



U.S. Department of
Transportation

Office of the Secretary
of Transportation

The Inspector General

Office of Inspector General
Washington, D.C. 20590

FAA

May 5, 2004

The Honorable Thomas H. Kean
Chairman
National Commission on Terrorist Attacks
Upon the United States
301 Seventh Street, SW
Room 5125
Washington, DC 20407

Dear Governor Kean:

Enclosed is a copy of our report to Senator John McCain, Chairman, Committee on Commerce, Science and Transportation, which we transmitted on May 4, 2004.

As requested by Senator McCain, we investigated (a) FAA's reported lack of responsiveness in providing the Commission with requested documents and materials, prompting the Commission to issue a subpoena for records on October 16, 2003; and (b) a specific allegation, initially identified by the Commission staff, that FAA had destroyed an audiotape that had been made at its New York Air Route Traffic Control Center (New York Center) of controller accounts of their actions and observations on September 11, 2001, shortly following the attacks. The Commission had learned of the tape, and its alleged destruction, during its interviews of New York Center personnel between September and October 2003.

Our investigative findings and recommendations concerning the alleged destruction of the audiotape are detailed in our report to Chairman McCain. In brief, we found that shortly before noon on September 11, the Center Manager directed the audiotaping of controllers' statements regarding their actions and observations that morning about the hijacked aircraft. We identified six controllers who gave tape-recorded statements, and determined that their statements were recorded on a single audiotape. We further found that the Center's then-Quality Assurance Manager--of his own volition and without consulting anyone--destroyed the tape, out of his personal concern that the tape never should have been made, because he considered it contrary to FAA policy and felt the controllers were not in the correct frame of mind to have properly consented to the taping. The Quality Assurance Manager told us that sometime

between December 2001 and February 2002, he destroyed the tape by crushing the cassette in his hand, cutting the tape into small pieces, and then depositing the pieces in trash cans throughout the Center.

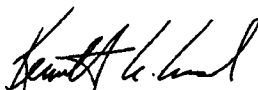
No one we interviewed from outside the Center, including former FAA Administrator Jane Garvey, knew of the existence or destruction of the tape until the Commission's probe. Also, we conducted sufficient interviews to satisfy ourselves that there was not anything on the tape that would lead anyone to conclude that FAA personnel had something to hide or that the controllers did not properly carry out their duties on September 11. We determined that the audiotape should not have been destroyed; that its destruction violated FAA's record retention policy. We concluded that the Quality Assurance Manager, in destroying the subject audiotape, and the Center Manager, in not telling his superiors about the tape and an agreement he had with the local union that it would be destroyed, did not act in the best interest of FAA, the Department, or the public.

Based on our findings, we recommended to FAA that it strengthen its evidence custody practices, and that appropriate administrative action be considered for the Quality Assurance Manager, as well as the Center Manager, given their conduct.

In addition, per Chairman McCain's request, we have investigated FAA's reported lack of responsiveness in the period leading up to the Commission's issuance of the subpoena. However, in order to complete our investigation, we will need to meet with Commission staff. We have been coordinating this matter with the Commission's General Counsel, and we would also be pleased to brief you and other Commissioners on our results.

If I can answer any questions or be of further assistance in this or any other matter, please feel free to contact me at 202-366-1959, or my Deputy, Todd J. Zinser, at 202-366-6767.

Sincerely,



Kenneth M. Mead
Inspector General

Enclosure

FAA



U.S. Department of
Transportation

Office of the Secretary
of Transportation

The Inspector General

Office of Inspector General
Washington, D.C. 20590

The Honorable John McCain
Chairman, Committee on Commerce,
Science and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

By letter dated October 16, 2003, you requested that we examine the Federal Aviation Administration's (FAA) responsiveness in complying with the requests of the National Commission on Terrorist Attacks upon the United States (9-11 Commission) for agency documents and other materials¹.

In response to your request, we initiated an investigation, dividing it into two parts. We investigated (a) FAA's reported lack of responsiveness in providing the Commission with requested documents and materials, prompting the Commission to issue a subpoena for records on October 16, 2003; and (b) a specific allegation that FAA had destroyed an audiotape that had been made at its New York Air Route Traffic Control Center² (New York Center) of controller accounts of their actions and observations on September 11, 2001, shortly following the attacks. The Commission learned of the tape, and its alleged destruction, during its interviews of New York Center personnel between September and October 2003.

Our investigative findings concerning the alleged destruction of the audiotape are detailed below. We have also investigated FAA's reported lack of responsiveness in the period leading up to the Commission's issuance of the subpoena. We will separately report our results to you following additional coordination with the

¹ The National Commission on Terrorist Attacks Upon the United States (9-11 Commission) is charged with preparing a full and complete account of the circumstances surrounding the September 11, 2001, terrorist attacks, including preparedness for, and the immediate response to, the attacks. We previously testified before the Commission about the state of aviation security prior to September 11. http://www.oig.dot.gov/item_details.php?item=1101

² New York Center is responsible for the domestic enroute air traffic management for the New York metropolitan/tri-state area and the oceanic north and west Atlantic and Caribbean areas, above 12,000 feet. New York Center is internally divided into sections, designated as Areas A thru F, with corresponding radar sectors per Area.

