

**9/11 Commission files**

**Daniel Marcus/ Box 8/**

**Team 8 folder**

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# MEMORANDUM

To: Front Office

From: Team 8

Re: 9/11 Air Defense Hearing

This memorandum sets forth the staff consensus regarding the timing and structure of a public hearing on the issues surrounding the United States' air defense on 9/11. Because that consensus is informed by Team 8's understanding of the scope of the investigative work that must be completed prior to the hearing, the memorandum begins by describing in detail the progress of and prospects for the investigation. It then identifies the principal issues of fact and policy implicated by the air defense mission that should be presented in a public hearing, and discusses the ways in which those issues can be presented at a public hearing. The memorandum concludes by stating Team 8's recommendations concerning the timing and structure of the air defense hearing.

## I. THE SCOPE AND PROGRESS OF THE AIR DEFENSE INVESTIGATION

### A. Procedural Progress

As you are aware, the air defense mission has already been the subject of intense public interest on the part of the victims' families and other interested parties. In part because of the intensity of this interest, on May 23, 2003, the Commission heard testimony from DOT, FAA, and Defense Department officials concerning the timing of their respective responses on the morning of 9/11. The hearing was preceded by initial document requests seeking relevant information from both DoD and FAA, but fact-finding was in its incipient stage on the hearing date; indeed, more than six months after its initial requests, and more than three months after the agencies represented that their document production was complete, the Commission continues to receive documents responsive to those initial requests as a result of subpoenas issued to DoD and FAA in October and November 2003.

Those subpoenas were required because, having completed its review of produced documents by early September, Team 8 began to conduct field interviews at regional FAA centers, Air Force bases, and the Northeast Air Defense Sector and discovered egregious failures to comply with the Commission's requests at virtually every site. This discovery required not only the compelled production of documents and tapes on an order of magnitude several times larger than the productions represented as complete in August, but the abbreviation and termination of interviews at several sites.

The consequences of this dilatory agency conduct for the progress of Team 8's fact-finding could not be more stark: Team 8's ability to complete its fact-finding work

in a timely fashion has been compromised. What was once considered an aggressive eighteen-month reporting timetable, compressed to a year by events beyond anyone's control, is now further compressed by agency unresponsiveness to six months. Team 8 now must review thousands of pages of documents, and hundreds of hours of raw and untranscribed audio tapes, before completing the interviewing process. To assist with that review, Kevin Shaeffer has been added to the team working on air defense issues on a full-time basis. Team 8 believes that further staff augmentation, as well as potential outsourcing of the transcription of critical tapes, is warranted.

Upon completion of this review, Team 8 must renew and complete the interviewing process. What follows is a list of sites Team 8 must visit or revisit; an estimated time for each site is in parentheses:

- Langley Air Force Base (1 day)
- Otis Air Force Base (1 day)
- NEADS (3-4 days)
- CONR/Tindall Air Force Base (3 days)
- Cheyenne Mountain (CINC NORAD) (3 days)
- Cape Tracon (1/2 day)
- Norfolk Center (1/2 day)
- Giant Killer (1/2 day)
- NY Center (1 day)
- NY Tracon and ROC (3 days)
- DC Center (2 days)
- DC Tracon (1 day)
- Indianapolis Center (1 day)
- Chicago ROC (1 day)
- Washington Ops Center (3 days)
- Herndon (3 days)
  
- NMCC (3 days)
- WH (3 days)

These approximately thirty working days of interviews must, of course, be preceded by days of preparation, and followed in turn by days of drafting the Memoranda for the Record necessary to inform Team 8's monograph and the Commission's Final Report. Assuming, therefore, that Team 8 were in a position to resume its interviews by December 8 (an aggressive assumption), and assuming further that Team 8 conducted interviews every other working day thereafter – a practical impossibility – Team 8 would complete the interviewing process toward the end of February. A more realistic assessment, given the work involved in preparation for and reaction to the interviews and the vagaries of interviewee availability, is that Team 8 will be able to complete the interviewing process no earlier than mid-April (assuming that there are no further discovery or other glitches). This timetable will be further impeded, moreover, if Team 8's fact-finding is interrupted by the need to plan and present a hearing prior to its conclusion.

