Where Was the Government? In Inquiry into the Events of September 11, 2001

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“All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident” - Arthur Schopenhauer
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To the diverse group of concerned citizens, academics and victims’ families who dare to question the actions of the United States government in the September 11, 2001 terrorist attacks, your efforts exemplify patriotism. Ask questions, demand answers.

Elizabeth A. Bradshaw
WHERE WAS THE GOVERNMENT? AN INQUIRY INTO THE EVENTS OF SEPTEMBER 11, 2001

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The terrorist attacks of September 11, 2001 have forever changed the geopolitical landscape. Yet despite the significance of such an event, those working in the field of state crime have been reluctant to investigate the role of the United States government in failing to prevent the attacks. Utilizing the five criteria of state crime put forth by Kauzlarich, Mullins and Matthews (2003), the actions and inactions of the National Security Council, the Central Intelligence Agency, the Federal Bureau of Investigation, the North American Aerospace Defense Command and the Federal Aviation Administration are examined. Drawing on the testimonies of government officials from each of the five agencies to the 9/11 Commission, evidence suggests that key officials failed to act on available information to prevent the attacks therefore constituting an explicit crime of omission. Most significantly, the National Security Council composed of top Bush administration officials, who were charged with the task of coordinating a response to such a threat, neglected to take crucial actions which may have prevented the attacks.
TABLE OF CONTENTS

ACKNOWLEDGMENTS ........................................................................................................... ii

CHAPTER

I. INTRODUCTION .................................................................................................................. 1

II. LITERATURE REVIEW ....................................................................................................... 3
   Legalistic and Expanded Legalistic .................................................................................. 5
   Human Rights Definitions ................................................................................................ 9
   International Law .............................................................................................................. 11
   State Crime and September 11, 2001 .............................................................................. 14
   Crimes of Omission .......................................................................................................... 16

III. DATA AND METHODS .................................................................................................... 21
   Data .................................................................................................................................. 21
   The National Commission on Terrorist Attacks Upon the United States ......................... 23
   Methods ............................................................................................................................ 29
   Analytic Strategy .............................................................................................................. 31

IV. NATIONAL SECURITY COUNCIL .................................................................................. 35
   Testimony of Condoleezza Rice ...................................................................................... 35
   Assigned or Implied Trust or Duty .................................................................................. 35
   Action or Inaction on Behalf of State or State Agencies .................................................. 37
   Summary ............................................................................................................................ 42
Table of Contents—continued

Testimony of Richard Clarke .............................................................. 43
Assigned or Implied Trust or Duty...................................................... 43
Action or Inaction on Behalf of State or State Agencies..................... 44
Summary .............................................................................................. 49
National Security Council Summary................................................... 50
CSG Reporting to Deputies Committee .............................................. 51

V. CENTRAL INTELLIGENCE AGENCY ...................................................... 54
Testimonies of George Tenet and John McLaughlin ......................... 55
Assigned or Implied Trust or Duty...................................................... 55
Action or Inaction on Behalf of State or State Agencies..................... 56
Summary .............................................................................................. 62
Testimony of Cofer Black ................................................................. 63
Assigned or Implied Trust or Duty...................................................... 63
Action or Inaction on Behalf of State or State Agencies..................... 65
Summary .............................................................................................. 69
Central Intelligence Agency Summary................................................. 70

VI. FEDERAL BUREAU OF INVESTIGATION .............................................. 74
Testimony of Louis J. Freeh ............................................................... 75
Assigned or Implied Trust or Duty...................................................... 75
Action or Inaction on Behalf of State or State Agencies..................... 75
Summary .............................................................................................. 80
Testimony of Thomas J. Pickard .......................................................... 81
Table of Contents—continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assigned or Implied Trust or Duty</td>
<td>81</td>
</tr>
<tr>
<td>Action or Inaction on Behalf of State or State Agencies</td>
<td>82</td>
</tr>
<tr>
<td>Summary</td>
<td>87</td>
</tr>
<tr>
<td>Federal Bureau of Investigation Summary</td>
<td>88</td>
</tr>
<tr>
<td>VII. NORTH AMERICAN AEROSPACE DEFENSE COMMAND</td>
<td>94</td>
</tr>
<tr>
<td>Testimonies of Craig McKinley, Larry Arnold and Alan Scott</td>
<td>96</td>
</tr>
<tr>
<td>Assigned or Implied Trust or Duty</td>
<td>96</td>
</tr>
<tr>
<td>Action or Inaction on Behalf of State or State Agencies</td>
<td>97</td>
</tr>
<tr>
<td>Summary</td>
<td>107</td>
</tr>
<tr>
<td>Testimonies of Richard Myers, Charles Joseph Leidig, Ralph Eberhart and Larry Arnold</td>
<td>109</td>
</tr>
<tr>
<td>Assigned or Implied Trust or Duty</td>
<td>109</td>
</tr>
<tr>
<td>Action or Inaction on Behalf of State or State Agencies</td>
<td>110</td>
</tr>
<tr>
<td>Summary</td>
<td>120</td>
</tr>
<tr>
<td>North American Aerospace Defense Command Summary</td>
<td>124</td>
</tr>
<tr>
<td>VIII. FEDERAL AVIATION ADMINISTRATION</td>
<td>133</td>
</tr>
<tr>
<td>Testimonies of Jane Garvey and Kenneth Mead</td>
<td>134</td>
</tr>
<tr>
<td>Assigned or Implied Trust or Duty</td>
<td>134</td>
</tr>
<tr>
<td>Action or Inaction on Behalf of State or State Agencies</td>
<td>135</td>
</tr>
<tr>
<td>Summary</td>
<td>142</td>
</tr>
<tr>
<td>Testimony of Bogdan Dzakovic</td>
<td>145</td>
</tr>
<tr>
<td>Assigned or Implied Trust or Duty</td>
<td>145</td>
</tr>
<tr>
<td>Action or Inaction on Behalf of State or State Agencies</td>
<td>146</td>
</tr>
</tbody>
</table>
Table of Contents—continued

Summary.............................................................................................................. 150
Testimonies of Monte Belger, Jeff Griffith, John White and Benedict Sliney........................................ 153
Assigned or Implied Trust or Duty...................................................................... 153
Action or Inaction on Behalf of State or State Agencies............................... 154
Summary.............................................................................................................. 163
Federal Aviation Administration Summary......................................................... 166
IX. DISCUSSION................................................................................................. 175
Prevention................................................................................................................ 175
Response................................................................................................................. 185
X. CONCLUSION................................................................................................. 192
The Verdict.............................................................................................................. 196
Limitations.............................................................................................................. 201
Controlling State Crime.......................................................................................... 202
BIBLIOGRAPHY................................................................................................. 204
CHAPTER I

INTRODUCTION

September 11, 2001 is a day that has forever changed the global political landscape. In addition to opening the gateway for wars in Iraq and Afghanistan, the terrorist attacks of September 11th have also allowed for an expansion of governmental authority into the domestic lives of its citizens. Despite the catalyzing effect which September 11th has allowed for, state crime theorists have been reluctant to evaluate the inconsistencies of government intelligence and response surrounding the attacks.

At its foundation, representative democracy depends on trust. Without it, the United States system of governing is nothing more than an autocratic plutocracy. Relinquishing power and autonomy to a higher governmental authority in exchange for protection from external threats is a core concept of the social contract. So crucial is the role of the state in protecting its citizens that it is spelled out in the preamble to the Constitution. It is the responsibility of the United States government to provide for the common defense and to support the general welfare of its citizens. The failure to do so demands accountability.

Drawing on the concept of crimes of omission, this project seeks to examine the actions and inactions of government officials in the National Security Council, the Central Intelligence Agency, the Federal Bureau of Investigation, the Federal Aviation of Administration and the North American Aerospace Command in the months leading up to and on the morning of the attacks. Judged by Kauzlarich, Mullins and
Matthews's (2003) criteria for a state crime, the culpability of government officials will be assessed through an analysis of publicly available transcriptions of testimonies to the 9/11 Commission. Despite its limitations, the 9/11 Commission's investigation is the only official account of the government's role surrounding the attacks. As such, its conclusions must be critically considered.

The parameters of this project limit the scope of the inquiry to a definitional assessment of the failures of the United States government to prevent the September 11th terrorist attacks as a state crime. Thus a consideration of the motivations of the state and state actors is left for future inquiry. By qualifying the actions and inactions of government officials which allowed for the attacks to occur as forms of state crime, focus is drawn away from the successes of the hijackers and onto the failures of the government. This is the necessary first step towards demanding government accountability and deconstructing the mythology that continues to justify state criminality in the name of 9/11.
CHAPTER II

LITERATURE REVIEW

State crime theorists have faced an uphill battle within the traditional criminological discipline. Tending to focus almost exclusively on crimes committed by the poor and working classes, criminologists have failed to recognize crimes committed by the wealthy and powerful. Acknowledging this disparity, Friedrichs (2000:60) contends that

in part, this relative lack of attention can be attributed to the challenge of gaining access to the politically powerful, their ability to conceal many of their crimes, the complexity and broad scope of the illegalities involved, and some ideological resistance to regarding government officials as criminal.

In spite of much criticism and resistance, state crime theorists have sought to expand the boundaries of criminology by developing alternative standards by which to define crime and criminality.

Challenging many of the traditional assumptions about crime, the “intellectual transgression” (Sharkansky 2000) of state crime even breeds disagreement among state crime theorists themselves. While some theorists assert that the definition of crime should be limited to strict legalistic criteria (Tappan 1947), some prefer a more expanded legalistic definition which incorporates violations of regulatory and international law (Sutherland 1983; Chambliss 1988; Kramer, Michalowski and Rothe 2005), while others insist on a definition based on human rights (Schwendinger
and Schwendinger 1970; Green and Ward 2000). Encouraging the study of state crime through all of these avenues, Friedrichs (2000:55) makes clear that governmental crime is not always crime in the narrower legal sense of the term. One must distinguish between those governmental or political actions prohibited by the state’s laws, those defined as criminal by international law, and those actions regarded as criminal by some other criteria of harmfulness not necessarily recognized by either the state’s laws or international law.

Regardless of the approach, a close examination of state crimes with any of these standards will inevitably yield a more robust understanding of crime and criminality.

The concept of “the state” so frequently employed by state crime theorists implies a number of assumptions which frequently go unacknowledged. Friedrichs (2000:53), adopting Plano and Greenberg’s (1979) definition, suggests that “the term state refers to a political entity with a recognized sovereignty occupying a definite territory, where as the term government refers to the political and administrative apparatus of such an entity.” Despite such a distinction, much of the literature on state crime tends to use such terms interchangeably. Often, crimes charged against “the state” are perhaps more appropriately crimes committed by the government. In either scenario, the study of state crime allows for the examination of both crimes committed by states as well as governments.

The necessity of law, many would contend, arises from the conflicts between social actors. Perhaps to protect the well being of the community, or to preserve the interests of a few, laws fundamentally reflect, alter and assert the social order. Many criminologists and state crime theorists in particular, postulate that law functions primarily to address the structural contradictions embedded within the social system. One of the state’s many functions is to mediate the conflicts that stem from contradictions inherent in the societal structure, especially within a capitalist system (Chambliss 1993a).
Another function of the state, Tilly (1985) argues, serves as a protection racket for war making. Governments, which offer protection from local and external violence to its citizens, are only able to provide such services to the extent that a clear and present threat exists (Tilly 1985). Since governments must create threats and then charge for protection against them, therefore ensuring their legitimacy, Tilly argues that governments can be considered racketeers. He states,

\[
\text{to the extent that the threats against which a given government protects its citizens are imaginary or are consequences of its own activities, the government has organized a protection racket. Since governments themselves commonly simulate, stimulate, or even fabricate threats of external war and since the repressive and extractive activities of governments often constitute the largest current threats to the livelihoods of their citizens, many governments operate in essentially the same ways as racketeers. (1985:171)}
\]

Establishing a monopoly over violence, governments function to protect their citizens from threats while at the same time condemning the use of violence amongst the public. However, since the threat of violence is essential to the maintenance of government legitimacy, states are forced to create threats of external war to ensure their continued survival.

Legalistic and Expanded Legalistic Definitions

Although a few criminologists in the early part of the century had insinuated a class bias present within the literature, it was not until 1939 when Edwin Sutherland introduced his concept of "white collar crime" that criminologists began to shift their attention to the crimes of the wealthy and powerful. Sutherland asserted that this term applied to "...a crime committed by a person of respectability and high social status in the course of his occupation" (1983:7). A marked departure from the street crimes being studied by other criminologists of the time, Sutherland's definition incorporated the requisites of both high social status and occupation. Specifically, Sutherland
intended the term ‘white-collar’ to apply “principally to business managers and executives, in the sense that it was used by a president of General Motors who wrote “An Autobiography of a White Collar Worker” (1983:265). In this context, the significance of high socioeconomic status is made clear. More importantly, Sutherland’s work highlighted the failure of criminologists to acknowledge the socioeconomic bias of their sample of “criminals.”

Sutherland concluded that the differential interpretation of the criminal law for white collar criminals was a result of the high status of the offenders (1940:9; 1983:60). Due to their high status white collar criminals were often able to circumvent the penalties and social stigmas experienced by offenders with diminished social status. In order to bring the illegal, though not necessarily criminal, acts of high status offenders into the realms of criminological inquiry, Sutherland proposed a definition of crime emphasizing the socially injurious behavior. Defining socially harmful violations of civil law as criminal was Sutherland’s attempt to direct criminological inquiry towards the crimes of the wealthy and powerful.

Challenging Sutherland’s concept of white collar crime, Tappan (1947) asserts that acts which are not legally defined as criminal, no matter how socially injurious, cannot be classified as such. Doing so, he argues, depletes criminology of the rigorous standards characteristic of science. Firmly asserting that no matter how flawed the legal system may be, it is the best set of standards by which to study crime, Tappan condemns the classification of white collar crime for allowing private values such as economic ethics to intrude upon the criminological discipline (1947:99). Noting its fallibility, yet lacking a thorough evaluation of the normative processes which culminate into the creation of a criminal code, Tappan concedes that no matter
how imperfect, the criminal code is the best standard by which to judge criminal activity.

Any deviation by sociologists or criminologists from the legal code as established by state authorities, Tappan implies, is neither criminology nor social science and is not objective (1947:99). A criminal (white collar or otherwise) cannot be defined as such unless they have violated a criminal statute and have been properly convicted (1947:101). Ultimately, Tappan deferred to the state the power to define crime and restrain criminological inquiry (Schwendingers 1970:128).

Even so, Sutherland’s definition of a crime also granted the state the ability to define criminality. He stresses that “the essential characteristic of crime is that it is behavior which is prohibited by the State as an injury to the State against which the State may react, at least as a last resort, by punishment” (1983:46). Although it marked a definitive shift in criminology, Sutherland’s concept of white collar crime was hardly out of bounds with many of the criminological and legalistic definitions of crime which granted the state the power to define socially injurious behavior (Schwendingers 1970:126).

Remaining firmly within the boundaries of legalistic definitions of crime, Chambliss (1989) highlighted the necessity of studying crimes committed by the government through the concept of state-organized crime. Chambliss contends that, “the most important type of criminality organized by the state consists of acts defined by law as criminal and committed by state officials in the pursuit of their job as representatives of the state” (1989:184). In sync with Sutherland’s definition of white collar crime, state organized crime is a distinct hybrid. Like many of the white collar crimes examined by Sutherland, state organized crimes are rooted in the need for
capital accumulation by modern nation states (202). In his definition of state-organized crimes, Chambliss (1989:184) cites examples include a state's complicity in piracy, smuggling, assassinations, criminal conspiracies, acting as an accessory before or after the fact, and violating laws that limit their activities. In the latter category would be included the use of illegal methods of spying on citizens, diverting funds in ways prohibited by law (e.g., illegal campaign contributions, selling arms to countries prohibited by law, and supporting terrorist activities).

Still heavily relying on the criminal law to define state-organized crimes, Chambliss furthers Sutherland's concept of white collar crime by drawing attention to the crimes committed by state administrators while in the course of their occupation.

Challenging state crime theorists, Sharkansky (2000) argues that "state crime" is an intellectual transgression which has been used to define state actions which are undesirable. Stressing that although state actions may be viewed as "nasty" or "distasteful," Sharkansky asserts that acts deserving of such labels do not warrant the title of state crimes. Assuming the position that "Crime implies an action that invites an authoritative response" (2000:36), Sharkansky proclaims that "...many activities described by the label of state crime in the literature are not appropriate to such expectations" (2000:36). Similar to Tappan (1947), this contention implies that the only suitable criteria for the label of 'crime' are that which is defined by the state. Since states themselves have a monopoly of control over the laws, and what is identified as criminal varies between time and place, Sharkansky concludes that the label of state crime simply cannot be applied to those acts which criminologists find to be undesirable.

Frequently, the division between corporate crime and state crime appears rather vague. Recognizing this ambiguity, Michalowski and Kramer (2006) introduced the concept of "state-corporate crime." The 1986 Challenger disaster,
which was the result of the interactions between the National Aeronautics and Space Administration (NASA) which set the timeline for the launch, and Morton Thiokol, Inc. who manufactured the solid rocket boosters used on the shuttle, brought the conceptual overlap to the forefront. Clarifying the seemingly obvious though unarticulated artifact, Michalowski and Kramer (2006:20) declare that

state-corporate crimes are illegal or socially injurious actions that result from a mutually reinforcing interaction between (1) policies and/or practices in pursuit of goals of one or more institutions of political governance and (2) policies and/or practices in pursuit of the goals of one or more institutions of economic production and distribution.

This definition of state-corporate crime encompasses both legal criteria as well socially injurious actions. Leaning towards human rights criteria as a classification for crime, though retaining the state-defined legalistic element, state-corporate crime is one of the many “intellectual transgressions” which permeate the state crime literature.

**Human Rights Definitions**

The debate between criminologists on whether to accept the legal statue as the recognized standard by which to classify crime and criminals or to pursue a more encompassing definition of crime remains a point of contention. Arguing for the ability to define criminality beyond the state instituted statutes, Schwendinger and Schwendinger (1970) contend that the laws themselves define the phenomena to be studied as well as the procedure by which to investigate it. They note that the ability to define crime hinges on political power. “This is why it can be assumed that with regard to the legal definition: political power determines the precision of the definition and the measurement of the phenomena” (Schwendinger and Schwendinger 1970:133).
Quite in line with Sutherland's assertion that wealthy and powerful "offenders" are often exempt from criminal sanctions, the Schwendingers also make poignant that those with political power direct the scope of criminological inquiry; often away from themselves. Once their actions are exempt from the ethical considerations embedded within law, those holding the reins of political power can effectively set the moral standards for criminology. Already laden with moral and ethical assumptions, a legalistic definition of crime establishes the boundaries of criminological inquiry (Schwendinger and Schwendinger 1970).

Offering alternative criteria to define crime the Schwendingers (1970) posit a humanistic definition founded on human rights. Asserting that all humans have equal intrinsic value and should therefore be granted racial, sexual and economic equality in addition to basic rights, they argue that criminologists must work to protect human rights above defending the social order. "To defend human rights, criminologists must be able to sufficiently identify the violations of these rights-by whom and against whom; how and why" (Schwendinger and Schwendinger 1970: 146). Proceeding in this manner, criminologists must inexorably move beyond a state officiated definition of crime.

Attempting to retain a definition of state crime inclusive of human rights, Green and Ward (2000) argue that the term "state crime" be reserved for a convergence between both violations of human rights and state organizational deviance. Along the same lines as Schwendinger and Schwendinger (1970), Green and Ward adopt a definition of human rights as articulated by the Universal Declaration of Human Rights. They assume human rights to be "...the elements of freedom and well-being that human beings need to exert and develop their capacities for purposive action" (2000:110).
Maintaining a more traditional approach to defining crime, Green and Ward (2000) include state organizational deviance in their definition of state crime. By defining state crime in such a manner, the authors are able to incorporate a definition focused on human rights while also retaining the concept of deviance so fundamental to traditional definitions of crime. State organizational deviance draws a distinction between acts committed by individual state actors and organizational misconduct.

The authors clarify that

state organizational deviance is conduct by persons working for state agencies, in pursuit of organizational goals, that if it were to become known to some social audience would expose individuals or agencies concerned to a sufficiently serious risk of formal or informal censure and sanctions to affect their conduct significantly (for example, by inducing them to conceal or lie about their activities). (2000:110)

State organizational deviance may take the form of seemingly legitimate state operations and organizations which become entangled with illegal ones. One example, given by Green and Ward (2004:107), is the willingness of the United States CIA to employ members of organized crime syndicates including known drug traffickers and terrorists. The use of right-wing guerilla organizations to destroy left-wing movements in Latin America, as well as the funding and support provided to Osama bin Laden and al Qaeda during the Afghan War against the Soviets, demonstrates numerous criminal ramifications. The CIA’s willingness to rely on known criminal sources implicates them in the consequences.

International Law

In an effort to concentrate on human rights violations perpetrated by the state while also combating the charges by fellow criminologists of injecting personal and political bias, many state crime theorists have sought international law as the standards by which to examine the crimes of the wealthy and powerful. Not without
its criticisms, utilizing international law as a criminological standard does have its limitations.

Reluctant to relinquish power to a higher authority, many states simply refuse to ratify international treaties; thus preserving their jurisdiction over the law of the land. “Under a treaty, obligations are binding on a state once the government of that state has ratified the treaty. Therefore, the state clearly controls the treaty obligations it undertakes” (Molina 2000:351).

Being the current hegemonic power, the United States has been particularly reluctant to sacrifice any of its sovereignty to a higher global authority. Barak (1990:40) argues that “when it comes to the ratification of the major multi-lateral human rights agreements or instruments, the USA has one of the very worst records among Western liberal democracies. By refusing to sign and recognize these various documents, the U.S. has, at least indirectly, contributed to the world-wide abuse of human rights.” One reason for this poor track record is the potential for international treaties to create impediments to capital accumulation in favor of human rights (Barak 1990). Thus, the failure of the United States to conform to the rules of international law threatens human rights at home and abroad.

Despite its inability to hold state and corporate actors accountable, international law does provide a more versatile tool by which to judge globally injurious behavior by states and transnational corporations. Embracing United Nations codes of conduct for transnational corporations, Michalowski and Kramer (1987) argue that international standards provide for a more open discourse of corporate transgressions. Since more nation states, particularly developing ones, are involved in the discussion of injurious behavior by transnational corporations than
would be in national legislation, a greater degree of participation which encompasses a critical reflexivity will result (Michalowski and Kramer 1987:47).

Although the United States has quite frequently been unwilling to ratify a number of treaties, the ones which have been ratified become synonymous with domestic law as stipulated by the U.S. Constitution. Central to the United Nations Charter, which the U.S. is signatory to, is the prohibition of aggressive war with exceptions for self defense (against an armed attack) and U.N. approval. The United States invasion of Iraq in 2003, Kramer, Michalowski and Rothe (2005) argue, was a war of aggression and thus constitutes a war crime.

Making a clear attempt to justify their actions under international law, the Bush administration claimed that the U.N. Charter (specifically Article 51) granted them the authority to invade Iraq. Since Iraq was demonstrated to have no connections with the events of September 11th 2001 or to have weapons of mass destruction, there was no justification to use armed force for self defense. After failing to meet the legal criteria for war with Iraq, the United States began to portray its mission as humanitarian intervention. Despite this, Kramer, Michalowski and Rothe (2005:65) contend that “the heavy burden of persuasion to justify a humanitarian invasion was not met, and subsequent events have made it clear that intervention increased rather than decreased the humanitarian crisis for the Iraqi people.”

The United States actions in Iraq were not in accord with international law and more significantly inflicted great devastation and destruction upon the Iraqi people. As a result, Kramer, Michalowski and Rothe argue that the Bush administration is criminally responsible for the deaths of Iraqi civilians, coalition forces as well as the detention and torture of prisoners of war (2005:73). Even so, it is quite unlikely that
the U.S. will be held accountable for its actions. Highlighting one of the major pitfalls of international law, Kramer, Michalowski and Rothe note that “the U.S. is not a signatory to the International Criminal Court, and as permanent members of the U.N. Security Council the U.S. and the U.K. can veto any move to censure their illegal behavior” (2005:73).

State crime theorists have made significant milestones for criminology. Perhaps most importantly, state crime theorists have challenged the traditional assumptions of the discipline and particularly the role of the state in defining crime. Critically evaluating the structure, function and actions of the state is of quintessential importance the study of state crime. Regardless of which definitional approach theorists adopt, their efforts force attention on the crimes committed by the government which far too often go unregulated, unpunished and unnoticed.

State Crime and September 11, 2001

Despite the plethora of research which has been done on state crime, relatively little attention has been paid to the role of the United States government surrounding the terrorist attacks of September 11, 2001. Stressing the importance of catalyzing events like September 11th, some state crime theorists have asserted the need to analyze such events because of their tendency to alter the basic components, and thus interactions, of the polity (Chambliss 1979; Wonders and Solop 1993). Without doubt, the 9/11 attacks have been used to justify and expansion of U.S. hegemony and military power throughout the globe, including our own backyard.

A number of researchers have noted how these attacks provided justification for numerous illegal activities. For example, in their analysis of the illegal invasion of Iraq, Kramer, Michalowski and Rothe (2005) assert that key administration
officials exploited the events of September 11\textsuperscript{th} in order to establish a connection between Iraq and al Qaeda as a pretext for war. They state,

Clarke personally informed President Bush that al Qaeda was responsible for the terrorist attacks and that Iraq had no connections to al Qaeda. Administration leaders ignored this information, and instead made intimations of a link between Iraq and the attacks of September 11 a staple of the prewar campaign to build support for an invasion of Iraq. (2005:58)

Along this same line, Kramer and Michalowski (2005) also make similar assertions that the events of September 11\textsuperscript{th} were used to further political goals that had already been set in place prior to the attacks. Referencing the attacks as “a stroke of good luck” and “a political godsend,” they note the importance of the attacks in setting in motion the Plan for A New American Century’s “Rebuilding American’s Defenses” which argues for an expansion of American global military dominance and spending. Although Kramer and Michalowski deem the attacks as “unanticipated,” they recognize that “the 9/11 attacks presented the neocons with the ‘catalyzing event’ they needed to transform their agenda into actual policy” (2005:459).

Furthermore, Rothe and Muzzatti (2004) also note the role of the attacks in enacting strategic plans for global hegemony, facilitated by a deliberately stimulated moral panic. They assert that,

the events of September 11, 2001 (as horrific as they were) provided the Administration with the excuse to act on its simmering geopolitical agenda. The orchestration of the Administrations’ intentions had begun prior to the terrorist attacks...The time was perfect, an excuse had been given to them, and the ease of creating and enhancing a moral panic to ensure public conformity was ripe. (2004:345)

In this account, as well as the others, the strategic significance of the attacks of September 11\textsuperscript{th} provided government officials with the opportunity to put in place previously contrived policies. Similar to Tilly’s (1985) assertions that the government functions as protection racket to ensure its legitimacy, the Bush
administration actively stimulated the fear spawned by the attacks to justify a war in Iraq.

Despite the seeming consensus among a number of state crime theorists that the terrorist attacks of September 11th provided the United States government with the opportunity to put in place and provide justifications for numerous policies which include but are not limited to: the wars in Iraq and Afghanistan, the USA PATRIOT Act, a curtail of civil liberties of U.S. and global citizens, and a preemptive military doctrine (i.e. the War on Terror), the events of 9/11 have yet to be examined by state crime theorists. With such consequential alterations to the domestic and global political landscapes, the reluctance of state crime theorists to undertake a more thorough evaluation the role of the United States government in the events surrounding the September 11th terror attacks seems astonishing. An investigation of these "unanticipated" though undeniably catalyzing events through a state crime lens is long overdue.

Crimes of Omission

Many state crime theorists have concluded that barricading state crime inquires within the boundaries mens rea, or criminal intent, will ultimately shroud many of the socially injurious and illegal acts perpetrated by the state. Perhaps more subtle, though causing great physical, economic and social harm, "...state negligence describes a situation in which 'crimes of omission' are committed" (Freidrichs 2007:128). Put simply, the failure of a state to act in an instance where it clearly has responsibility constitutes a crime by omission (Kauzlarich, Mullins and Matthews 2003; Friedrichs 2007).

Furthering studies of crimes of omission, state crime theorists have offered numerous criteria by which to study state negligent behavior. Proposing a definition
of state crime which encompasses the intended as well as the unintended effects of
government policy, Henry (1991) includes crimes of omission in his definition of
state crime. He asserts that

...we can define state crime as the material or physical harm on its
citizens, a subgroup of citizens, or citizens of other nations resulting
from the actions or consequences of government policy, mediated
through the practice of state agencies, whether these harms are
intentional or unintentional. (1991: 256)

Recognizing that the state is not a unitary force, Henry emphasizes the importance of
evaluating policy since it is “...enacted, interpreted, and enforced by the government
in the name of the state” (1990:254). Thus, the ineffective regulation and
enforcement of government policy implicates the state in the resulting actions,
regardless of intent.

Despite the assumed lack of criminal intent involved with state negligence, a
clear pattern of causation leading up to a crime of omission can often be identified.
For example, government negligence is often a product of favoring particular policies,
programs and constituencies at the expense of others (Freidrichs 2007). These
preferences, directed by elites within the polity, work to preserve the interests of the
state and expand its legitimacy (Kauzlarich, Mullins and Matthews 2003). While in
pursuit of these goals, the serendipitous consequences are not the result of
government inaction but rather of decisive choices made at the expense of more
socially beneficial ones.

Incorporating criteria which span the gamut of state crime literature,
Kauzlarich, Mullins and Matthews propose five standards by which to evaluate state
cri mes. A state crime, they assert, must meet these guidelines: (1) Generates harm to
individuals, groups, and property (2) Is a product of action or inaction on behalf of the
state or state agencies (3) The action or inaction related directly to an assigned or
implied trust and/or duty (4) Is committed, or omitted, by a government agency, organization or representative and (5) Is done in the self interest of (a) the state itself or (b) the elite groups controlling the state (2003:244-246). These criteria allow for the evaluation of both acts of commission as well as omission as state crime.

Creating a continuum of state crime, Kauzlarich, Mullins and Matthews (2003) draw a distinction between crimes of implicit and explicit omission. Crimes of implicit omission involve complete and utter negligence to address problems in society. The government’s failure to alleviate the perils of racism and income inequality would fall within the category of crimes of implicit omission. In contrast, explicit acts of omission “...occur when the state disregards unsafe and dangerous conditions, when it has a clear mandate and responsibility to make a situation or context safe” (249). Often, this type of omission is the result of bureaucratic failures and institutional dysfunction. “The major distinction between [explicit acts of omission] and [implicit acts of omission] is the degree of negligence or facilitation and whether the state has a responsibility to act to reduce the likelihood of harm” (250).

Beyond the physical and economic harm caused by crimes of omission is the violation of trust and the destructive effect it has on the social fabric. As Sutherland noted, one quintessential aspect of white collar crimes is that they involve a “violation of delegated or implied trust” (1940:3). Violations of trust on this level, Sutherland argues, have the potential to ruin social morale and create widespread social disorganization. Friedrichs affirms this position, pointing out that although the violation of trust is a key element in governmental crime and white collar crime generally, in the former case the violation of a public trust occurs, whereas corporate and occupational crime involve a violation of a trust which is essentially private. (2000:59).
Following in these footsteps, Kauzlarich, Mullins and Mattews (2003) also stress the role of that trust plays in crimes of omission. They argue that “...a key aspect of trust involves taking certain actions to protect a citizenry. Thus, when a state (or state agency) fails to act when necessary, this too constitutes a violation of trust” (245).

At its foundation, representative democracy depends on trust. Without it, the United States system of governing is nothing more than an autocratic plutocracy. The social contract— the theoretical rationale that citizens give up some of their rights in order to gain protection (from each other as well as from external threats) from the government— is fundamental to democratic governance. Elected to serve the interests of the people, government representatives are responsible, perhaps above all, for protecting citizens from foreign and domestic threats. Failure to do so destroys the trust assigned to representatives and threatens democratic governance.

More than a mere violation of trust, the failure of the United States government to protect its citizens is also a violation of law. The supreme law of the land, the U.S. Constitution sets forth in its preamble that it is the job of the government to “insure domestic tranquility,” “provide for the common defense” and “promote the general welfare.” Thus, the failure of the government to protect its citizenry from foreign attacks is a violation of constitutional law.

The terrorist attacks of September 11, 2001 directly resulted in the deaths of over 3,000 people. As stipulated by the U.S. Constitution, it was the explicit duty of the government, its agencies and its officials to prevent these attacks from occurring. As Friedrichs makes clear, “the most serious form of state criminality involves the unnecessary and premature loss of life that occurs when the government and its agents fail to act affirmatively in certain situations” (2007:128). The premature loss of
thousands of lives as a result of the negligence of United States government therefore warrants a state crime analysis.
CHAPTER III

DATA AND METHODS

Data

Determining the role of the United States government in the events surrounding the September 11, 2001 terrorist attacks requires a thorough evaluation of publicly available archival data. Incorporating government documents and news articles into the analysis, the strengths of each source will work to compensate the weaknesses of the other.

Using archival data in this project provides the best historical record for the government actions and inactions taken before, during and after September 11\textsuperscript{th}. Since the data is publicly available, and in many cases accessible via the internet, the information utilized can easily be found and reproduced by anyone. The ease of accessibility does not come without consequence. Due to the use of secondary sources, the opportunity to direct inquiry and probe specific questions is relinquished. Thus, the nature of this inquiry will be restricted to the questions raised by government officials and members of the media.

Government documents, which provide officials with a degree of accountability, are quite likely the best kept record of the functions of government. On the whole, most people regard government documents as legitimate and reliable
sources of information. As such, government documents allow for justifiable conclusions to be drawn on issues which may otherwise be contentious. Conversely, investigatory government documents are also created by the very body which they seek to study. As a result, government wrongdoings are often concealed or distorted. Furthermore, not all government actions are documented. Information concealed for reasons of national security or executive privilege are examples of "state secrets" which will not make their way into the historical record. Perhaps above all, any product of the polity will inherently be politicized and therefore must be analyzed within the context in which it was produced.

Working to correct for many of the weaknesses associated with government documents, newspaper sources help to accent an analysis of government accounts. Also widely available and thus more accountable to the general public, newspapers provide a more objective perspective of government assertions. Theoretically, it is the media's role to act as a "watchdog" on behalf of citizens. Guarding against corruption and tyranny, the media functions as an intermediary between a government and its citizens. Due to the reliance on informants, if government corruption is to be revealed, it will most likely be through the media. Thus, media records are essential to maintaining government accountability. Most generally, newspaper accounts work to draw public attention to both government documents and actions that might otherwise be lost in a sea of information. Nevertheless, these political alerts do not diminish the necessity of thorough investigations.

Not without criticism, a reliance on newspaper accounts also has its weaknesses. Often referred to as the "fourth branch of government," the media has fallen far short of its theoretical 'watchdog' role. Functioning as the mouth piece of government officials, some news sources do nothing more than echo the ideology of
the dominant political party. Most frequently owned by a corporate entity with ties to the political arena, media networks are limited in their ability to critically probe the halls of Washington. Although such blanketed statements cannot be made of all newspaper sources, the potential for bias must be acknowledged.

In an effort to correct for the weaknesses of each of these types of archival data an incorporation of both is needed. Using government documents as the bulk of this analysis will help to ensure its legitimacy and justify potentially controversial claims. To correct for the internal bias of government documents, employing media sources will work to highlight and draw critical attention to the more unsavory government actions and inactions.

The National Commission on Terrorist Attacks Upon the United States

Commonly referred to as the 9/11 Commission, the National Commission on Terrorist Attacks Upon the United States was signed into law by Congress and President George W. Bush on November 27, 2002. From the beginning, the Bush administration had sought to block an independent investigation of the attacks, arguing that an investigation would hinder the government’s response to the war against al Qaeda- most specifically in Iraq. Over a year after the most deadly attacks on American soil, Bush reluctantly established a national commission to investigate the attacks after facing intense pressure from the victim’s families as well as Senator John McCain. In comparison, the Warren Commission, which investigated the assassination of President John F. Kennedy in 1963, was established in as short as one week after the event.

