once accurate information was being developed--within days--both agencies had the burden of correcting the public record and insuring that subsequent information, including testimony provided to the Commission in May 2003, was accurate.

*3. The official versions of the events of 9/11 overstated the effectiveness of the FAA's notification of the military and the military's response to the attacks.*

In the aftermath of 9/11, if they had obtained accurate information about what happened, both NORAD and FAA faced potentially embarrassing realities. The FAA's standard operating procedures for notification of hijackings were disregarded on 9/11. The notifications that did occur, moreover, gave the military no realistic chance to intercept the aircraft, and were sometimes mistaken. NORAD scrambled the Langley fighters in the wrong direction against a nonexistent target. NORAD was, moreover, completely unaware of United 93--the fourth plane--as the flight was heading for Washington.

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<sup>4</sup> The reason for the malfunction is disputed. NEADS claims that the officer accidentally reformatted one of the tapes; the officer denies that this occurred.

None of this information necessarily reflected any negligence or misconduct by Air Force pilots or controllers. Indeed, they seem to have done all they could, given the information available to them.

Nevertheless, the official account seemed superficially plausible. By claiming that the fighters from Langley were scrambled simultaneously with the notification on American 77 and also in response to the hijacking of United 93, there was no need to acknowledge or explain why FAA gave NEADS the inaccurate report that American 11 was still airborne and heading toward Washington--from the northeast (the opposite direction from the approach route taken by American 77).

The official account also appeared to support the claim that the military was tracking United 93 and was positioned and prepared to intercept and to shoot it down before it hit its target in Washington, D.C.

Referral (new file)

MEMORANDUM

June 6, 2004

To: Tom and Lee  
From: Philip  
Subj: How Should the Commission Handle Evidence of Possible False Statements by US Officials

We believe the old USAF/NORAD account of NORAD's response on 9/11 is inaccurate. Team 8 has found evidence suggesting that one, or more, USAF officers – and possibly FAA officials – must have known their version was false, before and after it was briefed to and relied upon by the White House, presented to the nation, and presented to us at our May 2003 hearing.

The argument is not over details; it is about the fundamental way the story was presented. It is the most serious issue of truth/falsity in accounts to us that we have encountered so far.

This evidence of possible false statements is circumstantial, not conclusive. It is nonetheless significant, and will be summarized with care in a separate memo being prepared for commissioners.

The issues for you are as follows:

**1. Should we proceed to disseminate the memo carefully summarizing the evidence suggesting knowing false statements to commissioners?**

Your staff recommends we do, in order to insure that commissioners receive a common baseline of carefully vetted statements and evidence. The alternatives of withholding the evidence, or just allowing them to be briefed on such a volatile matter in an ad hoc informal way, did not seem preferable.

**2. Are we obligated, immediately and before our public hearing, to refer this evidence to the DOD Inspector General for further investigation? Should commissioners discuss this?**

Your threshold choice is whether to make a judgment on the matter yourselves or ask the Commission to discuss it on Wednesday, June 9.

On the substance of whether we should refer, your staff disagrees.

**Zelikow's view** is that:

(1) Executive Branch employees have a duty to report evidence of waste, fraud, or corruption under EO 12674. Our duty is less clear legally, but we must consider the ethical duty. Concern about disrupting our hearing plans should not be a factor, one way or the other, unless we think the hearing will produce evidence that may cure the allegation. But ...

(2) The hearing is not likely to produce evidence that can cure the original misconduct, if it occurred. Even if they are truthful now, it will not remedy evidence of prior, knowing false statements.

(3) Holding such evidence back from the IG until after the hearing could leave us vulnerable to a later accusation that we thereby damaged their ability to investigate the matter. For example, if an IG questions an employee about a misconduct allegation, they must first give a Miranda-style warning (called a Garrity warning). But congressional oversight experience may offer a different way to view the problem, and mitigate this concern.

**Kojm, Marcus, and Farmer's view** is that:

(1) We do have a duty, whether legal or ethical, to report evidence of misconduct. But if the evidence is still there after our hearing, delaying such a referral to the IG for another couple of weeks will not make much difference. Our duty will have been discharged. Further, we may get evidence at the hearing that may change our judgment of whether misconduct occurred. So we should wait and avoid the potential disruption.

(2) The USAF employee who is the most likely initial target of an investigation is not scheduled to testify. Though Arnold and Eberhart may be caught up in an investigation, the concern about damaging a later IG investigation is remote.

(3) There are ample precedents from congressional experience for questioning about possible cover-ups. The hearing will then trigger predictable reactions, including an investigation if one is warranted.