Team 8 is aware that the Commission has approved a hearing on the United States' Air Defense on 9/11 for March 2, 2004; if that remains the Commission's decision, Team 8 will present a hearing on that date. The Commission should be aware, however, that such a hearing will fall, as a consequence of the federal agencies' failure to comply with Commission requests, toward the middle of Team 8's interviewing process, rather than at its end. This timing will necessarily affect the type of hearing that can be conducted; such a hearing will of necessity be interim in nature, and will require Team 8 to suspend its fact-finding in early February to prepare for the hearing.

#### B. Substantive Progress: Unanswered Questions

The importance of Team 8's fact-finding to the nature of the hearing the Commission eventually conducts cannot be overstated. In perhaps no aspect of the 9/11 attacks is the public record, as reflected in both news accounts and testimony before this Commission, so flatly at odds with the truth. Team 8's review of the documents provided prior to the subpoenas, coupled with the results of the interviews conducted prior to issuance of the subpoenas, has cast serious doubt on the public version of events as reflected in media accounts and in various public statements of officials from the FAA, NORAD, and the White House.

The public source versions of, among other issues, (1) the timing of the FAA's notifications to NORAD of the hijackings, (2) the purpose for and direction of the NORAD fighter scramble orders, (3) the cause of the disappearance of American Airlines flight 77 (the plane that struck the Pentagon) from radar, (4) the ability of NEADS controllers to locate and track the hijacked airliners because of NORAD's mission to "look outward," (5) the ability of the fighter jets to respond to United Airlines flight 93, and (6) the source and timing of the transmission of the shoot-down order to the pilots who would have had to execute it, all appear to be untrue. In addition, Team 8's preliminary review of DoD exercise materials predating 9/11 raises questions about repeated public assertions of various officials that no one had imagined or planned for the use of commercial airliners as weapons, and that NORAD was hampered in its air defense mission by the Cold War paradigm of "looking outward" for transnational threats, and by the doctrine of *posse comitatus*, which prohibits military involvement in domestic law enforcement.

These anomalies in the factual record are neither random nor insignificant; indeed, they go to the heart of the larger policy issues underlying the air defense mission on 9/11. In virtually every instance outlined above, the public source understanding of what occurred in the national immediate response on 9/11 has served to understate the difficulty that FAA, DoD, and other administration officials had communicating internally and with each other, and to overstate the government's evolving situational awareness. The documents uncovered by Team 8 in its interviews and produced now in response to subpoena bear directly, in other words, on the veracity of the current public source understanding of our national preparedness and response.

Team 8 believes, based on its work to date, that an account of the immediate response based on plenary fact-finding will accomplish more than mere clarification of the public understanding of the events on 9/11; it will, in addition, provide a window into the operations of antecedent policy choices and bureaucratic relationships, and into the agencies' efforts, in the immediate aftermath of the attacks and beyond, to explain their conduct to the public.

The fact, for instance, that the FAA and NORAD had difficulty communicating on 9/11 because their radar terminologies were incompatible and because they rarely, if ever, conducted joint training is a window into the historic bureaucratic rivalry of the two agencies. The fact that no fighter jets were available for the five minute flight to New York from Atlantic City raises the broader policy issue why DoD decided to pair down NORAD's complement of alert bases. The fact that the fighters scrambled from Langley did not head directly to Washington, as DoD officials have represented in numerous interviews and in testimony before the Commission, but east and then north in response to a false report, is a window into the lack of situational awareness on 9/11 and, candidly, into NORAD's attempt to shape the public's understanding of events in their immediate aftermath. The fact that the sequence of the shoot-down order and its transmission has been misrepresented in the public record – Col. Marr from NEADS, for instance, is quoted repeatedly as stating that the fighters would have shot down UAL 93 “to save lives on the ground,” when the record seems to indicate that no “shoot-down” order was received until after flight 93 was known to have crashed -- is, again, revealing not just of the fact that the pilots would not have had authorization to shoot down the airliner, but of the agency's attempt to shape the public's understanding in the aftermath of the event.