Once established, the 9/11 Commission was severely under-funded. Initially, the Bush administration allocated only $3 million for the eighteen month long investigation. This is in comparison to the $112.6 million spent to investigate the
2003 Columbia space shuttle disaster (Marrs 2006:152) and the $40 million budget for the Challenger (Shenon 2008:31). Following public outcry and protest, particularly from the victim’s families, an additional $10 million was devoted to the investigations.

Initially, Henry Kissinger was appointed to head the bipartisan commission. Rather than publicly disclose a list of clients from his consulting firm Kissinger and Associates, Kissinger chose to resign as chair of the commission amidst allegations that his clients included several large oil-giants possibly connected to Saudi Arabia. A second-choice candidate, the White House selected former New Jersey Governor Thomas Kean over long-time Bush family consolate James A. Baker to assume Kissinger’s vacated position as chairman of the 9/11 Commission. Even though the law allowed for only one chairman, Kean, however, found it necessary to designate Lee Hamilton as ‘co-chair’ to bolster the bipartisan image of the Commission (Shenon 2008).

Although all ten commissioners (five Democrats and five Republicans) had separate jobs and participated in varying levels in the investigative work, the Commission was also backed by a professional staff led by an executive director who buttressed much of the work load. It was the responsibility of the executive director of the Commission to select and manage the staff, direct the investigation, arrange witnesses and write the report. Philip Zelikow did all that and so much more. Perhaps the most powerful person on the commission, Shenon explains that “Phillip Zelikow’s micro-management meant that the staff had little, if any, contact with the ten commissioners; all information was funneled through Zelikow, and he decided how it would be shared elsewhere” (2008:317). His greatest legacy as a historian and
gifted writer, Zelikow authored and edited much of the 9/11 Commission’s official report.

Selected unilaterally by Kean and Hamilton without the consultation of the other commissioners, the assignment of Philip Zelikow to the position of executive director of the 9/11 Commission has drawn a plethora of well deserved criticism for his connections to the Bush administration. Though Kean, Hamilton and the other commissioners were aware of Zelikow’s friendship with Condoleezza Rice, the details were not revealed until midway through the commission’s work. To make matters worse, Zelikow omitted the extent of his connections to the current administration in the resume provided to the Commission. Most of them were aware of Rice and Zelikow’s work together on the National Security Council during the first Bush administration. They also knew of a book the two published together in 1995 on German reunification.

The Commissioners were not aware of Zelikow’s role in the Bush administration’s NSC transition team in 2000. Once Rice had been appointed as National Security Advisor she selected Phillip Zelikow to serve as her counterterrorism advisor on the NSC transition team. In this capacity Zelikow was responsible for a review and reorganization of counterterrorism czar Richard Clarke’s Counterterrorism Security Group within the NSC, which ultimately led to his demotion. Rather than reporting to the Principals Committee as he had done throughout the Clinton administration, Clarke was directed to report to the Deputies Committee thus ceasing his contact with top administration officials. This proved to be significant when Clarke credited the successful prevention of the Millennium terrorist attacks to his close and frequent interactions with the Principals Committee.
Nor was the Commission informed of Zelikow’s authorship of the thirty one page “preemptive war” doctrine, written anonymously at Rice’s request. In the early stages of the investigation, the United States launched the war in Iraq based on the alleged connection between Iraq and al Qaeda, and thus an insinuation of 9/11. Even though the Commission found no evidence to support the link, the pressure to find one was great, especially from Zelikow and many of the ‘experts’ he selected to testify on the connection between Iraq and al Qaeda. One of his many conflicts of interest, Shenon (2008:43) reveals that

at Rice’s urging, Zelikow was the principal- if not initially secret-author of a national security strategy paper that would turn American military doctrine on its head and justify a “preemptive war” against an enemy that posed no immediate threat to the United States. It was being written with Iraq in mind; the administration needed a scholarly document it could point to in justifying the imminent invasion.

It seemed to many of the commissioners and staff that Zelikow was doing everything in his power to find a connection that he later conceded simply was not there.

Even after Zelikow’s connections to the White House were more fully disclosed, Kean and Hamilton were unwilling to replace him. Even in the face of protests from the 9/11 victims’ families, serious complaints of misconduct from the staff and urgings from the Commissioners themselves, the chairmen stood their ground. Although Zelikow was allowed to maintain his position, he was not allowed to participate in the investigations of the NSC. Also, he was to have ended all contact with his friends in the White House throughout the Commission’s work, a condition set forth from the beginning.

Disobeying the condition on which he was hired, Zelikow did not cease contact with the White House. “The phone logs maintained by Karen Heitkotter showed that there were several phone calls from Rove to Zelikow’s office telephone number over a four-month period in 2003- at least two in June and two more in
September" (Shenon 2008:174). Furthermore, there were no records of outgoing office phone calls and calls on Zelikow's personal cell phone. Heitkrotter also maintains that on numerous occasions she had arranged a gate pass for the West Wing for Zelikow to visit Rice in her offices. Another occasion involved lunch with Rice and her staff at the NSC (Shenon 2008:107). Shenon states that "for many of the staff, it was just what they had suspected: Zelikow was some kind of White House mole, feeding information back to the administration about the commission's findings" (2005:107).

The past and continued relationship of the Commission's executive director with Bush administration officials ruined any chance of a bipartisan investigation. Due to his extensive control and authorship of the Staff Statements and the Commission's final report, Philip Zelikow's influence permeates the government's official account of the September 11th terrorist attacks. In light of his refusal to obey the Commission's orders to end contact with his friends at the White House, Zelikow's loyalty appears clear. As such, the 9/11 Commission's investigations, and especially their final report, must be held suspect.

Some major criticisms of the 9/11 Commission's report include the omission of key pieces of evidence and the distortion of included ones. An open letter to Congress signed by 25 individuals who worked in government agencies which provide national security and public safety including the FBI, CIA, FAA DIA and Customs substantiates the claims of omission. They state,

omission is one of the major flaws in the Commission's report. We are aware of significant issues and cases that were duly reported to the Commission by those of us with direct knowledge, but somehow escaped attention. Serious problems and shortcomings within government agencies likewise were not included in the report. The report simply does not get at key problems within the intelligence, aviation security, and law enforcement communities. The omission of
such serious and applicable issues and information by itself renders the report flawed, and casts doubt on the validity of its recommendations. (Letter 2004:1)

The contention that the 9/11 Commission excluded key issues and information further emphasizes the need to evaluate its claims with caution.

Most significantly, the 9/11 Commission never sought to hold individuals or agencies accountable for their actions and inactions. Instead, the commission stated, “our aim has not been to assign individual blame. Our aim has been to provide the fullest possible account of the events surrounding 9/11 and to identify lessons learned” (National Commission 2004:xvi). Concerned that assigning blame might send the Commission into partisan turmoil, Kean and Hamilton consistently maintained that there would be no “finger-pointing” in the final 9/11 report.

If it was not the goal of the Commission to assign blame and hold government agencies responsible for their actions and inactions, who is charged with the task? The insistence on learning how to prevent future attacks from occurring without consequential ramifications for the failures of government actors establishes a pattern of permissiveness that is sure to prevail. Despite its misguided goals, the 9/11 Commission’s investigation is essential since it is the only “official” account of the events of September 11th. Therefore its significance cannot be dismissed.

To the extent that it is possible, an attempt to salvage portions of the Commission’s investigation from the influence of Phillip Zelikow must be made. Rather than rely on the Staff Statements or official report penned by Zelikow, transcripts from the public hearings of the 9/11 Commission archived online will be used in an effort to attain a more ‘objective’ source of data.
Methods

The National Security Council (NSC), the Central Intelligence Agency (CIA), the Federal Bureau of Investigation (FBI), the North American Aerospace Defense Command (NORAD) and the Federal Aviation Administration (FAA) each played a significant role in failing to prevent the September 11th attacks. Acting as a scapegoat for the entire government, the intelligence community has been portrayed as particularly responsible. Chalked up to barriers in information sharing, government officials readily accept this excuse as the primary reason as to why the attacks were not prevented. The FBI, for example, was responsible for domestic intelligence gathering and federal law enforcement. Once the hijackers entered the United States, their investigation was fully within the jurisdiction of the FBI. Moreover, the CIA whose job entails collecting foreign intelligence was accountable for identifying and foiling the plans of al Qaeda.

Obviously, without the use of airplanes, the attacks could not have been carried out. Therefore, the aviation community as well failed to prevent, and once in progress stop the attacks from occurring. Within the Department of Transportation, the FAA working in close connection with the airline industry also played a critical role which must be examined. Additionally, NORAD was also responsible for defending and protecting the air space of North America. Once a plane is identified as hijacked by the FAA, NORAD then assumes responsibility for the threatening aircraft. Thus, a failure to prevent hijacked airplanes from being used as missiles falls within their jurisdiction.

Furthermore, the Bush Administration and particularly the NSC’s role in the failure to prevent the attacks cannot be underestimated. Responsible for advising the President on national security and foreign affairs, the domain of the NSC includes
preventing foreign and domestic attacks from occurring. However, it must be noted that some members of the NSC do overlap with other agencies. The Central Intelligence Director, for example, serves both the NSC as well as the CIA. Due to the NSC's vital role in providing national security, the actions and inactions of the NSC's officials must be scrutinized.

Due to their significant failures, the 9/11 Commission devoted a great deal of its investigation to the responses of the NSC, CIA, FBI, NORAD and FAA. As a result, transcripts of the public hearings include numerous testimonies from officials representing these five agencies. Narrowing down the data to fit within the parameters of this project, public hearings which did not seem to be explicitly relevant were first excluded from consideration. Of the twelve public hearings, the first, third, fourth, fifth, sixth and eleventh hearings were dismissed as irrelevant. From the remaining hearings (the second, seventh, eighth, ninth, tenth and twelfth), panels were selected which dealt with events leading up to or during the attacks and included witnesses from at least one of the five agencies of interest. From here, individuals which occupied their position within each agency on or before September 11, 2001 were selected for inclusion in the analysis.

Even though this was the dominant approach for minimizing the amount of data to be analyzed it must be noted that some exceptions were made. For example, NORAD officials also included members of the Joint Chiefs of Staff, National Military Command Center and more generally the Department of Defense, who contributed a great deal of information about NORAD's response. Additionally, the testimonies of three FAA officials also went unevaluated due to abundance of FAA officials testifying to the Commission. In this case, every effort was made to collect a
sample of testimonies from both top level FAA officials, such as the administrator, to
lower level officials such as a member of the investigative Red Team.

Analytic Strategy

Identifying crimes of the state is an endeavor which begs for definitional
clarity. Although many state crime theorists have offered varying definitional
approaches, Kauzlarich, Mullins and Matthews (2003) seek to establish a definition
which “...should precisely define and describe an existing phenomenon in such a way
that allows and assists the study of the phenomenon” (244). Rather than creating a
definition which seeks to limit state crime inquiries, Kauzlarich, Mullins and
Matthews introduce five criteria to help facilitate the study of state crime. A state
crime, they assert, must meet these guidelines: (1) Generates harm to individuals,
groups, and property (2) Is a product of action or inaction on behalf of the state or
state agencies (3) The action or inaction related directly to an assigned or implied trust
and/or duty (4) Is committed, or omitted, by a government agency, organization or
representative and (5) Is done in the self interest of (a) the state itself or (b) the elite
groups controlling the state (2003:244-6).

Utilizing these criteria as a standard by which to judge the actions and
inactions of the United States government in the events surrounding 9/11 will provide
a definitive method by which to firmly conclude the culpability of the state.
Analyzing the transcribed testimonies of officials from each of the five agencies
(NSC, CIA, FBI, NORAD and FAA) by the five criteria proposed by Kauzlarich,
Mullins and Matthews (2003) will aid in systematically establishing the role of each
government agency in the events surrounding September 11th.
Generates Harm to Individuals, Groups, and Property

Quite obviously, the attacks of September 11, 2001 generated a great deal of harm to individuals, groups as well as property. Allowing this criterion to go largely unchallenged, the bulk of the analysis is devoted to determining the culpability of each government agency in the harm resulting from the attacks.

Is a Product of Action or Inaction on Behalf of the State or State Agencies

If the data demonstrates the failure of a state agency to take action to prevent the attacks from occurring, it will have fulfilled this criterion. Furthermore, if an action was undertaken by a state agency which facilitated the attacks, this criterion will also have been met. On the other hand, if the data fails to substantiate that the attacks were the product of action or inaction on behalf of the agency in question, the agency will be found to be lacking in responsibility and will therefore be excluded from further analysis.

The Action or Inaction Relates Directly to an Assigned or Implied Trust and/or Duty

Beyond merely establishing the actions or inactions of each agency, it must be also be demonstrated that it was clearly the duty (i.e. responsibility) of each agency to have done so. Declarations of implied responsibility will be admissible from either the agency itself or from other government officials. Demonstrating this criterion will go above and beyond the implied trust which exists between any state representative and the citizens of a democracy.
Is Committed, or Omitted, by a Government Agency, Organization or Representative

Since each of the objects of inquiry are state agencies (with the exception of the airline industry which will be examined in the context of its relationship with the FAA), this criterion will have largely been met from the outset. Once action or inaction has been established (as demanded by criterion number two), this criterion will also be fulfilled.

Is Done in the Self Interest of (a) the State Itself or (b) the Elite Groups Controlling the State

Finally, and perhaps most challengingly, Kauzliarich, Mullins and Matthews’s definition of state crime requires that the action or inaction be done in the interest of the state or elite groups controlling the state. Essentially, this criterion seeks to address the mens rea, or criminal intent of the state. Actions undertaken by corporations, illegal or otherwise, can quite easily be chalked up to the pursuit of organizational goals, chiefly the accumulation of profit. Due to the complexity of “the state,” its organizational goals are much more difficult to identify. As Friedrichs (2007) suggests, government negligence is often the result of favoring particular policies, interests and constituencies over others. Thus, choosing to preference certain policies or strategies while neglecting others are the codified result of state interests.

By its very nature government policy serves state interests in some fundamental manner. The outcomes of these policies as implemented by state agencies are not necessarily in accordance with the intentions of law makers. Nevertheless, the failure to regulate and enforce policy implicates the government in its outcomes. Therefore, choosing one policy over an alternative is a reflection of
state interest regardless of the intended or unintended consequences that flow from such a decision. In line with Henry's (1991) definition of state crime, harm resulting from government policy need not be intentional in order for it to be classified as criminal.

When considering the actions or inactions of each of the five government agencies (NSC, CIA, FBI, NORAD and FAA) in the events surrounding the attacks of September 11th, it is not necessary to establish a causal link between the action and the self interest of the state. Since the state and its interests are not so easily identified, especially from the outside looking in, the interests of the state itself or elite groups in control of the state can be broadly construed. Furthermore, the decision of an agency to pursue a course of action or inaction is the most concrete expression of the interests of state agencies. Therefore, the actions and inactions of the agency as a whole, as well as its representatives, will serve to substantiate the interests of the state.

Judged by the criteria put forth by Kauzlarich, Mullins and Matthews (2003), the actions and inactions of the United States government as documented by the testimonies of officials from the NSC, CIA, FBI, NORAD and FAA will shed light on to the failure to prevent the 9/11 attacks. If it is found that government agencies failed to act when they had the clear responsibility to do so, then it must be concluded that the September 11, 2001 terrorist attacks were a state crime.
CHAPTER IV

NATIONAL SECURITY COUNCIL

According to the National Security Council's website,

The National Security Council is the President's principal forum for considering national security and foreign policy matters with his senior national security advisors and cabinet officials. Since its inception under President Truman, the function of the Council has been to advise and assist the President on national security and foreign policies. The Council also serves as the President's principal arm for coordinating these policies among various government agencies.

Furthermore, regular attendees of the NSC include the President, who is the chair, the Vice President, the Secretary of State, the Secretary of Treasury, the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Director of National Intelligence and the Assistant to the President for National Security Affairs (National Security Council website).

Testimony of Condoleezza Rice

Assigned or Implied Trust or Duty

Role of the National Security Advisor

The National Security Presidential Directive 1 signed by President Bush on February 13, 2001 which became effective one month later, set forth the structure for the National Security Council as well as the responsibilities of the Assistant to the President for National Security Affairs (also known as the National Security Advisor);
the role occupied by Condoleezza Rice from 2001-2004. One of the more significant
changes made by the President in NSPD 1 was an expansion of the powers of the
National Security Advisor to include chairing the NSC Principals Committee. As
articulated by President Bush,

the NSC Principals Committee (NSC/PC) will continue to be the
senior interagency forum for consideration of policy issues affecting
national security, as it has since 1989. The NSC/PC shall have as its
regular attendees the Secretary of State, the Secretary of the Treasury,
the Secretary of Defense, the Chief of Staff to the President, and the
Assistant to the President for National Security Affairs (who shall
serve as chair). (NSPD 1)

Thus, the meetings and the agenda of the NSC/PC in which the most urgent foreign
policy considerations are discussed were set at the behest of Rice in consultation with
the other members.

Amongst other NSC Policy Coordination Committees (NSC/PCCs) - which
are the center for interagency policy coordination- the National Security Advisor is
designated the chair of the Counter-Terrorism and National Preparedness committee.
Further, the Assistant to the President for National Security Affairs, in consultation
with the President and Vice President, also has the power to establish additional
NSC/PCCs where necessary (NSPD 1). Finally, the more routine responsibilities of
the Assistant to the President for National Security Affairs include ensuring that
necessary papers are prepared and NSC actions and Presidential decisions are
recorded.

Overall, the position of the National Security Advisor in the Bush
administration, as dictated by the February 13, 2001 NSPD, serves as a coordinating
center for national security policy issues. As chair of the NSC/PC, Rice was in charge
of this powerful interagency panel. Further, by serving as the chair of both the NSC
Principals Committee as well as the Counter-Terrorism and National Preparedness
Committee, Rice was in a position to bring many of the concerns voiced by the Counter-Terrorism and National Preparedness Committee - which was directly dealing with the heightened terrorist threat throughout the spring and summer of 2001- to the attention of the NSC/PC.

Action or Inaction on Behalf of State or State Agencies

Bush Administration's Policy Towards al Qaeda

The threat posed by al Qaeda to American interests both at home and abroad was well known by officials in both the Clinton and Bush administrations. During the transitory period between the administrations, both President Bush and National Security Advisor Rice were briefed by CIA director George Tenet on terrorism and the al Qaeda network. Furthermore, Rice was also briefed by the outgoing NSC staff on counterterrorism initiatives and the threat posed by al Qaeda. As expressed by Rice, “because of these briefings and because we had watched the rise of al Qaeda over many years, we understood that the network posed a serious threat to the United States” (p. 4). Aiming to ensure continuity while other al Qaeda policies were being developed, the Bush administration decided to continue pursuing the Clinton administration’s policy towards al Qaeda, even going as far as to retain numerous Clinton era officials including George Tenet (director of intelligence), Louis Freeh (director of the FBI), Richard Clarke (national coordinator of counterterrorism at the NSC) and the entire counterterrorism team on the NSC staff. Rice maintains that “…the decision that we made was to, first of all, have no drop off in what the Clinton administration was doing because clearly they had done a lot of work to deal with this very important priority. And so we kept the counterterrorism team on board” (p. 13).
The threat posed by al Qaeda began to heighten in the spring and summer of 2001. As threat reporting increased, the NSC “...moved the U.S. Government at all levels to a high state of alert and activity” (p. 7). The Counterterrorism Security Group (CSG), chaired by Richard Clarke, also began meeting sometimes daily to review threat reporting and coordinate actions and responses. Moreover, Rice also met and spoke frequently during this time with the Director of Central Intelligence (DCI) George Tenet to discuss terrorism and al Qaeda. As Rice put it, “[an attack by al Qaeda] was on the radar screen of any person who studied or worked in the international security field” (p. 12). Thus, the National Security Council was well aware of the increasing threat posed by al Qaeda during the spring and summer of 2001.

The possibility of an attack inside the U.S. was plausible enough for Rice along with Chief of Staff Andy Card to meet with Clarke to ensure “that domestic agencies were aware of the heightened threat period and were taking appropriate steps to respond, even though we did not have specific threats to the homeland” (p. 8). Shortly thereafter, Clarke and the CSG convened to alert the Federal Aviation Administration (FAA), Immigration and Naturalization Services (INS) and the Coast Guard about the threats, urging them to increase security and surveillance.

Other agencies were issuing urgent warnings as well. The Defense Department, for example, issued at least five warnings to U.S. military forces that near term attacks by al Qaeda may take place. The State Department also issued at least four worldwide warnings about the anticipated attacks, going as far to warn the Taliban that they would be held responsible for any al Qaeda attacks. Moreover, the FBI had issued at least three nationwide warnings to domestic law enforcement
agencies stating that although most threats identified overseas targets, terrorist attacks on U.S. soil were also possible. Additionally, at least five civil aviation security information circulars were issued by the FAA to all U.S. airlines and airport security which warned of the potential for hijackings.

**August 6, 2001 Presidential Daily Briefing**

Although much of the threat information had suggested a target overseas, both President Bush and Rice were concerned about a terrorist attack U.S. soil. Composed by the CIA, the August 6, 2001 Presidential Daily Briefing (PDB) is considered one of the most specific warnings given to the Bush administration about the looming terrorist attacks. Asserted by Rice to be in response to questions asked by the President about al Qaeda’s intentions to strike the homeland, the briefing has generated a great deal of controversy as to how it came about. Initially, the CIA had advised the 9/11 Commission in writing that the PDB was prepared and self generated by a CIA employee. This version of events was later corrected by George Tenet, reflecting Rice’s assertion that the PDB was in response to questions asked by the President.

At the time of Rice’s testimony, only portions of the August 6, 2001 PDB were made available to the Commission. It was not until April 10, 2004 that the document was declassified. Titled “Bin Laden Determined to Strike in US,” the PDB summarizes, according to Rice, some of the more “historic information” known about bin Laden and his attempts to attack U.S. interests at home and abroad. Despite the emphasis on attacks inside the United States, Rice maintains that the “[PDB] did not warn of attacks inside the United States. It was historical information based on old reporting. There was no new threat information, and it did not, in fact, warn of any coming attacks inside the United States” (p. 25).
Contradicting Rice’s position, the briefing conveys that although some of the information may have been historical, a clear and present domestic threat existed. Contrasting the historical and current threat information, the PDB states:

Nevertheless, FBI information since that time indicates patterns of suspicious activity in this country consistent with preparation for hijackings or other types of attacks, including recent surveillance of federal buildings in New York. (Presidential)

In retrospect, the accuracy of the PDB in predicting elements of the attacks is chilling. Nevertheless, Rice maintains that “there was nothing in this memo as to time, place, how or where” (p. 27).

Even though the PDB notes the presence of al Qaeda operatives residing inside the U.S. as well as the existence of support structures that could aid in attacks, this was not the first time that Rice or the President had been alerted to the existence of al Qaeda sleeper cells in the U.S. Rice confirms that

in the memorandum that Dick Clarke sent to me on January 25th, he mentions sleeper cells. There is no mention or recommendation of anything that needs to be done about them. And the FBI was pursuing them. And usually when things come to me it’s because I’m supposed to do something about it, and there was no indication that the FBI was not adequately pursuing the sleeper cells. (p. 57)

Further illustrating the awareness of the domestic threat, Rice asserts that “…the President was aware that there were issues inside the United States. He talked to people about this. But I don’t remember the al Qaeda cells as being something that we were told we needed to do something about” (p. 24).

FBI Investigation of Threats

As indicated by the PDB, the FBI had 70 full field investigations of individuals which may be connected to bin Laden underway at the time. Moreover, Rice asserts that “the country had already taken steps through the FBI to task their 56
field offices to increase their activity” (p. 27). As a result, Rice concluded that the FBI was evaluating the threat and no further actions needed to be taken.

Despite her assertion, it is unclear whether or not the FBI had ever tasked its field offices to increase their activity. After thousands of interviews to the 9/11 Commission, Commissioner Roemer concludes that “to date, we have found nobody—nobody at the FBI who knows anything about a tasking of field offices” (p. 68). Had the FBI been tasked, information about an inordinate amount of young Arab men attending U.S. flight schools may have raised red flags. For example, according to Commissioner Kerrey, FBI Agent Kenneth Williams

...said that the FBI should investigate whether al Qaeda operatives were training at U.S. flight schools. He posited that Osama bin Laden’s followers might be trying to infiltrate the civil aviation system as pilots and security guards, other personnel. He recommended a national program to track suspicious flight schools. (p. 54)

If the FBI was tasked to inform its field offices of the threat posed by al Qaeda, it is unclear why information such as this was not made available to Rice and other members of the NSC.

**September 4, 2001 Memorandum**

Further stressing the urgency of the threat posed by al Qaeda and the government’s inability to take action is the September 4, 2001 memo to Rice from Clarke, which Commissioner Roemer claims that Clarke

...lays out his frustration that the military is not doing enough, that the CIA is not pushing this hard enough in their agency, and he says we should not wait till the day that hundreds of Americans lay dead in the streets due to a terrorist attack... (p. 69)
Conversely, Rice contends that the memo was a warning not to get dragged down by the bureaucracy. Written just before a Principals Meeting in which a strategy for dealing with al Qaeda was to be considered, Rice claims that

…it would not be appropriate or correct to characterize what Dick wrote to me on September 4th as a warning of an impending attack. What he was doing was, I think, trying to buck me up so that when I went into this principals meeting, I was sufficiently on guard against the kind of bureaucratic inertia that he had fought all his life. (p. 70)

The difficulty in establishing the accuracy of these competing contentions is further complicated by the fact that this memo has yet to be declassified, though portions of it were made available to the Commission. In either case, the memo conveys the frustration and fear felt throughout the government on the eve of the attacks.

Summary

The threat posed by al Qaeda to American interests was well known throughout both the Clinton and Bush administrations. Although Rice maintains that there was no “actionable intelligence” that indicated a domestic terrorist attack, the actions taken by both the President and Rice demonstrate that the potential for a domestic attack was real. Prompted by the President’s concerns about al Qaeda’s intention to strike the homeland, the August 6, 2001 PDB confirms the potential for a domestic attack. If it had not been made clear to Rice in the January 25th memo from Clarke that al Qaeda sleeper cells where present within the U.S., the PDB again stressed this warning. Startled enough by the possibility of an attack within the U.S. to summon Clarke to alert domestic agencies of the heightened threat period, Rice understood that an attack on the homeland was at least plausible.

Despite the abundance of evidence which suggested an attack within the United States, Condoleezza Rice failed to take actions which could have prevented the attacks. Clearly within her responsibilities as National Security Advisor, Rice had
the power to voice the concerns of Clarke and the CSG to the Principals Committee. Cited as one of the primary reasons for the successful foiling of the 1999 Millennium plot, frequent meetings by the Principals Committee, ordered by Rice, could have changed the outcome of September 11, 2001.

Testimony of Richard Clarke

Assigned or Implied Trust or Duty

Role of the National Coordinator for the Counterterrorism

Richard Clarke, who served as the national coordinator for the counterterrorism at the NSC throughout 2001, began his career in the White House at the end of the first Bush administration in the fall of 1992 as head of the Counterterrorism and Security Group (CSG). Until 1998, Clarke’s title “...had always been a special assistant to the President” (Clarke Testimony p. 111). Thereafter, Clarke’s title became the national coordinator for security, infrastructure protection and counterterrorism, otherwise known as the “terrorism czar.” He asserts that “[the position] gave me all of the responsibility and none of the authority” (p. 111). Once the Bush administration took office, the NSC was reorganized, therefore shifting Clarke’s position. The first National Security Presidential Directive (NSPD 1) stipulated that

- the Counter-Terrorism Security Group, Critical Infrastructure Coordination Group, Weapons of Mass Destruction Preparedness, Consequences Management and Protection Group, and the interagency working group on Enduring Constitutional Government are reconstituted as various forms of the NSC/PCC on Counter-Terrorism and National Preparedness.

Thus, Clarke’s title went from the national coordinator for security, infrastructure protection and counterterrorism to the national coordinator for counterterrorism (i.e.
the Counterterrorism Security Group). Throughout both the Clinton and second Bush administrations, it was Clarke and the CSG principal responsibility to coordinate counterterrorism policy.

Action or Inaction on Behalf of State or State Agencies

Awareness of al Qaeda

Having worked for three administrations on counterterrorism operations, Clarke understood the threat posed by al Qaeda, perhaps better than anyone else. Clarke asserts that al Qaeda came into existence sometime in 1988 or 1989. Although members of the NSC had suspicions as early as 1993, it was not until former national security advisor (1993-1997) Anthony Lake urged the CIA to investigate this organization, which seemed to be centered around bin Laden, that the White House was informed of al Qaeda’s existence in 1995. Thus, it was during the Clinton era that the U.S. government began deal with the threat posed by al Qaeda. However, the Bush administration’s decision to retain many members from the Clinton administration, including Clarke, as well as to continue pursuing the Clinton administration’s policy towards al Qaeda meant that the implementation of Clarke’s strategy was left up to the new administration.

Bush Administration’s Policy Towards al Qaeda

In comparison to the Clinton administration, Clarke notes that fighting terrorism and al Qaeda were much lower priorities in the Bush administration. Concerned about the administrations failure to treat al Qaeda as a high priority, Clarke notes that
George Tenet and I tried very hard to create a sense of urgency by seeing to it that intelligence reports on the al Qaeda threat were frequently given to the President and other high-level officials...But although I continued to say it was an urgent problem, I don't think it was ever treated that way. (p. 104)

Compared to the increased counterterrorism budget seen during the Clinton years, the Bush administration demonstrated early on that the trend would not continue. Although the Clinton administration had begun making efforts to deal with al Qaeda, much of the work was left to the incoming administration.

One of the counterterrorism issues left on the table from the Clinton administration was the bombing of the U.S.S. Cole on October 12, 2000. Since it was not until January of 2001 that the CIA determined that the suicide bombing had been done by al Qaeda- although Clarke maintains that he and his staff had enough information to build a case against al Qaeda just two days after the attack- it was left up to the Bush administration to decide whether or not to respond. A justifiable reason to go after al Qaeda, Clarke laments that

unfortunately there was no interest, no acceptance of that proposition, and I was told on a couple of occasions, well that, you know, that happened on the Clinton administration’s watch...I thought the Bush administration, now that it had the CIA saying it was al Qaeda, should have responded. (p. 145)

Urgent Warnings to the Bush Administration

Just five days after the Bush administration took office on January 25, 2001 Clarke sent a memo to National Security Advisor Rice urgently asking her to hold a Principals Meeting on the pressing al Qaeda threat. Succinctly laying out the nature of the threat posed and strategies for approaching it including whether or not to respond to the Cole attack, the January 25th memo stresses the importance of considering al Qaeda (or ‘al Qida’) as a threat in its own right.
As we noted in our briefings for you, al Qida is not some narrow, little terrorist issue that needs to be included in broader regional policy. Rather, several of our regional policies need to address centrally the transnational challenge to the US and our interests posed by the al Qida network. By proceeding with separate policy reviews on Central Asia, the GCC, North Africa, etc. we would deal inadequately with the need for a comprehensive multi-regional policy on al Qida. (NSC Memo from Clarke)

Moreover, the memo clearly identifies the decisions about al Qaeda that had been deferred to the Bush Administration such as whether to fund the Northern Alliance and increase assistance to Uzbekistan.

The response that Clarke received from the Bush administration was one he was not expecting. Clarke states that

the response was that in the Bush Administration I should, and my committee, the counterterrorism security group, should report to the deputies committee, which is a sub-cabinet level committee, and not to the principals, and that therefore it was inappropriate for me to be asking for a principals meeting. Instead, there would be a deputies meeting. (p. 106)

Accustomed to reporting directly to the principals throughout the Clinton administration, Clarke and the CSG had in effect suffered a demotion in the current administration. As a result of this bureaucratic shift, Clarke no longer had direct access to Condoleezza Rice and the other principals. He therefore “...spent less time talking about the problems of terrorism with the national security advisor in this Administration” (p. 118).

Further delaying a meeting to address the threat, the Deputies Committee did not convene until after February. “Then, when the deputies committee did meet, it took the issue of al Qaeda as part of a cluster of policy issues...” (p. 106); exactly what Clarke had advised against. In contradiction of Clarke’s urgings in the January 25th memo, al Qaeda was examined in the context of a myriad of other interrelated issues, therefore diluting its significance. As the Deputies Committee prepared to
meet with the Principals, the meeting was initially put on hold due to a full calendar and then due to summer vacations.

By June, Clarke was so frustrated by the failure of the Bush administration to treat the al Qaeda threat as serious that he resigned. Recounting his feeling at the time, Clarke reflects

and I thought, if the Administration doesn’t believe its national coordinator for counterterrorism when he says there’s an urgent problem, and if it’s unprepared to act as though there’s an urgent problem, then probably I should get another job. (p. 107)

Soon thereafter Clarke was reassigned to a new position he created involved with cyber security.

**September 4, 2001 Principals Meeting**

One week prior to the attacks the principals committee finally met on September 4th. Eight months after Clarke sent a memo to Rice on strategies for dealing with al Qaeda, his recommendations were approved by the Principals Committee. For such an urgent threat, Clarke found an eight month waiting period for a Principals meeting “unusual.” Stressing that only the Principals, rather than the Deputies, had the power to approve a change in policy towards al Qaeda, Clarke contends that “…all the right people to make those kinds of changes were represented by the five or six people on the principals committee” (p. 128). However, he continues on to say “by law, in fact, many of the kinds of decisions you’re talking about can only be made by the President” (p. 129). The final approval of the change in policy towards al Qaeda, needed by the President, did not occur until after September 11th. Revealing his frustrations, Clarke says that

… all of the things we recommended back in January were those things on the table in September. They were done. They were done
after September 11th. They were all done. I didn’t really understand why they couldn’t have been done in February. (p. 108)

Contingent on the completion of this policy development process, Clarke was forced to wait to brief the President on counterterrorism and the threat posed by al Qaeda despite numerous threat warnings. Clarke contends that

President Bush was regularly told by the director of Central Intelligence that there was an urgent threat. On one occasion - he was told this dozens of times in the morning briefings that George Tenet gave him. On one of those occasions he asked for strategy to deal with the threat. (p. 109)

Once Rice relayed this information to Clarke, he responded by saying “well, you know, we’ve had this strategy ready since before you were inaugurated. I showed it to you. You have the paperwork. We can have a meeting any time you want” (p. 109). But the meeting never came and as far as Clarke knows, the President never asked again.

Availability of Domestic Threat Information

Acknowledging that much of the threat reporting suggested an overseas target, Clarke thought that an attack could occur inside the United States. He contends that

the fact that we didn’t have intelligence that we could point to that said it would take place in the United States wasn’t significant in my view because, frankly, sir - I know how this is going to sound, but I have to say it- - I didn’t think the FBI would know whether or not there was anything going on in the United States by al Qaeda. (p. 120)

Although Clarke doubted the FBI’s ability to identify the presence of al Qaeda members inside the U.S., this was not the case.

In actuality, the FBI had identified members of al Qaeda residing within the U.S., though the information never made it to Clarke. Somehow, the FBI never reported to Clarke that al Qaeda members al Hazmi and Mihdhar were residing in the
U.S. Further, the Moussaoui case—in which FBI agents were investigating a young Arab male with jihadist views attending flight school in Minnesota—had never been relayed to Clarke and the CSG either. The fact that this information was available within the FBI but was never been told to Clarke, he finds “absolutely incomprehensible” (p. 120), especially in light of previous warnings given to the FBI and CIA.

... I had been saying to the FBI and to the other federal law enforcement agencies, and to the CIA, that because of this intelligence that something was about to happen that they should lower their threshold of reporting—that they should tell us anything that looked the slightest bit unusual. (p. 120)

Had information about the Moussaoui case been provided to Clarke, in conjunction with the pre-existing information about airplanes being used as weapons and the potential for domestic hijackings, he believes that “...even without the benefit of 20/20 hindsight, I could have connected those dots” (p. 121).

Summary

By the time the Bush administration took office, a strategy for dealing with al Qaeda was already on the table. As articulated by the January 25, 2001 memo from Clarke to Rice an urgent principals level review was needed to determine how to go about dealing with al Qaeda and whether to retaliate for the attack on the U.S.S. Cole. Instead of convening a Principals meeting as a result of the request, Clarke and the CSG were instructed to report to the deputies committee rather than the Principals. Considered amongst numerous other foreign policy issues—just as Clarke had advised against—the strategy for dealing with al Qaeda was held up in the Deputies Committee. It was not until September 4, 2001 that the Principals met to agree on a strategy for dealing with al Qaeda. Eight months after Clarke had proposed his strategy and urged for a Principals meeting to review it, it was approved by the
Principals. Only after September 11th occurred was Clarke’s strategy for dealing with al Qaeda approved by the President and put into place.