**3. Are we obligated to inform relevant witnesses in our public hearing that commissioners may ask about a possible cover-up before they appear before us, in public and under oath? (Telling an IG does not necessarily tell the witness, since the IG investigation will remain secret, at least for a time.) Should commissioners discuss this?**

Again, the threshold issue is whether you should make this judgment or put it on the agenda for Commission consideration on Wednesday. And again, on the substantive answer, your staff disagrees.



**Zelikow's view** is that the employees are not legally entitled to further notice, unless this is necessary to avoid damaging a subsequent investigation. But he believes we should put them on notice of the possible line of questioning as a matter of fairness, and to preserve public perception that the Air Force and/or FAA witnesses are being treated fairly and were not being ambushed. It is also possible that, once commissioners are informed of these serious concerns, the issue will show up in the newspapers just before the hearing. If so, witnesses may learn of the coming charges from the papers instead of from us.

There is a real danger that the hearing plans could be disrupted, as witnesses decline to appear – possibly on advice of counsel. We could then face the choice of whether to compel their appearance and require them to take the Fifth.

**Kojm, Marcus, and Farmer's view** agree that there is no legal requirement of further notice. Further, on the issue of fairness, they believe that Eberhart and Arnold are on notice of our concerns. Staff posed tough questions to them and to others during our investigation, and minders attended these interviews. They will have their stories ready and we need to take no further action to advise or protect them. There is no need to do more, or risk disrupting our hearing.

#### Consultation with Gorelick and Fielding

I sought confidential advice from Gorelick and Fielding on this matter last week. Though neither have had the opportunity to study the issues in detail, their initial impressions were:

- Both agree that the evidence must be provided to commissioners.
- Gorelick did not really consider Issue #2, but held a position similar to the Kojm/Marcus/Farmer view on Issue #3.
- Fielding held a position similar to the Zelikow view on Issue #2 and Issue #3.

I have not consulted Gorelick and Fielding further. They have not seen this memo. Naturally either of you may wish to consult either or both of them directly.

#### Brief Factual Background

The official USAF/NORAD account of 9/11, presented in testimony to the Commission, included in NORAD's official history, and apparently briefed and relied upon by the White House, was that NORAD scrambled its fighters from Langley AFB in order to respond to the hijacking of AA 77 (which hit the Pentagon), that they did not have time to

intercept that aircraft, and that DOD subsequently tracked the approach of UA 93 toward Washington, but the aircraft crashed before action needed to be taken.

The staff does not believe this account is true. Instead we have found, and are preparing to state publicly, that NORAD scrambled its fighters from Langley AFB in order to intercept an aircraft that no longer existed -- AA 11 (which hit the WTC) -- believing incorrectly that this aircraft might be headed toward Washington and sending fighters up the Eastern seaboard in order to meet AA 11. Further we have found that NORAD did not know about AA 77 until three minutes before it hit the Pentagon, and began diverting the already scrambled aircraft toward Washington against some target (which they did not know was AA 77) one minute before impact, much too late to make a difference. We have also found that NORAD was not tracking UA 93 and did not even know that aircraft had been hijacked until after it had crashed.

Team 8 has unearthed evidence strongly suggesting the possibility that a USAF officer, and possibly others at the USAF and FAA, must have known that the official story was false, yet persisted in telling it or did not correct the record, even after the Commission began following up with questions after its May 2003 hearing.

*Referral***Dan Marcus**

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**From:** Philip Zelikow  
**Sent:** Friday, June 04, 2004 8:07 AM  
**To:** Kevin Shaeffer; Dan Marcus; Chris Kojm  
**Cc:** John Farmer; Dana Hyde; Miles Kara; John Azzarello; Kevin Shaeffer; Karen Heitkotter; Stephanie Kaplan; Steve Dunne  
**Subject:** RE: Reply to John's Message and Proposed Memo to Commissioners

Folks --

I've just received the message Kevin sent at 1:11 this morning.

Receiving e-mails like this makes me wonder if all of you have lost the ability to use the telephone or, in Dana's case, walk ten feet to my office.

Even now, and in this message, I don't see a professional analysis of the issues I raised in my memo. So you don't like Dan's approach. Fine. But stating a disagreement is not analysis. Issues don't go away just because you don't want to think about them.

I've thought plenty about this one. I discussed it yesterday with the Chairman. I've also reached out for other assistance on it.

I'm sure you thought hard about this. I'd like the benefits of that thinking. I would like to see every one of you in my office, this morning, at 10:30. If you're out of town, find a phone.