Because the issue of immediate response is by nature fact-intensive, and because the facts surrounding the national air defense on 9/11 are so misunderstood in the existing public record, a clear understanding and presentation of the underlying facts of the air defense on 9/11 is, in Team 8's view, a necessary premise to the presentation of broader policy considerations the Commission may desire to address in its public hearing.

## II. THE TIMING AND STRUCTURE OF THE AIR DEFENSE HEARING

### A. Timing of the Air Defense Hearing

Given the considerations of process and substance outlined above, the Team 8 staff consensus is that the hearing on air defense should await a more complete development of the factual record than will be possible by March 2. Because there is such a public misunderstanding of what occurred, and because that misunderstanding has been abetted by government officials, Team 8 considers a definitive clarification of the factual record a top priority of the public hearing, whenever it is conducted. To hold a public hearing with the factual record unsettled, in our view, would compromise the Commission's ability to clarify the public record on the facts of 9/11; to the extent that those facts form the premise for any broader policy discussion, a public hearing with the facts unresolved will render tentative any broader policy discussion of air defense

preparedness. Accordingly, Team 8 recommends that the hearing on air defense immediate response be held the last week in April, when the factual record is likely to be complete.

Team 8 acknowledges, however, that the Commission schedule as currently approved calls for a hearing on March 2. Team 8 requests that the Commission be informed of its concerns regarding the process and substance of the investigation, and asked to revisit the wisdom of a March hearing. Should the Commission decide to proceed with the March date, Team 8 will interrupt its ongoing fact-finding to conduct the hearing as outlined below.

## B. The Structure of the Air Defense Hearing

The structure of the air defense hearing turns on how far Team 8 has progressed in developing the facts of the day. Team 8 views the following hearing scenarios as achievable, depending on the Commission's ultimate preferences.

### 1. A March Hearing

Should the Commission decide to treat the air defense issue in a single-day hearing in March, with no follow-up public hearing, the challenge will be to conduct the hearing in a manner that acknowledges its interim nature while striving to be as complete as possible. Any staff statement opening the hearing must be couched in terms that make clear that the fact-finding process is as yet incomplete, and be limited to identifying key issues and tentative conclusions.

Composition of the panels will also prove challenging. There is consensus that such a hearing – if this is the Commission's only treatment of the issue -- should consist of accountable high-level officials from FAA, from DoD, and from the White House. The difficulty is that those officials may be the least effective witnesses in clarifying the factual picture of 9/11, which Team 8 will, for the reasons set forth above, not be able to accomplish. A possible solution would be to invite each panel to include a person who participated and can speak to the operational details of the day, in addition to the higher-level officials. Team 8 views a single-day March hearing as the least desirable alternative.

### 2. A Bifurcated Hearing, March and Late April

An alternative to a single-day hearing in March, if the Commission still desires to conduct such a hearing, would be to hold a one-day hearing in March that will be interim in nature, to be followed by a hearing in late April. The advantage of this approach, from a staff perspective, is that it will allow staff to clarify definitively, in a public forum, those aspects of the public record that are currently incorrect. It will also allow the Commission to question high-level accountable officials based on a factual record that is complete.

The difficulty with this approach is that it will commit the interim March hearing to further fact-finding with operational officials as witnesses. This is less than desirable, both because of the difficulty of furthering fact-finding in such a forum and because of the risk that lower-level officials will appear to be scapegoats in such a forum.