In addition to Clarke’s difficulties in informing the Principals of the urgent threat posed by al Qaeda, FBI information about al Qaeda operatives within the United States was not relayed to Clarke. As the national coordinator for counterterrorism, it was Clarke’s responsibility to coordinate both foreign and domestic intelligence. However, information about the FBI’s investigation of Zacarias Moussaoui and al Qaeda operatives residing within the U.S. was never conveyed to Clarke despite multiple warnings of looming attacks.

National Security Council Summary

Many of the points of contention between Rice and Clarke’s testimonies lie in the urgency of the threat posed and the process in which the threat was addressed. While Rice admits that there was an urgent and immediate threat posed by al Qaeda, she maintains that there was no “actionable intelligence.” On the other hand, Clarke posits that the bombing of the *U.S.S. Cole* was justification enough to retaliate against al Qaeda. As Rice repeatedly makes clear, the Bush administration did not want to respond to al Qaeda “tit-for-tat.” Instead, they waited until eight months in office to approve a strategy for dealing with al Qaeda- the same one Clarke proposed in January.

Rice asserts that the limited availability of information indicating a domestic attack held the administration’s focus overseas. Despite the January 25, 2001 memo which indicated that al Qaeda sleeper cells were inside the U.S. and the August 6, 2001 Presidential Daily Briefing which summarized bin Laden’s historical and continuing desires to strike within the U.S., Rice maintains that “there was nothing in this memo as to time, place, how or where” (Rice Testimony p. 27). Even so, Clarke
is confident that in addition to older information about planes being used as bombs and the current potential for domestic hijackings, if he had been informed of the cases being pursued by the FBI on al Qaeda operatives inside the U.S., that "...even without the benefit of 20/20 hindsight, I could have connected those dots" (Clarke Testimony p. 121).

CSG Reporting to Deputies Committee

The biggest disagreement between Rice and Clarke's testimony concerns the Principals meeting. With one thwarted attack under his belt, Clarke, amongst many others, consistently notes the difference between the Clinton administrations handling of terrorist threats and the Bush administrations. As Commissioner Fielding asserts, ...we've heard testimony about the coordination that took place during the Millennium threat in 1999, where there were a series of Principal Meetings and a lot of activity, as we're told, which stopped and prevented incidents. It was a success, it was an intelligence success. And there had to be domestic coordination with foreign intelligence and everything, but it seemed to work. (Rice Testimony p. 33)

In spite of Rice's claims that the structural and legal impediments to sharing information between domestic law enforcement and intelligence agencies inhibited the prevention of the 9/11 attacks, the successful response to the Millennium threat of 1999 suggests otherwise.

The primary difference between the two administrations handling of terrorist threats resided in the structuring of the NSC. The restructuring of the NSC that took place in the Bush administration was largely designed and implemented by Phillip Zelikow who was a member of Rice's 2000-2001 NSC transition team. In the Clinton administration, Clarke and the CSG reported directly to the Cabinet-level Principals Committee. Under the new administration, Clarke was to meet with the Deputies
Committee despite his urgent request for a Principal level review of the al Qaeda network.

Rice, however, asserts that the CSG was in frequent contact with the Principals.

The CSG was made up of senior not junior people, but the top level counterterrorism experts. Now, they were in frequent contact with their principals. Dick Clarke was in contact with me quite frequently during this period of time. When CSG would meet, he would come back usually through e-mails, sometimes personally, and say here's what we've done. (p. 34)

Although Rice acknowledges that Clarke presented her with a series of decisions that needed to be made by the new administration, she maintains that “...by no means did he ask me to act on a plan” (p. 72).

Laid out in the January 25, 2001 memo to Rice, Clarke begins by asking Rice to act: “We urgently need such a Principals level review on the al Qida network” (NSC Memo from Clarke). Additionally, Rice approached Clarke after the request by the President to see a strategy for dealing with al Qaeda, as he was unaware that there was one in the works. Clarke states that he

...came back to her and said, well, there is a strategy; after all, it’s basically what I showed you in January. It’s stuck in the deputies committee. She said she would tell the President that and she said she would try to break it out of the deputies committee then. (Clarke Testimony p. 129)

On more than one occasion, it appears that Clarke had made attempts to spur Rice into requesting a Principals meeting, something that Rice had been granted the power to do by the NSPD 1.

Rice’s failure to convene a Principal level review of al Qaeda early on in the Administration despite Clarke’s repeated warnings implicates her in the September 11th attacks. Since it was within her capacity as the National Security Advisor to
dictate when the Principal Committee would meet, Rice must be held accountable for her failure to prevent the 9/11 terrorist attacks.
CHAPTER V

CENTRAL INTELLIGENCE AGENCY

Although the United States has been conducting intelligence activities since its incarnation it was not until World War II that intelligence gathering became a government-wide effort. In 1947, President Truman signed the National Security Act which created the Central Intelligence Agency. "The National Security Act charged the CIA with coordinating the nation's intelligence activities and correlating, evaluating and disseminating intelligence affecting national security" (History of the CIA). In 1952 the Director of Intelligence (DI) was formed within the CIA to "help the President and other policymakers make informed decisions about our country's national security. DI analysts look at all the available information on an issue and organize it for policymakers to give them more ideas on how to think about it" (Intelligence Analysis). However, the practice of giving daily briefings to the president (Presidential Daily Briefings), was not established until 1964 by President Johnson.

Even though members of the CIA claim that they 'are not policymakers' their role in shaping policy is significant. Having hands-on experience with the intelligence used to shape policy, members of the CIA have the best understanding of national security threats. Thus, their role in informing the President and other policymakers is of quintessential importance.
Testimonies of George Tenet and John McLaughlin

Assigned or Implied Trust or Duty

Role of the Director of Central Intelligence and Deputy Director of Central Intelligence

Following presidential approval of the Intelligence Reform and Terrorism Prevention Act on December 17, 2004, the positions of both the Director of Central Intelligence (DCI) and the Deputy Director of Central Intelligences (DDCI) were abolished. John McLaughlin had worked within the CIA since 1972, but it was not until 2000 that he was appointed by President Clinton to serve as DDCI, a position which he continued to occupy until 2004.

Tenet was appointed to serve as DCI by President Clinton in July 1997 and continued to occupy the position until July 2004. As Commissioner Hamilton summarizes,

the director has a responsibility to carry out some of the most sensitive matters in the United States government. He has an obligation to find out information people don’t want to give us, to carry out a lot of clandestine operations, to protect the lives of a lot of people who carry out those missions, and, of course, to inform policymakers. (Tenet Testimony 1:15)

Despite Tenet’s frequent assertions that he is “not a policymaker,” he acknowledges that “…I obviously have an input into the policy process with the data I provide” (Tenet 1:49). Additionally, Tenet agrees that his principal role as DCI is to inform government officials, but maintains that it is not his job to generate activities based on that information.
In addition to their roles within the CIA, both Tenet and McLaughlin also served on the National Security Council. DCI Tenet served as a statutory advisor to the National Security Council. When issues were discussed at Principals Meetings pertaining to Tenet’s responsibilities and expertise, he was mandated to attend (NSPD 1). Furthermore, McLaughlin served on the NSC Deputies Committee and was in regular attendance at NSC/DC meetings (NSPD 1). Although attention is focused primarily on Tenet and McLaughlin’s roles within the CIA, their positions within the NSC Principals and Deputies committees cannot be overlooked.

Action or Inaction on Behalf of State or State Agencies

Due to the secretive nature of intelligence gathering, Tenet and McLaughlin were granted a great deal of leniency on what information they divulged to the Commission. As a result, a lot of information was given to the Commission behind closed doors and was not made available to the public. The authority granted to Tenet to select what will be publicly discussed is reflected by exchanges such as:

Commissioner Gorelick: “Thank you for that elaboration. And because—we have sort of left in your hands, actually, the degree to which you talk about this.”

Tenet: “And I think this is the right way to talk about it.”

Commissioner Gorelick: “Fine. And we will pursue it in private. But I appreciate both your answer and the elaboration on the answer” (Tenet 1:29).

Therefore, much of what was publicly revealed about the actions or inactions occurring within the CIA or even the NSC were left to the discretion of Tenet and McLaughlin.
CIA Efforts to Address al Qaeda Threat

The CIA's efforts to gather intelligence on Osama bin Laden and al Qaeda began in the early 1990s. From as early as 1996, the CIA identified bin Laden "...as one of the most active financial sponsors of Islamic fundamental terrorism" (Tenet 1: 17). Their concern over bin Laden grew after he was asked to leave Sudan and then moved to Afghanistan. Tenet asserts that

During his years in Sudan, Bin Laden was not yet the center for terrorist operational planning that he became in Afghanistan, but we created a dedicated component in the Counterterrorism Center, the Bin Ladin Issue Station, that was staffed by officers from multiple agencies, with the mission of disrupting his operations. We also issued the earliest of what turned out to be a long series of warnings about Bin Laden and al Qaeda, and I believe those warnings were heeded. (Tenet 1: 17)

Tenet clearly argues that the CIA was well aware of the threat posed by al Qaeda and bin Laden and had been working for years gathering information and thwarting numerous attacks.

As early as 1997, bin Laden and al Qaeda's interest in striking the homeland were known by policymakers. Tenet refutes the assumption that because information about bin Laden's increasing capabilities was not included in the National Intelligence Estimate of 1997 that it was not well known to government officials. Noting that the Staff Statement written by the Commission excluded information about the '97 NIE, McLaughlin states that

...the staff statement failed to note that in the '97 [National Intelligence Estimate] update we included information that Bin Ladin had been surveilling; people associated with Bin Ladin had been surveilling institutions in the United States and that, therefore, we concluded the likelihood was growing that he would attack in the United States. That was, I think, the most significant finding in the '97 NIE. (Tenet 2: 24)
Therefore, policymakers were informed about bin Laden’s intentions to perpetrate attacks within the U.S. The failure of the Commission’s staff statement to reflect ‘the most significant finding in the ’97 NIE’ is puzzling.

In 1999 the CIA had developed what they called “the plan.” Focused on developing both human and technical sources geared towards disrupting terrorists and their plots, “the plan” succeeded in developing a network of human intelligence which grew dramatically from 1999 to 2001. On the more technical side of “the plan” the CIA worked to develop the Predator, an unmanned aircraft which is capable of firing missiles and was intended to hunt and kill bin Laden. In the fall of 2000, the CIA began flying the Predator in reconnaissance mode, though its ability to fire a missile was uncertain. Unable to fly during the winter, it was not until after an extensive test-period that in the fall of 2001 that the Predator was ready to be flown armed.

Contact with President Bush

In comparison to his interactions with President Clinton, Tenet asserts that the primary difference between the two presidents “… is that I would see [President Bush] every day to conduct the daily brief with our briefer- - usually six days a week. So this president wanted a face-to-face contact, and so I was in the Oval Office with him or at Camp David every day of the week” (Tenet 1: 22). Similarly, Tenet also had daily phone contact and weekly meetings, in addition to seeing her at the morning briefings, with National Security Advisor Condoleezza Rice. Furthermore, Tenet states that “at the working level, our chief CTC and our terrorism experts had almost daily contact with Mr. Clarke, and I’d have periodic contact with him as I bumped into him at meetings” (p. 23).
From early on, Tenet contends, the Bush administration was well aware of the threat posed by al Qaeda. He states that “...the new group also immediately understood what we were talking about here, and bin Ladin and al Qaeda became an agenda item early on with the national security advisor and the President” (Tenet 1: 23). More specifically, Tenets argues that

…I gave the President very intimate understanding of what we were doing operationally around the world, particularly as we got into a high-threat period, in terms of disruption operations, countries I was contacting, things I might need from other policymakers to aid and abet my efforts. So there was a clear understanding of what we were doing around the world to deal with this problem. (p. 24)

Due to his frequent contact with President Bush and other members of the administration, Tenet was able to relay a detailed understanding of the threat posed by al Qaeda and efforts to address the problem.

Despite Tenet’s frequent contacts with the President throughout the spring and summer of 2001, Tenet had no contact with the President at all in August. Tenet contends that even with such a high threat period, he did not see the President nor talk to him on the phone. It was not until sometime after the September 4th Principals Meeting, which Bush was not present at, that Tenet had contact with the President. He maintains that “I didn’t see the President. I was not in briefings with him during this time. He was on vacation. I was here” (Tenet 2: 42).

Urgency of Threat

In addition to the frequency of contact with the Bush administration about the threat, Tenet makes clear, that the sense of urgency throughout the rest of the government was widespread. Numerous agencies began taking actions to prevent the anticipated attacks, largely due to Tenet’s efforts.
...by spring and summer, everybody was seized with the urgency of this nature by virtue of what I was telling them, and by this time period the CSG is meeting every day. We're taking actions to undertake disruptions. The Defense Department is taking security precautions at its facilities, the State Department is taking security precautions at facilities overseas. The CSG is issuing advisories to the FAA... All I can tell is that the policymakers got it because I talked to all of them about it and they understood the nature of what we were dealing with. (Tenet 1:32).

Even though the government was in a high-state of alert, the entire nature of the threat was not understood. Tenet declares that “warning was well understood, even if the timing and method were not” (Tenet 2:18).

**Principals Meetings**

Even though policymakers understood the high threat level that characterized the spring and summer of 2001, neither the NSC Principals Committee nor the Deputies Committee held meetings around the threat. Tenet disagrees with the suggestion made by Richard Clarke that regular Principals Meetings could have prevented the September 11 attacks. Urging a focus on future prevention rather than on mistakes of the past, Tenet argues that more frequent meetings wouldn’t have made a difference.

With respect to everybody, going to more meetings isn’t necessarily going to help, okay? And different policymakers are going to basically communicate in different ways. So one size doesn’t fit all, and you have to judge. I can only give you personal perspectives from where I sat. (Tenet 1:34)

Agreeing with Tenet’s assertion that more frequent meetings wouldn’t have prevented 9/11, Commissioner Gorelick goes on to specify what the meetings could have accomplished, despite systemic problems.

The purpose of the meetings was to use essentially brute force to break through walls and barriers and seams and processes that were broken... in the absence of those systematic fixes, all you can do is use
Brute force to bring everyone to the table and say: What do you know? (Tenet 1:34)

Bringing together key officials through a Principals Meeting would have conveyed the magnitude of the threat at hand and provided a forum by which to coordinate a response. Despite the success of regular Principals Committee meetings during the Millennium threat period, Tenet maintains that more meetings would not have helped.

**Nature of the Threat**

Although it was clear throughout the government, Tenet claims, that attacks were imminent, many anticipated that the attacks would occur abroad. When asked by Commissioner Gorelick whether the CIA limited its reporting to overseas targets, Tenet replied

> we did not have the same kind of granularity inside the country, nor did the reporting take us, in a tactical sense, to give us the kind of specificity we needed to give us opportunities to do things that would have led us to conclude that the plot was inside the United States now. (Tenet 1:31)

It was not a matter of limited report of domestic threats, instead the level of detailed information was just not available to the CIA. Regardless, Tenet asserts that “we all understood Bin Laden’s attempt to strike the homeland, but we never translated this knowledge into an effective defense of the country” (Tenet 2:19).

**August 6, 2001 Presidential Daily Briefing**

The origins of the August 6, 2001 Presidential Daily Briefing (PDB) titled “Bin Laden Determined to Strike in the U.S.,” which suggested the possibility of a domestic attack, raised question as to whether the document was generated internally by the CIA or was in response to questions by the President. In response to Commissioner Kerrey’s contention that “the President was worried about the
possibility of a domestic attack, and that produced the presidential daily, the famous presidential daily brief on the 6th of August, 2001. And--you look confused…” Tenet replies, “I don’t think that’s how it happened, but go ahead, sir” (Tenet 1: 41).

Commissioner Ben-Veniste makes poignant that although Condoleezza Rice has maintained that the PDB was in response to questions by the President, “the authors of this piece, and others familiar with it, say they have no information to suggest that this piece was written in response to a question from the President. And indeed, it goes on to say that it was prompted by an idea from the CIA” (p. 44). Once the contradiction of the origins of the PDB is highlighted, Tenet firmly holds that “I just don’t know. I don’t know what we’ve responded or what the origin is. I just don’t know” (p. 43).

In Tenet’s latter testimony, the confusion over the origins of the August 6th PDB is clarified. Responding to a series of events, the President raised questions about al Qaeda’s interest in striking the homeland. Although there was no formal tasking for the PDB to be generated, questions raised by the President were discussed at a PDB planning meeting. Tenet therefore concludes in a document submitted to the Commission that “in summary, although the August 6th PDB piece was technically self-initiated, it was prompted by the President’s questions and interest” (Tenet 2:38).

Summary

The elevated threat period was quite evident throughout the government. Within the CIA, both Tenet and McLaughlin were at the pulse of the agency. As early as 1997, policymakers were informed by the NIE that bin Laden and his associates were surveilling domestic targets, which led the CIA to believe that the possibility of a domestic attack was increasing. Even though the NSC Principals were not regularly
convening, Tenet stresses that communication nevertheless occurred through informal interactions. With the exception of the entire month of August and sometime into September, Tenet was in daily phone contact and weekly meetings with the President. If information about bin Laden and al Qaeda's intention to strike the homeland had not been made clear to the President through these frequent interactions with Tenet, as he claims it was, the August 6th PDB further stressed those concerns. As Tenet clarified, the PDB was technically self initiated, though prompted by the President's questions.

Testimony of Cofer Black

Assigned or Implied Trust or Duty

Role of the Director of the Counterterrorism Center at CIA

From 1999 to 2002 Cofer Black was the Director of the Counterterrorism Center (CTC) within the Central Intelligence Agency. Reporting principally to the CIA, Black describes his position as director of the CTC as

reporting to the director of Central Intelligence, but also I reported to the deputy director for operations on a dotted line as well as a dotted line to the deputy director of intelligence...it's one of these unfortunate jobs where you have lots of bosses, and you get lots of advice. (Black Testimony 133)

After his position at the CTC, Black was appointed by President Bush to head State Department Counterterrorism.

Created in 1986 by William Casey, the CTC was "...established under the Directorate of Operations to help combat international terrorist threats. [Director of Intelligence] officers serve in its analytic components to provide regional and functional expertise - the first permanent unit combining analysis and operations"
(CIA website). The CTC coordinates both the intelligence analysis and the tactical operations, thus a crucial point between knowledge and decision. Following 9/11, the CTC significantly expanded its analytic component and was renamed the Office of Terrorism Analysis.

In its broadest capacity, the CTC works to counter terrorist threats. Similar to the NSC's Counterterrorism Security Group (which the CTC had regular participation in), the CTC's primary role within the CIA was to be the nerve center for terrorist activities. Black elaborates that "most importantly, we worked to develop our own operations to advance U.S. counterterrorism objectives by penetrating terrorist safe havens and collecting intelligence that would both inform policy and enable our own operations" (Black Testimony p. 98). Illustrating the dynamics of the CTC, and the power they had within the agency, Black asserts that

...what mattered to me and the men and women I led in the counterterrorist center did not depend on the flavor of the Administration, but rather was driven by what WE thought needed to get done and our attempts to protect American citizens, property and interests. (p. 98)

The CTC, at the direction of Black, produced a great deal of information which shed light onto growing international jihadist networks, including al Qaeda. Relaying this information to policymakers, Black asserts that "I believe that the record shows that the U.S. government understood the nature of the threat" (p. 101). Products produced by the CTC which included "...personal interactions via participation in the Counterterrorism Security Group; periodic stand-back assessments on [bin Laden] and Sunni extremist-related topics; contributing to the annual 'Patterns of Global Terrorism'" (p. 101); each worked to inform government officials of the threat.
Action or Inaction on Behalf of State or State Agencies

Throughout Black’s co-testimony with Thomas Pickard, former acting director of the FBI (Pickard’s testimony will be analyzed within the FBI section), the dismissal of blame is emphasized. Black’s opening remarks make clear he’s “...not here to testify as part of a political process, or to create another political firestorm over some perceived allegation of negligence or inattention or error by somebody else” (p. 98). Furthermore, Commissioner Lehman assures both Black and Pickard, that assigning blame is not a priority; “and please understand that the questions I am posing to you have nothing to do with the blame game or finger pointing. Our high responsibility is to draw the right lessons and to make real achievable recommendations for change” (p. 103). Focused on preventing future attacks instead of the mistakes of the past, the failure of government officials lay beyond scrutiny.

Bombing of the U.S.S. Cole

It was obvious from early on, Black asserts, that the bombing of the U.S.S. Cole in 1999 was undertaken by al Qaeda members. As early as January 2001, in a report titled “The Intelligence Case,” the CTC had made the intelligence case (which requires a higher burden of proof than a law enforcement case) that people associated with al Qaeda were behind the attacks. However, Black states that

the area that we felt we needed to explore more was proof that there was a clear command/control relationship between the leadership of al Qaeda - - Osama Bin Ladin or Khalid Sheikh Mohamed, some one like that- - that we could actually track to these individuals that actually executed the attack. (p. 109)

Black continues on to note, however, “we actually did get that, I might point out, but that was something like a year, a year and a half later. So we could say to you absolutely this is proof positive of the intelligence case” (p. 109). As the testimony
proceeds, Black firmly asserts that "...we were able to prove, even in the intelligence case, there's a direct link between Osama Bin Ladin and the Cole attack" (p. 124). However, Black makes clear that there was never any discussion within the Bush Administration of retaliating against al Qaeda or the Taliban for the attack.

Nature of Threat

By the summer of 2001, the increased amount of chatter suggested a near-term massive terrorist strike. This information was also corroborated by human intelligence, detentions and disruption efforts. Sources appeared to indicate that the attack would possibly occur in the Middle East, Europe or quite likely Saudi Arabia. However, Black states that "none of this, unfortunately, specified method, time or place" (p. 100).

Even if the CTC was unaware of the timing and location of the threat, those behind the threat were well known. Black stresses that "...the single issue that overwhelmingly occupied our attention was Osama Bin Ladin and al Qaeda" (p. 98). The operations developed by the CTC to address this threat included attempting to track, disrupt and capture bin Laden, gathering intelligence and developing operations against al Qaeda's chief lieutenants, creating a global counterterrorism network and developing the Predator. Furthermore, Black makes clear that the Predator was of high priority to the CTC, despite debates over how to proceed.

Appearing quite uncomfortable, Black carefully addresses the question of what went wrong, ominously stating, "Well, I'll tell you, I would start from the standpoint that when I started this job in 1999, I thought there was a good chance I was going to be sitting right here in front of you. And I was mentally prepared for it all along" (p. 119). As Black's response continues his uneasiness is portrayed
through the excessive use of the phrase "you know" (conversely, the phrase was rarely used until this point in the testimony) and his choppy line of dialogue.

Black makes obvious that CTC did everything it could to prevent the attacks. He states that "in CTC we heard our director’s call. I’ve heard some people say this country wasn’t at war. I want to tell you, Mr. Chairman, the counterterrorism center was at war, we conducted ourselves at war" (p. 102). From his perspective, the people at the CTC were doing everything in their power to thwart the threat posed by al Qaeda. The nature of the threat was clearly understood.

You’ll never hear from us, ‘Oh, you know, we didn’t get it.’ Oh, we got it all right. We knew what we were up against. We gave it all we had... The bottom line here, I got to tell you- - and I’ll take part of the blame on this- - I kind of failed my people despite doing everything I could. We didn’t have enough people to do the job, and we didn’t have enough money by magnitudes. (p. 119)

Although the CTC was well aware of the nature of the threat, it simply was not enough. A shortage of jobs and money hindered their ability to execute their plans. Black concludes "...it would have been better if we as a country had made the commitment to provide our counterterrorist warriors the resources and the numbers so they could do the best job they could" (p. 120).

Black continues on to reveal how the CIA dealt with a shortage of funds during the Millennium plot threat period and how that interfered with funding to prevent September 11th. As funds began to run short, Black approached Tenet about the situation.

I said, ‘Mr. Tenet, you know, we’re spending money here; we’re not going to make it to the end of the fiscal year. We’re going to make it to the end of the fiscal year. We’re going to be three months short. We’re going to stop and- - you know, we won’t be able to operate.’ (p. 120)
Black claims that Tenet responded by stating, "Well, you know, do what's right for the country; blow it out.' So we did. So we spent- - you know, after the money threat was over, we spend our time trying to get the money to make up for that which we spent" (p. 120). When Commissioner Fielding asked Black if he requested funds from Tenet, he replied that he did. He makes clear that "He was aware of our resource needs. And he did- - we were the first among equals of all his highest priorities" (p. 133). Black concludes that it was the CIA that ultimately lacked the funding.

**August 6, 2001 Presidential Daily Briefing**

A reflection of the heightened threat period, though not a warning, Black states that the August 6, 2001 Presidential Daily Briefing (PDB) was intended to raise the possibility of a domestic attack. Black contends

I think the PDB piece is basically a place marker that is a reminder to the principals that read these materials that, whereas the tactical intelligence is pointing to locations overseas, that it is good to be mindful of what [bin Laden’s] ultimate objective is, that is to strike hard against the United States. (p. 103)

Aware of bin Laden's historical intentions of striking the United States on multiple fronts, Black and the CTC felt it important to remind the President of the potential for a domestic attack.

While questioning how the accuracy of information received by the FBI is assured, Commissioner Fielding unveils the process by which PDBs come about. Black explains that

there's an elaborate vetting process. Information is received, raw intelligence is received, it comes in to personnel that review it, that do the analysis function. And there are those that write articles for numerous publications, including the PDB. This particular employee
was home-based in the Directorate of Intelligence and was serving in the Counterterrorism Center. (p. 132)

Unsatisfied with Black's response, Commissioner Fielding presses on as to the accuracy of the information contained in the PDB. Although Black had not personally talked to the author of the PDB, he asserts that "...I understand that this officer was in contact with the FBI. In this instance I think that the assumption would be that the FBI would have confidence in the information that it provided" (132). Therefore, it appears that the source of the information gathered about bin Ladin's intentions to strike domestically came from the FBI.

Summary

As director of the Counterterrorism Center in the CIA, Cofer Black was at the heart of the terrorist threat. Following the attack on the U.S.S. Cole in October of 1999, the CTC was tasked with discovering the perpetrators. Once a clear link to bin Laden and al Qaeda had been established in "The Intelligence Case" as early as January 2001, the Bush administration had been made aware of al Qaeda's involvement. Viewed largely as a relic of the Clinton era, the new Administration decided not to retaliate against al Qaeda or the Taliban for the attack of the U.S.S. Cole.

From Black's account, the CTC was acutely aware of the nature and the urgency of the threat posed by al Qaeda. So certain that a threat was going to occur, it seemed as though it were just a matter of time. In spite of the urgency of the threat, the CTC was unable to decipher when, where and how. This failure was due largely to a lack of funds not just within the CTC, but within the CIA. Despite Black's requests for funding and the CTC's priority within the CIA, Tenet did not have enough funds to allocate for the looming threat. It is less clear, however, how much
more funding was needed or what the funds were needed before. Presumably, this is
classified information.

Originating from within the CTC though relying on information from the FBI, the August 6th PDB is argued by Black to be a reminder for President of the historic potential for a domestic attack by bin Laden. Although Black seems to downplay the significance of the PDB, amidst such a high threat period a warning to the President coordinated by both the FBI and the CIA demonstrates its importance.

Central Intelligence Agency Summary

The Central Intelligence Agency was at the forefront of the battle against bin Laden and al Qaeda. No one understood the nature of the threat better than the CIA. Fulfilling their role of informing policymakers, Tenet and Black claim to have done all they could to prevent the attacks. Unfortunately, it was not enough. Even so, the sense of urgency which engulfed the agency is evident in both Tenet and Black’s testimonies.

Tenet firmly that informal communications about the threat were taking place regularly, even if NSC Principals Meetings were not being held. Frequent, often daily interaction (with the exception of the entire month of August 2001) between Tenet and President Bush and also Condoleezza Rice, illustrates these informal channels of communication.

Unmentioned in the 9/11 Commission report or in Tenet or Black’s testimonies, was another example of this form of communication. On July 10, 2001, Black laid out the fragmented case to Tenet that there was an increasing likelihood that al Qaeda would soon strike the U.S. Sensing that the threat was imminent, Tenet called National Security Advisor Rice from his car requesting to see her immediately.
This meeting stood out of the minds of both Tenet and Black as the starkest warning that they had given to the White House about the looming threat. Also in attendance at this briefing were Rice’s deputy Stephen Hadley and her top counterterrorism aid Richard Clarke (Landay, Strobel and Walcott 2006).

“For months, Tenet had been pressing Rice to set a clear counterterrorism policy, including specific presidential orders called “findings” that would give the CIA stronger authority to conduct covert action against bin Laden” (Two Months). By convening an ‘out-of-cycle’ meeting with Rice, Tenet and Black hoped to convey the urgency of the threat at hand and set the government in action. Black stressed that the threat”…amounted to a strategic warning, meaning the problem was so serious that it required an overall plan and strategy” (Two Months) and that action needed to be taken immediately. To further authenticate the warnings being received by the CIA, Tenet had the National Security Agency confirm them. Concluding that the al Qaeda communications were in fact genuine, “on June 30, a top-secret senior executive intelligence brief contained an article headlined “Bin Laden Threats Are Real” (Two Months). Despite their urgent warning to Rice, both Tenet and Black walked away from the July 10the meeting feeling frustrated and brushed off. It appeared to them that Rice was not heeding their warnings. As “Black later said, ‘The only thing we didn’t so was pull the trigger to the gun we were holding to her head” (Two Months).

Within a week of the briefing given to Rice by Tenet and Black, both Secretary of Defense Donald Rumsfeld and Attorney General John Ashcroft received a similar briefing about the urgent threat. Although Tenet had outlined the briefing given to Rice, Rumsfeld and Ashcroft to members of the Commission including Commissioner Ben-Veniste and executive director Philip Zelikow in a secret
testimony, no mention of the briefing was included in the 9/11 Commission’s report. Affirming the seeming omission, “the State Department confirmed that the briefing materials were ‘made available to the 9/11 Commission, and Director Tenet was asked about this meeting when interviewed by the 9/11 Commission” (Landay, Strobel and Walcott 2006).

Tenet’s assertion that “going to more meetings isn’t necessarily going to help... And different policymakers are going to basically communicate in different ways” (Tenet 1:34) is quite accurate. However, the effectiveness of these types of informal communications is questionable. Even though Tenet maintains that holding regular NSC Principals Meetings would not have made a difference, the need to hold separate, informal meetings with Rice, Rumsfeld and Ashcroft (all members of the Principals Committee) seems to indicate otherwise.

In light of such urgent meetings by top-level officials, the CIA’s August 6, 2001 PDB appears to be a much greater warning of the coming attacks than acknowledged by either Tenet or Black. As clarified by Tenet, even though the PDB “...was technically self-initiated, it was prompted by the President’s questions and interest” (Tenet 2:38). In contradiction of Tenet and Rice’s assertions that the PDB was composed in response to questions from the President, further investigation by the 9/11 Commission’s staff revealed otherwise. The senior CIA analysts who authored the document claim that it was not ordered by the President, but instead was completely self-initiated. Furthermore, their intention in writing the PDB was not to convey ‘historical information’ as Rice claims, but rather to “…remind President Bush that al-Qaeda remained a dire threat in August 2001 and that a domestic threat was a distinct possibility, no matter what he was hearing elsewhere” (Shenon 2008:
Nevertheless, Tenet and Black maintain that the PDB was not a warning, instead it was merely a reminder that the potential for a domestic attack existed.

As early as January 2001, the CIA had developed a strong intelligence case linking al Qaeda and bin Ladin to the bombing of the *U.S.S. Cole*. Although Black claims that there was never any discussion within the Bush administration of retaliation for the bombing, such an act was nevertheless justification for a response to the threat posed by al Qaeda. Even though plans such as the Predator and other strategic responses were being developed, efforts came too little, too late.

From the testimonies of both Tenet and Black, it appears as though the Central Intelligence Agency was keenly aware of the threat posed by bin Laden and al Qaeda. Nevertheless, when, where and how the attacks would occur remained a mystery. A major impediment to action, Black cites that lack of funds, not only within the CTC, but within the CIA as a whole, as the main reason for their failure to prevent the attacks. Relieving Tenet of responsibility for this failure, Black makes clear that Tenet did everything in his power to provide the CTC with funding. Even so, it was just not enough.
CHAPTER VI

FEDERAL BUREAU OF INVESTIGATION

Housed within the Department of Justice and created by the Attorney General in 1908, the Federal Bureau of Investigation grew out of a group of Special Agents made up of detectives and former Secret Service people. Having jurisdiction over violations of more than 200 categories of federal law, the FBI's duties include protecting civil rights alongside providing security from international and domestic terrorism. After September 11th the FBI undertook a whole new role with a belated emphasis on counterterrorism efforts.

Working both domestically and internationally with one another, the FBI relied heavily on the Central Intelligence Agency, amongst other intelligence organizations, to provide information about international terrorist threats. At the direction of the CIA, FBI agents were able to identify, track and begin taking legal actions against members of al Qaeda living inside the United States. Although communication might not have been effective enough to prevent the attacks, the FBI and the CIA were able to work with one another on a variety of counterterrorism efforts including the East African and U.S.S. Cole bombings (Freeh Testimony p. 30)

As the supreme law enforcement agency in the United States, the FBI is clearly charged with providing national safety and security. Once the hijackers entered the country legally and began training at flight schools, their illegal operations fell under the jurisdiction of the FBI.
Role of the Director of the FBI

Nominated by President Clinton, Louis J. Freeh was the director of the FBI from September 1, 1993 until June 25, 2001 when he was replaced by his deputy director Thomas Pickard as acting director. Prior to serving as director of the FBI Freeh had been an assistant U.S. attorney as well as a federal district court judge both in the Southern District of New York. In his capacity as director of the FBI it was Freeh’s job to oversee the Bureau. Thus, the actions and inactions which occurred throughout the agency during his eight year tenure until the months before September 11th happened under his supervision.

Action or Inaction on Behalf of State or State Agencies

The Federal Bureau of Investigation had been aware of the threat posed by al Qaeda for a number of years, so much so that FBI headquarters had an al Qaeda/Osama bin Laden unit which was operated out of the New York City office. As Freeh points out, “...the investigation of al Qaeda was centralized in New York City. That’s were the primary office and the three squads that were established ultimately in New York City dealt with the Cole bombing, the East African bombing as well as the al Qaeda organization in general” (Freeh Testimony p. 20). The New York City office, Freeh notes, was involved in investigation, intelligence and analysis. As Freeh puts it “they were the whole embodied knowledge of the United States government at that time with respect to al Qaeda and its principals” (p. 21).
With full support of Attorney General Janet Reno, the FBI established a Counterterrorism Division in 1999 with the mission of controlling and supporting terrorism cases while also being supervised by headquarters. In addition to the New York City office, the Counterterrorism Division also had a great deal of expertise, notably the director Dale Watson as well as Debbie Stafford and Mike Rolince. Through special agent in charge (SAC) conferences and seminars, Freeh states, information about al Qaeda was disseminated from headquarters and the Counterterrorism Division to the rest of the field. Freeh makes clear, however, that the al Qaeda case was being directed out of FBI headquarters and the Counterterrorism Division, even though it was run out of the New York City office.

Planes as Weapons

Spanning as far back as the 1996 Olympic Games in Atlanta, the FBI had considered the threat of planes used as weapons in ‘special event’ planning. Part of the security planning for events such as the Olympics or Bush’s visit to the G-8 Summit, using planes as weapons whether packed with explosives or otherwise during a suicide mission had been discussed within the FBI and the larger intelligence community as early as 1996. Successfully thwarting a plot is made easier in these contexts since the time and the place of the event are known. Although this threat had been incorporated into standard special event planning, Freeh notes, a set procedure for how to deal with hijacked airplanes in suicide missions had not been integrated into domestic protection.
Interagency Communications

One of the most notable demonstrations of cooperation between the FBI and other agencies was during the Millennium threat period. Both Freeh and the Attorney General "...worked very closely with the National Security Council, with the director of Central Intelligence, the CIA, military component, civilian components. This was an integrated and long-term planning operation with respect to the Millennium threats..." (p. 30). Furthermore, during their overlapping tenure, Freeh along with Attorney General Reno, met with National Security Advisor Sandy Berger on a biweekly basis for 14 or 15 months. During their hour to two hour long meetings Reno, Berger and Freeh "...went over every piece of counterterrorism, counterintelligence case that we had" (p. 48). As a result of these frequent contacts, Freeh discounts the notion that information wasn’t being shared between the FBI and the NSC. However, Freeh mentions very little about his contacts with Bush administration officials, particularly National Security Advisor Rice.