Philip

-----Original Message-----

**From:** Kevin Shaeffer  
**Sent:** Fri 6/4/2004 1:11 AM  
**To:** Dan Marcus; Philip Zelikow; Chris Kojm  
**Cc:** John Farmer; Dana Hyde; Miles Kara; John Azzarello; Kevin Shaeffer  
**Subject:** RE: Reply to John's Message and Proposed Memo to Commissioners

All,

Dan states below that at the April 22<sup>nd</sup> meeting, he thinks "we all agreed" to the following:

1. No decision would be made on the referral until after the June hearing;
2. T8 would not conduct its own investigation into the issues raised in the April 6<sup>th</sup> memo and,
3. That we "pretty much" agreed that the memo should not go to the Commissioners.

We disagree with Dan's characterization of our position at that meeting. First, we never agreed that the memo should not go to the Commissioners. On the contrary, we urged that the Commissioners should be fully informed (and in a timely manner) on the contents of the memo so that they could make an informed decision as to the proper course of action. It was our stated belief then (and is now), that it is their call to make.

Prior to departing the meeting, we recall Philip stating that he wanted to hold on making any decision on the matter for "a couple of weeks." We also recall that John F. formally dissented from that suggestion, and stated his belief that the Commissioners needed to be informed.

6/4/2004

Philip states below that his "sense of the group" was "...that any further decision about whether to refer at all should be postponed until after the hearing." We disagree with the characterization that postponing the decision such was the "sense of the group." Again, our position was, and remains, that this is a serious matter and should be addressed by the Commissioners. The April 6<sup>th</sup> memo was, in fact, an interim report to the "Commissioners and Front Office." We did not express any agreement with postponing the referral decision until after our hearing.

We feel that the Commissioners should have been informed by now of the issues raised in the memo. For the record, we desire that the memo be forwarded to Commissioners without further delay.

Regards,  
Kevin, John A., Miles, Dana

-----Original Message-----

**From:** Dan Marcus  
**Sent:** Wednesday, June 02, 2004 9:37 AM  
**To:** Philip Zelikow; John Farmer; Chris Kojm  
**Cc:** Team 8; Steve Dunne; Stephanie Kaplan  
**Subject:** RE: Reply to John's Message and Proposed Memo to Commissioners

I think we all agreed when we met on this matter weeks ago (1) that we would make no decision on the need for a referral until after the June hearing, and (2) Team 8 would not conduct its own investigation into "false statements" or cover-up. And I think we pretty much agreed that John's memo should not go to the Commission. However, it has always been my understanding that when Team 8 briefed Commissioners for the hearing, they would mention their concerns -- not only that the facts we have learned are inconsistent with the story put out by NORAD after 9/11 and at our May 2001 hearing, but also that there is reason to be concerned that at least some of the accurate facts were known to or knowable by NORAD and FAA officials long ago. While we have to be careful in discussing this with Commissioners, I think they are entitled to know the staff's well-considered (if inconclusive) concerns, and that appropriate questions can be prepared to focus on the inconsistencies and the reasons for them. This is NOT unfair sandbagging in my mind, and does not preclude us from later reaching whatever conclusions we want, including that the matter needs to be referred to the IGs or Justice.

-----Original Message-----

**From:** Philip Zelikow  
**Sent:** Tuesday, June 01, 2004 7:58 PM  
**To:** John Farmer; Chris Kojm; Dan Marcus  
**Cc:** Team 8; Steve Dunne; Stephanie Kaplan  
**Subject:** Reply to John's Message and Proposed Memo to Commissioners

John -

I read your message about your weekend conversation with Tom about this. I'll discuss this directly with Tom before taking further action. I believe that I discussed this matter with him in April. I'll talk to him and see if he agrees. The issue was certainly discussed with Lee, who had a view.

But first, just so we don't all start suffering from a collective case of Alzheimer's, let's try together to remember what the issues were in April, when this topic was originally discussed, and the last time anyone discussed it with me. At that time I identified five issues.

1. Options for possible referral.
2. Timing of possible referral.

6/4/2004

3. Relationship between referral and the Commission hearing, including likely constraints in testimony of officials who were subject to a pending investigation.
4. Danger of unethically sandbagging witnesses by knowingly withholding an intended referral until after the witnesses had testified at our hearing under oath.
5. Danger of compounding the problem in both #3 and #4 by raising issues of official misconduct to commissioners before the hearing, inviting possible questioning of witnesses on this topic.

These are serious issues. None were discussed in the original memo and, as far as I know, no one has offered any considered analysis to me on any of these questions.

You may recall, too, that my initial judgment of these questions in April led me to propose the option of immediate referral to the two IGs, and then address the consequences of that by adjusting our hearing and instructions to commissioners and witnesses accordingly. The sense of the group – as I understood it -- was that this move was premature, that it was not clear we would make any referral at all, and that any further decision about whether to refer at all should be postponed until after the hearing.