### 3. A Hearing in Late April

From Team 8's perspective, this is the most desirable timing for the hearing. Because it will allow time for Team 8 to conclude its fact-finding, such a hearing would open with a definitive staff statement, clarifying those aspects of the public record that are misunderstood and forming the factual predicate to which the witnesses on the FAA, NORAD, and White House panels react. It offers the best hope, in our view, of definitively setting the record straight with respect to air defense issues on 9/11, and segues nicely to the issues of immediate response in New York City and at the Pentagon. It will afford the Commission the opportunity, in a one-week period, to tell the definitive story of the immediate response to 9/11, to highlight the overriding challenges of that day in responding to the attacks, and to provide an inductive premise for the discussion of higher-order policy issues.

## III. CONCLUSION

The Team 8 staff consensus is that the dilatory response of federal agencies to the Commission's document requests has compromised Team 8's ability to complete its investigation in a timely manner. Although completion is still possible, the work will now be rushed, and there will be little time for the kind of reflection that these issues warrant in drafting the Team 8 monograph.

Because of these considerations, Team 8 is unanimous that a comprehensive hearing in late April will afford staff the best opportunity to tell a definitive story and to clarify a public record that is incorrect in several material respects. Should the Commission decide, notwithstanding Team 8's concerns, to conduct a hearing in early March on air defense, Team 8 will prepare for such a hearing, and believes that such a hearing can add value to its work. Team 8 wants it clearly understood by the Commission, however, that such a hearing will of necessity be interim in nature, and will not clarify the public understanding of the events of 9/11 in the way that Team 8 feels is essential.

*Team 8*

**Dan Marcus**

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**From:** John Farmer  
**Sent:** Monday, December 08, 2003 1:41 AM  
**To:** Front Office  
**Cc:** Team 8  
**Subject:** Time, people, and the May deadline

Philip, all -- Because the issue of whether the Commission should seek more time to complete its work will be addressed soon (perhaps as early as this week), I have spoken at length to members of Team 8 about the May deadline and prospects for completing our work given the delays in our obtaining the necessary information from federal and other governmental agencies. We have attempted -- deliberately -- NOT to factor into our assessment such factors as political realities and personal plans -- factors that we acknowledge must weigh heavily in the Commission's deliberations; rather, we have focused on the work itself, in order to give you and the Commissioners a sense of how much time we will need based strictly on the project at hand. Our consensus is that the work cannot be done "right," within the current time constraints, without outside assistance. Assuming that the Commission decides to ask for more time, there is general agreement among Team 8 members that 2-3 months' additional time would be necessary to complete our work. (Again, we recognize that this time estimate is based solely on the work at hand, and does not take into account the "bigger picture" that the Commission must consider.)

Assuming that the Commission decides NOT to seek more time, Team 8 would seek the following assistance in order to complete its work:

First, transcription help. We have recently received an enormous quantity of untranscribed tapes from FAA, NORAD, and, now, New York City. I know that discussions are underway with the Miller Center for some form of assistance, but we may need to hire another, less sophisticated outside transcription firm at significant cost. THIS IS THE MOST CRITICAL LOGISTICAL NEED.

Second, for purposes of the air defense piece of Team 8's assignment, we request an administrative assistant/paralegal to help Lisa Sullivan in DC, and a staffer with a working knowledge of NORAD/DoD, perhaps someone on mobility from one of the Congressional committees, to assist in document reviews and interviews. In addition, we may need to hire a consultant with expertise in radar to assist us in evaluating the performance of FAA and, to a lesser extent, NORAD on 9/11.

Third, for purposes of completing the New York piece (evaluating the new documents we will be receiving and participating in interviewing), we would like to add four people: an intern; two persons with law enforcement or fire fighting experience; and, as referenced in an earlier e mail, Bill Raisch, as a consultant on the private sector piece. In addition, we are interested in bringing on "volunteers," such as law students and associates at NY firms, to assist in reviewing nonconfidential documents and conducting nonconfidential interviews.

We recognize the constraints of time and budget within which the Commission must operate, and will work within whatever constraints the Commission decides to honor. We feel we owe it to you and to the Commissioners, however, to put forward our candid assessment, unalloyed with political or personal considerations. Thanks,

John

Team 8

**Dan Marcus**

**From:** Dana Hyde  
**Sent:** Tuesday, March 02, 2004 12:02 PM  
**To:** Front Office  
**Cc:** John Farmer  
**Subject:** Status of WH "Day of" Investigation

All -

Over the weekend, John and I took stock of where we stand with respect to our investigation of the White House response to the attacks of 9/11. Outlined below are our thoughts and suggested amendments to EOP Interview Request No. 3.