Furthermore, Freeh contends that cooperation between the FBI and the CIA was not unique to the Millennium threat. He states that

my experience in eight years is that there was extremely good cooperation between the FBI and the CIA, and that goes back to matters such as the Cole bombing, the East African embassy bombings cases. The Alex Station, which you know from your staff was set up in 1997, the CIA and the FBI together in a station dedicated to al Qaeda investigations and disruption activities overseas. FBI agents would regularly accompany CIA officers overseas to exploit al Qaeda cells and disrupt them. (p. 30)

For years the FBI and the CIA had worked hand in hand to address the threat posed by al Qaeda. Contrary to popular assertion that the FBI and CIA did not communicate with one another, Freeh states that "I think cooperation, in my view, was a very outstanding one for many years" (p. 30).
Phoenix Memo

Within the bureau, information was not always disseminated effectively. In contrast to Freeh's contention that "...the coordination between headquarters and the field, in my view, was very, very good" (p. 21), information in the field was not always given the full attention of headquarters. The Phoenix Memo, as it came to be known, was sent to the New York City office from the Phoenix office on July 10, 2001. After observing that an inordinate number of individuals supportive of Osama bin Laden were attending aviation universities and colleges in Arizona, agent Kenneth Williams became concerned that it was "more than a coincidence." Williams wrote in the memo that this, "...gives reason to believe that a coordinated effort is underway to establish a cadre of individuals who will one day be working in the civil aviation community around the world. These individuals will be in a position in the future to conduct terror activity against civil aviation targets" (Phoenix Memo p. 2).

In addition to assessing the situation in Arizona, Williams offered headquarters a plan of action to address the issue. Williams wrote that Phoenix believes that the FBI should accumulate a listing of civil aviation universities/colleges around the country. FBI field offices with these types of schools in their area should establish appropriate liaison: FBIHQ should discuss this matter with other elements of the U.S. intelligence community for any information that supports Phoenix's suspicions. FBIHQ should consider seeking the necessary authority to obtain visa information from the USDOS on individuals obtaining visas to attend these types of schools and notify the appropriate FBI field office when these individuals are scheduled to arrive in their area of responsibility. (Phoenix Memo p. 2)

Unfortunately, Williams' suggestions were not carried out before September 11, 2001. When asked about the Phoenix memo, Freeh states that "...my understanding of the memo, mostly what I've read in the newspapers, is that it was sent to headquarters; it was not decentralized in the sense that it never made it to headquarters. It was looked at
there. It was analyzed. People took what they thought was the appropriate action at the time. (p. 23)

Although all of the leads were allegedly pursued after September 11th, Freeh asserts that “there was nothing about the information contained in that memo, as far as I’ve read, or as I understand it, that would have led you to September 11th” (p. 23).

When asked by Commissioner Roemer why Williams’ suggestions were not carried out, Freeh points to the difficulties in overcoming federal statutes preventing educational institutions from providing the FBI with information without a subpoena or a grand jury request. Commissioner Roemer notes, however, that agent Williams did not have to overcome these statutes in order to uncover the trend in Phoenix. Even so, Freeh maintains that “… I’m not privy to the information your staff is privy to. From what I’ve read and heard and talked to, I don’t see how that memo unfortunately gets you to prevent the horror of September 11th. I just don’t see it in any logical, nonspeculative way” (p. 47).

Hijackers Contact with FBI Informant

Even though Freeh is unable to see how the Phoenix memo could have prevented the attacks from occurring, he grudgingly admits that contact between two hijackers and an FBI informant could potentially have prevented 9/11. In the year prior to September 11th two of the nineteen hijackers had regular contact with a long time active FBI informant in San Diego. In the best of all circumstances, Freeh admits, the contacts between the informant and the hijackers could have prevented the attacks. However, this could only have been possible if the FBI and its informants had been tasked to find out more information about the two hijackers. Stipulating the conditions under which prevention of the attacks would have been possible, Freeh states that
... it would have been helpful for the FBI at that particular point in time to know the names of those two individuals; that the information which was generated in the January 2000 physical surveillance, not by the CIA but by a liaison agency-- if that information and the initiation for that surveillance, which were phone calls to a central number, which you're well aware of, which plays an integral role not only in the East African bombings case but also in the Cole investigation; the, you know, June meeting when three but not all of the photographs of those events-- if all of that had worked the way it could have worked, and that informant, as well as informants all of the FBI's domain, were tasked to find out information about two specific people, you could have had a completely different result. (p. 46)

Although it is unclear exactly what the FBI had known about the hijackers and the information provided to the informant, Freeh makes clear that surveillance of the hijackers and their connections to the East African and Cole investigations was ongoing.

Summary

As the director of the FBI from 1993 to June 2001, actions and inactions taken by the agency happened under the supervision of Louis Freeh. Despite frequent regular contacts with administration officials throughout the Clinton era, Freeh mentions very little about his interactions with Bush administration officials. During the Millennium threat period the FBI worked in conjunction with the CIA and other agencies to successfully neutralize the threat. As early as the 1996 Olympic Games in Atlanta the FBI had conceptualized and planned for the possibility of airplanes being used as weapons against U.S. targets even incorporating this threat into standard special event planning. These special events, however, had the added advantage of knowing the time and the place of a potential attack; elements which could not be determined in the 9/11 attacks. Even though hijacked planes used in suicide missions was incorporated into the threat planning for special events, it had never been integrated into domestic flight protection.
Although Freeh maintains that the Phoenix memo could not have led to the prevention of September 11th, its predictive potential is startling. After being reviewed by FBI headquarters and the al Qaeda/Osama bin Laden unit in the New York office, the warnings that a coordinated effort by bin Laden to send his followers to flight schools in the U.S. went unheeded. Disregarding the suggestions for action by FBI headquarters made by agent Williams, the FBI was unable to make the connections in time to prevent the attacks. Further demonstrating the need for agency wide action were the frequent contacts between an active FBI informant and two of the nineteen hijackers.

Even though it seems that the FBI and other intelligence agencies were keeping a close watch on the individuals at the time, Freeh maintains that their names were unknown and an agency wide tasking was needed to discover the missing links. In contrast to Freeh’s assertions that communication within the FBI as well as with other agencies was quite good, cooperation between the FBI and the CIA, internal and interagency coordination was not adequate enough to prevent the attacks of September 11th.

Testimony of Thomas J. Pickard

Assigned or Implied Trust or Duty

Role of the Acting Director of the FBI

Beginning his career in the FBI in 1975 as a Special Agent, it wasn’t until the resignation of Louis Freeh as director of the FBI that Thomas Pickard was appointed by Attorney General John Ashcroft to the role of acting director on June 25, 2001 (Federal). His tenure as acting director ended on September 4, 2001 when Robert
Mueller took over as director of the FBI. Prior to his new assignment, Pickard had occupied the number two position of deputy director since November 1999.

Throughout his tenure as both the deputy director and then the acting director of the FBI, Pickard had worked first-hand with the threats posed by al Qaeda. For example, when Director Freeh had been out of town, Pickard was in charge of coordinating the FBI’s response to the African embassy bombings. Moreover, as deputy director he also had the opportunity to brief White House officials on counterterrorism issues including the Vice President, the National Security Advisor and the Attorney General. In both of his capacities within the FBI, Thomas Pickard had been keenly aware of al Qaeda and the growing threat that they posed.

Action or Inaction on Behalf of State or State Agencies

Some of the best information on al Qaeda, Pickard asserts, came from the FBI’s investigation of the bombings of the U.S.S. Cole and the U.S. African embassies. Those arrested in connection with the bombings provided valuable information and resources by which to identify other members of al Qaeda. Pickard explains that “we also exploited their pocket letter, cell phones, calling cards, credit cards and hotel registrations to links to other members” (Pickard Testimony p. 95). As a result, the FBI was able to identify members of al Qaeda who were inside the United States and obtain Foreign Intelligence Surveillance Act coverage on them.

Throughout the spring and summer of 2001, the FBI was well aware of the heightened threat period. Noting the increased volume of threat reporting, Pickard makes clear that “many of these threats had great specificity and others were very general in nature... There was no specificity as to what, where and when. We knew the who, but only that it was al Qaeda” (p. 94).
Interagency Coordination

Contrary to assertions that a bureaucratic wall between CIA and the FBI prevented the sharing of information, there was a great deal of contact between the two agencies in the months leading up to 9/11. As Pickard illustrates,

I had regular conversations with the director of the CIA and his deputy, and the attorney general and his deputy about the threats we were receiving and to learn if there was anything more that would help us understand the fragmentary information we had. (p. 94)

Furthermore, much of the chatter seemed to indicate that an attack would occur overseas, though a domestic attack could not be ruled out.

Acknowledging the assistance of the CIA for the approximately 70 full-field FBI investigations on suspected members of al Qaeda that had been mentioned in the August 6th PDB, Pickard makes clear that

...credit has to be given very greatly to the CIA for giving us the information and for the other members of the intelligence community that they provided us with information to direct us to look at these individuals. Otherwise, we're operating in a vacuum, where we don't know who to be on” (p. 104).

Contesting assertions, similar to the ones made by Rice, that the ‘70 full-field investigations’ gave the impression that the FBI had the threat covered, Pickard states that “...especially with the experience I've had in counterintelligence and counterterrorism, you can never say you have it covered” (p. 121). As Pickard repeatedly makes clear throughout his testimony ‘you can only know what you know.’

In addition to meeting with members of the CIA, the FBI was also in contact with Vice President Dick Cheney about the threat. Although Pickard was never given the opportunity to brief the President or the Vice President on counterterrorism issues, he asserts that the Vice President was briefed on March 16, 2001 by Director Freeh and Assistant Director Watson on counterterrorism and al Qaeda’s presence inside the
U.S. As a follow-up, the Vice President met with Freeh at a later meeting prior to his resignation in late June, though Pickard was not present.

On January 26, 2001, Pickard and Freeh both briefed National Security Advisor Condoleezza Rice and Stephen Hadley on counterintelligence and counterterrorism issues including bin Laden and al Qaeda. Again in February, Pickard met with Rice to brief her on the Khobar Towers bombing, since the end of the statute of limitations on it was approaching. However, bin Laden had not come up at the second meetings. In total, Pickard states that he had at least two meetings with Rice.

One week after Pickard took over as acting Director of the FBI on June 22nd, he began to brief Attorney General John Ashcroft on terrorism. Meeting somewhere between seven and eight times with Ashcroft, Pickard would begin each meeting discussing either counterterrorism or counterintelligence, though at least three meetings specifically pertained to counterterrorism. After the FBI's director of counterterrorism Dale Watson had informed him that the CIA was concerned that an attack would soon occur, Pickard relayed this information to Ashcroft on at least two occasions. Surprisingly, after hearing this warning about a potential terrorist attack, Ashcroft told Pickard that he 'did not want to hear about this anymore' (p. 136).

If it was not evident from his verbal responses, Pickard got the impression that terrorism was not a top priority for the Attorney General in another way. Pickard makes clear that “[terrorism] was a top tier for the FBI. The attorney general on May 10th issued a budget guidance for us, and I did not see that as the top item on his agenda” (p. 116). Following the issuance of the budget guidance, Pickard sought to appeal the decision in hopes of gaining more funds for counterterrorism. After discussing the issue with Ashcroft in August and gaining his approval for appeal, it
was not until September 12, 2001 that Pickard received the denial for increased funding for counterterrorism from the Attorney General.

**Communication within the FBI**

Communicating information about the threat down the chain of command within the FBI, Pickard “...spoke both collectively and individually with each of the special agents in charge (SAC) of the FBI’s 56 field offices and with the assistant directors at FBI headquarters about what we knew and what we should be doing” (p. 94). In greater detail, Pickard asserts that

I spoke to each of the 56 SACs during the month of July, between July 9th and July 31st, each of them individually. I had them on the phone, secure conference call with the assistant directors from the Counterterrorism, Dale Watson; Counterintelligence, Neil Gallagher; and the assistant director of the Criminal Division, Rubin Garcia. We discussed their performance, and in addition to that hour-and-a-half discussion of their performance in their field office and their commitment to the counterintelligence and counterterrorism efforts, we also discussed during that phone call the threat level. (p. 111)

Despite Pickard’s assertion that he had talked personally with each of the 56 SACs about the threat, there were still SACs who were not informed. Somehow, neither the SAC in Miami or in New York (six blocks away from FBI headquarters, Commissioner Roemer points out) were informed of the heightened threat period, even though the al Qaeda/bin Laden unit operated out of the New York office. In his defense, Pickard maintains that he talked to the SAC in Miami on July 18th, and further explains that “I don’t know why they didn’t hear it. I spoke to them each individually, as I said. And in addition I had communications out to them. I don’t understand what more I could have done” (p. 111).

However the breakdown in communication occurred, information had not been moving up the chain of command as well. As Commissioner Kean points out,
“during the spring and summer of 2001 the Minneapolis office had Moussaoui detained and they were concerned that he might be part of a larger plot” (p. 117). Pickard had not been informed of the Moussaoui case until September 11th even though the people working on the case reported to the Commission that “…they were desperate to get the attention of headquarters” (Commissioner Gorelick p. 129). Commissioner Gorelick furthers states that “…they went to the SAC, and they said “Would you please call Mike Rolince,” the international Terrorism Section chief in headquarters, and the SAC wouldn’t do it” (p. 129).

In addition to the Moussaoui case, Commissioner Kean points out that “the New York office began searching for al Hazmi and al Mihdhar, knew that they were in the country and were searching for them that same summer” (p. 117). It was not until a few days after September 11, 2001 when the hijackers were being identified that Pickard was informed that the New York office had been pursuing two of the suspected hijackers. Swamped with information about the threat, the FBI was unable to identify the most crucial pieces of information needed to prevent the plot.

Immediately following the attacks, the pieces began to slowly come together. Interestingly enough, Pickard notes that “on the afternoon of September 11th, we had reports all over the map. We had situations where we thought the Department of State had been bombed. We thought bombs were going off. We thought the Sears Tower was evacuated, and things like that” (p. 131). As a result, Pickard contacted all 56 SACs again in an attempt to gather as much information about the attacks as possible. Shortly thereafter Pickard was informed of the Moussaoui case and the investigations by the New York office.
Summary

Serving as deputy director of the FBI from 1999 until he became acting director following Louis Freeh’s tenure from June 25, 2001 until September 4, 2001, Thomas Pickard was at the center of the bureau’s struggle to uncover the 9/11 plot. Illustrating the amount of coordination between the CIA and the FBI, Pickard credits the CIA for directing the FBI’s attention to members of al Qaeda within the U.S. Having regular contact with Vice President Cheney, National Security Advisors Sandy Berger and Condoleezza Rice and Attorney General Ashcroft, Pickard frequently briefed the Cabinet members on the threat posed by al Qaeda. When faced with repeated warnings that an attack by al Qaeda’s would soon occur, Attorney General Ashcroft informed Pickard that he ‘did not want to hear about this anymore’ (p. 136).

Demonstrating his role in disseminating information about the heightened threat period to the 56 field offices, Pickard maintains that each office had been informed despite claims by the SACs in Miami and New York that they had not received word. If information was having a difficult time flowing down the chain of command, it also had difficulty flowing up. Field agents in the Minneapolis office were having difficulties gaining the attention of FBI headquarters about the Moussaoui case, fearing that he was part of a larger plot. Despite significance of the case in such a heightened threat period, Pickard was not made aware of Moussaoui until September 11th. In addition to Moussaoui, the FBI was also tracking two of the hijackers, al Hazmi and al Mihdhar, throughout the year prior to 9/11. However, Pickard had not been informed of the FBI’s interest in the hijackers until September 11th. Though the reason remains unclear, information about the urgent threat posed
by al Qaeda was known on multiple levels throughout the bureau but was not effectively communicated between FBI headquarters and the field offices.

Federal Bureau of Investigation Summary

Considering the testimonies of both Louis Freeh and Thomas Pickard helps to reconstruct the actions and inactions of the FBI in the months leading up to 9/11. Both admitting their awareness of the heightened threat period, Freeh and Pickard reveal different elements of a discombobulated story. In comparison to Freeh’s vague testimony, Pickard’s account provides great detail and specificity about the flow of information down and chain of command within the FBI as well as with other agencies.

As Pickard makes clear, he had been in contact with each of the 56 SACs as well as FBI headquarters throughout July 2001 and had discussed the increased threat period as well as their performance on counterterrorism issues. Despite assertions that neither the Miami office nor the New York office (which housed the al Qaeda/bin Laden unit) were informed of the increased threat period, Pickard maintains that “I don’t know why they didn’t hear it. I spoke to them each individually, as I said. And in addition I had communications out to them. I don’t understand what more I could have done” (Pickard p. 111).

Throughout 2001 both Pickard and Freeh were in frequent contact with members of the Bush administration. Shortly after the new administration took office in January 2001, Pickard and Freeh met with newly appointed National Security Advisor Rice and her predecessor Berger to discuss counterintelligence and counterterrorism issues including al Qaeda and bin Laden. Briefed by Freeh at least twice, Vice President Cheney had been informed of al Qaeda’s presence inside the U.S as early as March 21, 2001. As the threat began to escalate throughout the
summer, Pickard began to inform Attorney General Ashcroft of the imminent nature of the attack. Shockingly, Ashcroft responded by stating that ‘he didn’t want to hear anything more about this.’

The FBI investigations of the *U.S.S. Cole* and African embassy bombings yielded a wealth of information about al Qaeda and its operatives. The FBI relied heavily on the CIA to inform them of the nature of the threat and draw their attention to al Qaeda members inside the U.S. Dispelling the contention that the FBI and CIA didn’t communicate with one another, Freeh states, “I think cooperation, in my view, was a very outstanding one for many years” (Freeh p. 30). Pickard also takes this position, recognizing that “…credit has to be given very greatly to the CIA for giving us the information and for the other members of the intelligence community that they provided us with information to direct us to look at these individuals. Otherwise, we’re operating in a vacuum, where we don’t know who to be on” (Pickard p. 104).

Stemming from these efforts, the FBI was able to identify members of al Qaeda inside the U.S. and even obtain FISA coverage to begin tracking two of the nineteen hijackers, al Hazmi and al Mihdhar, in the year prior to 9/11. Even more startling, the hijackers rented a room from and lived under the same roof as an active FBI informant, who supplied information about Islamic terrorist groups such as Hamas and Hezbollah to the FBI. Additionally, the FBI also admits that a San Diego case agent was at least aware that the two Saudis were renting a room from the informant (Bash, Arena and Ensor 2002). Although the hijackers were living right beneath the noses of the bureau, the FBI failed to task its field offices and informants to gather more information about them. Had this occurred, Freeh admits that September 11th could have possibly been prevented.
On July 10, 2001 agent Kenneth Williams sent a memo to the New York office as well as FBI headquarters detailing his observation that a large number of followers of bin Laden were attending aviation schools in Arizona. Based on his observations, Williams feared that a coordinated effort was underway to place these individuals into positions where they might undertake terrorist activities against civil aviation targets. In the Phoenix memo, Williams laid out a recommended plan of action including discussing the matter with other intelligence agencies, tasking the bureau for any information that might support these suspicions and taking necessary steps towards gaining visa information from the U.S. Department of State on individuals attending flight schools throughout the U.S.

Even amidst a heightened threat period, both FBI headquarters and the New York office failed to follow any of Williams’ recommendations. Knowing only what he had read in the newspapers, Freeh contends that the Phoenix memo was received and the appropriate actions were taken. Despite its chilling accuracy, Freeh maintains that “there was nothing about the information contained in that memo, as far as I’ve read, or as I understand it, that would have led you to September 11th” (Freeh p. 23).

Zacarious Moussaoui was taken into custody by the FBI after overstaying his visa on August 15, 2001. The decision to take Moussaoui into custody after overstaying his visa was done deliberately in hopes of neutralizing the terrorist threat he was believed to have posed. Drawing attention to himself at a Minneapolis flight school due to his interest in flying a Boeing 767 without having any previous experience flying, Moussaoui’s jihadist beliefs further raised the FBI’s suspicion about his intentions. Within days following his arrest, suspicions were confirmed when the French Intelligence Service reported that Moussaoui had affiliations with
radical fundamentalist Islamic groups and activities connected to Osama bin Laden (Rowley 2002).

As agents from the Minneapolis office approached their supervisory special agent in charge about the case urging him to contact counterterrorism experts at the New York office and headquarters, they faced resistance. Disputing the probable cause necessary to obtain a warrant to search the contents of Moussaoui's laptop, FBI headquarters refused to approve the request. A FBI division legal advisor for 12 years and an FBI agent for over 21 years Colleen Rowley, who was involved in the case, contends that personnel at FBI headquarters "...continued to, almost inexplicably, throw up roadblocks and undermine Minneapolis' by-now desperate efforts to obtain a FISA search warrant, long after the French intelligence service provided its information and probable cause became clear" (2002). In what Rowley calls "a desperate 11th hour measure to bypass the FBIHQ roadblock," the Minneapolis division went directly to the CIA's counterterrorism center and was later scolded by FBI headquarters personnel. Unfortunately, it was not until September 11, 2001 that the FISA warrant was granted.

Disregarding the frequently offered excuse that 'hindsight is 20-20,' Rowley notes that

...the only main difference between the information being submitted to FBIHQ from an early date which HQ personnel continued to deem insufficient and the actual criminal search warrant which a federal district judge signed and approved on September 11th, was the fact that, by the time the actual warrant was obtained, suspected terrorists were known to have highjacked planes which they then deliberately crashed into the World Trade Center and the Pentagon. To say then, as has been iterated numerous times, that probable cause did not exist until after the disastrous event occurred, is really to acknowledge that the missing piece of probable cause was only the FBI's (FBIHQ's) failure to appreciate that such an event could occur. (Rowley 2002)
Therefore, the evidence of probable cause provided to FBI headquarters to obtain FISA coverage on Moussaoui neither improved nor changed from mid-August until September 11. The only failure was FBI headquarters’ inability to conceive the attacks.

Even though they had received the Phoenix memo just three weeks earlier, FBI headquarters did not disclose to the Minneapolis office that there were other reports of individuals connected to bin Laden training at aviation schools in the U.S. Likewise, headquarters also did not disseminate information about the Moussaoui case to other offices. In congruence, both Pickard and Freeh claim that they were not informed of the Moussaoui case before 9/11.

Further criticizing the actions of the FBI in her whistle blowing letter to director Robert Mueller, Rowley expressed her shock and disappointment that the supervisory special agent who was blocking Minneapolis’ agents attempts to gain a warrant, his unit chief and other responsible headquarters personnel were not investigated but rather remained in their positions and were promoted. She argued that this supports the notion that individuals occupying lower ranks within the bureau are aggressively investigated for misconduct while those at the top often escape scrutiny.

Rowley’s notion that those at the highest ranks within the FBI often escape serious investigation for their misconduct is evident in both Freeh and Pickard’s testimonies. As the director of the FBI in the months leading up to 9/11, Freeh’s actions and inactions went largely unexamined by the Commission. Claiming ignorance about many of the issues raised by the Commission, it is surprising that the highest ranking official within the agency can know so little about the internal functioning of the FBI. Ironically, much of what is known about Freeh’s interactions
with members of the Bush administration is revealed through Pickard’s testimony rather than his own. Even though Pickard reveals greater detail about the highest levels of the FBI than does Freeh, both officials escaped accountability for their failures.

Had FBI headquarters acted on the suggestions of agent Williams, the events of September 11th might have turned out differently. Piecing together elements of the Phoenix memo, the Moussaoui case and the tracking of al Hazmi and al Mihdhar, a number of clear warnings emerges. A formal tasking issued by top level FBI officials could have helped to connect each of the isolated cases to a larger coordinated plot. As director and acting director of the FBI, both Freeh and Pickard bore the responsibility for such a directive. Alleging ignorance, the highest ranking officials in the FBI were not informed of the Moussaoui case or the Phoenix memo until after 9/11, despite the imminent threat posed by al Qaeda.

Regardless of the efforts of FBI field agents including Kenneth Williams and Colleen Rowley, detailed information which could have prevented the attacks was overlooked by personnel at FBI headquarters, including both director Freeh and acting director Pickard. For whatever reason, FBI headquarters was not fully considering cases brought forth by the field offices. Although the lower ranking members of the FBI were taking actions to disrupt and prevent the attacks, it appears that FBI headquarters not only neglected information within the bureau, but in the case of Moussaoui intentionally blocked the means to pursue crucial leads. Perched at the top of the FBI bureaucracy, both director Freeh and acting director Pickard were responsible for ordering a bureau wide assessment of the threat posed by al Qaeda. Freeh and Pickard’s failure to task the agency, a responsibility clearly within their domain, implicates them in the resulting terrorist attacks.
CHAPTER VII

NORTH AMERICAN AEROSPACE DEFENSE COMMAND

A joint organization between the United States and Canada, the North American Aerospace Defense Command was established in 1958. Located in Colorado, NORAD’s headquarters are lodged within the Cheyenne Mountain Operations Center. NORAD is divided into three subordinate regional headquarters located at Elmendorf Air Force Base in Alaska, Canadian Forces Base in Winnipeg, Manitoba and Tyndall Air Force Base in Florida which receive orders from the commander (NORAD).

“A component of the North American Aerospace Defense Command, the Continental NORAD Region (CONR) provides airspace surveillance and control and directs air sovereignty activities for the continental United States (CONUS)” (NORAD). Of its two defense sector the Western Defense Sector is located at McChord Air Force Base in Washington and is responsible for defense of the Western region of the U.S. The Eastern Defense Sector, headquartered in Rome, New York, was in charge of handling the events that unfolded on 9/11. “Co-located with Headquarters First Air Force (Air Forces Northern) at Tyndall, FL., a Combined Air Operations Center coordinates CONR sector activities and executes the NORAD air sovereignty mission for the continental United States” (NORAD).

On the morning of September 11, 2001, it was the responsibility of the North American Aerospace Defense Command (NORAD) to protect the United States and its citizens against air attack. General McKinley elaborates, stating that “…our mission was to defend North America, to surveil, to intercept, to identify, and if
necessary to destroy, those targets which we were posturing were going to come from outside our country” (McKinley et al. no page number).

A remnant of the Cold War era and the threat of Soviet long-range bomber penetration, NORAD’s main focus was on the ‘air defense identification zone’ which extends 100 to 200 miles off of the coast. Therefore, NORAD was positioned around the perimeter of the United States, granting little attention to the central regions. Even though NORAD’s responsibilities included protection from domestic threats, much of its attention was directed outwards at threat coming from overseas. Nevertheless, it was NORAD’s responsibility to defend the North American air space from both internal and external threats.

As Commissioner Gorelick points out, NORAD’s foundational documents clearly establish its domestic jurisdiction over the United States. Even though NORAD’s attention may have been directed to threats coming from overseas, its responsibility also included threats from within. Gorelick states that

> it has two missions, and one of them is control of the airspace above the domestic United States, and aerospace control is defined as providing surveillance and control of the airspace of Canada and the United States. To me that air sovereignty concept means that you have a role which, if you were postured only externally you defined out of the job. (Myers et al. p. 50)

Although assertions abound that NORAD was postured outward on 9/11, Gorelick makes clear that their mission nevertheless included protection from domestic threats.

In contrast to the frequent assertions that NORAD’s defense was focused outward on threats coming from abroad, Commissioner Lehman points about that the breakdowns in communication that morning had little to do with this distinction. As Lehman makes clear

> ...what disturbs us most is that the glitches in command and control are glitches that had really nothing to do with the fact that it was an
internal rather than external, because in the justification for maintaining NORAD, of course, the possibilities of intercepting hijacked airliners was part of the justification from the beginning, although the expectation was that they would be foreign airliners and incoming. (p. 43)

Be it foreign or domestic, intercepting both types of hijacked airliners falls within NORAD's mission and procedures were in place to deal with both threats.

Testimonies of Major General Craig McKinley, Major General Larry Arnold, and Colonel Alan Scott

Held on the second day of the twelfth public hearing of the 9/11 Commission on May 23, 2003, the panel titled “Military Aviation Authorities on September 11, 2001” hosted a number of prominent military officials responsible for airspace defense. Questioned simultaneously, the testimonies of Major General Craig McKinley, now retired Major General Larry Arnold and Colonel Alan Scott are interwoven. As such, their testimonies will be examined collectively rather than independently. It is important to note that none of these officials were placed under oath.

Assigned or Implied Trust or Duty

Roles and Responsibilities

Acting as a representative for NORAD, Major General Craig McKinley became the commander First Air Force, continental U.S. NORAD on 1st August 2002. After examining the nature of the questions the Commission proposed to ask of him, McKinley invited Major General Larry Arnold (now retired), commander of the First Air Force on the morning of September 11, 2001, to join him. As McKinley explains,
First Air Force is a subordinate command of Air Combat Command, and is responsible to the North American Aerospace Defense Commander for the execution of the air defense mission to protect our nation. First Air Force, as NORAD’s continental United States NORAD region, is responsible for the air defense of the continental United States under the NORAD agreements.

As the commander of First Air Force on 9/11, Larry Arnold was at the center of the NORAD’s response to the attacks. Additionally, Colonel Alan Scott (also now retired), who was recruited as the best expert on the chronology of NORAD’s timeline of events, was working alongside Arnold that morning.

NORAD’s defense was broken down into three sectors on September 11th; NORAD continental region located in Peterson Air Force Base in Colorado Springs, the air operations center at Tindel Air Force Base in Florida and the Northeast Air Defense Sector at Rome, New York. That morning, both Arnold and Scott were working to coordinate NORAD’s response at Tindel Air Force Base. McKinley, on the other hand, was directly experiencing the attacks while he was at the Pentagon.

Action or Inaction on Behalf of State or State Agencies

Awareness of Threat

According to General McKinley, there was no available intelligence information within NORAD or DOD which indicated a threat to commercial aviation prior to the attacks. He further articulates that “information from the daily Joint Chiefs intelligence report on the morning of September 11th indicated no specific threats within the country.” When asked about whether NORAD had considered the use of airplanes as weapons by terrorists, McKinley responds by stating that that information was not available to them at the time.
Commissioner Ben-Veniste goes on to remind McKinley of multiple well known instances in which terrorists used or planned to use airplanes as weapons including: the crash of a small plane onto the White House lawn on September 12, 1994, in December 1994 an armed Algerian Islamist terrorist hijacked an airliner threatening to crash it into the Eiffel Tower, 1996 planning for possible airplanes flying into the stadium of the Olympic games in Atlanta, intelligence information from October 1996 about an Iranian plot to hijack a Japanese plane over Israel and crash it into Tel Aviv, intelligence information from August 1998 about a group of unidentified Arabs planning to fly an explosives laden plane from overseas into the World Trade Center, September 1998 intelligence information that bin Laden might be planning to fly an aircraft with explosives on board into a U.S. airport, intelligence information from August 2001 about a plot to either bomb the U.S. Embassy in Nairobi from an airplane or crash an airplane into it, and in July 2001 information about possible attacks using airplanes during the G-8 Summit.

Following Ben-Veniste's overview of available information, McKinley concedes that "it's obvious by your categorization that those events all took place and that NORAD had that information." In retrospect, McKinley agrees that there could have been better preparedness by NORAD to meet the threat of terrorist using airplanes as weapons based on available information at that time.

**War Games**

Even if NORAD had not been aware of the threat to civil aviation prior to 9/11 or the use of planes as missiles, it regularly coordinated exercises to help prepare for hijacking scenarios. Prior to September 11th NORAD ran multiple exercises which simulated varying hijacking scenarios. For example, Amalgam Virgo 01
conducted June 1-2, 2001, "...was an exercise created to focus on peacetime and contingency NORAD missions. One of the peacetime scenarios that is and has been a NORAD mission for years is support to other government departments. Within this mission falls hijackings" (McKinley). Even though McKinley maintains that NORAD’s mission was not geared towards domestic threats, the routine exercises within Amalgam Virgo provided experience in cooperating with domestic agencies, such as the FAA, in handling hijacked aircraft.

In fact, on the morning of the attacks NORAD was in the process of running an exercise. As Gen. Arnold makes clear, "...we were in the middle of a NORAD exercise at that particular time, which means that basically our entire staff was focused on being able to do the air operations center mission, which was our job to do." As a result, there was a great deal of confusion as to whether or not the attacks were part of the exercise. Even Arnold himself was uncertain:

And I was upstairs in our facility, immediately went downstairs, picked up the phone, asking on the way to my staff, ‘Is this part of the exercise?’ Because quite honestly, and frankly we do do hijacking scenarios as we go through these exercises from time to time. But I realized that it was not. This was real life.

Although it had been a long time since a hijacking had last occurred, Arnold claims that the exercise actually helped to prepare NORAD for the attacks. He maintains that "...we had reviewed the procedures of what it is we do for a hijacking, because we were in the middle of an exercise. So we were pretty well familiar with those procedures, and of course we have our own checklist that we follow."

NORAD Timeline

Laying out NORAD’s timeline of the events of September 11, 2001, Colonel Alan Scott walks the Commission through a chronology of the attacks. As Gen.
McKinley makes clear, "...this is the North American Aerospace Defense Command and continental NORAD region timeline. Other agencies may have other logs that may have different times." Thus, NORAD's timing and version of events that occurred that day may differ from the Federal Aviation Administration's timeline.

At 8:02 a.m. Eastern Standard Time, American Airlines flight 11 (AA 11) departed from Logan International Airport in Boston headed to Los Angeles. Shortly thereafter at 8:16, United Airlines flight 175 (UA 175) also left Logan, headed towards Los Angeles. Three minutes later at 8:19, American Airlines flight 77 (AA 77) to Los Angeles took off from Dulles International Airport in Washington D.C. At 8:43, United Airlines flight 93 departed out of Newark, New Jersey to San Francisco from Liberty International Airport.

Only eighteen minutes after take off (8:20), AA 11 displayed the first sign of trouble when its transponder was turned off and ceased contact with air traffic control. However, it was not for another twenty minutes that the FAA contacted NORAD about a potentially hijacked plane at 8:40. Once NORAD received notification, F-15 alert aircraft at Otis Air Force Base in Massachusetts, about 153 miles away from New York City, were immediately ordered to battle stations by Northeast Air Defense Sector (NEADS) commander Colonel Robert Marr.

**Scramble Orders**

Once AA 11 hit the South Tower at 8:46, it became clear that the hijackings were not part of an exercise and it was necessary for NORAD to issue a scramble order. As Col. Scott makes clear, "at that minute is when the Otis F-15s were scrambled." Resulting from a discussion with Col. Marr, Arnold disregarded the
bureaucratic chain of command and took it upon himself to issue the scramble order.

Normally, Arnold asserts that

the route, if you follow the book, is they go to the duty officer of the national military center, who in turn makes an inquiry to NORAD for the availability of fighters, who then gets permission from someone representing the secretary of Defense.

Nevertheless, Arnold contends that “I told them to go ahead and scramble the airplanes and we’d get permission later.” Following this, Arnold states that “I picked up the phone, called NORAD, whose battle staff was in place because of the exercise, talked to the deputy commander for operations. He said, you know, I understand, and we’ll call the Pentagon for those particular clearances.” It only took six minutes for the F-15s to get airborne making primary radar contact by 8:53, quickness attributable to the battle stations order issued by Col. Marr thirteen minutes earlier.

Absent any warning to NORAD about a second hijacked plane and without turning off its transponder, UA 175 struck the North Tower at 9:02, sixteen minutes after the first impact at which time F-15s had been scrambled from Otis. “The distance of those fighters which had been scrambled out of Otis, at that particular point they were still 71 miles away, about eight minutes out, and going very fast” claims Scott. Only three minutes later, the FAA reported a possible hijacking of UA 175. Nine minutes after the second impact, the FAA reported the crash at 9:11. At 9:09, F-16s were placed on battle stations at Langley Air Force Base in Virginia; however, scramble orders are not given at this time. Around this same point, AA 77 turned off its transponder and began to turn back around headed east.