So I take this current message as your recommendation that we reconsider these issues. Fair enough. Then ...

1. If we believe in good faith that we are likely to recommend a referral for investigation of misconduct, I believe we must immediately do so, promptly notify affected witnesses, and adjust our plans for the hearing. This may be a radical adjustment.
2. If we invite commissioners to question witnesses about discrepancies in prior testimony, we are making a judgment that we are doing so in order to challenge memory or credibility. Fine. But then we do not/not plan to recommend any investigation of these individuals for official misconduct based on the information we currently possess.
3. If we do all we can to discourage commissioners from doing anything other than probing the facts of what actually happened that day, then we can ethically postpone making a judgment on whether or not we wish to refer the misconduct allegation for further investigation.

Option #3 is where we were. It strikes me as a somewhat lawyerly approach, but defensible.

My own preference was, and is, to just make the referral decision one way or the other and then act accordingly. But I remain open to the views of others. I do need advice from Dan and Steve on the appropriate ethical and legal course of action here.

Philip

-----Original Message-----

**From:** John Farmer

**Sent:** Tuesday, June 01, 2004 3:45 PM

**To:** Philip Zelikow; Chris Kojm; Dan Marcus

**Cc:** Team 8

**Subject:** Briefing Memo

6/4/2004

Philip, all – Gov. Kean reached out for me over the weekend regarding the June hearing. I had made no effort to reach him, directly or indirectly. He said he did so because he recalled my having told him, in discussing the need for the DoD subpoena, that Team 8 suspected that the Commission was not told the truth at its May 2003 hearing. He wanted to know if that were still the case and, if so, what the Commission's recourse would be. He knew nothing of the April 6 interim report, or of the disparities in notification times that Team 8 has discovered. He said he thought we should highlight those discrepancies at the June hearing. I indicated that I would provide a briefing memo this week setting forth the relevant information. I have attached such a memo. The memo describes the May testimony, contrasts it with the truth as Team 8 has reconstructed it, and recommends referral of the matter to an appropriate agency for further investigation. Please review it and circulate it to Commissioners. Thank you for your attention to this matter.

John

6/4/2004

## Dana Hyde

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**From:** Scott William Civ 1AF/XP [William.Scott@tyndall.af.mil]  
**nt:** Friday, June 06, 2003 4:30 PM  
**J:** 'dhyde@9-11commission.gov'  
**Subject:** FW: 1AF Security Chief

Dana

I have not been hiding from you - just came in off the road after a grueling 2 weeks (including a grueling 2 hrs with the Commission).

Here is the info Sec Lehman requested - it came from our Northeast Air Defense Sector Commander - see second para.

Cheers  
Scotty Scott

-----Original Message-----  
From: Marr, Robert [mailto:MarrR@neads.af.mil]  
Sent: Monday, June 02, 2003 6:25 AM  
To: 'Scott William Civ 1AF/XP'  
Subject: RE: 1AF Security Chief

You know you loved it!

The answer on AA77 is not easy, nor is it pretty. At the time AA77 was occurring we were focused on UAL93 which was the only confirmed hijack that the FAA had identified to us.

My records show UAL 93 reported as hijacked at 0916L, once we found it and identified it's westerly heading, we scrambled Langley at 0924L just in case it turned around toward DC, which it did later.

At 0924L we also received a call from the FAA about AA77 with a follow-up call at 0925L. It is easiest to explain the simultaneous scramble order with the AA77 notification as the scramble being against AA77 - it takes a lot of time to explain to the public that you're scrambling fighters against a plane heading away from the possible target! All I have is comments from the crew, but it appears that what really happened with AA77 is that the first call at 0924L was from another FAA center, I think it was Boston Center who called to say that something was happening in Washington Center that we needed to be concerned with (this would make sense because Boston now had our number whereas the other Centers were just starting to get in the game). We called Washington Center and they said they didn't have time for us - there was a shift change going on. Their interest level obviously peaked quickly and we improved the comm. flow, although Washington never saw the track as far as I can tell. The approach controllers were the first to get a contact. I can't confirm these conversations and I'd have to do a lot of research to find out exactly which controller was taking those calls - we were a little busy. However, that's the closest I have come to reconstructing that particular event.

Col Bob Marr  
NEADS/CC  
387 Hangar Road  
Rome NY 13441-4307  
(315)334-6515  
DSN 587-6515

-----Original Message-----  
From: Scott William Civ 1AF/XP [mailto:William.Scott@tyndall.af.mil]  
Sent: Sunday, June 01, 2003 21:31  
To: Marr Robert K NEADS/CC  
Subject: RE: 1AF Security Chief

Hey Bomar