As you will recall, on December 31, 2003, the Commission submitted EOP Request No. 3, which sought "meetings" with 16 persons who on 9/11 were located in either the Situation Room, the PEOC, or aboard Air Force One and who were involved in responding to the hijackings. The fulfillment of this request, coupled with Team 8's "tag-on" questions to Team 3 witnesses, would have resulted in the questioning of approximately 25% of the total individuals in the PEOC and Sit Room that day (that number is based on lists available at NEOB that show 44 people in the Situation Room and 40 people in the PEOC on 9/11). In addition, our initial plan called for interviews with 8 Secret Service agents, 3 of whom were with either the President or VP on 9/11.

As of today (March 2), 5 of the 16 EOP "meetings" have been conducted. The Secret Service interviews were placed on "hold" for two weeks by the White House; last Friday, we learned that 5 of the 8 interviews can go forward subject to the same restrictions placed on WH employees (i.e., pre-meetings, participation of WH Counsel's Office, and I assume no recording); interviews of the 3 USSS agents in proximity to the President (Eddie Marenzel) and VP (Truscott and Zotto) are still on hold. The White House also placed a hold on review of the USSS tapes from 9/11.

Over the weekend we reflected on two factors: first, the press of time, and second the disappointing results of the interviews conducted thus far.

With respect to time, Team 8A's monograph is due at the beginning of May, and, as we understand it, our hearing has been tentatively set for the beginning of June. Our goal is to complete fact-finding by April 1<sup>st</sup> (with 8 weeks for synthesis, writing, and hearing preparation) but that could slip to mid-April. So at most, we have 6 more weeks for fact-finding.

Second, very little new information -- that is, information above and beyond the details contained in Woodward, Evan Thomas, etc. -- has been gained in the 5 White House "meetings" conducted thus far (Barnes, Irwin, Loewer, Hargis, and Frank Miller). To a person, no one has any recollection of the circumstances and details surrounding the authorization to shoot down commercial aircraft. That includes Michael Irwin, who is captured on the Air Threat Conference Call tape passing such authorization to the NMCC. Similarly, Frank Miller -- whom Dick Clarke, Roger Cressey, and others identified as the person charged with "working the ROE issue" -- stated on Friday that he has no recollection of any involvement in that issue. The White House principals interviewed on this topic -- Dr. Rice and Mr. Hadley -- also provided no detail beyond that captured by the Air Threat Conference Call (Hadley) or reported to the press (Rice).

The same absence of recollection holds true with respect to other topics of interest, such as the Andrews scramble and the reported threat to Air Force One. And while some basic questions regarding the physical layout of the PEOC and its communication systems on 9/11 have been answered, key points such as the means and extent of connectivity between the PEOC and Situation Room that morning remain garbled. Indeed, the only point that was uniformly affirmed in the Hargis, Barnes, Irwin, and Miller "meetings" is the unreliability of the documents (i.e., logs) that have been provided to the Commission from the Situation Room and PEOC. *Sua sponte* Frank Miller provided us with an example of an erroneous Sit Room log entry, while Rob Hargis and Michael Irwin talked extensively about how unreliable the logs were from that day.

In short, we fear that the remaining interviews will be no more fruitful than those conducted thus far. Our sense is

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that the White House will take the position that it is not possible to reconstruct – with any degree of accuracy or reliability – what went on that morning in the Situation Room and PEOC. While we disagree, a detailed reconstruction would require more time, resources and an approach different than that which is currently being pursued. Admittedly, this is difficult fact-finding given the passage and time and the chaotic nature of the day; at the same time, tougher nuts have been cracked in the past.