At 9:16, the FAA reports the hijacking of the fourth plane UA 93 which was veering off course in the Ohio area. Even though AA 77 had turned off its transponder around 9:09, it was not until 9:24 that the FAA reported its possible hijacking to NORAD. “And at this moment as well is when the Langley F-16s are
scrambled out of Langley” Scott contends. Only a minute later, AA 77 is reported to be headed towards Washington D.C. Even though its transponder had been shut off, primary radar contact had been maintained with AA 77 as it continued towards the Pentagon.

Coining it the ‘first red herring of the day’, a report from Boston FAA at 9:27 indicated that a fifth plane, Delta Flight 89, was also missing. Scott explains that “we call that the first red herring of the day because there were a number of reported possible hijackings that unfolded over the hours immediately following the actual attacks.” However, Delta Flight 89 turned out not to be highjacked and landed at 9:47.

By 9:30, twenty one minutes after being placed on battle stations and six minutes after the scramble order, the Langley F-16s were airborne and were 105 miles away from the Washington area. Even though F-16s can fly a maximum speed of about 1,500 mph at high altitudes and 915 mph at low altitudes, the planes flying out of Langley did not use this advantage. Without ‘going into burner,’ McKinley explains that the “[F-16s], based on their configuration, traveled at .98 Mach, roughly 575 knots, 660 miles per hour, about 10 nautical miles per minute.” With two planes already having impacted the World Trade Center and another plane reported hijacked and headed towards Washington, the F-16s flew at least 250 mph slower than their highest potential speed.

Had the F-16s from Langley traveled faster, it may have been possible to intercept AA 77 before it reached the Pentagon. Confirming this position, Arnold maintains that

I think that if those aircraft had gotten airborne immediately, if we were operating under something other than peacetime rules, where they could have turned immediately towards Washington, D.C., and gone
into burner, it is physically possible that they could have gotten over Washington, D.C.

At 9:34, the FAA was unable to precisely locate AA 77 and at 9:37 radar data is lost near the Pentagon. Three minutes later, UA 93 also turned off its transponder and began to go off course. In response to growing concerns that AA 77 and UA 93 might be heading towards Washington D.C., the closest available fighters stationed at Langley Air Force Base were sent to cover the air space above the capital. General Arnold elaborates on the attention of NORAD at the time, stating that “our focus---you have 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.”

On the day of the attacks, NORAD reported that AA 77 impacted the Pentagon at 9:43. About two weeks later, NORAD changed AA 77’s impact time to 9:37- six minutes earlier. Scott explains that

it took about two weeks to discover in the parking lot of the Pentagon this entry camera for the parking lot, which happened to be oriented towards the Pentagon at the time of the impact and the recorded time is 9:37. And that’s why the timeline went from 9:43 to 9:37, because it is the best documented evidence for the impact time that we have.

Like many of the estimated times contained in NORAD’s official chronology of the attacks, the actual events were reconstructed after the fact and were therefore subject to alteration.

In the urgency to do something about UA 93 the Secret Service had contacted Andrews Air Force Base, located ten miles south of the Pentagon, and “…asked them to get anything they could airborne, and I think the quote was ‘to protect the House’ (Arnold). Arnold maintains, however, that by this time the fighters were in the area intending to intercept the plane. He states that
it was our intent to intercept United Flight 93. And in fact my own staff, we were orbiting now over Washington D.C. by this time, and I was personally anxious to see what 93 was going to do, and our intent was to intercept it. But we decided to stay over Washington, D.C., because there was not that urgency...So we elected to stay over D.C. until that aircraft was definitely coming towards us.

At 10:02 UA 93’s radar data is lost. Estimating its impact time at 10:03, UA 93 crashed into a field in Shanksville, Pennsylvania over forty five minutes after it was reported hijacked, as it headed towards Washington, D.C. Raising questions about the flow of information within the FAA that day, at 10:07 the FAA reports that there may be a bomb on board UA 93, which NORAD estimates had crashed four minutes earlier. Twelve minutes after its impact, the FAA reports that UA 93 had crashed.

**Shoot Down Orders**

Although General Arnold had authority to intercept the plane, he had not received orders to shoot down the plane prior to its crash. He clarifies that

...we intended to intercept that aircraft at some point in time, attempted to deviate that aircraft away from the Washington, D.C. area. There was discussion at that particular time whether or not that aircraft would be shot down. But we, I did not know of presidential shoot down authority until after that aircraft had crashed.

Instead, NORAD was informed about five minutes after the crash of the presidential authority.

Passed down from NORAD headquarters at Cheyenne Mountain, Arnold is unclear as to who authorized the shoot down orders. He contends that “I do not know who issued it. It is my understanding that it was issued by the president, or the vice president in his stead, that that order was issued. And it was issued around the time that we decided to put all the aircraft on the ground…” Clarifying the responsibility,
Commissioner Hamilton states that “as of September 11th, only the president had the authority to order a shootdown of a commercial aircraft,” since the vice president had no position in the military chain of command. Despite the significance of a presidential shootdown order, the time the notification was received was not included in NORAD’s timeline of events.

Alongside the shootdown order was a declaration of a no-fly zone over the Washington D.C. area. Arnold elaborates, stating that particular declaration that I am referring to is a class bravo airspace within the Washington, D.C. area that was shut down to aviation, except for military or for law enforcement emergency response aircraft at that particular time.

If an aircraft could not be determined to be friendly, then NORAD had the authority to bring it down.

VP Cheney Orders Overheard by Mineta

Referencing testimony from Secretary of Transportation Norman Mineta heard immediately prior, Commissioner Roemer inquires about a shootdown order of AA 77 issued by Vice President Cheney sometime between 9:15 and 9:20. Mineta admits that he was not in the room to hear Cheney issue the shootdown order, but inferred that orders had been given after entering the room. He states that there was a young man who had come in and said to the vice president, ‘The plane is 50 miles out. The plane is 30 miles out.’ And when it got down to, ‘The plane is 10 miles out,’ the young man also said to the vice president, ‘Do the orders still stand?’ And the vice president turned and whipped his neck around and said, ‘Of course the orders still stand. Have you heard anything to the contrary?’ Well, at that time I didn’t know what all that meant. (Mineta testimony, no page number)

From Mineta’s recount, it is not clear what orders had been given. It is only in retrospect that he realizes that the Vice President had issued shootdown orders. He
states that "And then later I heard of the fact that the airplanes had been scrambled from Langley to come up to DC, but those planes were still about 10 minutes away" (Mineta testimony, no page number).

Mineta's contention that a shootdown order had been issued by the Vice President for AA 77 contradicts NORAD's official timeline of events. According to NORAD's version, no shootdown orders had been issued prior to the crash of UA 93-over twenty-five minutes after AA 77 had struck the Pentagon. Affirming NORAD's account, Arnold maintains that "I was never aware of any order given to shoot down American Airlines 77."

Contact with FAA

According to NORAD's timeline, the FAA first made 'documented' contact with NORAD at 8:40 to report the possible hijacking of AA 11. Even after both planes had hit the towers, Arnold claims that NORAD did not have an open line of communication with the FAA. As Arnold firmly asserts "the continental United States NORAD region, my headquarters, responsible for the continental United States air defense, did not have an open line with the FAA at that time." As McKinley explains, however, even if there wasn't contact between continental NORAD region on Tindal Air Force Base in Florida, the FAA's Boston center had open lines of communication with the Northeast Air Defense Sector in Rome, New York. When asked by Commissioner Ben-Veniste if there was regularly a tape recording made of these types of open line communications, both McKinley and Arnold asserted that they were unaware of any such recordings.
Summary

According to their official timeline, NORAD had not been notified that AA 11 was hijacked until 8:40, at which point Colonel Marr placed the F-15s at Otis Air Force Base at battle stations. Even though AA 11 had turned off its transponder almost twenty minutes earlier, the FAA had failed to notify NORAD about the situation. Once the first plane struck the North tower, Marr consulted General Arnold about issuing scramble orders. Disregarding the chain of command requiring him to get consent from higher authorities, Arnold ordered the scramble and then proceeded to obtain authorization. Sixteen minutes after the scramble order was issued, UA 175 struck the South tower at 9:02 without ever being reported to NORAD as hijacked.

Still an estimated eight minutes away, the F-15s from Otis were 71 miles outside of New York. Stationed 153 miles away from NYC, the fighters had only traveled 82 miles since their departure at 8:46. Accounting for the six minutes that it took them to get airborne, the F-15s had only traveled 82 miles in 10 minutes, or about 8.2 miles per minute. Based on this information, it can be concluded that the F-15s were traveling around 492 miles per hour (8.2 miles per minute multiplied by 60 minutes equals 492 mph). What remains a mystery is why the Otis F-15s were traveling less than 500 mph, despite their capacity to travel at maximum speeds of 1,650 mph at high altitudes and 900 mph at low altitude. It is worth noting, however, that after the second plane impacted the South tower the F-15s began traveling about 534 miles per hour (71 miles away divided by 8 minutes outside of New York City equals 8.9 miles per minute, multiplied by 60 minutes equals 534 mph).

At 9:09, F-16s were placed on battle stations at Langley Air Force Base in Virginia. However, it was not until 9:24 that the F-16s were scrambled after American Airlines 77 was reported as potentially hijacked and headed towards
Washington, D.C. Even though F-16s can fly a maximum speed of about 1,500 mph at high altitudes and 915 mph at low altitudes, the planes flying out of Langley did not use this advantage. Without ‘going into burner,’ McKinley explains that the “[F-16s], based on their configuration, traveled at .98 Mach, roughly 575 knots, 660 miles per hour, about 10 nautical miles per minute.” With two planes already having impacted the World Trade Center and two planes reported hijacked and headed towards Washington, the F-16s flew at least 250 mph slower than their highest potential speed.

On September 11th, AA 77 was reported to have impacted at 9:43 after radar data was reported lost around the Pentagon. Two weeks later, however, a camera located at an entrance to the Pentagon was discovered to have captured the collision on tape. Since this was the best documentation available, the official impact time was changed from 9:37 to 9:43, a difference of six minutes, to reflect the time indicated by the camera.

Scrambled at 9:24, the F-16s from Langley were airborne by 9:30. Stationed 105 miles away from the Pentagon and traveling 660 miles per hour, the F-16s were still 77 miles away when the AA 77 hit the Pentagon at 9:37. At this rate, they were traveling about 11 miles per minute. However, going by the original impact time of 9:43, the F-16s would have arrived at the Pentagon with minutes to spare (11 miles per minute multiplied by 13 minutes between being airborne and the impact time equals 143 miles>105 miles).

Even if the F-16s had made it there in time, it is debatable whether or not the shootdown orders had been issued. Requiring authorization from the President or Vice President, Arnold claims that he had not been informed of order to shootdown AA 77. Secretary of Transportation Norman Mineta, however, claims to have
overheard an exchange between Vice President Cheney and a young aide in which Mineta inferred that shootdown orders had been given between 9:15 and 9:20. If this was in fact the case, it is unclear how Cheney was informed of the hijacking before NORAD at 9:24.

According to NORAD’s official timeline, the FAA reported UA 93 as potentially hijacked at 9:16. However, it was not until 9:40 that the aircraft turned off its transponder and began to veer off course. Opting to remain positioned over Washington, D.C. in anticipation of UA 93, Arnold makes clear that fighter jets were in place and had intended to intercept the plane if it came near. Crashing into a vacant field in rural Shanksville, Pennsylvania at 10:02, the situation never made it to that point. Presidential shootdown orders, Arnold claims, were finally received around 10:05 three minutes after the impact of UA 93.

Testimonies of General Richard Myers, Admiral-Select Charles Joseph Leidig, General Ralph Eberhart and General Larry Arnold

Similar to the previous testimonies, Myers, Leidig, Eberhart and Arnold were all questioned simultaneously rather than separately. As a result, their testimonies will also be evaluated collectively. In contrast to the first set of testimonies by NORAD officials, the Commission made certain to place Myers, Leidig, Eberhart and Arnold under oath.

Assigned or Implied Trust or Duty

Roles and Responsibilities

Beginning on October 1, 2001, General Richard Myers became the Chairman of the Joint Chiefs of Staff. As such, he was the highest ranking military officer and
the principal military advisor to the President, the Secretary of Defense and the National Security Council. Thus, Myers was not actually in the military chain of command that day, but rather an advisor. His responsibilities included strategic planning, contingency planning and readiness of the armed forces. Additionally, he was also the former Commander of NORAD from 1998 to 2000.

Admiral-Select Charles Joseph Leidig served as the deputy director of operations at the National Military Command Center on 9/11 and was the senior watch officer on duty at the time. Asked a day earlier to fill in for the deputy director of operations, General Montague Winfield, on the morning of September 11th, Leidig assumed Winfield’s duties at 8:30 a.m. until Winfield took over later in the morning during the Air Threat Conference call.

Furthermore, General Ralph Eberhart was commander of NORAD and the U.S. Northern Command that morning. Appointed by and responsible to both the President and the Canadian Prime Minister, the commander’s headquarters are located at Peterson Air Force Base in Colorado. Additionally, Major General Larry Arnold was the commander of the Continental U.S. NORAD Region (CONR) on 9/11.

Action or Inaction on Behalf of State or State Agencies

By June 2004, the Commission had grown frustrated dealing with NORAD. Commissioner Ben-Veniste specifically notes the staff’s difficulty in obtaining accurate and complete information from the agency. Convinced that NORAD was trying to hide something, the 9/11 Commission issued its second of three subpoenas (the first was to the FAA while the third was the New York City government).

Referencing General Arnold’s earlier testimony in May 2003, Commissioner Ben-Veniste charged that General Craig McKinley and General Larry Arnold failed to
notify the Commission about key information about events that day. Ben-Veniste states that

...it is disturbing to see that there were efforts at after-action reports which were available shortly after 9/11. There were communications which our staff has received with respect to emails that reflect some of the facts on nearly a contemporaneous basis with the 9/11 catastrophe that reflect a story which unfortunately is different from the one which was presented to this commission earlier. (p. 41)

The information uncovered by the Commission's staff as well as subsequent testimonies provided by NORAD officials dramatically differ from the assertions made to the Commission over a year earlier in May. Acute attention must be given to the discrepancies between NORAD official's testimonies in May 2003 compared to accounts presented below.

Misinformation

Initially, both McKinley and Arnold denied the existence of the tape recordings of the open-line communications between NORAD's Northeast Air Defense Sector and the FAA's Boston sector at the testimony in May. It was subsequently revealed, Arnold contends, that

the Northeast Air Defense Sector apparently had a tape that we were unaware of at the time. And your- - to the best of my knowledge, what I've been told by your staff is that they were unable to make that tape run. But they were later able to- - your staff was able, through a contractor, to get that tape to run. (p. 42)

However, Arnold maintains that at that time he was unaware of any tapes. It was through these tapes that the Commission's staff was ultimately able to provide detailed and accurate information about NORAD's response, which had been missing from the earlier testimony. Crediting the Commission, Arnold admits that “... a lot of
the information that you have found out in your study of this 9/11, the things that happened on that day, helped us reconstruct what was going on” (p. 39).

Another example contrary to the earlier testimony, NORAD apparently had not received reports from the FAA that AA 77 was hijacked. Complicating their official timeline, it becomes unclear how NORAD was able to track AA 77 until radar contact was lost just before the plane hit the Pentagon without ever being made aware that it was potentially hijacked. If AA 77 had never been reported to NORAD as hijacked, Secretary Mineta’s testimony that the vice president had issued a shootdown order of AA 77 between 9:15 and 9:20 even further confuses the reality of that morning.

As Arnold tries to explain his earlier testimony, the matter becomes even more unclear. At that time, he asserts, he did not know those facts. Reflecting back to his earlier testimony, the uncertainty of Arnold’s original and current testimonies becomes evident. Attempting to recall why the F-16s out of Langley Air Force Base had been scrambled in the first place, Arnold asserts that he thought it had been in response to United 93, not AA 77 as others had claimed. Demonstrating his confusion, Arnold reflects on his earlier assertions and states

I was trying to remember in my own mind what was it that persuaded us to scramble those aircraft. And I thought at the time that it was United 93. But as I was able to - - we did not have the times when these things were- - when we were notified of this. I did not have that information at that time. I didn’t have it. (p. 41)

Much of NORAD’s story, Commissioner Kerrey observes, gives the appearance that NORAD took the bullet for the FAA’s failure to respond effectively to the attacks. Kerrey explains that

if you look at what you all did on that day, it’s hard to find fault. And we really haven’t uncovered this stuff, it was readily available, the facts were all there. So it leaves the impression that there is an attempt
to create a unified story there, and has you all, as I said, taking a bullet for the FAA, because the FAA should have told you what was going on -- it seems to me. (p. 53)

Kerrey seems to imply that the FAA, not NORAD, was responsible for failing to effectively respond to the attacks since they failed to swiftly notify NORAD once it became clear hijackings had occurred. Even with delayed notification from the FAA, NORAD was still unable to intercept or shoot down any of the four hijacked planes.

Suggesting a deliberate attempt to create a unified story of the actions and inactions of NORAD and the FAA, Kerrey specifically points to a White House briefing on September 17, 2001. He states that “it feels like something happened in that briefing that produced almost a necessity to deliver a story that’s different than what actually happened on that day” (p. 53). Unfortunately, General Myers- the only witness who attended the briefing- had left the hearing early due to a scheduling conflict just prior to Commissioner Kerrey’s questions. General Eberhart, however, assures the Commission that “first of all, there’s no scheme here or plot to spin this story to try to cover or take a bullet for anyone” (p. 54).

Awareness of Threat

Beginning at the end of May and continuing through August 2001, General Myers and the chairman of the Joint Chiefs received intelligence information about the heightened threat period and al Qaeda preparation for an attack against the U.S. More specifically, Myers and the chairman both reviewed the August 6, 2001 presidential daily briefing. Despite suggestions within the memo including its title (“Bin Laden Determined to Strike in US”) that a domestic attack could occur, Myers maintains that attention was primarily centered overseas, specifically the Saudi Arabian peninsula. Moreover, he contends that information about the FBI’s
investigation of Moussaoui was never shared with him. However, he dismisses the idea that information about the Moussaoui case in combination with the August 6th PDB might have produced some sort of training scenario to help prepare for such a threat.

Myers makes clear that "in most of the threat reporting leading up to 9/11, it was hijacking an airplane and in the normal hijack mode, not in the mode of a weapon" (p. 48). Even so, both the Joint Chiefs of Staff as well as NORAD had considered integrating suicide hijackings into training exercises. Interestingly, a positive force training scenario had been proposed by the Joint Chiefs of Staff in 2000 which simulated a hijacked plane flying into the Pentagon. However, it was rejected as too unrealistic. In response to the eleven different intelligence reports widely circulating about the potential for al Qaeda to use airplanes as weapons, "...NORAD's own planning staff proposed to include exercises dealing with hijacked suicide aircraft" (p. 48). This proposal, however, was also rejected.

War Games

On the morning of September 11th, NORAD was involved in a training exercise called Vigilant Guardian. As a result, both NORAD headquarters as well as the regional sectors were postured for 'wartime conditions.' Whether being in a training position helped or hindered NORAD's ability to respond is uncertain. Illustrating some of the confusion caused by the ongoing exercise, Commissioner Roemer reads an excerpt from the Staff Statement:

the FAA says at 8:38 in the morning, 'Hi, Boston Center, TMU, we have a problem here. We have a hijacked aircraft headed towards New York and we need you guys to - - we need someone to scramble some F-16s or something up there. Help us out.' NEADS says, 'Is this real world or an exercise?' (p. 75)
As Eberhart contends, however, only 30 seconds were lost during this particular interaction. Nevertheless, situations similar to this one undoubtedly occurred throughout NORAD amounting to many delayed reactions.

On the other hand, Eberhart feels as though preparation for the exercises helped to hasten NORAD’s response. He maintains that

my belief is that it helped because of the manning, because of the focus, because of the crews— they have to be airborne in 15 minutes. And that morning, because of the exercise, they were airborne in six or eight minutes. And so I believe that focus helped. (p. 75)

What Eberhart fails to mention is that there is a six minute lapse time between the battle stations command and the scramble order in addition to six minutes for the F-15s to get airborne, thus bringing the time closer to twelve minutes. To be sure, the response time still fell within appropriate boundaries.

Phantoms

Complicating NORAD’s response to the events that morning, a number of phantom aircraft appeared on NORAD’s radars. Although these nonexistent phantoms appeared real to individuals monitoring the radars, none of the officials elaborate on what exactly a phantom aircraft is and why they were appearing on NORAD’s radars. In their first round of testimonies to the Commission, NORAD officials failed to mention the miscommunication between the FAA and NORAD that a ‘phantom’ American Airlines flight 11 appeared on the radar heading south away from New York City even after the actual aircraft had impacted the WTC.

In his first testimony, Arnold made clear that the F-16s from Langley were scrambled in response to UA 93. He later admits, however, that he was wrong. As Commissioner Gorelick reminds Arnold, the scrambling was actually done in response to a phantom AA 11.
...you said that the reason that you were wrong was that you hadn’t had an opportunity to listen to the tapes, or the tapes weren’t accessible. But, I mean, we have - - I’m just holding four of them - - that clearly reflect that the scrambling was done in response to this phantom American 11, which didn’t exist anymore. (p. 68)

As a consequence of NORAD’s original contention that F-16s had been launched in response to UA 93, “... senior policymakers reassured the American public that our military was on it and would have - - would have addressed this threat to the White House or the Capitol before the threat arrived. And that may or may not have been the case” (Gorelick p. 69).

Chalking his forgetfulness up to old age, Arnold explains that reviewing the tape recorded logs (which he had not done prior to his first testimony in May) helped to refresh his memory.

So, I guess in the way the human mind works, unfortunately, is we try to put things into some kind of category. And then, as we heard this log, or this log was presented to me, it made more sense to me then that that’s what had occurred. It occurred to us - - we have now had two airplanes that hit, and we got a call that this, another airplane, because it was another airplane to me, had been hijacked. (Arnold p. 69)

After being presented with the flight log, Arnold’s memory was refreshed. As Arnold’s statement ‘because it was another airplane to me’ confirms, the nonexistent phantom aircraft took on the appearance of an actual airplane. Concurring with the Commission’s findings, the F-16s were not launched in response to UA 93, but instead a phantom AA 11, Arnold admits.

A phantom American Airlines 11 was not the only phantom aircraft appearing on the radar that morning. Revealing the confusion created by the phantoms, amongst other false reports, General Myers states that

in fact, as General Arnold said, we fought many phantoms that day. There were many phantoms. I remember getting to the NMCC, and we
got the call that a bomb had gone off in front of the State Department. So you think, 'Oh, my goodness, what else is happening in this town?' We got many aircraft calls inbound that morning that turned out to be phantoms. (p. 46)

Even more startling, at 10:37 the Vice President reported through the National Military Command Center conference call to have received an anonymous threat that Air Force One, codenamed Angel, was to be the next target. This too was later discovered to not only be a phantom, but a myth altogether. As Commissioner Ben-Veniste states “the information, according to the staff, that there was another phantom report, that there was no anonymous call, there was no use of the code name Angel for Air Force One or a statement that Air Force One was to be next, and yet that mythology was perpetuated for some weeks, if not months, thereafter” (p. 77).

Chain of Command

According to Myers, who spent much of September 11th working alongside Secretary of Defense Donald Rumsfeld in the National Military Command Center (NMCC), Rumsfeld was in frequent contact with both the President and the Vice President throughout the day. Although Rumsfeld was in contact with the President several times throughout the day and at least once through a video teleconference, Myers particularly stresses, that Rumsfeld had “…lots of conversations with the vice president” (p. 43).

Vice President Cheney had in fact issued shootdown orders the Commission confirmed. Even though Cheney had apparently issued this shootdown order, Commissioner Roemer reveals “and this is so surprising, so shocking to some people, that I believe it’s Colonel Marr decides not to convey the vice president’s order to the pilots that are circling around Washington” (p. 61). Even so, according to Roemer by
this time United 93 had already crashed and it is highly unlikely that anything could have been done.

Nevertheless, it is unclear exactly why Colonel Marr had not delivered Cheney's shootdown orders to the F-15 pilots. As Eberhart explains, Marr's reluctance to relay the order was due to a great deal of concern about accidentally shooting down the wrong airliner. Eberhart states "so that was at the forefront of Bob Marr's concern, is we don't have a confirmed hijacking right now. Let's make sure we clearly understand this order, convey it properly, so that in fact we do not make a mistake" (p. 62).

Detailing the difference between intercepting an aircraft and shooting it down, Arnold makes clear that shooting down a plane is a method of last resort. He explains "But it's very typical in an intercept, you try to get that airplane, get to the side of them, get their attention, see if they will respond to you..." (p. 64). Unfortunately, NORAD was unable to even reach any of the hijacked planes to perform an interception. While awaiting presidential shootdown authority, Arnold was forced to consider whether he would issue a shootdown of UA 93 without first receiving authorization. Fully expecting to receive presidential authority, Arnold affirms that he would have issued the order. Luckily, it never came to that point.

**National Military Command Center: Significant Event Conference**

Once the first plane had hit the WTC, the NMCC was the primary means to notify senior policy makers that a significant event had occurred. After the second plane hit, the NMCC became the center of information. At that point, Admiral Charles Leidig established a Significant Event Conference call, which later was upgraded to an Air Threat Conference. As Leidig explains, "and what that does is
that brings senior leadership and combatant commanders into the conference to start discussing what actions should be taken or might be taken” (p. 71). The significant event conference “...is on a special phone circuit and its classified to be able to pass information, relay information between very senior leadership all the way to the White House” (Leidig p. 71).

Throughout the conference call that morning there was a great deal of difficulty establishing open lines of communication with the FAA. Unsure of exactly how long the FAA was left out of the conference call, Leidig states that “I know that they were in intermittently. Most of the time they were not in the conference” (p. 72). As Leidig understands it, “…there were some compatibility issues between their secure phone and ours in the Command Center that caused them to drop out of the conference” (p. 73).

In an attempt to bring the FAA into the crucial decisions being made, a separate line was arranged. Communications, however, were distorted. Leidig admits,

I can say that it did hamper information flow because we were getting information in a more roundabout way from the FAA. Sometimes it would come from a local commander to NORAD back to us, or sometimes it would come on an open line to the operations center. (p. 72)

Since NORAD was included in the conference call, effectively integrating the FAA into the communications would have allowed information to flow directly between the two agencies.

SCATANA

Relinquishing control of the airspace from civilians to the military, SCATANA was one option which became viable after the second plane had hit the
towers and it appeared that orchestrated attacks were unfolding as early as 9:03. NORAD, however, did not execute the procedure until sometime around 11:00. Another remnant of NORAD’s cold war posture, SCATANA was intended to take control of the airspace in the event of a Soviet bomber attack. Under this procedure, all navigational aids are turned off and the NORAD assumes control of the airspace. As Eberhart asserts, “...and as people approached me with “declare SCATANA” the problem was that we could not control the air space that day with the radars we had and all the aircraft that are airborne- - four to five thousand airplanes airborne” (p. 69). Eventually executing a modified version of SCATANA, navigational aids were left on, the FAA remained in control while the planes were being grounded and law enforcement and rescue aircraft were allowed to traverse the airspace.

Summary

Held over a year after NORAD’s official timeline had first been presented to the Commission, a wealth of information about NORAD’s response had later been uncovered by the staff’s investigation. Complicating a thorough understanding of the events that day, much of Myers, Leidig, Eberhart and Arnold’s testimony to the Commission consisted of distinguishing the truth of what actually occurred that day. One notable failure, NORAD never bothered to notify the Commission that a ‘phantom’ AA 11 which continued to appear on the radar traveling south away from New York even after the actual plane had hit the first tower. As a result, the entire timeline of events that day, including the Air Force’s official report, was skewed. The phantom AA 11 was only one of the many phantoms that appeared on NORAD’s radars that day. Both Arnold and Myers make clear that NORAD battled numerous phantoms that day. The source and nature of these phantoms goes unexplored by the Commission. One thing is clear; the phantom aircraft were a
source of confusion which plagued NORAD’s response. Although they are not expressly acknowledged as such within the testimony, there is reason to believe that the phantoms aircraft were a product of the numerous war games being executed by the military on September 11th.

Even though NORAD officials readily admit that they were running training exercises (commonly referred to as war games) that morning involving hijacked aircraft, the Commission was reluctant to aggressively investigate what the exercises entailed and how they impacted NORAD’s response. Just prior to General Myers departure, someone from the audience interjects, shouting “Ask about the war games that were planned for 9-11…Tell us about the 9-11 war games” (p. 50). To which Commissioner Gorelick replies “Could you please be quiet, we only have a few minutes with General Myers, and I would like to ask a question” (p. 50). But the member of the audience persists, repeating “Tell us about the war games” (p. 50).

What the transcript fails to include, but is evident in the video recording of the testimony, is that the member of the audience also specifically mentions “Vigilant Guardian.” Commissioner Kean then requests that the audience member be quiet if he wishes to stay there. The audience member submits and their request was not honored to interrogate Myers about the military war games that morning.

NORAD maintains that the war games actually helped to better prepare them for the attacks. Failing on four separate occasions in one day, it is difficult to see how they were prepared at all. Considering the many instances where employees were forced to question, ‘is this real world or exercise?’ the war games likely slowed and obfuscated a swift and effective response to the attacks.

Initially, both McKinley and Arnold posited that tape recordings of the phone calls between the FAA’s Boston Center and NORAD’s sector in Rome, New York
did not exist. Upon further investigation the Commission found that tapes, which revealed a different version of events that day, were in fact made. For example, the F-16s scrambled out of Langley were not launched in response to UA 93 or AA 77 but instead phantom AA 11. What is more, AA 77 had apparently never even been reported to NORAD as hijacked.

As Commissioner Kerrey suggests, there seemed to be an attempt to create a unified story which had NORAD taking a bullet for the FAA. Pointing to a White House briefing on September 17, 2001, Kerrey comments that “it feels like something happened in that briefing that produced almost a necessity to deliver a story that’s different than what actually happened on that day” (Myers et al. p. 53). Although what those differences were is uncertain, the inconsistencies between testimony by NORAD officials in May 2003 and later in July 2004 warrant suspicion.

As implied by many of Commissioner Kerrey’s statements, there seemed to be a general consensus that much of NORAD’s inability to respond was attributable to the FAA’s failure to promptly notify them of a hijacking. Thus, the FAA bore the blame, not NORAD. To suggest that NORAD’s response to the attacks was even adequate is to ignore the fact that they did not intercept or shootdown any of the four hijacked airplanes. Even if the FAA had given NORAD such delayed notification, NORAD’s response was still insufficient.

By June 2004, the Commission had concluded that the Vice President had in fact issued shootdown orders. NEADS commander Colonel Bob Marr, however, had decided not to relay the Vice President’s orders to the F-15 pilots, fearing that the wrong airliner might accidentally be shot. Despite Marr’s commitment to following the chain of command to authorize a scramble, he nevertheless took it upon himself to disregard Cheney’s instructions and in effect issue a stand down order by way of
omission. In the end it did not matter since UA 93 had already crashed by the time the orders were issued.

The National Military Command Center was the coordinating organization between senior policymakers and military officials including members of the White House, the Department of Defense and NORAD on September 11th. After relieving his superior General Montague Winfield as the director of operations at the NMCC of his duties at 8:30 that morning, deputy director Charles Leidig convened the Special Conference call, later to be upgraded to an Air Threat Conference call, between top level officials. He was relieved from these duties after Winfield's return later that morning. The FAA, however, was left out of the conference due to technical difficulties. Instead, the FAA was getting information to the NMCC indirectly through an outside line in a roundabout way. This, Leidig makes certain, hampered information flow. Establishing a direct line of communication between the FAA and NORAD would have helped facilitate a more appropriate response to the attacks.

After the first two planes had hit the towers, the third had hit the Pentagon and the fourth had crashed in Pennsylvania, NORAD decided to implement a modified version of SCAT ANA sometime around 11:00. Once both planes had hit the towers at 9:03 and it became clear that orchestrated attacks were under way, civilian control of the airspace could have been commandeered by the military under a provision known as SCAT ANA. Under this modified version, the FAA remained in charge of safely landing all commercial aircraft; only military and life support aircrafts were allowed to remain in the air. To their credit, the FAA safely landed over 4,000 aircraft without incident by 12:00.
A consideration of the testimonies of NORAD officials in May 2003 and later in June 2004 raises a number of critical questions. To begin, the discrepant alterations in NORAD's official timeline of events over almost three years after September 11th begs the question as to why it took so long for NORAD's official timeline to be straightened out. Moreover, NORAD's failures to even reach one of the planes in time to intercept them requires an explanation of why standard operating procedures were tossed aside that day.

The day before NORAD publicly released its first official timeline on September 18, 2001 a White House briefing was held at which Commissioner Kerrey notes that "it feels like something happened in that briefing that produced almost a necessity to deliver a story that's different than what actually happened on that day" (Myers et al. p. 53). For the most part, this timeline remained the basis for NORAD's presentation to the Commission. One notable difference, however, is that UA 175 was reported to NEADS as hijacked at 8:43 and the Otis F-15s were scrambled in response to this notification by the FAA. According to Col. Scott's presentation of the timeline to the Commission, NORAD had never been informed that UA 175 was hijacked. Furthermore, the September 18th timeline also reflects that AA 77 was reported hijacked at 9:24, F-16s were scrambled in response by 9:30 and the official impact into the Pentagon was 9:37. Additionally, by this timeline, UA 93 had never been reported as hijacked. By the May testimony, however, it was revealed that UA 93 had been reported hijacked as early as 9:16, over forty minutes before its crash.

Shortly after September 11th, NORAD's story had begun to change. Initially, AA 77 was reported to have struck the Pentagon at 9:43. Not true, it was later reported. Rather, a camera in a nearby parking lot documented the impact time to be
six minutes earlier at 9:37. The timing of this event is crucial, as the six minute
difference would have determined whether or not the F-16s airborne at 9:30 from
Langley Air Force base 105 miles away, traveling 660 miles per hour would have
been able to make it to the Pentagon in time to intercept the plane.

Even after two planes had hit the towers and two other planes were reported
hijacked and headed towards Washington, D.C., McKinley reports that the F-16s
traveled about 660 miles per hour even though their maximum capacities allow for
upwards of 1,500 mph at high altitudes and 915 mph at low altitudes. Launched at
9:24 in response to the FAA’s report that AA 77 may be hijacked, the jets never
bothered to ‘go into burner’ and flew nearly 300 miles per hour slower than they were
equipped to handle. Had the fighters traveled at their full capacity, it is likely that
they would have arrived in time to intercept either UA 93 or AA 77.

Similarly, the F-15s launched from Otis Air Force Base also traveled
significantly below their potential. Scrambled at 8:46 after already being on battle
stations, the fighters took six minutes to get airborne. They had only traveled 82
miles of their 153 mile journey to New York by the time UA 175 struck the South
tower. According to Colonel Scott, the F-15s were 71 miles out, or eight minutes
away. At this rate, the F-15s were only traveling about 492 miles per hour until the
second plane hit, and then accelerated to an estimated 534 miles per hour thereafter.
Even though the maximum capacity of a F-15 is 1,650 mph at high altitudes and 900
mph at low altitudes the fighters hurried to New York at least 300 miles per hour
below their capacities.

It remains unclear why the fighter jets from Otis and Langley were flying at
speeds significantly below their maximum capacities despite the urgent events
unfolding around them. The negligence of these aircraft, whether the result of the
individual decisions of the pilots or orders from above, contributed to NORAD's failure to fulfill their mission of domestic air defense.

At the top levels of the chain of command, Secretary Norman Mineta's testimony reveals that the Vice President was aware of the flight headed towards the Pentagon and was tracking its trajectory. As he recalls,

there was a young man who had come in and said to the vice president, 'The plane is 50 miles out. The plane is 30 miles out.' And when it got down to, 'The plane is 10 miles out,' the young man also said to the vice president, 'Do the orders still stand?' And the vice president turned and whipped his neck around and said, 'Of course the orders still stand. Have you heard anything to the contrary?' Well, at that time I didn't know what all that meant. (Mineta testimony, no page number)

From Mineta's recount, it is not clear what orders had been given. General Arnold maintains that he was never made aware of any shootdown order for AA 77. It was not until later that Mineta discovered that shootdown orders had been issued by the Vice President. "And then later I heard of the fact that the airplanes had been scrambled from Langley to come up to DC, but those planes were still about 10 minutes away," Mineta explains. If the Vice President was aware that a plane was headed towards the Pentagon, why wasn't the building evacuated to minimize casualties?

In the second rendition of NORAD's official timeline, AA 77 was never even reported to NORAD as hijacked. If AA 77 had never been reported hijacked, then the F-16s could not have been launched in response at 9:30, as previously stated. To make sense of this discrepancy, Arnold reviewed the tape recordings between the FAA's Boston Center and NEADS based in Rome, New York. Despite initially denying their existence with McKinley, the tape recordings, Arnold asserts, show that the fighters were not launched in response to AA 77 or even UA 93, but instead a
phantom flight AA 11 heading south. The actual AA 11 had already hit the tower over forty minutes earlier. This phantom flight also went unreported to the Commission in the first testimony.

Even though shootdown orders therefore could not have been issued for AA 77, as Mineta's testimony indicated, the Commission revealed that the Vice President had in fact issued shootdown orders, but instead in response to UA 93. Without first obtaining the approval of the President, the Vice President had no authority to issue a shootdown order since he is not part of the military chain of command. Despite Cheney's frequent public assertions that the orders were made in consultation with the President, the 9/11 Commission found that "...there was no evidence to suggest that Bush had weighed in on the shoot-down order before Cheney had issued it. And there was plenty of evidence to suggest that Bush knew nothing about it" (Shenon 2008:265). Therefore, Vice President Cheney had authorized an unconstitutional shootdown order. In this context, NEADS battle commander Colonel Bob Marr's decision not to relay the orders to the F-15 pilots circling Washington, D.C. makes sense.

One explanation that has been offered for the delayed response of both the F-15s from Otis and the F-16s from Langley as well as NORAD's failure to intercept any of the hijacked airplanes, is that stand down, rather than shoot down, orders had been authorized by the Vice President that morning as early as 9:15 to 9:20. Reflected in the situation observed by Secretary Mineta, stand down orders could have very well been issued. Still, a stand down order was something the Vice President did not have the power to authorize. It must be noted that none of the witnesses affirm that the Vice President issued stand down orders.
As a significant portion of their mission, NORAD was responsible for surveilling, identifying, intercepting and, if necessary, destroying hostile aircrafts. It is important to keep in mind that intercepting aircraft is a regular procedure at NORAD, while shooting down an aircraft is clearly much more serious. On 9/11 however, NORAD failed to even reach any of the four hijacked planes to intercept them. Not once was NORAD able to intercept any of the planes. Whether or not any of the fighters could have made it to the scene on time depends on which timeline of events one subscribes to. No matter the version of events, be there no mistake, NORAD failed on four separate occasions to defend the U.S. air space on 9/11.

Why NORAD was unable to effectively execute its air defense mission is puzzling in light of the numerous war games that were proposed and conducted regularly. Although both McKinley and Myers absurdly claim that neither NORAD nor the Joint Chiefs of Staff had considered the potential for suicidal hijackings, evidence suggests the opposite. Ironically, a positive force training scenario had been proposed by the Joint Chiefs of Staff in 2000 which simulated a hijacked plane flying into the Pentagon. It was later rejected as unrealistic.

Similarly, Amalgam Virgo 01 which was conducted June 1-2, 2001, “…was an exercise created to focus on peacetime and contingency NORAD missions. One of the peacetime scenarios that is and has been a NORAD mission for years is support to other government departments. Within this mission falls hijackings” (McKinley testimony, no page number). The routine exercises within Amalgam Virgo, rehearsed just three months prior, provided experience in cooperating with domestic agencies, such as the FAA, in handling hijacked aircraft.

Furthermore, CNN reports that sometime between the years of 1991 and 2001, NORAD ran a training exercise involving a plane crashing into a building. “Military
officials said the exercise involved simulating a crash into a building that would be recognizable if identified, but was not the World Trade Center or the Pentagon...The identity of the building named in the exercise is classified” (Starr 2004). Contrary to the claims of NORAD, the threat of using airplanes as weapons was real enough to plan and practice exercises with this potential in mind.

What the government describes as a “bizarre coincidence,” on the morning of September 11, 2001, “officials at the Chantilly, Va.- based National Reconnaissance Office had scheduled an exercise that morning in which a small corporate jet would crash into one of the four towers at the agency’s head quarters after experiencing mechanical failure” (Lumpkin 2005). The National Reconnaissance Office employs both personnel from the military as well as the CIA and operates many of the nation’s spy satellites. Additionally, the agency was located just four miles from Washington Dulles International Airport where AA 77 departed only fifty minutes before the exercise was to begin. However, the intelligence agency stresses that this exercise involved a simulated accident that was not caused by terrorism (Lumpkin 2005).

Annual exercises involving coordination between multiple branches of the military and intelligence agencies are common. Regular training exercises such as Global Guardian and its various components including Northern Vigilance and Vigilant Guardian, all integrate hijacked aircraft into their exercises. NORAD admits that on the morning of September 11th they were in the middle of a training exercise, though officials are reluctant to disclose much information about it.

According to Aviation Week and Space Technology, on 9/11 NORAD was several days into its semiannual exercise known as Vigilant Guardian, NEADS was fully staffed, its key officers and enlisted supervisors already manning the operations center “battle cab”...Senior officials involved in Vigilant Guardian were manning Norad command centers throughout the U.S. and Canada, available to make immediate decisions. (Scott, W.B.)
Both Arnold and Eberhart agree that the exercise helped rather than hindered NORAD’s response. Although though senior officials may have been ready at their positions, immediate decisions were not made.

The multiple war games being conducted on 9/11 were one of the many issues that went unexplored by the Commission. Regardless of the urgings of the frustrated audience member to ask acting Chairman of the Joint Chiefs of Staff Myers about the war games planned for that day, the Commission failed to recognize the relevance of these activities to NORAD’s response. More than just Vigilant Guardian, Ruppert (2004:336) contends that

as it turns out, on September 11th, various agencies including NORAD, the FAA, the Canadian Air Force, the National Reconnaissance Office, and possibly the Pentagon were conducting as many as five war game drills- in some cases involving hijacked airliners; in some cases also involving blips deliberately inserted onto FAA and military radar screens which were present during (at least) the first attacks; and which in some cases had pulled significant fighter resources away from the northeast US on September 11. In addition, a close reading of key news stories published in the spring of 2004 revealed for the first time that some of these drills were “live-fly” exercises where actual aircraft were simulating the behavior of hijacked airliners in real life; all of this as the real attacks began.

A truly jarring scenario, if multiple war games similar to these were being conducted on 9/11, then this would help to explain at least some of the missing elements of NORAD’s multiple versions of the events that day. Just as Arnold and Myers both confirm, there were many phantom aircraft appearing on the radar that morning including a phantom AA 11 that continued on a southbound trajectory even after the actual aircraft had hit the North tower. A product of the exercise, the deliberately inserted ‘blips,’ ‘injects’ or phantoms all appeared as indistinguishable from real aircraft on the radar that day.
Furthermore, many of NORAD’s bases were left short on aircraft due to the drills. Although the northeastern United States is one of the most populated regions, the closest air force bases with available aircraft to defend the airspace over New York and the Capitol were Otis Air Force Base (153 miles away) and Langley Air Force Base (105 miles away). Closer bases such as Andrews Air Force Base, home to Air Force One, located just ten miles south of the Pentagon did not have any fighter jets available that morning to guard the Capitol. If the jets had been pulled away from their normal stations at Andrews Air Force Base to participate in an exercise, than this would explain why NORAD was forced to rely on fighters located significantly farther away, therefore slowing their response time.

Although the specifics were not aggressively pursued by the Commission and remain undisclosed, it appears evident that the war games being conducted that day significantly stifled and confused NORAD’s ability to respond to the attacks. As Arnold himself admits, he was forced to ponder whether the attacks were part of the exercise or where occurring in real life. Similarly, the communications between the FAA’s Boston Sector and NEADS also display similar confusions. When the FAA indicates that F-16s might need to be scrambled, the NEADS employee asks “is this real world or exercise?” (Myers et al. p. 75). Even though much of NORAD’s senior leadership had been at battle stations that day due to the exercise, the countless instances where employees where forced to distinguish between the military exercise and ‘real life’ effectively blurred the reality of events that morning. Despite Arnold and Eberhart’s claims that the exercise actually helped NORAD’s response, there appears to be no evidence to support this claim.

NORAD’s difficulty in establishing a conclusive timeline of events gives pause to the accuracy of the testimony of its employees. Since General Larry Arnold
was present at both the first testimony in May 2003 and a year later in June 2004, his change in testimony raises questions about its accuracy. Furthermore, as the commander of NORAD’s CONR sector on 9/11, Arnold was undoubtedly in charge of defending the airspace of the U.S. from the attacks.

On the whole, NORAD was unable to fulfill its mission of defending the U.S. from airborne attack. The reasons for this failure are difficult to concretely establish since three varying versions of the events that day have been released by NORAD. The degree to which NORAD acted negligently largely depends on which timeline of events one subscribes to. Even so, the response times put forth to the Commission by Scott, Arnold, McKinley, Myers and Eberhart confirm that the F-15s launched from Otis and the F-16s from Langley were traveling at speeds significantly below their maximum capacity. No explanation, however, is given for this. Furthermore, contrary to Eberhart and Arnold’s testimony, the war games being conducted on 9/11 seemed to confuse and inhibit an effective response by NORAD. Make no mistake, NORAD failed on every level to prevent, intercept and/or shootdown even one of the four hijacked aircraft. As a result of their negligence, over three thousand lives were lost.
On September 11, 2001, the responsibility of providing aviation security was a joint effort between the FAA and the air carriers. Providing the basic standards to screen individuals as well as ensuring compliance with these standards, the FAA had the duty of guaranteeing that all air carriers followed the uniform standards put forth in the Air Carrier Standard Security Program. Further, it was the job of the FAA to assess terrorist threats and implement security measures and equipment to most effectively thwart them (General Accounting Office 2000).

Administrator Garvey also affirms that on 9/11 the “government’s role, that is the FAA’s role, was regulatory. By rulemaking, the FAA set the security standards for U.S. airports, for U.S. airlines worldwide, and for foreign air carriers flying to the United States. The FAA also ensured compliance with those standards” (Garvey Testimony, no page number).

Air carriers, on the other hand, were responsible for overseeing screening operations including passengers, baggage and cargo whether they were performed by their own employees or through independent security firms. In either scenario, air carriers were mandated to ensure compliance with FAA standards. Air carriers who fell short of overseeing and monitoring the effectiveness of screening operations could be reprimanded through the imposition of fines (General Accounting Office 2000).
A collective assortment of shared responsibilities, the FAA worked hand in hand with the aircraft carrier industry to provide aviation security. Inspector General Kenneth Mead asserts that “industry provided and paid for the security, that is, the airlines and the airports. The FAA’s role was to establish security requirements and ensure compliance with those requirements” (Mead Testimony, no page number).

From the beginning, government involvement in civil aviation has been exemplified by a dual mandate of both regulating and promoting the airline industry. As best described by former Inspector General of Transportation (1990-1996) Mary Schiavo,

the [FAA’s] identity, its character and its raison d’être formed over decades, so that the jet age began with a government agency keenly interested in fostering the business of flying...The roots of its mission go back to aviation’s first real-champion, the military, and its first business partner, the federal government. (1997:45)

As directed by the 1958 Federal Aviation Act “the Administrator is empowered and directed to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad” (Title III Sec. 305 as cited in Thomas 2003:42). Therefore, it was the legal obligation of the FAA to promote the economic development of the airline industry while simultaneously regulating it as well.

Testimonies of Jane Garvey and Kenneth Mead

Assigned or Implied Trust or Duty

Roles and Responsibilities

Jane Garvey’s tenure as the Administrator of the FAA began in August 1997 and continued through August 2002. Breaking rank from previous FAA
Administrators, Garvey was the first to be appointed to a five year term, the first to not hold a pilots license, and the first female Administrator. Garvey also served as acting administrator of the FAA and had spent many years working for the Federal Highway Administration (FHWA) as deputy director. Prior to joining the FHWA in 1993, Garvey had been the director of Boston’s Logan International Airport which two of the hijacked planes departed from on the morning of 9/11. As the Administrator of the FAA in the four years prior to the attacks, many of the actions and inactions of the FAA occurred on her watch.

Kenneth Mead was the Inspector General of the Department of Transportation on September 11th. In this capacity, Mead was responsible for inspecting and reporting on the federal aviation system. Having testified on aviation security and the FAA in 1987 while working at the General Accounting Office, his appearance in front of the 9/11 Commission not the first time Mead discussed the weaknesses of the system. His testimony “...is based on audits and criminal investigative work spanning a number of years, covering a broad range of aviation security subjects” (Mead, no page number). Mead’s intimate knowledge of the U.S. civil aviation security system makes him a valuable asset for assessing the state of aviation security on 9/11.

Action or Inaction on Behalf of State or State Agencies

A History of Commercial Airliner Hijackings

Commercial aviation has long been a desirable target of those aiming to make a political statement. Throughout the 1960s and 1970s, a rash of hijackings occurred where commercial aircraft were diverted to Cuba and other locations. In response, the U.S. government implemented harsher penalties for hijacking and the use of airport
metal detectors increased. According to Garvey, "those measures helped to stem the domestic hijacking epidemic." Hijackings such as these "... in which the hijacker seizes control of the aircraft for transportation, or in which passengers are held as hostages to further some political agenda," (Garvey, no page number) remained the anticipated form of air piracy on 9/11.

In the 1980s, a number of bombings initiated changes in airport security. To begin, the bombing of TWA 847 in 1985 led to a reauthorization of the Federal Air Marshal program for overseas flights as well as the establishment of the FAA's first intelligence division to assist American carriers in foreign countries. Moreover, the bombing of Pan Am 103 in 1988, which resulted from an explosive device in checked luggage, "...stimulated the most significant changes in aviation security since the 1970s" (Garvey). As a result, aviation security was made a top priority by Congress and the FAA took on the additional responsibilities of research, intelligence and threat assessments.

Another significant consequence of the explosion of Pan Am 103 and the subsequent commission in 1990 was the development of an investigative Red Team group. As Garvey explains,

this red team augmented the work being done by the inspectors, and reported to the top FAA security official. Red team findings influenced screener training, led to changes in the computer-assisted profiling program, and helped direct changes in the protocol for positive bag match. In effect, they helped shape the policy and direction for security programs.

However, accusations had surfaced charging FAA headquarters of ignoring, down playing and in some cases covering up Red Team findings which reflected poorly on civil aviation security.

Perhaps one of the FAA's most laudable accomplishments in aviation security was successfully blocking Ramzi Yousef's 1995 plan to simultaneously bomb 12 U.S.
commercial aircraft over the Pacific. Coordinating alongside Philippine authorities, U.S. intelligence and law enforcement officials worked to uncover the plot which was discovered to be connected to the 1993 World Trade Center bombing. Garvey states that “at this time, the FAA initiated discussions with the executive branch, Congress and the industry on the greater domestic threat to aviation.”

Just as the government and outside experts began to decide what changes needed to be made, TWA Flight 800 crashed into the Atlantic in July 1996. Initial suspicions pointed to terrorism, though that was not the case. Acting swiftly, Clinton established the White House Commission on Aviation Security and Safety, commonly referred to as the Gore Commission. Garvey contends “that commission’s security recommendations centered on improving screening and countering the effects of explosive devices.” Moreover, for the first time significant federal funding in the form of $100 million annually was made available to purchase security equipment, specifically explosive detection equipment, for civil aviation. Of the 27 recommendations made by the Gore Commission in 1997, 24 had been implemented by September 11, 2001.

Mead points out that prior to 9/11, advancements in aviation security were implemented reactively rather than preventatively. Therefore, the air carriers were only prepared for what they had experienced. Mead makes clear that security underlining that model and the assumptions on which the pre-9/11 aviation security model were predicated did not envision a scenario of commercial airliners being used as a weapon, or the use of box cutters by individuals who were prepared to die in the commission of their terrorist acts.

Whether the hijackers were willing to die in the process of their attacks is beside the point. Aviation security consisted of measures to prevent hijackings, not to stop them after they had already begun.
Weaknesses in Aviation Security

The competing responsibilities of both regulating the airline industry while also promoting their economic interests compromised aviation security. Since implementing costly security features infringed on profit, resistance on behalf of the airliners was great. Mead notes that “in our opinion, those counterpressures in turn manifested themselves as significant weaknesses in security that we, the GAO, others including the FAA, repeatedly found during audits and investigative work.”

One weakness was the lax performance of screeners. Meeting the requirements put forth by the FAA to screen passengers and their carry-on luggage, the airliners would award contracts to the lowest bidding screening company. Poorly trained and under paid, screeners received only 15 hours of training which was instituted after a FAA regulation. Mead states that

our work has shown that it wasn’t unusual for these screeners to be getting less money than the starting wage for an employee in a fast-food restaurant right down the concourse. And those conditions, among others, resulted in screener turnover rates at some airports were running about 400 percent a year.

As a result, screener performance was low and items such as firearms and mock explosives would frequently go unnoticed by screeners at security checkpoints during investigative tests.

As early as 1997 the GAO recommended implementing performance standards for screeners. Additionally, “the FAA reauthorization act of 1996 directed FAA to issue a rule on the certification of the screening companies, which in turn would result in standards for the screeners” (Mead). However, due to delays in the rule-making process, these standards had not been enacted by September 11th.

Background checks for screeners were also sorely in need of regulation. Mead reveals that “in October 2000, one of the nation’s largest private security companies
pled guilty to a felony, paid more than $1 million in fines and restitution for actually falsifying the criminal history checks and screening qualification records at one of our nation's major airports. This was not an isolated incident.'

Mead reveals that the explosive detection devices purchased with federal funds were being significantly underutilized by the airliners. He makes clear that the machines cost the government about $1 million a copy. These machines were capable of screening 125 bags an hour. They were certified by the FAA at that rate. We routinely were finding that the vast majority were screening between 250 and 700 bags a day.

Absent air carrier willingness to pay for expensive security upgrades, the federal government generously footed the bill for screening devices to help prevent explosions on board planes. None the less, the air carriers neglected to use the machines to their full potential, allowing hundreds of bags daily to go unchecked.

**Awareness of Threat**

Although there was intelligence information received by the FAA and passed onto the airliners about the growing terrorist threat, much of it was focused overseas. Garvey stressed "again, the threats we received, particularly in the months before, the summer months before September 11th, were very focused on overseas targets, concerns about American interests overseas, but primarily overseas."

Concerned that the information was not credible or 'solid' enough, Garvey states that she had repeatedly gone back to the staff and said, "Where those run to the ground?" And that's exactly why I said solid, because those were run to the ground by the intelligence community, by our own folks with the intelligence community, and for various reasons were discounted as not credible.
One intelligence report discounted as not credible, involved the use of airplanes as weapons. Garvey contends that "I was not aware of any information of it being used as a weapon that was credible. I'm saying that correctly" (emphasis added). Similar to NORAD, the FAA also claims that there was no consideration of planes being used as weapons.

Drawing on his experience from the Joint Inquiry, Commissioner Roemer reminds Garvey of the numerous pieces of intelligence between January 1995 and August 2001 in which planes were used as weapons. Roemer states that the CIA disseminated several of these reports to the FBI and to the agencies, and one of the agencies it disseminated this to was the FAA. Now, I know that...since the counterterrorism unit was set up in 1986, the FAA had an intelligence liaison officer full-time with the CIA, FBI and State.

Garvey agrees, stating that the FAA has a very active intelligence branch. Even so, she states that "we are dependent on the information we get from the CIA, and with a close examination of that information with the CIA, with the FBI. We do depend on them for the raw intelligence."

**Timeline of Hijackings and Notifications to NORAD**

As Commissioner Cleland notes, published accounts of the attacks argued that Boston flight controllers knew as early as 8:13 that American Airlines flight 11 had been hijacked. By 8:21 two flight attendants on board AA 11 had called American Airlines confirming the hijacking. "Yet, according to the FAA official time-line, NORAD was not notified until 8:40, about, what, 20-some-odd minutes later" (Commissioner Cleland in Garvey Testimony).

In dispute, Garvey states that it was not until 8:20 that Boston sector realized that there was a problem with AA 11. She believes that three or four different
attempts were made by air traffic control to raise the aircraft to a higher altitude without response. After this, "at about 8:34, based on the good initiative of the controller and his supervisor, NORAD was actually - - that was the first notification from the controller and the supervisor to Otis" (Garvey). It is important to note that Garvey goes out of her way to recognize the extraordinary response and initiative taken by the controller and his supervisor in notifying NORAD. FAA protocols for handling hijacked aircraft, it seems, were appropriately followed.

Explaining the six minute difference between this time and NORAD’s official notification time, Garvey explains that "It was - - the official one is 8:40, as you’ve suggested. After they did that, they then called up to headquarters, and then the official notification.” Rather than being the fault of the FAA, NORAD was responsible for an unaccounted six minute delay which went unmentioned in their official timeline of events.

Commissioner Ben-Veniste contends that by 8:55, the FAA received information that American Airlines 77 had turned off its course. He states that "according to our information, NORAD was not notified until 9:24, approximately half an hour” after it displayed signs that it was hijacked. In contention, Garvey maintains that is not consistent with her understanding. She states “the timeline that I have, that I remember, is one that had a notification twice before the time that you mention, so that there had been three notifications.”

Protocols and Procedures

Once the FAA contacts NORAD about a hijacked aircraft there is nothing more for the FAA to do, Garvey maintains. Rather, “NORAD’s procedures would rule at that point, would prevail” over the FAA’s. After Boston contacted NORAD,
Garvey expected they would respond to the hijacking by sending up planes, as they had done many times before, but the fighters never made it.

When asked whether protocols for that day were followed, Garvey confirms that they were, stating “You know, was it observed for that day? I think so, yes. Yes. I mean, the protocols before that did not anticipate anything of that magnitude. The protocols that were in place pre-9/11 anticipated some crises, but not of that magnitude.”

Summary

Historically, commercial aviation has remained a consistent target for terrorists hoping to get their political point across. In contrast to the claims that the FAA had never fathomed hijackings in which the perpetrator was willing to die during the course of the attacks, intelligence information provided to the FAA dating back to the 1995 plot to blow up twelve commercial aircraft over the Pacific suggests otherwise. Even so, as Garvey makes clear, “the threats we received, particularly in the months before, the summer months before September 11th, were very focused on overseas targets, concerns about American interests overseas, but primarily overseas.”

Concerned that the information provided to the FAA by the intelligence community, including its own intelligence division, was not credible enough, Garvey ordered her staff to ‘run those sources into the ground’ to ensure their validity. Even though the FAA was heavily reliant on the CIA for the intelligence information they received, Garvey was hesitant enough to have her staff scrutinize CIA intelligence about the looming terrorist threat. One piece of information that was deemed inadequate involved the use of planes as weapons. Garvey carefully contends that “I was not aware of any information of it being used as a weapon that was credible. I’m saying that correctly” (emphasis added). In other words, a great deal of information
about the immediate threat posed to civil aviation, including airplanes being used as weapons, was dismissed by Garvey as not credible enough.

On September 11, 2001, the U.S. civil aviation security system was in shambles. Operating reactively rather than proactively, aviation security was only able to protect against threats which it had already encountered. According to Mead's experience, it took an aviation disaster to initiate the sorely needed advancements in security. As a result, the system was plagued with deficiencies that had yet to be made significant issues absent a catastrophic event.

The poor performance of security screeners was one persistent problem. Meeting the requirements put forth by the FAA to screen passengers and their carry-on luggage, the airliners would award contracts to the lowest bidding screening company. Equipped with only 15 hours of training (provided only after a FAA mandate) and paid minimum wage, screener turnover reached as high as 400 percent annually at some major airports. As air carriers and security screening companies failed to invest in the training and wages of their screeners, the screeners in turn neglected to invest their time and efforts into preventing dangerous contraband from boarding commercial aircraft.

Background checks of screeners were also needed. Although it is not clear if he is referring to any of the airports or screening companies involved in 9/11, Mead reveals that “in October 2000, one of the nation’s largest private security companies pled guilty to a felony, paid more than $1 million in fines and restitution for actually falsifying the criminal history checks and screening qualification records at one of our nation’s major airports.” Even more startling, he contends that “this was not an isolated incident.” The lax policies of private security clearly contributed to the weaknesses in aviation safety. In 1997, the GAO recommended that the FAA
implement performance standards for screeners. These recommendations were still caught up in the rule-making process on 9/11.

Recommendations stemming from the Gore Commission sought to address many of the inadequacies of aviation security. These recommendations were backed for the first time by significant federal funding in the form of $100 million annually to purchase security equipment, specifically explosive detection equipment, for civil aviation. With a price tag of $1 million a piece, explosive detection machines were not being used to their full potential. Although the FAA had certified these machines as capable of scanning upwards of 125 bags per hour, Mead found that only 250 to 700 bags were being scanned daily. Even though the federal government went as far as to foot the bill for the much needed security equipment that the air carriers were responsible for providing, they still failed to use them. The air carriers were never reprimanded for their negligence.

The first sign of trouble that morning, the pilot of AA 11 failed to respond to numerous requests to climb to a higher altitude at 8:20 a.m. Then, according to Garvey, “at about 8:34, based on the good initiative of the controller and his supervisor, NORAD was actually - - that was the first notification from the controller and the supervisor to Otis.” The official notification, however, did not come until Otis contacted NORAD headquarters at 8:40, thus leaving NORAD responsible for this six minute gap, not the FAA.

At least in the case of AA 11, it seems that the air traffic controller and his supervisor at the FAA’s Boston center reacted swiftly and appropriately, even garnering the praise of Garvey and the Commissioners. A full fourteen minutes after it started to become clear that AA 11 might be a hijacking, the FAA contacted Otis to investigate the situation. At that point, responsibility for AA 11 shifted to NORAD.
Garvey makes clear that after the FAA contacts NORAD about a hijacked aircraft, “NORAD’s procedures would rule at that point, would prevail at that point.” Although they may have ruled, NORAD’s procedures certainly did not prevail during the attacks.

Testimony of Bogdan Dzakovic

Assigned or Implied Trust or Duty

Role of the Red Team

Following the 1988 bombing of PanAm Flight 103, the FAA created the Red Team to identify security weaknesses by replicating tactics that terrorists could potentially use. Composed of former security officials, the red team would use methods available to the general public (such as obtaining false law enforcement credentials) to breech security checkpoints during unannounced inspections. Red Team members were able to successfully smuggle contraband, including guns and simulated explosive devices, past security checkpoints and into secure areas without proper authorization in the overwhelming majority of cases.

On September 11th, Bogdan Dzakovic’s was a 14 year veteran of the Security Division of the FAA. Reaching the position of Team Leader, his seven year tenure with the Red Team began in 1995. Articulating his position as Team Leader in the FAA’s hierarchy, Dzakovic explains that his immediate boss reported directly to the Associate Administrator for Aviation Security, who reported directly to the Administrator of the FAA.

The extraordinary success of the Red Team in breaching aviation security yielded numerous reports about the defects of the system. However, the Red Team’s
warnings went unheeded and even covered up by the FAA. The Red Team’s warnings were finally vindicated on 9/11. A reward for his successes with the Red Team, Dzakovic states that “later, I was removed from my position as a Red Team Leader with no explanation and placed in a career limbo” (Dzakovic submitted statement, no page number).

Action or Inaction on Behalf of State or State Agencies

The Culture of the FAA

It didn’t take Dzakovic long to see the flaws in the commercial aviation system. “And it took me about two years, between one and two years, to realize that there was a very serious problem in how FAA conducts its business” he states. While continuing to test aviation security regulated by the FAA, Dzakovic approached senior officials in the Inspector Generals Office and then the General Accounting Office about the flaws which plagued the system. He soon found that “...the GAO has their own long history of reports going back 20 years documenting how poor aviation security is.” The problem was not new.

With no effective responses, he then authored a letter to Administrator Garvey in August 1998 “…trying to explain to her that there’s a serious culture of gross mismanagement in civil aviation security.” Despite his efforts to speak up about the problems, he states “…I started trying to work within the system, and I saw that was a pointless effort, because criticism is not accepted in FAA. That’s part of the culture.” Furthermore, Dzakovic felt that the problems in aviation security which the Red Team uncovered were downplayed, dismissed or covered up.

As Dzakovic continued to test aviation security, he began to realize that “…while I was doing my testing, what I found out over the years is that the Red Team
was basically working its way out of a job." Each success of the Red Team revealed a flaw of the FAA and aviation security. He states,

although we breached security with ridiculous ease up to 90% of the time, the FAA suppressed these warnings. Instead we were ordered not to write up our findings (in some cases) and not to retest airports where we found particularly egregious vulnerabilities to see if the problems had been fixed. Finally, the agency started providing advance notification of when we would be conducting our 'undercover' tests and what we would be checking for. (Dzakovic submitted statement)

Rather than fix the deficiencies in aviation security, the FAA sought to conceal them first by downplaying the Red Team's reports, then by diminishing their investigative powers.

At Boston's Logan International Airport, where both AA 11 and UA 175 took off from on 9/11, there had long been failures to comply with FAA regulations. Dating back to May 1999, Logan was in a critical state of noncompliance with FAA aviation security regulations. In his whistle blower complaint, an FAA agent at Boston's Logan Airport stated that the security problem was so serious that "...the only thing that is holding security together at this airport are the tenuous threads of luck" (Dzakovic Testimony). Giving way on 9/11, the tenuous threads of luck were not enough to prevent the nineteen hijackers from penetrating the civil aviation security system and executing their plan.

After a year long period of intensive testing in 1998 which yielded horrendous results for screening checkpoints, the Red Team was prohibited from screening checkpoints anywhere through September 11th. Restrictions such as these continued and by 9/11 the Red Team was only testing explosives detection systems domestically. Dzakovic asserts in his submitted statement to the Commission that, "the managers in the FAA (including the highest offices in FAA) deliberately choose
to ignore our findings. This is particularly grievous in light of the ever growing terrorist threat of which they were also aware.”

**Awareness of Threat**

In his opening remarks to the Commission, Bogdan Dzakovic makes clear that “...I would like to just say that I will always be held in shock and awe when I hear people who work in this field say that 9/11 was a totally unpredictable situation” (no page number). One reason for this, dating back to the 1960s the aviation field has historically been the target of terrorism. Secondly, the Red Team regularly demonstrated that the FAA was not enforcing the standards it put forth. Third, he points to the abundance of intelligence information indicating an attack.

Stressing the urgency of the situation he states that “…the intelligence information was so great that something was going to happen, and I acknowledge the fact that we didn’t know when or where, but something was going to happen, something in the near future.” Referencing a statement made on April 6, 2000 by a former associate administrator of FAA security to the Committee on Commerce, Science and Transportation, Subcommittee on Aviation Security, Dzakovic quotes, “moreover, members of foreign terrorist groups and representatives from state sponsors of terrorism are present in the United States. There is evidence that a few foreign terrorist groups have well established capability and infrastructure there.” Therefore, intelligence information available to the FAA indicated that the threat posed by terrorism was pressing and that there was a domestic support network to assist foreign terrorist groups inside the U.S.

Even without this information, Dzakovic claims that protecting civil aviation is rather simple. He asserts that “there are basically two threats against aviation, and
that’s a hijacking or a bombing, and all you have to do is focus on those to issues: how to minimize a hijacking and how to minimize a bombing.” From a security standpoint, the hijackings on September 11th were no different than the many hijackings that had came before it. Dzakovic argues that

...from a security point of view there is no difference between defending against a hijacker that wants to do a September 11th thing or a hijacker who wants to go to Miami. The key word is you are defending against a hijacking, and you worry about his motivations later.

A point of departure from other officials who claim that September 11th was radically different than anything they could have conceived of, Dzakovic maintains that defending against all hijackings, whether suicidal or not, involves the same basic procedures. He notes that “...what happened on September 11th was not a failure of the system; it was a system that was designed for failure. Every single aspect of it did not work to either deter or find terrorists.”

**CAPPS System**

The Computer Assisted Passenger Protection Screening (CAPPS) used to identify potentially dangerous passengers on 9/11, Dzakovic explains, gives a false sense of security. He argues that

I really believe that CAPPS is the number one most dangerous system out there, because it just totally gives a false sense of security. And CAPPS only, I don’t know what the percentage is, but like it would make a selectee out of 10 or 15 percent of the population of travelers. What that does is it totally eliminates the other 85 to 90 percent of the people from further selection other than on a random basis.

Therefore, only a small percentage of passengers were being selected for additional screening measures. As the Red Team knew, a lot could go undetected. However, six of the nineteen hijackers according to Commissioner Fielding, and nine according to
Dzakovic, were selected for additional screening measures by CAPPS. Nonetheless, the biggest deterrent against aviation terrorism, Dzakovic explains, is being interviewed by an experienced risk assessment person, something that did not happen on 9/11.

Reports of a Gun on board AA 11

On the morning of September 11, 2001, Dzakovic was working at the FAA operations center. “What happened that day we received from a credible source at the operation center that a gun was in fact used on one of the flights” (Dzakovic). Even though the report of a gun on board AA 11 was included in a summary of events to Administrator Garvey, the FAA initially denied that such a document existed. Instead, the FAA actually stated that what the person meant to write was it wasn’t a gun but it was a knife, and instead of a bullet wound it was a stab wound. It was that kind of activity going on this entire time, where they just denied, and in my opinion tried to cover up, what actually went on.

Knowing how easy it was to smuggle a gun on board commercial airliners from his Red Team experience, Dzakovic was not surprised by the report. In contrast to reports of a gun on board AA 11, the Commission ultimately concluded that only box cutters were used to hijack all four planes.

Summary

Providing a stinging critique of the FAA, Dzakovic’s experience working with the Red Team allowed for a rare glimpse into the dismal state of civil aviation security. On the front lines of security evasion, the Red Team was incredibly successful in their endeavors including smuggling guns and mock explosives on board as well as gaining access to secure locations in airports and planes.
Team breached security up to 90 percent of the time. As Dzakovic puts it, “we were extraordinarily successful in destroying U.S. Flag commercial aircraft and killing large numbers of innocent people in these simulated attacks” (Dzakovic submitted statement). This was a regular occurrence.

Dating back to 1997, Dzakovic began speaking loudly about the flaws. First, he went to the Inspector General’s Office only to find that they had their own 20 year history of reports on the poor performance of aviation security. He notes that “in 1998, I sent a memo through my chain of command to the Administrator of FAA attempting to have these issues addressed. The Administrator didn’t even have the courtesy to acknowledge receipt” (Dzakovic submitted statement). Even when he was dismissed after 9/11, Dzakovic continued to persist by filing a Whistleblower Disclosure with other FAA security officials. Bogdan Dzakovic did all he could to alert senior FAA officials about the urgent problems in civil aviation security uncovered by the Red Team.

Rather than address the weaknesses in civil aviation identified by the Red Team, the FAA sought to downplay, dismiss and cover up their findings. Although he had tried to work through the system, he remarks that, “...I saw that was a pointless effort, because criticism is not accepted in FAA. That’s part of the culture” (submitted testimony). Successfully unveiling the faulty aviation security system regulated by their parent agency, the Red Team worked themselves out of a job.

In the year prior to September 11, 2001, Dzakovic maintains that the FAA issued 15 terrorism warnings to the air carriers. He states that “…the intelligence information was so great that something was going to happen, and I acknowledge the fact that we didn’t know when or where, but something was going to happen, something in the near future.” Rather than requiring the air carriers to bolster
security measures at airports and inside aircraft, the FAA chose not to respond.

Even though the Commission posits each of the four planes was hijacked using box cutters with blades less than four inches long, Dzakovic asserts that he received credible information that a firearm was used on one of the aircraft. Since one national Red Team study found that over two thirds of firearms made it past security, Dzakovic wasn’t surprised by the report. Not long after, the story began to change. Rather than a gun on board one of the flights and a passenger with a bullet wound, it was a box cutter and a stab wound. Days later, Administrator Garvey announced that no guns were used on any of the aircraft without providing any explanation for why the false report occurred.

Contrasting the frequent contentions by government officials that the hijackings on 9/11 were of a unique nature since they involved suicidal hijackers, Dzakovic makes clear that the difference is negligible. The motivations of the hijackers are secondary to preventing air piracy in the first place. Aviation security is simple, he maintains, since the two threats to civil aviation are hijackings and bombings. Had the FAA focused its attention on effective prevention of hijackings, suicidal or otherwise, the attacks on September 11th may have been disrupted.