The bottom line is that the time constraints and process that have been imposed (i.e., (1) limited document requests that exclude email or telephone records; (2) pre-meetings with agency representatives to discuss our topics/questions in advance; (3) the presence and participation of White House Counsel's Office in the "meetings"; (4) limited time for "meetings"; (5) a limited number of witnesses all of whom must be justified in advance (no "fishing expeditions"); and (6) limited ability to confront witnesses in any manner perceived as "hostile") is not conducive to a full exposition of what went on at the White House that day. Our primary concern is that the expectation of what the Commission is pursuing in this area – that is, a plenary investigation of the decision-making and emergency response at the White House on 9/11 – exceeds what is actually being accomplished in the current structure. If the expectation of what should be pursued is decidedly less, then we are probably on the right track.

So where do we go from here? Outlined below are proposed amendments to EOP Request No. 3 that reflect the view that White House interviews are of little fact-finding value, at least as currently structured. One recommendation would be to expend capital and resources on obtaining written and electronic resources from the day, such as emails, phone logs, and pager records (the White House utilizes a text paging system that allows for detailed messaging to be conveyed via pager). A second recommendation would be to aggressively pursue access to the USSS tapes, which may or may not contain useful information. Surely we don't want to overstate the definitiveness of our investigation. We hope to either push harder over the final months, as outlined above, or start adopting more modest expectations.

We look forward to your comments and views. Dana and John (Farmer)

#### **Proposed Deletions to EOP Request No. 3**

(1) **Dwayne Carmen (WHMO):** He may have been involved in Andrews scramble but we will probably know enough about the sequence of events leading up to that scramble to write it without interviewing him; decision subject to change after USSS interviews.

(2) **Tony Crawford (NSC):** Has notes from the day but they don't begin until around 1100.

(3) **Hector Irastorza (WH):** Present in the Situation Room and should be knowledgeable about evacuation procedures prior to 9-11; dropped in the interest of time.

(4) **Harriet Miers (WH):** Loewer stated that Miers was sitting on the communications deck of AF1 that day and was instructed by Loewer to write down everything she heard. Accordingly, we expect to rely on her notes from the day. However, the WH has expressed concern about this interview and at this point it seems sufficient to have the notes speak for themselves.

(5) **Keeper of Watch Log on 9/11:** Not as significant as the two other logs listed below

(6) **Lt. Rancher:** Mistake from the Air Threat Conference Call transcript.

#### **Interviews Pending from EOP Request No. 3; Should Proceed**

(1) **Scott Heyer (Sit Room Comms Officer):** May be able to shed light on who were the participants in the Dick Clarke SVTS and the times the various agencies were included; scheduling in the works.

(2) **Mathew Waxman (NSC):** Fairly detailed notes from early in the day; worth speaking to about his notes.

(3) **Keeper of Shelter Log – name(s) unknown:** The PEOC shelter log places the VP in the shelter at 0958 and Mineta in the shelter at 1007. In terms of the timeline, it is important to understand how reliable (if at all) these times are.

(4) **Keeper of WHMO Log – Dave Boone:** The WH recently produced a handwritten version of the WHMO log and identified Boone as the keeper of it; the log was a special project he took on that morning – i.e., the WHMO log is not a document which is normally kept – and other than the Air Threat Conference Call is the primary record we have from the morning.

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(5) **Tom Greenwood:** May shed some light on coordination and interaction with DoD/FAA; assisted Miller that day.

**New Requests**

(1) **John Bellinger (NSC):** The White House recently produced his "day of" notes which reflect at least some involvement in the ROE issue.

(2) **VP Military Aide (I believe his last name is Cochran):** The person at the Vice President's side in the PEOC who should have been intimately involved in the military communications chain is his military aide.

**Follow Up Documents**

(1) **Air Force One Phone Logs:** Deborah Loewer stated that there should be logs from the communications deck that morning; such logs were not specifically covered in our request. Having said that, the White House just produced another log not sought in our request – the White House Communications Agency (WACA) Royal Crown log – which is the classified side of the WH switchboard.

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