Although the Red Team successfully fulfilled their mandate to identify weaknesses in civil aviation security, the FAA failed to use its regulatory powers to force the air carriers and airports to repair the system. Dzakovic makes clear, “what was of even more concern to me was that the individuals who occupied the highest seats of authority in FAA were fully aware of this highly vulnerable state of aviation security and did nothing” (Dzakovic submitted statement).
Testimonies of Monte Belger, Jeff Griffith, John White and Benedict Sliney

Assigned or Implied Trust or Duty

Roles and Responsibilities

As acting Deputy Administrator on September 11, 2001, Monte Belger occupied the second ranking position at the FAA next to Administrator Jane Garvey. Belger retired from the FAA in September 2002. Thirty years of experience under his belt working for the FAA, he made his way from an entry-level inspector up through headquarters. On September 11th, Belger was helping to facilitate communications with the NMCC at FAA headquarters.

His first day on the job, Benedict Sliney was the Operations Manager Air Traffic Control System Command Center in Herndon, Virginia on 9/11. Without the authority to do so, Sliney first ordered the ground stops, which prohibited aircraft from taking off, in Boston, New York and much of the East Coast. At 9:46, he then proceeded to order a national grounding which resulted in the safe landing of over 4,500 commercial aircraft by 12:16.

Contributing very little throughout the testimonies, John White was facility manager of the FAA Air Traffic Control Systems Command Center working alongside Sliney during the attacks. Also a silent witness, Jeff Griffith was the Deputy Director of Air Traffic Control on 9/11. Admittedly, the testimonies revealed very little about the responsibilities of Sliney, White and Griffith. Furthermore, finding outside information about the job responsibilities of these witnesses proved impossible.
Action or Inaction on Behalf of State or State Agencies

Awareness of Threat

Although the intelligence community was experiencing a heightened threat period throughout the spring and summer of 2001, Belger claims that he had no knowledge of the increased risk of a terrorist attack and that threat assessments passed along to the FAA did not reflect this fact. This was certainly not the case.

According to Commissioner Gorelick, the FAA did not alert the airliners of threat information shared by the Counterterrorism Security Group (CSG) until July 24, 2001. Belger explains that “there were two types of information that was generally given to the industry. One was called a circular, which was just information, and secondly... a directive, which would have directed the airlines and the airports to do something different” (p. 83). Even though circulars went around to the airliners and airports mentioning the potential for an attack to occur, no directives were ever given to spur them into taking steps to protect against the looming attacks. However, Belger maintains that “…during the summer period, I saw no intelligence, nor did our security folks tell me anything that would lead us to direct the airlines or the airports to do anything other than what they were doing” (p. 84). Apparently an increased potential for a terrorist attack did not warrant heightened security measures.

In contrast to Belger’s claims that the FAA was not privy to any information about the heightened threat period, Commissioner Lehman elaborates on the information provided to the FAA via the White House.

In fact, the White House did ensure that FAA Headquarters did get that intelligence, in fact, all of the intelligence staff has verified this, that Mr. Bono, the head of your security and intelligence, had received all of that, and had sent it forward, and that Ms. Garvey’s assistant filtered it out. In fact, she didn’t even have clearances for it. And that at no
time was a request made for direct briefings on these matters in that period leading up to 9/11. (p. 100)

Clearly, some people at the FAA were aware of the threat posed by terrorism to civil aviation. Even though security and intelligence officials were fully aware of the increased risk for terrorism, senior FAA officials including Belger and Garvey went uninformed of intelligence information surrounding the threat. At the center of blame, it seems, is Garvey’s assistant who did not even have clearances to view intelligence information, yet took it upon herself to filter out crucial intelligence information so that it would never cross the Administrator’s desk.

**Hijacking Protocol**

According to Commissioner Gorelick, prior to 9/11, the FAA’s protocol for handling a hijacked aircraft “...was to allow the hijacking to go forward, essentially not to resist, and deal with the consequences once the plane landed, on the assumption that that’s what the hijackers were going to do” (p. 86). Once an aircraft was thought to be hijacked, NORAD was to be contacted and jurisdiction over the errant aircraft was to be assumed by the military until it could be grounded.

In Belger’s mind, there was no doubt that the FAA security organization as well as the air traffic control organization knew exactly what to do in the event of a hijacking. Griffith also confirms this position, stating that the air traffic control field managers also knew what to do in the case of a hijacking. He argues that the procedures are very clear. The procedures are trained as a matter of refresher training in our operational facilities every year, and it surprises me to hear that someone would think that our field managers would not know what to do in the event of a hijacking. There are protocols, there are check lists, there are folders kept in our operational positions where people have responsibility for reporting. And through the years - - not only for hijackings, but aircraft accidents and other incidents - - reporting is a very high priority. (p. 89)
A general consensus amongst the witnesses as well as most of the Commissioners, the response of lower level officials at the FAA was especially well executed and procedures were followed appropriately. Crediting the training which occurs annually at FAA operational facilities, both Belger and Griffith agree that the procedures for handling a hijacked aircraft were well known amongst the field managers.

Coordination between the FAA and NORAD: the NMCC

According to Belger, on 9/11 the FAA communicated with the military through the National Military Command Center (NMCC). He explains that the National Military Command Center in a hijack scenario had the responsibility to coordinate DOD’s response to requests from the FAA or the FBI. The FAA at that time did not have direct dedicated communication links with NORAD. The NMCC was the coordination authority between the FAA and DOD organizations. (p. 79)

Thus, the FAA, primarily through the hijack coordinator (a senior person in the security organization), had to first contact the NMCC in order to request assistance from NORAD in the event of a hijacking. From then on, it became the NMCC’s responsibility to promptly coordinate a response.

The Air Traffic System Command Control Center was the FAA’s nerve center for information on suspicious aircraft on 9/11. Sliney explains that the Command Center had a ‘military cell’ which served as their liaison to the military and whom was present throughout all of the events that occurred that morning. Even though the Command Center notified everyone who needed to be contacted, including the military, Sliney contends that they did not have the authority to contact the military for assistance. He states that

we had no process in place where a Command Center would make such a request for military assistance. I believe that the military was involved, and you know, I suppose in hindsight it’s too simplistic to
say that they all look alike to me. If you tell the military you’ve told
the military. (p. 92)

Rather, it was the responsibility of the air route traffic control center overseeing the
hijacked plane to contact the NMCC in order to obtain assistance from NORAD. To
the best of Sliney’s understanding, the notifications for each hijacking were made
promptly. He asserts that “I was given to understand that all such notifications were
made. I had no reason to believe that they were not” (p. 92).

**Hijacking Net**

In the event of a hijacking, the FAA’s operations center procedure was to
establish a line of communication with the NMCC through the hijacking net. Belger
explains that “the hijacking net is an open communication net run by the FAA hijack
coordinator, who is a senior person from the FAA security organization, for the
purpose of getting the affected federal agencies together to hear information at the
same time” (p. 87). Included in the hijacking net is the FAA, DOD (and the NMCC),
FBI, Secret Service and the airliners. As a matter of fact, Belger asserts that “the
National Military Command Center was entered into the hijacking at 9:20 in the
morning. That net’s there for everybody to listen, real-time, to hear what’s going on”
(p. 101). Noting his aggravation, he argues that “it was my assumption that morning,
as it had been for my 30 years of experience with the FAA, that the NMCC was on
that net and hearing everything real-time” (p. 87).

Contrary to Belger’s thirty years of experience, the NMCC had not been part
of the hijacking net communications. He affirms “And I can tell you I’ve lived
through dozens of hijackings in my 30-year FAA career, as a very low entry-level
inspector up through to headquarters, and they have always been there. They were
always on the net, and were always listening in with everybody else” (p. 87). An
exception to the norm, the NMCC had not been involved in the open line of communication on September 11, 2001. When Belger discovered that the NMCC was not on the hijacking net, a stream of colorful language flowed from his mouth; an uncontrollable expression of the frustration that overcame him.

Although the NMCC claims that it initiated a teleconference with an FAA representative, Belger claims that he is unaware of any attempts made by the NMCC to contact the FAA. Commissioner Kerrey argues that “...an FAA representative joined the call who knew nothing, had no responsibility for hijack situations, had no access to decision makers, and none of the information available to senior FAA officials” (p. 103). Belger, however, maintains that he was not aware of whom the NMCC had tried to call. He asserts that

I don’t know about the efforts that the NMCC made to make secure communications calls with the FAA. The FAA has the latest communication capability. I don’t know who they called, but our intelligence folks were right there next to the operations center, and they have the latest equipment” (p. 101).

Despite assertions from NMCC that they were in contact with an FAA representative, Belger makes clear that it certainly was not the appropriate officials.

Transponders

A device on board all commercial aircraft, transponders are one of many mechanisms which help to facilitate tracking aircraft. With the exception of United Airlines 175, all of the hijacked aircraft had their transponders turned off long before they crashed. Sliney agrees with Commissioner Kean’s assertion that “...there’s no reason for anybody who’s a pilot ever to turn off the transponder. It should be on at all time while the plane is in the air” (p. 96). Thus, once the transponders were turned off on flights AA11, AA 77 and UA 93 it became clear that there was a problem.
Although aircraft whose transponders are disengaged can still be tracked in areas with extensive radar coverage such as the Northeast United States, an aircraft flying at low altitudes with its transponder off is more difficult to detect. As Sliney explains,

but I believe that the altitude of the aircraft would affect our ability to track the primary or radar target. The transponder enhances that. If the transponder is on, you can pretty much follow the target anywhere. But at low altitudes, you would have the terrain and other anomalies of the radar that would prevent you from tracking the aircraft at a low altitude. (p. 96)

Commissioner Kean asserts that one of the three hijacked airplanes, though which one is not specified, actually disappeared for a period of time from radars because it was flying at such a high altitude. Sliney refutes this notion. Although he cannot be sure who had maintained radar contact, it is unlikely that contact was totally lost. He states,

there are radars that would have seen the target regardless. Would they have known what to be looking for, I do not know. Did Boston Center lose radar control of the aircraft, or lose the target? They could have. Their altitude - - their altitude structure is much higher than the terminal radar approach controls, which probably could have seen it, but would not have had the electronic representation of the data associated with that target at those terminal radar controls that the center would have. (p. 96)

When asked by Commissioner Kean why the transponder was placed inside the cabin so that it could easily be turned off, Sliney is not sure. He replies that “I think the biggest factor, at least the biggest anomaly in my mind on that day was I had never experienced a situation where a hijacker could fly the plane” (p. 97).
Cockpit Security Alert

A matter of debate, the Commission had been informed that a cockpit security alert had been suggested, though not issued prior to the crash of UA 93. Gorelick states that at 9:16 the tapes reveal that a manager from the Boston center asked the command center to issue a nationwide cockpit security alert, which Boston had done. Which meant, as I understand it, you told everybody, lock your cockpit doors, or beware of someone trying to enter the cockpit. (p. 85)

However, this security alert, Gorelick claims, was never issued. Fifteen minutes after Boston center requested that a nationwide security alert be issued, the cockpit of UA 93 was breached.

Affirming this contention, Commissioner Roemer adds that Ellen King, a floor manager at the Command Center, received a request from Boston center to issue a security warning. A “very competent individual,” King assumed some of Sliney’s duties that morning including organizing the staff as well as overseeing his desk and telephone. Sliney maintains, however, “that information was not given to me on that day, making a recommendation to increase the security in the cockpit” (p. 98). Surprised that King would not have passed such important information on, Sliney reaffirms that “she’s as I indicated, a very competent individual. I would find it hard to believe that she did not pass that information on somewhere” (p. 99). Wherever the request was passed along to, one thing remains clear: it never made it to the pilots of UA 93.

Concurring with Sliney, John White, who was the senior person at the Command Center, also contends that he was not aware of the request from Boston center. A warning was issued to the air carriers, however. He states that “I wasn’t aware of that request, this is the first time I’ve heard of it, today. I have always been
under the assumption that we did issue a verbal warning to the air carriers about cockpit security” (p. 86). The difference between the verbal warning issued to the air carriers White refers to and the cockpit security alert that was never instituted goes unelaborated on.

**FAA Response to UA 93**

After two planes had already hit the World Trade Center, Cleveland Air Traffic Control confirmed that UA 93 was hijacked at 9:28. However, it was not until six minutes later that the FAA Command Center was informed of the hijacking. At 9:49, Cleveland called the Command Center asking “Are you going to put planes in the air? And somebody at headquarters should do something” (Commissioner Kerrey). In response, the Command Center contacted an official at FAA headquarters about the urgent need for aircraft to intercept the plane. As Commissioner Kerrey recounts the exchange between the Command Center and FAA headquarters:

“We want to think about scrambling some aircraft.” Command Center says -- FAA headquarters says, “Oh, God, I don’t know.” Command Center, “That’s a decision somebody’s going to have to make in the next 10 minutes.” FAA headquarters, “You know, everybody just left the room.” (p. 104)

Once push came to shove and a decision had to be made about UA 93, the Command Center pressed FAA headquarters to request assistance from NORAD. Oddly enough, no one was around to make that decision.

Although FAA headquarters had not informed the military of the flight headed towards Washington D.C., there were still military officials involved in what was going on. Belger argues that

...I truly do not mean this to be defensive, but it is a fact-- there were military people on duty at the FAA Command Center, as Mr. Sliney said. They were participating in what was going on. There were
military people in the FAA’s Air Traffic Organization in a situation room. They were participating in what was going on. (p. 105)

Military officials on duty at both the FAA Command Center as well as the Air Traffic Control, Belger maintains, were involved in the response even though there was no ongoing contact between the FAA and the NMCC. Despite their presence, the FAA was still unable to establish open lines of communication with the NMCC to coordinate an effective response.

Grounding Commercial Aircraft

His first day on the job as Operations Manager of the Air Traffic Control System Command Center, Benedict Sliney disregarded the usual command structure and ordered first ground stops and then the grounding of all commercial aircraft. Beginning with 'ground stops,' which prohibited aircraft from taking off, in Boston, New York and much of the East Coast, Sliney maintains that “...we still had more reports of aircraft whose course or altitude or other aspects of their flight made them suspicious in light of the crashes. The national ground stop was just a natural extension of the smaller scope ground stops” (p. 91).

After both planes had hit the towers, American Airlines 77 had impacted the Pentagon and United Airlines 93 had been reported hijacked, the FAA decided to ground all 4,500 commercial aircraft and hundreds of thousands of passengers at 9:45 a.m. “By 12:16, for the first time in the history of the FAA, the U.S. air space was empty of all aircraft except for military and essential emergency flights” (p. 80). Orchestrating the safe landing of all commercial aircraft in two and a half hours without any incidents was the most remarkable feat undertaken by the FAA that day.
Summary

Contrary to the claims made by Belger that the FAA did not receive any information about the heightened threat period throughout the spring and summer of 2001, Commissioner Lehman makes clear that intelligence information was passed along via the White House. Although this intelligence reached FAA headquarters, including the FAA intelligence and security team, it was never made available to top officials such as Belger because Garvey's assistant, who did not have the clearances to view the information, filtered it out.

On 9/11, appropriate hijacking protocols were well known throughout the FAA. Belger asserts that "the procedures are trained as a matter of refresher training in our operational facilities every year, and it surprises me to hear that someone would think that our field managers would not know what to do in the event of a hijacking" (p. 89). Similarly, Griffith also confirms this position, stating that the air traffic control field managers knew what to do in the event of a hijacking. Concerning the notifications to NORAD about the hijacked aircraft, Sliney states that to the best of his knowledge, "I was given to understand that all such notifications were made. I had no reason to believe that they were not" (p. 92).

Since there is no reason for a pilot to ever turn off the transponder, the first sign of a hijacking occurred once the transponder was switched off on AA 11. Due to the extensive radar coverage of the northeastern U.S., even without the transponder it is still possible to track an aircraft, though this is complicated when a plane is flying at low altitudes. In contrast to assertions made by NORAD that at least one of the planes disappeared from the radar entirely, Sliney maintains that it is unlikely that contact was totally lost with any of the planes.
On 9/11, the FAA did not have direct contact with NORAD. Rather, Belger asserts that the FAA’s hijack coordinator, who was a senior person in the security organization, had to first contact the NMCC in order to request assistance from NORAD in the event of a hijacking. Sliney, on the other hand, argues that it was the responsibility of the air route traffic control center overseeing the hijacked plane to contact the NMCC to obtain assistance from NORAD. The Air Traffic System Command Control Center, the FAA’s nerve center for information on suspicious aircraft on 9/11, however, did not have the authority to contact NORAD directly. Once the NMCC had been contacted, it became their responsibility to promptly coordinate a response.

In the event of a hijacking, the FAA’s operations center procedure was to establish a line of communication with the NMCC through the hijacking net. Included in the hijacking net is the FAA, DOD (and the NMCC), FBI, Secret Service and the airliners. At 9:20, after two planes had already hit the towers, the NMCC was entered into the hijacking net. Defying Belger’s thirty years of experience handling dozens of hijackings at the FAA, the NMCC was not online hearing the real-time information being conveyed throughout the attacks as he had assumed. An exception to the norm, it is not clear why the NMCC had not been involved. The NMCC maintains that contact was made with a lower level FAA official who had no experience or knowledge of the attacks. Unaware of whom was contacted, Belger makes clear that it was not the appropriate officials.

A matter for debate, the Commission received information that the FAA’s Boston center requested that the Command Center issue a nationwide cockpit security alert urging pilots to lock their cockpit doors and to beware of intrusions as early as 9:16. Apparently reaching Ellen King, who had assumed a number of Sliney’s
responsibilities including answering the phone that morning, it is unclear who the request was passed on to. Certain of King's competence and credibility, though unsure of whom she had informed, Sliney claims that he was never made aware of a request to increase cockpit security. Similarly, White, the facility manager at the Command Center, was also not informed. The request was never honored and the cockpit of UA 93 was breached fifteen minutes after Boston contacted the Command Center.

Even after UA 93 was confirmed by Cleveland air traffic control to be hijacked at 9:28 and reported to Command Center at 9:34, a fifteen minute delay prompted Cleveland to once again call Command Center urging them to respond. At that point, Command Center contacted FAA headquarters who hesitated to relay the message to NORAD to intercept the plane. Although Command Center contacted Headquarters at 9:49 and UA 93 did not crash for almost another fifteen minutes, fighter aircraft were nevertheless unable to respond.

With three planes having already reached their targets and a fourth plane reported hijacked, Sliney decided to extend the ground stops he had already put in place to a nationwide grounding of all commercial aircraft at 9:45. In about two and a half hours, the FAA was able to successfully ground 4,500 aircraft and hundreds of thousands of passengers safely without incident. Their failure to prevent the hijackings aside, the successful execution of the nationwide grounding was the most notable achievement of the FAA that morning.

Even though he acknowledged the superb response from lower level FAA officials, the performance of FAA headquarters was a particular source of criticism for Commissioner Lehman. Commenting on the bureaucratic structure of the agency, he states the "...FAA had what is to me a surprisingly hierarchal and centralized set
of protocols where everything had to be cleared upstairs ultimately to headquarters, when it got to headquarters, it seemed to fall into a black hole" (Lehman in Belger et al. Testimony p. 100). In their defense, Belger argues that headquarters was focused on communications with the NMCC. However, Lehman responds that “there was no direct communication with NORAD from headquarters, even though headquarters had centralized the decision-making. The communications with NMCC, which you have said was where the focus of headquarters was, was never established during the critical period” (p. 101).

Commissioner Kerrey echoes a similar rhetoric, commending those at the local level including officials at the FAA’s sectors in Boston and New York. He comments that “you guys did a fabulous job. But I’m with Secretary Lehman, Mr. Belger, and I think headquarters blew it” (p. 103). Particularly, Kerrey points to FAA headquarters delayed response to the request for military assistance from Cleveland Center for UA 93.

The general consensus of many of the Commissioners as well as the witnesses, FAA officials at the Boston and New York centers responded promptly and efficiently to the attacks. Since air traffic controllers and managers were required to review hijacking protocols annually as a matter of training, the procedures were well known. The failure to respond to the attacks seems to instead lie with FAA headquarters. Though it is not evident who is to blame, it was clearly the responsibility of FAA headquarters to have established communications with the NMCC.

Federal Aviation Administration Summary

By September 11, 2001, the FAA was well aware of the threat posed to civil aviation by terrorists seeking to make their political point. Whether based on common sense or past experience, the two threats posed to aviation security have
always been hijackings and explosives. Challenging the contention that the 9/11 hijackings were a new breed, Dzakovic argues that

...from a security point of view there is no difference between defending against a hijacker that wants to do a September 11th thing or a hijacker who wants to go to Miami. The key word is you are defending against a hijacking, and you worry about his motivations later. (Dzakovic testimony, no page number)

Emphasizing the need to prevent hijackings before they occur, implementing effective civil aviation security was one of the first fronts on which to confront aircraft piracy.

According to Schiavo, from 1970 to 2001, 823 airplane hijackings had occurred. “More recently, from 1993 to 1997...worldwide there were 87 hijackings, 7 commandeerings, 5 bombings or shootings, 50 attacks at airports, and 16 shootings at aircraft in just 5 years” (Schiavo 2003:8). Thus, the prevalence of airplane hijacking and terrorism had demonstrated a sustained security risk to civil aviation.

Following the 1988 bombing of PanAm Flight 103, the FAA created the Red Team to identify security weaknesses by replicating tactics that terrorists could potentially use. Composed of former security officials, the red team would use methods available to the general public to breech security checkpoints during unannounced inspections. Overwhelmingly successful in their efforts, the Red Team was able to gain access to secure locations up to 90 percent of the time.

One persistent problem with aviation security was the inadequate performance of security screeners. Poorly trained and under paid, the turnover rate of security screeners reached as high as 400 percent in some airports. As a result, firearms and mock explosives used by the Red Team, not to mention contraband from the traveling public, would regularly go undetected by screeners. It is no surprise then that the nineteen hijackers were able to smuggle box cutters and mace onto the planes; items prohibited past security checkpoints by the Checkpoint Operations Guide in effect on
September 11, 2001 (Schiavo 2003:18). Well-trained and competent screeners could have easily identified such contraband in violation of federal aviation security regulations.

Additionally, cockpit intrusions were also a rather frequent occurrence. According to Thomas (2003:34), in the two years prior to September 11, 2001 there were over 30 incidents of passengers penetrating the cockpit of a commercial airliner either partially or completely. Even in the six months following 9/11, seven incidents of passengers partially or completely entering the cockpit were recorded (2003:36).

Aware of this threat, FAA agents, consumer groups and flight attendants had been urging the FAA to implement reinforced cockpit doors for years. Simply reinforcing the cockpit door in addition to locking them could have foiled the 9/11 terrorist attacks. Unfortunately, as Thomas (2003:37) argues, "because of the cost to the airlines of reinforcing the cockpit doors of eight thousand commercial airliners, the FAA failed to do anything about the problem." As a result, the hijackers were easily able to enter the cockpit and take control of the plane.

Although the Red Team fulfilled their mandate to identify the weaknesses in civil aviation, the FAA failed to use its regulatory power to bring aviation security up to par. Rather than address the problems identified by the Red Team, the FAA chose to downplay, ignore and cover up their findings. Had the FAA taken steps to regulate screener performance and mandate the airliners to reinforce cockpit doors, the September 11th attacks could have been thwarted. Instead, the FAA placed the profits of commercial airline companies ahead of the safety of the public. Once again the FAA's dual mandates of promoting the airline industry as well as regulating it proved to be incompatible.
If history had not taught the FAA lessons about the dangers posed by terrorism to civil aviation, intelligence information indicating a heightened threat period should have. In the year prior to 9/11 the FAA had issued 15 terrorism warnings to the air carriers. Dzakovic states that “…the intelligence information was so great that something was going to happen, and I acknowledge the fact that we didn’t know when or where, but something was going to happen, something in the near future” (Dzakovic testimony, no page number). The head of security and intelligence, Mr. Bono, was also aware of intelligence information given to the FAA by the White House that indicated the increased potential for a near-term terrorist attack. Only some of this information made it to Administrator Garvey, while other crucial reports were allegedly filtered out by her assistant who lacked the clearances necessary to view them.

Curiously, Deputy Administrator Monte Belger claims that he had no knowledge of the increased risk of a terrorist attack, nor did FAA threat assessments reflect this fact. Mistakenly, he asserts that “…during the summer period, I saw no intelligence, nor did our security folks tell me anything that would lead us to direct the airlines or the airports to do anything other than what they were doing” (Belger et al. testimony p. 84). Even though the air carriers were informed of the increased risk for a terrorist attack, the FAA never directed the airlines or the airports to increase security measures in preparation.

Administrator Jane Garvey, on the other hand, had been given intelligence indicating that an attack on American interests may occur, though much of the information was focused overseas. Despite this information provided by the CIA, Garvey was concerned about the legitimacy of the threat reports. Emphasizing the lack of ‘credible’ and ‘solid’ reporting, Garvey states that she had
repeatedly gone back to the staff and said, "Where those run to the ground?" And that's exactly why I said solid, because those were run to the ground by the intelligence community, by our own folks with the intelligence community, and for various reasons were discounted as not credible. (Garvey testimony, no page number)

Although she received information that indicated the potential for planes being used as weapons, Garvey concluded that the reports were not credible enough to warrant a response from the FAA.

The protocols for handling hijacked aircraft were well known throughout the FAA. Perhaps the most common threat to aviation security, hijacking procedure was annually reviewed. Credited to annual training, air traffic controllers and their supervisors were able to promptly respond to the hijackings. Fourteen minutes after the first signs of trouble, Garvey states that "at about 8:34, based on the good initiative of the controller and his supervisor, NORAD was actually -- that was the first notification from the controller and the supervisor to Otis" (Garvey testimony, no page number). It is worth noting that Garvey goes out of her way to recognize the extraordinary response and initiative taken by the controller and his supervisor in notifying NORAD. She believes that officials followed proper protocol and notified NORAD in a timely fashion. Commissioners Lehman and Kerrey both agree, commending the officials at the FAA's Boston and New York sectors for their appropriate responses. Therefore, the accusations made by NORAD officials that the FAA's delayed notification of the hijackings fumbled their response are not supported.

In contrast to NORAD's timeline which indicates that the first contact from the FAA came at 8:40, Garvey argues that the six minute discrepancy occurred on NORAD's end. Although Boston sector contacted Otis Air Force base requesting assistance at 8:34, the 'official' notification time was clocked six minutes later after
Otis reached NORAD headquarters. Supporting the position that NORAD sought to conceal the actual notification times from the FAA, the unexplained six minute discrepancy is left for NORAD, not the FAA, to account for.

According to the Commission, by 8:55 AA 77 had turned off course and the FAA determined that it was hijacked, though it was not until 9:24 that NORAD was notified. Garvey, however, disagrees arguing that “the timeline that I have, that I remember, is one that had a notification twice before the time that you mention, so that there had been three notifications” (Garvey testimony, no page number). Although NORAD maintains that they were not notified of AA 77 until 9:24, Garvey makes clear that this was in fact the third, not the first, notification. Once again, the timeline presented by NORAD omitted two prior notifications therefore mistakenly placing blame on the FAA for failing to notify them with sufficient time to respond.

By 9:28 Cleveland Air Traffic Control had determined that UA 93 was hijacked. Reporting the hijacking to Command Center at 9:34, Cleveland was forced to call back fifteen minutes later urging Command Center to contact FAA headquarters about scrambling aircraft. Once Command Center reached headquarters, their response was one of hesitation and delay. By this time, two planes had struck the towers and another had impacted the Pentagon, yet FAA headquarters was resistant to request assistance from NORAD. It is not clear whether or not the FAA ever contacted NORAD to scramble jets in response to UA 93. One thing is for sure, fighter aircraft were unable to reach UA 93 before it crashed nearly forty minutes after it was determined to be hijacked.

The first sign of trouble, three of the hijacked aircraft - AA 11, AA 77 and UA 93 - each had their transponders turned off. A device on board all commercial planes, transponders are one of many mechanisms which help to facilitate tracking aircraft.
Due to the extensive radar coverage of the northeastern U.S., even without the transponder it is still possible to track an aircraft, though this is complicated when a plane is flying at low altitudes. Despite the excuses from NORAD officials that because the transponders had been shut off they were unable to locate the hijacked aircraft, Sliney maintains that it is unlikely that contact was totally lost with any of the planes.

Once the FAA notifies NORAD about an aircraft piracy, responsibility for the hijacked aircraft shifts. At the point that Boston center contacted Otis about AA 11 at 8:34, NORAD assumed responsibility for investigating the aircraft. Garvey makes clear that after the FAA contacts NORAD about a hijacked aircraft, “NORAD’s procedures would rule at that point, would prevail at that point.” Although the FAA is responsible for the safety and security of commercial aircraft up until the point that it is hijacked, NORAD is charged with investigating, surveilling and neutralizing threats after it has been determined that a hijacking has occurred.

In the event of a hijacking, it was the NMCC’s responsibility to coordinate a response from the DOD and if necessary NORAD. Therefore the FAA did not have direct lines of communications with NORAD, only the NMCC. The hijacking net hosted agencies such as the FAA, FBI, Secret Service and DOD (including the NMCC) and provided real-time information about the situation at hand.

Complicating communications with NORAD, the FAA was unable to maintain connection with the NMCC through the hijacking net. Defying Belger’s thirty years of experience in dealing with hijackings at the FAA, the NMCC had not been participating in the hijacking net since 9:20 as he had assumed. Once Belger realized the NMCC’s absence, he could not conceal his anger and frustration.
Although they were unable to participate in the hijacking net, the NMCC claims that they contacted an FAA representative who knew nothing about the situation, had no experience with hijackings and no access to decision makers. Unaware of whom was contacted, Belger makes clear that it was certainly not the appropriate person. Belger also notes that there were many military officials at FAA headquarters and the Command Center participating in what was going on during the attacks. Their presence, however, was no substitute for direct lines of communication with the NMCC.

After three planes had already reached their targets and a fourth plane was reported hijacked, Sliney ordered an extension of the ground stops he had already put in place to a nationwide grounding of all commercial aircraft at 9:45. In about two and a half hours, the FAA was able to successfully ground 4,500 aircraft and hundreds of thousands of passengers safely without incident. Their failure to prevent the hijackings aside, the successful execution of the nationwide grounding was the most notable achievement of the FAA that morning.

The September 11th attacks could not have been carried out without the aid of commercial aircraft. Had the FAA fulfilled its regulatory mandate by addressing the weaknesses in civil aviation security identified by the Red Team, the attacks might not have occurred. Since the FAA was responsible for setting security standards for the airliners and airports and ensuring their compliance, the failures of aviation security on 9/11 are directly linked to the negligence of the FAA. The FAA was well aware of the problems in civil aviation security years before September 11th but nevertheless neglected to address them due to the inevitable costs to the industry.

The FAA must be faulted for their failure to enact much needed security upgrades and enforce regulations already in place, especially in light of intelligence
information indicating the increased risk for a terrorist attack by al Qaeda. However, after the attacks had already begun it appears that the decisions and actions carried out by air traffic controllers and their managers at the FAA’s sectors in Boston, Cleveland and New York were in line with appropriate hijacking procedures. From these testimonies, it does not appear that lower level FAA officials failed to fulfill their responsibilities. Quite the contrary, both Administrator Garvey and Operations Manager Sliney assert that to the best of their knowledge, all hijacking procedures were followed swiftly and effectively. Joining Commissioner Lehman in praising the actions of these officials, Commissioner Kerrey states that “you guys did a fabulous job. But I’m with Secretary Lehman, Mr. Belger, and I think headquarters blew it” (Belger et al. testimony p. 103).

The failure to respond to the attacks seems to instead lie with FAA headquarters. As Commissioner Lehman asserts “...FAA had what is to me a surprisingly hierarchal and centralized set of protocols where everything had to be cleared upstairs ultimately to headquarters, when it got to headquarters, it seemed to fall into a black hole” (Belger et al. testimony p. 100). For one, FAA headquarters was unable to establish contact with the NMCC: the coordinating agency between the FAA and NORAD. Though it is not evident who is to blame, it was clearly the responsibility of FAA headquarters to establish communications with the NMCC. Even though Deputy Administrator Belger had taken actions to enter the NMCC into the hijacking net, their absence remains unaccounted for. Whatever the reason, the absence of the NMCC on the hijacking net was an anomaly which disabled real-time communications between the FAA and NORAD about the ongoing attacks.
CHAPTER IX

DISCUSSION

Prevention

The entire government had been on a state of high alert throughout the spring and summer of 2001. As Rice put it, "[an attack by al Qaeda] was on the radar screen of any person who studied or worked in the international security field" (Rice Testimony p. 12). With the exception of only a few, almost every government official testified that they were aware of the increased risk of a terrorist attack. Although they may have been aware that a terrorist attack was right around the corner, no one knew when, where or how it would occur. The CIA, the Counterterrorism Center, the Counterterrorism Security Group and the FBI's field offices frantically worked to uncover the plot. Even though each agency held a piece of the puzzle, no one implemented a plan of action.

Perhaps more than anyone, the CIA understood the nature of the threat posed by al Qaeda. After all, the CIA funded, armed and trained Osama bin Laden and the members of the Mujahideen in the late 1980s against the Soviets, many of whom later went on to form al Qaeda. At the CIA's Counterterrorism Center, bin Laden and al Qaeda occupied the bulk of their attention. Generated internally by employees at the CTC, the August 6, 2001 Presidential Daily Briefing titled "Bin Laden Determined to
"Strike in US" warned President Bush and members of the NSC of the possibility for a domestic attack. After interviewing the veteran CIA analysts who authored the PDB, the 9/11 Commission’s investigative staff concluded that the document was not merely a historic overview as Rice asserted. Instead, the authors claim that “it was meant to remind President Bush that al-Qaeda remained a dire threat in August 2001 and that a domestic attack was a distinct possibility, no matter what he was hearing elsewhere” (Shenon 2008:378).

Even though the PDB did overview some of bin Laden’s historic attempts to attack the U.S., the document also stressed that “nevertheless, FBI information since that time indicates patterns of suspicious activity in this country consistent with preparation for hijackings or other types of attacks, including recent surveillance of federal buildings in New York” (Presidential). Furthermore, the PDB also indicated that al Qaeda had established a support network inside the U.S. capable of aiding terrorist activities. Predicting the ‘how’ and ‘where’ of the attacks, the information contained in the PDB admittedly may not have been enough to have stopped them. Even so, this intelligence did provide a basis for preventative measures to begin.

In refutation of the frequently offered explanation that the 9/11 attacks were the result of a legal ‘wall’ which prevented the sharing of information between the FBI and the CIA, there appears to have been regular coordination between the two agencies concerning the threat posed by al Qaeda. Dating back to 1997 when the CIA and the FBI collaboratively established the Alec Station which was dedicated to al Qaeda investigation and disruption activities overseas, the two agencies worked together to neutralize the terrorist threat. Over the years FBI-CIA cooperation continued through the East African Embassy bombings, the bombing of the U.S.S.
Cole and the successful thwarting of Millennium plot. In their view, both Freeh and Pickard agree that cooperation between the FBI and the CIA was quite good.

These collaborative interactions paved the way for intelligence sharing throughout the spring and summer of 2001. A product of CIA-FBI coordination, the August 6th PDB was authored by the CIA yet also contained information uncovered by the FBI. Furthermore, the CIA provided the FBI with the intelligence needed to initiate 70 full field investigations on suspected members of al Qaeda. As Pickard makes clear, without the direction of the CIA and other intelligence agencies, the FBI was operating in a vacuum. Although their cooperative interactions may not have been enough to prevent the attacks, there is no support for the notion that the CIA and the FBI were inhibited by a legal wall which prevented them from sharing intelligence information.

Despite its fragmentation, the FBI had multiple pieces of information which hinted at how the attacks might be carried out. The Phoenix memo sent from agent Kenneth Williams to FBI headquarters on July 10, 2001 observed that an inordinate number of bin Laden’s supporters were training at flight schools in Arizona. Williams feared that a coordinated effort might be underway by bin Laden to establish a cadre of individuals working in civil aviation who may use their training to carry out terrorist attacks. Had FBI headquarters acted on Williams’ suggestions, such as investigating all U.S. flight schools and discussing the matter with the intelligence community in order to corroborate his reports, the 9/11 plot would have become more clear.

In the year prior to 9/11, two of the nineteen hijackers were living with an active FBI informant in San Diego. The FBI acknowledges that a San Diego case agent knew that Saudi visitors were residing with the informant who provided
information on the Islamic terrorist groups Hamas and Hezbollah. After receiving
information from the CIA on Khalid al Hazmi and Nawaf al Mihdhar, the New York
office had obtained FISA on coverage on the two men and was searching for them
leading up to September 11th. Firmly within his responsibilities as FBI director to
order such a directive, Louis Freeh admits that had there been a formal tasking to
gather more information about al Hazmi and al Mihdhar the attacks might have been
prevented.

The FBI took Zacarious Moussaoui into custody after overstaying his visa on
August 15, 2001. The decision to take Moussaoui into custody after overstaying his
visa was done deliberately in hopes of neutralizing the terrorist threat he was believed
to have posed. Drawing attention to himself at a Minneapolís flight school due to his
interest in piloting a Boeing 767 without having any previous experience flying,
Moussaoui’s jihadist beliefs further raised the FBI’s suspicion about his intentions.
Suspicions were soon confirmed when the French Intelligence Service reported that
Moussaoui had affiliations with radical fundamentalist Islamic groups and activities
connected to Osama bin Laden.

From the perspective of the Minneapolis agents handling the Moussaoui case,
personnel at FBI headquarters “…continued to, almost inexplicably, throw up
roadblocks and undermine Minneapolís’ by-now desperate efforts to obtain a FISA
search warrant, long after the French intelligence service provided its information and
probable cause became clear” (Rowley 2002). Risking disciplinary actions, the case
agents were so desperate to bypass the resistance from FBI headquarters that they
went directly to the CIA’s Counterterrorism Center. Despite their efforts, the FISA
warrant was not approved until after the attacks.
The New York office, which housed the FBI's bin Laden and al Qaeda unit, as well as FBI headquarters had received and reviewed the Phoenix memo, actively investigated al Hazmi and al Mihdhar and had been informed of the Moussaoui case. Piecing together elements of these three cases brought forth by FBI field offices, a number of clear warnings emerged. However, this information was never passed on to the other offices involved in similar investigations. Although it was reviewed, few, if any, actions were taken by headquarters. A formal tasking issued by top level FBI officials could have helped to connect each of the isolated cases to a larger coordinated plot. As director and acting director of the FBI, both Freeh and Pickard bore the responsibility for such a directive.

All the malfunctions in civil aviation security coalesced on September 11th to unveil the FAA's concern for the profits of the airline industry over the safety of the public. Historically, the FAA's dual mandate of regulating the airline industry while simultaneously promoting its economic interests created an environment where sorely needed safety measures where only implemented in response to a catastrophic event. Despite the successes of the Red Team in identifying the failures of the civil aviation security system that the FAA was charged with regulating, the FAA was resistant to addressing the problems. The Red Team's findings were ignored, downplayed, dismissed and even covered up by upper level FAA officials.

Even though security features in place on 9/11 identified ten of the 19 hijackers for additional security measures, all 19 were nevertheless able to successfully board their respective planes. The hijackers that underwent additional security measures prior to boarding their planes were in no way thwarted by the measures in place. Levels of security which the hijackers successfully surpassed included: questioning, additional metal detection, scanning of bags for explosives and
holding the checked baggage off of the plane until it was confirmed that the
individuals had boarded. Further, according to Dzakovic nine of the 19 hijackers
were identified by the Computer Assisted Passenger Prescreening System (CAPPS) as
passengers who should be subject to additional screening, which in most cases
resulted in holding the checked baggage (National Commission 2004).

In the year prior to 9/11 the FAA received at least 15 intelligence warnings
about the increased risk for terrorism and had even passed many of the warnings
along to the airliners. However, security upgrades such as installing reinforced
cockpit doors on thousands of aircraft or regulating security screeners’ performance at
every airport would have forced the airline industry to sacrifice millions of dollars in
profit; a measure the FAA was just not willing to take. Instead, thousands of people
paid with their lives. A systemic problem rooted in the FAA’s conflicting mandates,
the temptation to place profits over safety was high. Since many former FAA
officials go on to work in the airline industry and vice versa, the revolving door
between government and business promotes an organizational environment fertile for
corruption.

Aside from the rare rocket from below, there are really only two threats to
aviation security: explosives and hijackings. Because prevention of aircraft piracy
begins long before a hijacking ever occurs, the motivations of the offender are not
significant concerns. The 9/11 hijackings were not of a new breed, but rather an
unanticipated outcome to a traditionally anticipated threat. It was the duty of the FAA
to set the security standards for U.S. airports and airliners and ensure the industry’s
compliance with such measures. Utterly failing to fulfill its regulatory function, the
FAA had allowed U.S. civil aviation security to sink to a dismal state. On September
11, 2001 the FAA once again sacrificed the safety of the public to the profits of the airline industry.

What was needed more than anything in the spring and summer of 2001 was a government wide evaluation and subsequent reaction to the increasing threat posed by al Qaeda. It was not as if the information was not available; it just was not coordinated. If many of the executive branch agencies such as the NSC, CIA, FBI, DOD and FAA had been brought together and tasked to assess what was known about bin Laden and al Qaeda, the attacks may have been prevented. The one organization capable of executing such a response to the threat remained paralyzed: the NSC.

"The National Security Council is the President's principal forum for considering national security and foreign policy matters with his senior national security advisors and cabinet officials" (National Security Council). Regular attendees of the NSC include the President, the Vice President, the Secretary of State, the Secretary of Treasury, the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Director of National Intelligence and the Assistant to the President for National Security Affairs. When pertinent, other senior officials such as the Attorney General are invited to attend. Brining together the most senior government officials to discuss matters of national security, the NSC was the one organization that had not only the authority but the responsibility to develop a response to the urgent threat.

The Bush administration was promptly alerted of the increasing threat posed by terrorism upon taking office. National Security Advisor in the Clinton administration Sandy Berger informed Condoleezza Rice that she would be spending more time on issues of terrorism, and specifically al Qaeda and bin Laden, than anything else in her new role as advisor to the President (Shenon 2008:255). To stress the seriousness of the issue, Berger went out of his way to stop by Clarke's
introductory briefing on counterterrorism and al Qaeda. But, as Shenon (2008:255) asserts, “he was never sure he got his message across to Rice or the other members of the transition team, including her counterterrorism adviser Philip Zelikow.”

As the threat of an attack by al Qaeda grew, Clarke attempted to inform his new boss that action needed to be taken. Clarke presented Rice with a plan to address the al Qaeda threat in the Administration’s first week in office. By then, it had recently been confirmed that al Qaeda had been behind the bombing of the U.S.S. Cole as suspected. An act of aggression against a U.S. military vessel, the Bush administration had the justification to take actions against al Qaeda or bin Laden. But to the new administration, the Cole bombing was a relic of the Clinton era.

One of the more significant changes made by President Bush to the NSC upon taking office was an expansion of the powers of the National Security Advisor Condoleezza Rice to include chairing the NSC Principals Committee. Despite the urgent threat period, there was never a Principals Meeting concerning the threat posed by al Qaeda held throughout the duration of the Bush administration until exactly one week before the attacks. As the threat grew during the summer months, many of the Principals were away on vacations. President Bush himself spent the entire month of August away from Washington. Unconcerned about the pressing threat posed by al Qaeda, the NSC Principals Committee waited eight months into their tenure to formally discuss the nature of the problem. When the attacks occurred, the NSC Principals Committee was awaiting the President’s approval for a plan of action against al Qaeda; virtually the same plan that had been presented to Rice by Clarke during the Administration’s first week in office.

Thanks to the demotion created by Philip Zelikow and instituted by Rice, the Terrorism Czar Richard Clarke spent significantly less time talking with the National
Security Advisor on issues of terrorism. Fully aware of the threat at hand, Clarke pushed for Rice to convene a Principals Meeting, writing “we urgently need such a Principals level review on the al Qida network” (NSC Memo from Clarke). From his experience of thwarting the Millennium attacks, Clarke knew how important Principals Meetings could be. In fact, he credited them as the key factor in the 1999 success. So frustrated with Rice’s failure to respond, Clarke quit his position as head of the Counterterrorism Security Group in June. Having the power to order such a meeting, Rice ignored the warnings of Clarke, amongst others, and neglected to gather the Principals on the immediate threat facing the nation.

The Bush administration was receiving warnings from the CIA as well. Unlike his interactions with President Clinton, George Tenet had almost daily contact with George Bush on the President’s insistence. With the exception of the entire month of August while Bush was away at his ranch in Texas, Tenet was meeting sometimes six mornings a week to provide Bush and Rice with a daily intelligence report which included information about al Qaeda’s activities. Since Director of Central Intelligence was keenly aware of the threat, so much so that he claimed the “system was blinking red,” it is quite likely that Tenet passed this information onto the President during their daily meetings. Clarke confirms that both he and Tenet worked hard to convey a sense of urgency to the President about the threat posed by al Qaeda. Apparently, they never got their message across.

On August 6, 2001 Bush was presented with a Presidential Daily Briefing from the CIA titled “Bin Ladin Determined to Strike in US,” the PDB was written as a reminder that an attack was looming and it could very well occur at home. Contrary to Rice’s frequent assertion that there was no “actionable intelligence,” the August 6th PDB chillingly predicted the who, how and where of the attacks. Once again
confirmed in the PDB, Rice and Bush had both been aware of al Qaeda's presence inside the U.S. However, Rice asserts that "but I don't remember the al Qaeda cells as being something that we were told we needed to do something about" (Rice Testimony p. 24).

The National Security Advisor did not take any actions to prevent the attacks, nor did she advise the President to do anything either. Convening a Principals Meeting concerning al Qaeda early on in the Administration’s tenure would have brought together many top level officials who miserably failed in their responsibilities on 9/11 such as: President Bush, Vice President Cheney, National Security Advisor Rice, Secretary of Defense Rumsfeld and Director of Central Intelligence Tenet amongst others. As a NSC Principal, the regular attendance of the Chairman of the Joint Chiefs of Staff could have also helped to improve the response from the NMCC and NORAD.

Furthermore, including Attorney General Ashcroft in the meeting may have helped to convey the threat to the FBI as well. Comparatively, Attorney General Janet Reno was only able to organize information from the FBI concerning the Millennium threat after she formally tasked the bureau herself. Rather than take a proactive role in responding to the threats, Ashcroft, on the other hand, told acting FBI director Pickard that he did not want to hear any more about the threat posed by al Qaeda.

The Bush administration and members of the National Security Council were fully aware of the threat posed by al Qaeda. Even if most of the information suggested an attack overseas, information contained in the August 6th PDB reveals that a domestic attack could not be ruled out. In either scenario, as the chief advisor to the President on issues of national security both at home and abroad, National Security Advisor Rice failed to take preventative measures to address the threat.
Instead of being reprimanded for her failure to fulfill her responsibilities both to the President and to the nation, Condoleezza Rice remains a Cabinet level official in the Bush administration.

Response

On June 1, 2001 the Chairman of the Joint Chiefs of Staff updated the policy for aircraft piracy and the destruction of derelict objects, replacing the previous protocol from July 1997. Concerning the hijacking protocols of the FAA, the NMCC, DOD and NORAD, the Joint Chiefs instruction spelled out the process for handling hijacked aircraft as well as issuing shootdown orders. Although the procedures changed very little between the July 1997 and the June 2001 instructions, one notable difference was that the FAA headquarters hijack coordinator was specifically responsible for contacting for NORAD for escort aircraft to intercept the hijacked plane.

The hijacking procedures in place on September 11, 2001 required that the FAA hijack coordinator contact the NMCC in an expedient manner after an aircraft was determined to be hijacked. The NMCC would then check with NORAD to determine the availability of aircraft before sending the request to the DOD, who was then required to receive approval from the Secretary of Defense before responding. Once the request was approved by the Secretary of Defense, then the NMCC would inform the FAA hijack coordinator of the appropriate NORAD Air Defense Sector to contact for assistance (Chairman A-2). Additionally, the NMCC was to remain in coordination throughout the hijacking until the situation was resolved.

If all other efforts by NORAD or military aircraft to control the hijacked plane had failed and it needed to be shot down, then authorization was once again needed from the Secretary of Defense. As the June 1, 2001 instruction states,
if destruction is required, the [Deputy Director of Operations at the NMCC] will forward all requests or proposals for DOD military assistance to the DOD Executive Secretary and appropriate OSD staff offices, and then to the Secretary of Defense for approval... (Chairman C-1)

Therefore, only the Secretary of Defense could authorize the shootdown of a commercial aircraft.

The actions of FAA headquarters as well as the hijack coordinator that morning are not readily apparent, thus making it difficult to assess whether hijacking protocols were abided by. Once the first flight (AA 11) was determined to be hijacked at 8:34, an air traffic controller and his manager at Boston sector notified Otis Air Force Base to scramble jets. In this case, it does not appear that the request was funneled through the hijack coordinator. On the receiving end, Northeast Air Defense Sector (NEADS) commander Colonel Robert Marr ordered F-15 fighter jets to battle stations. Contacting his superior Major General Larry Arnold, Marr sought authorization to scramble the F-15s once AA 11 had hit the WTC. Approving the request, Arnold claims that he had the clearances necessary to issue a scramble order, though he was required to get authorization to intercept an aircraft. After Arnold contacted his superiors at NORAD headquarters to authorize an interception, approval was needed from the Secretary of Defense to proceed.

The appropriate clearances from Secretary of Defense Donald Rumsfeld, it appears, never came. In order to take action against a hijacked aircraft, the NMCC had to first receive approval from Rumsfeld before a response between NORAD and the FAA could be coordinated. This would shed light on why aircraft at Otis and Langley Air Force Bases sat waiting at battle stations but were not launched for a significant length of time. It would also help to explain why UA 93 had not been intercepted or shot down.
There is no evidence in any of the testimonies reviewed to suggest that Secretary Rumsfeld made any authorizations that morning. According to General Richard Myers who was at the NMCC on 9/11, Rumsfeld did not join him at the NMCC until 10:30 (Myers et al. p. 44). It appears that Rumsfeld was instead outside the Pentagon assisting in the clean up of AA 77. As Myers recalls,

the secretary [of Defense], except for the short period of time that he went outside to examine where the aircraft came into the Pentagon and to help, because at that point they needed hands and he lent his hands to help those injured and those responding, but then he came back in sometime around 10:00 and was upstairs. (Myers et. al p. 44)

Abandoning his post in the middle of an attack on the homeland, Secretary of Defense Donald Rumsfeld was unavailable to make crucial decisions about the military's course of action at least between 9:37 and sometime after 10:00.

During the time that Rumsfeld was unavailable, the FAA's Cleveland Center and Air Traffic Control Command Center were frantically awaiting assistance. Cleveland Center had reported the hijacking of UA 93 to Command Center at 9:34. However, Command Center did not have the authority to notify NORAD directly, so the information was passed on to FAA headquarters. After fifteen minutes without a response from FAA headquarters, Cleveland once again called Command Center urging them to prompt headquarters to notify NORAD to scramble aircraft. In response, Command Center reached FAA headquarters shortly after 9:49 and stressed the immediate need to contact NORAD about UA 93. Even after three planes had already crashed, FAA headquarters seemed hesitant to request assistance. Forty minutes after Cleveland Center notified Command Center about the hijacking of UA 93, the plane crashed without ever being intercepted. While Cleveland desperately waited for military assistance with UA 93, the Secretary of Defense was AWOL and unable to authorize a response from NORAD.
The FAA had notified NORAD of the hijacking of AA 77 twice prior to the first official NORAD notification time at 9:24, according to Administrator Garvey. If it was in fact the case that the FAA had notified NMCC much earlier, than this would lend credence to Secretary of Transportation Norman Mineta’s testimony that Vice President Cheney was tracking the flights’ course as early as between 9:15 and 9:20. In their second testimony to the 9/11 Commission, NORAD officials claimed that they had never been notified by the FAA that AA 77 was hijacked. One possible explanation might be that although the hijack notification from the FAA made it to the Department of Defense and up to the White House, an approval for a response never made it back down to NORAD.

The 9/11 Commission concluded that Vice President Cheney had not issued a shootdown order of AA 77, but instead UA 93, from the Presidential Emergency Operations Center (PEOC). On multiple occasions Cheney had publicly stressed that the shootdown order was made in consultation with the President. It was necessary to obtain Bush’s prior approval for Cheney to order the destruction of a commercial airliner since the Vice President has no position in the military chain of command. Even though authorization to shoot down an aircraft needed to be approved by the Secretary of Defense, the President as the Commander in Chief could have made such a decision. Since Secretary of Defense Rumsfeld was not available at the height of the attack to make crucial decisions about shooting down a commercial airliner, President Bush could have assumed the Secretary’s duty.

The 9/11 Commission’s investigative staff found that “…there was no evidence to suggest that Bush had weighed in on the shoot-down order before Cheney had issued it. And there was plenty of evidence to suggest that Bush knew nothing about it” (Shenon 2008:265). From their review of multiple phone logs from the
communications between the Bush and Cheney the Commission was unable to uncover any evidence to support Cheney's claims. Further, an examination of the notes taken that morning by officials on board Air Force One with Bush and in the PEOC with Cheney also do not reflect this assertion. Absent any authorization from President Bush, it therefore appears that Vice President Cheney's shootdown order was unconstitutional (Shenon 2008).

Serving to complicate the military's response to the hijacked aircraft were the numerous war games occurring on the morning of the attacks. Fully staffed including its top officials, NORAD was several days into its annual Vigilant Guardian exercise. Despite the preparedness and available support, the training exercise severely confused NORAD's response. To be fair, if authorizations were never received from the Secretary of Defense, then NORAD would have been blocked from effectively responding to the hijackings. Nevertheless, as the testimonies of NORAD officials make clear, employees involved in the exercise were forced to question whether the hijackings were part of the simulation or were in fact occurring in real life.

Further confusing the reality of the situation, Ruppert (2004) confirms that the war games involved simulated hijacked aircraft crashing into buildings and artificial 'blips' or phantom aircraft inserted onto NORAD radars which appeared real. The testimonies of Generals Eberhart and Arnold reveal that NORAD was forced to deal with many phantoms. A product of the exercise, the deliberately inserted 'blips,' 'injects' or phantoms all appeared as indistinguishable from real aircraft on the radar that day. Although the real AA 11 had already smashed into the WTC, NORAD's second testimony to the Commission shows that fighter aircraft had been launched in response to a phantom AA 11 which was heading south. As another plane headed
towards New York and two other hijacked aircraft approached Washington D.C.,
NORAD’s fighter jets were pulled south in pursuit of a phantom AA 11.

The hijack protocol in place on 9/11 required that the NMCC remain in
contact with the FAA throughout the duration of the hijacking situation. On the
morning of the attacks, this clearly was not the case. The Deputy Director of
Operations at the NMCC is designated as the official DOD coordinator between
NORAD and the FAA (Chairman 2). The day before, Admiral Joseph Leidig had
been asked by his superior General Montague Winfield to assume his responsibilities
as Deputy Director of Operations at 8:30 on the morning of September 11th.
Although he was supposed to have convened an Air Threat Conference call, Leidig
mistakenly established a Significant Event Conference after the second aircraft hit the
WTC. The Significant Event Conference call brought NORAD combat commanders
as well as senior military and White House officials together to discuss the threat.
Once General Montague resumed his position, the call was then upgraded to an Air
Threat Conference, though the difference goes unexplored. The FAA, however, was
left out of both calls.

At FAA headquarters, Deputy Administrator Monte Belger thought he had
established contact with the NMCC when he entered them into the hijacking net at
9:20. Included in the hijacking net is the FAA, DOD (and the NMCC), FBI, Secret
Service and the airliners. Contrary to Belger’s thirty years of experience in dealing
with hijackings, the NMCC had not been listening in on the real time information
being shared as they always had before, though it is unclear why.

Although Leidig credits the breakdown of communication to compatibility
issues between the secure phones at the NMCC and FAA headquarters, Belger
maintains that the FAA had the appropriate technological capabilities. Another
possible explanation attributes the failure to establish communications to the
inexperience of Admiral Leidig. Since it was not normally his role to fill, perhaps
Leidig, who was the primary person in charge of coordinating NMCC’s response, was
unprepared for the task he was handed. In any scenario, the inability of the FAA and
the NMCC to establish communications undoubtedly fumbled an effective military
response to the hijackings.
CHAPTER X

CONCLUSION

A review of the testimonies from officials representing the NSC, CIA, FBI, NORAD and FAA to the 9/11 Commission reveals a consistent pattern of government misdeed surrounding September 11th. Much of the blame for the failures to prevent the attacks does not reside at the lower levels of these bureaucratic structures. Quite the contrary; government officials at the highest levels of public office were particularly guilty of failing to fulfill their Constitutional duties to protect the public from external threats. In most cases, officials further down the agency hierarchy performed their duties quite well. Their superiors, on the other hand, seemed to be the most responsible for the failures of 9/11. Concentrated at the highest levels of public office, the failures and inactions of government officials were committed by those with the greatest responsibility to protect the public.

Within each agency it appears that officials at the top of the CIA, FBI and FAA were responsible for a greater degree of negligence than were lower level officials. From the testimonies of Director of Intelligence George Tenet and Richard Clarke, it appears that Tenet did all he could to warn President Bush and National Security Advisor Rice about the looming attacks. For its part, the CIA seemed to be keenly aware of the al Qaeda threat, though action could not be taken without direction from the NSC or the DOD.

The failures of FBI headquarters are particularly notable. Even though acting FBI director Thomas Pickard went out of his way to contact each of the special agents
in charge at each of the 56 FBI field offices, his efforts were not enough to corroborate crucial pieces of information about the 9/11 plot. Many of the field agents who executed their jobs marvelously in the months leading up to 9/11 felt as though FBI headquarters was going out of its way to block their efforts. In his eight year tenure as director of the FBI, Louis Freeh must be held particularly accountable for the actions and inactions of headquarters. If Freeh or Pickard had formally tasked the bureau to systematically evaluate all the available information about al Qaeda and bin Laden, there is a good chance that the 9/11 plot may have been uncovered.

The evidence suggesting that the FAA mishandled their notification of the hijackings is weak. For the most part, lower level officials promptly identified the hijacked aircraft and reported them to the proper authorities. Although FAA headquarters was unable to maintain contact with the NMCC as was required by hijacking protocols, this breakdown of communication most likely occurred on the opposing end. Notifications, it appears, were promptly made. A response from the NMCC, on the other hand, was not.

Though they cannot be faulted for their failure to respond to the attacks, senior FAA officials must be held accountable for their negligence in preventing them. The weaknesses of the civil aviation security system which enabled the attacks were not new. As the Red Team embarrassingly revealed, the FAA had not been performing its regulatory functions. Senior FAA officials including Administrator Jane Garvey and Deputy Administrator Monte Belger had been informed of the security problems but actively sought to ignore the findings of the Red Team investigations. Even in light of the intelligence information indicating the increased risk for a terrorist attack, FAA headquarters took no actions to force the airlines and airports to implement more stringent security measures. Had the FAA fulfilled regulatory role by
implementing standards for security screeners and installing reinforced cockpit doors the hijackings could not have been executed.

Highlighted by the 9/11 attacks, the failures of civil aviation security can be attributed to the conflicting mandates of the FAA. The problems of aviation security were more the result of the tensions between promoting the airline industry and regulating safety than the negligence of FAA officials themselves. Involving the deviant interactions of both a government agency and a corporation, the FAA’s inability to regulate the airline industry is best described as a state-facilitated corporate crime.

Top Bush administration officials particularly neglected to fulfill their responsibilities both in terms of prevention and response. As the chief advisor to the President on issues of national security, National Security Advisor Condoleezza Rice did not convince Bush that immediate action needed to be taken. One necessary initial step was to convene a Principals Meeting on the threat posed by al Qaeda. In the new administration, the National Security Advisor enjoyed an expansion of responsibility to include serving as the chair of the NSC Principals Committee. Brining together top Administration officials, a Principals Meeting on al Qaeda would have provided the coordination necessary to initiate a government-wide evaluation of threat posed by al Qaeda and bin Laden. Had this coordination taken place, much of the fragmented information on bin Laden, al Qaeda and the 9/11 plot might have appeared more cohesive. In the best of all circumstances, the plot could have been disrupted before it even began. Less optimistically, an FAA mandate to increase aviation security or a more alert response from NORAD could have foiled the plot after it had already begun.
Even if Rice had not advised the President to act, the information Bush was receiving from Director of Intelligence George Tenet made clear an attack by al Qaeda was coming, and soon. As the most powerful government official in the U.S., President Bush cannot claim innocence. Well aware that members of al Qaeda were residing in the U.S. and that the threat of an attack was growing, the President quite clearly had the responsibility and the authority to act. Nevertheless, President Bush sat idly as the threat period intensified and came to a head on 9/11 without ever taking initiative to address the problem.

Once the attacks had already begun, the United States military failed on four separate occasions to intercept or shoot down any of the hijacked aircraft. Even though it cannot be conclusively determined from the testimonies whether or not the NMCC had sent the FAA’s request for assistance to the Secretary of Defense, it appears clear that Donald Rumsfeld was nevertheless unavailable to make critical decisions about the military’s response for at least part of the attacks. Since a response from NORAD was contingent upon the Secretary’s approval, NORAD’s inaction could easily be attributed to Rumsfeld’s absence. Just as any military official would be court marshaled for going AWOL in the middle of a battle, so too should Secretary of Defense Rumsfeld.

Although it is not clear what Vice President Dick Cheney knew about the threat of an attack by al Qaeda leading up to September 11th, his actions that morning raise many questions. Watching the attacks unfold from the Presidential Emergency Operations Center, the decisions made by the Vice President were not his to make. As Secretary of Transportation Norman Mineta maintains, Cheney had been tracking AA 77 as it headed towards the Pentagon. While Secretary Rumsfeld was absent and President Bush was on Air Force One, Cheney took it upon himself to coordinate the
military's response to the attacks. Since the Vice President has no position in the military chain of command nor was the President consulted on the matter, the shootdown orders issued by Cheney were unconstitutional.

The evidence suggests that at least four Cabinet level Bush administration officials are directly culpable in the September 11, 2001 terrorist attacks. President George W. Bush, Vice President Dick Cheney, National Security Advisor Condoleezza Rice and Secretary of Defense Donald Rumsfeld all failed to fulfill their legal obligations to protect American citizens from an attack by al Qaeda. Occupying the highest government positions, these four individuals were particularly responsible, as stipulated by the Constitution, for protecting the general welfare and providing for the common defense. Their failure to do so demands accountability.

The Verdict

Judged by the standards put forth by Kauzlarich, Mullins and Matthews (2003), the activities of the Central Intelligence Agency, the Federal Bureau of Investigation, the Federal Aviation Administration, the Department of Defense (including the National Military Command Center and the North American Aerospace Defense Command) and the National Security Council concerning 9/11, have each met the criteria for a state crime of explicit omission.

Generated Harm to Individuals, Groups, and Property

The harm resulting from the 9/11 attack has forever been commemorated, yet the immediate loss of life and property was only the beginning. The manner in which the attacks have been exploited and manipulated to justify an expansion of state power at the expense of civil liberties ensures that the damage caused by the attacks lives on. The Bush administration has used the September 11th terrorist attacks to
implement an agenda of global imperialism and domestic repression. The social and physical harm that continues to be perpetrated by the state in the name of 9/11 is perhaps even more significant than the initial act itself.

A Product of Action or Inaction on Behalf of the State or State Agencies

The complexity of organizational dynamics allows for both actions and inactions to be occurring alongside one another within the same agency. In many ways action and inaction are one in the same; the decision not to act is an action in its own right. In most cases, employees working at the lower levels of the agency hierarchy acted in accordance with appropriate protocols. In contrast, individuals occupying top positions in the CIA, FBI, FAA, DOD and especially the NSC made conscious decisions not to act. The culmination of these inactions paved the way for the attacks to be carried out.

The Action or Inaction Related Directly to an Assigned or Implied Trust and/or Duty

Trust is fundamental to the relationship between the governed and the governing in a democracy. Relinquishing power and autonomy to a higher authority in exchange for protection from threats is a core concept of the social contract. In violation of their organizational responsibilities entrusted upon them by the public, key government officials in the NSC, CIA, FBI, FAA and DOD failed to take actions to prevent an attack by al Qaeda when it was clearly their duty to have done so.

A particularly concentrated amount of culpability resides in the NSC and by extension top Bush administration officials. The inactions of Rice, Bush and Rumsfeld created the environment for the attacks to occur. What was needed more than anything was leadership both in terms of preventing the attacks and stopping
them once they had begun. It was the purpose of the NSC to assess threats to national security and approve a plan of action against them. Without a coordinated plan of action from the NSC, it is not apparent what the other agencies would have been able to achieve on their own. The NSC bore the most responsibility for preventing the attacks while also being guilty of the most crucial inactions.

*Is Committed, or Omitted, by a Government Agency, Organization or Representative*

By design, each of the witnesses’ testimonies selected for analysis was employed by one of the five agencies in question on September 11, 2001 or in the months leading up to the attacks. Furthermore, the content of the 9/11 Commission investigations largely focuses on the governments role in the attacks. Therefore, the revealed inactions for the most part only pertained to omissions by government officials.

*Is Done in the Self Interest of (a) the State Itself or (b) the Elite Groups Controlling the State*

In order to evaluate the self interest of the state or elite groups controlling the state, it is essential to consider the autonomy of state actors. The extent to which states act independently of other social groups, classes or organizations in society determines their capacity to act autonomously (Skocpol 1985:9). However, neither the state nor the concept of autonomy is monolithic. Different government factions may be more or less autonomous dependent on time or place. Thus state autonomy is relative. As Skocpol (1985) argues, virtually all scholars agree that the U.S. cannot be described as an autonomous actor. This suggests that decisions made by the U.S. government are influenced by extra-governmental interests, namely economic elites.
Supporting this notion, Kauzalrich, Mullins and Matthews’ fifth criteria for a state crime reflects the assumption that economic elites often have control over the interests of the state.

Although the goal of this project has not been to explore the underlying motivations and rationale behind the failures of government agencies to prevent the attacks, an examination of the relationship between state and economic actors is a fertile place to start. Even though the interactions between the FAA and the airline industry demonstrate the clear linkages between government and business, the relationship between the political and economic is not as clear within the CIA, FBI, DOD and NSC. Further investigation is needed to assess the extent to which the inactions of the CIA, FBI, DOD and NSC were autonomous from economic interests.

Whether or not the failure to prevent the 9/11 terrorist attacks was done in the self interest of the state is a tenuous speculation to make. Quite obviously, the attacks have served the interests of the Bush administration who seized the tragedy to justify an illegal war in Iraq. But to what extent were senior administration officials complicit in their decisions not to act? The evidence seems to suggest that the failure to prevent the 9/11 attacks constitutes at least an explicit crime of omission, though a more complicit form of state crime cannot be ruled out.

In the most explicit sense, a growing sector of the public believes that the United States government, and particularly the Bush administration, played an active role in the 9/11 attacks in order to justify a war with Iraq. Too startling for many to consider, the idea that the government would perpetrate acts of terror against its own citizens has grave implications. The historical record provides evidence suggesting that such a situation is not beyond the realm of possibility.
Composed by the Joint Chiefs of Staff in 1962, the “Northwood Documents” detailed numerous approaches for creating a justification for war with Cuba, even going as far as to perpetrate terrorist activities against U.S. citizens. One proposal included staging a situation in which a U.S. commercial aircraft filled with college students on vacation would be “shot down” over Cuban territory. As the document explains:

an aircraft at Eglin AFB would be painted and numbered as an exact duplicate for a civil registered aircraft belonging to a CIA proprietary organization in the Miami area. At a designated time the duplicate would be substituted for the actual aircraft and would be loaded with the selected passengers, all boarded under carefully prepared aliases. The actual registered aircraft would be converted to a drone. (Northwoods p. 10)

The actual aircraft would land, unload the passengers and return to its original status, while the unmanned drone would take its place, issue a distress signal that it was under attack by a Cuban MIG aircraft before being blown up by remote. An incident such as this would be part of a larger terror campaign including simulated hijacking attempts of commercial aircraft by Cubans, mock sabotages on U.S. military bases (lobbing mortars, burning aircraft and ships) and sinking a Cuban boat (real or simulated). To help generate support for retaliation, the document even suggests that posting “casualty lists in US newspapers would cause a helpful wave of national indignation” (Northwoods p. 8).

Both the overt and covert military and paramilitary operations included under Operation Northwoods would be undertaken by a single agency, specifically the Joint Chiefs of Staff. The document makes clear that the simulated terror campaign would be a catalyzing event by which to initiate a war with Cuba, stating that “it is recognized that any action which becomes pretext for US military intervention in Cuba will lead to a political decision which then would lead to military action” (p. 2).
To be fair, nothing comparable to the Northwoods Document has surfaced implicating the Bush administration in the September 11th terrorist attacks. At the same time, the 9/11 Commission’s investigation never considered such a degree of government complicity. Even so, that the government would even put to paper strategies “suitable for planning purposes” (Northwoods p. 4) to deliberately terrorize its own citizens as a justification for war is a frightening prospect.

Limitations

Moving down the state crime complicity continuum, it cannot be determined from the data whether government officials engaged in acts of commission, either implicit or explicit. In a courtroom where the defendant, prosecutor, judge and jury are all members of the state, how will the culpability of government officials ever be objectively assessed?

Objectivity certainly was not possible for the 9/11 Commission to accomplish. Thanks to the help of the Commission’s executive director Phillip Zelikow, the Bush administration and the National Security Council Zelikow helped to architect, escaped a serious critique of their failures. Given the executive director’s extensive history with the Bush administration and the NSC, his close personal friendship with Condoleezza Rice and his continued communications with the Administration during the course of the Commissions investigations, the findings produced by the Commission must be scrutinized.

Even though the data may not directly provide evidence for a more explicit form of state crime such as a crime of commission, the possibility cannot be ruled out. The resistance of the Bush administration to launch, fund or cooperate with an official investigation into the attacks raises questions as to what they were trying to hide. Further fuelling suspicions of a cover up, once an official investigation had finally
begun, the Bush administration sought to influence the 9/11 Commission’s investigation via the executive director Philip Zelikow. Sifted through the filters of ‘state secrets,’ national security, classified information, partisanship and the decisions of the executive director, what is known about the role of the Bush administration in the events surrounding 9/11 is only the tip of the iceberg.

In order to more fully understand the Bush administration’s role in the 9/11 attacks alternative sources of data must be used. As the politics of the 9/11 Commission acutely demonstrated, government sponsored investigations are restricted in their ability to explore the depths of state criminality. Turning to other sources of data such as journalistic investigations or archived media coverage of the attacks might help to uncover aspects of 9/11 that the Commission neglected to examine.

Controlling State Crime

Despite all the evidence indicating that Bush administration officials were particularly responsible for a crime of omission, the Commission neglected to hold Rice, Bush, Cheney and Rumsfeld accountable for their faults. Had the Commission concluded in its final report released in July 2004 that the failures of top Bush administration officials led to the attacks, it is unlikely that that they would have received reelection in November. Instead, the Commission’s assessment of the Administration’s handling of 9/11 was positive enough to ensure Bush’s 2004 reelection. Expressing her appreciation for his exceptional work in the 9/11 investigations, newly promoted Secretary of State Condoleezza Rice appointed Philip Zelikow to the job of State Department counselor where he would serve as her all purpose advisor. Rather than be punished for their failures to act, Bush administration officials were rewarded with another four year in office.
The biggest disgrace of the 9/11 Commission was its refusal to hold government officials accountable for their mistakes. Without a detailed consideration of the failures of government which allowed the attacks to occur, patterns of state criminality will likely persist. Just as significant as the criminal omissions which led to the attacks are the state crimes of commission that continue to be perpetrated in the name of 9/11. Viewing the September 11th attacks in terms of the failures of the U.S. government rather than the successes of al Qaeda is the first step to deconstructing the sanctity of 9/11.

As the literature on state crime has shown, state actors regularly engage in deviant and illegal behaviors which produce social harm above and beyond that of traditional street crime. When government officials violate the trust inherent in the relationship between citizens and government, democratic governance in threatened. If government sponsored investigatory bodies refuse to hold public officials responsible, who will? Absent any mechanisms for controlling the actions of government officials, democratic governance is reduced to nothing more than an autocratic plutocracy.

Since government sponsored investigatory bodies have refused to hold public officials responsible, citizens must take the fate of negligent politicians into their own hands. By any means necessary citizens must work to incapacitate the state apparatus and dismantle the locusts of corruption and power. Without a state there can be no state crime. Until citizens take back the power relinquished to the state under the social contract they will be forced to suffer the recidivism of a tyrant government.
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