Commission. We have found no indication that FAA intentionally withheld records. In addition to interviews of FAA officials, we have examined correspondence and email communications between FAA and Commission staff. We found that miscommunications and misunderstandings led to concerns that FAA had not been thorough enough in its production of materials pursuant to the Commission's requests.

On November 17, 2003, FAA responded to the Commission's subpoena, detailing its prior production of records and transmitting additional materials. According to FAA's response, prior to the subpoena, it had provided over 6,000 documents and other materials pursuant to the Commission's requests. In order to complete our investigation, further contact with the Commission is needed with respect to the issue of FAA's level of responsiveness, and we will be meeting with Commission staff.

As we summarize our investigative results below, we note that the New York Center's creation of the subject audiotape occurred at a time of extraordinary efforts by FAA, through the actions of its entire air traffic control workforce and management, in safely grounding the nation's air traffic during the terrorist hijackings and attacks of September 11.

Alleged destruction of 9/11 audiotape

- We found that a single cassette tape-recording was made at the Center on September 11—beginning around 11:40 a.m. and lasting about an hour—of controllers giving first-hand accounts of their actions in interacting with, or tracking, two of the hijacked aircraft that morning. We identified six controllers who gave tape-recorded witness statements, each being approximately 5-10 minutes long.
- The Center Manager, who directed the taping, said he did so because he wanted a contemporaneous recordation of controller accounts to be immediately available for law enforcement. He told us he was concerned that controllers would take stress-induced sick leave and thus be unavailable to provide conventional written witness statements in a timely manner. As part of an agreement with the local controllers' union president (further addressed below), the Center Manager told the local president that the controllers could use their taped statements to assist in preparing their written statements.
- While we concluded that the Center Manager's decision to tape-record the controller statements was prudent under the circumstances, we found a number

of irregularities surrounding the decision to tape-record and the subsequent handling of the audiotape, based on the following findings:

- Prior to the taping, the Center Manager agreed to the local union president’s condition that any tapes be temporary and destroyed once standard written witness statements were obtained. After the taping, the Quality Assurance Manager, as custodian of the tape, separately committed to the union that he would “get rid of” the tape. We confirmed, as detailed below, that this tape was subsequently destroyed by the Quality Assurance Manager, acting on his own initiative, between December 2001 and February 2002.
- Neither manager informed FAA Regional or Headquarters authorities of the tape’s existence or their separate agreements to destroy it. Had they contacted the Air Traffic policy experts in FAA Headquarters, they would have been instructed to retain the tape, treating it as an original record requiring five-year retention.
- Despite the stated purpose of the tape and it having been logged into the Center’s record of evidence, its existence was never disclosed to law enforcement (i.e., the FBI). This was the case even though the Quality Assurance Manager began forwarding evidence materials, as they became available, to the FBI (through FAA’s liaison) beginning on September 12³. Further, the Center’s evidence log, referencing the tape, was not provided to anyone outside the Center until October 2003 in response to the Commission’s probe.
- Moreover, the Quality Assurance Manager made a conscious decision not to include the tape in the Center’s “Formal Accident Package” of evidence (finalized in November 2001), because, as he told us, he would lose control of the tape and thus be unable to keep his word to the union that he would “get rid of” the tape.
- We were told that nobody ever listened to, transcribed, or duplicated the tape. When one of the six controllers asked to listen to the tape in preparing her written statement, the Quality Assurance Manager told her that the tape was not meant for anyone to hear. Per FAA policy, controllers are afforded the opportunity to review radar data and radio transcripts before submitting

³ FAA’s liaison to the FBI advised that within a couple of days of September 11, he provided FBI with Air Traffic Control voice and radar data, in which FBI was primarily interested, along with several controller written statements that had been obtained, up to that point, from FAA’s Boston and Cleveland Centers and personnel at Dulles Airport. He advised that FBI’s requests for materials were verbal, not written.

written statements; however, this manager declined this controller's request to listen to her own oral statement. This same controller said she again asked to listen to the tape, at the time of the Commission's interviews (between September-October 2003), but did not know its whereabouts.

- Both managers misconstrued a Regional email they received directing that all administrative/operational data and records for September 11 be retained and secured. The email closed by stating, "If a question arises whether or not you should retain the data, RETAIN IT. Any questions, pls call . . ." The Quality Assurance manager told us, in part, that this email message could not have been intended to apply to the tape-recorded statements since the Region and FAA Headquarters were unaware of the tape's existence.
- The Quality Assurance Manager told us that sometime between December 2001 and February 2002, he destroyed the tape of his own volition, by crushing the cassette case in his hand, cutting the tape into small pieces, and then depositing the pieces in trash cans throughout the Center. He advised that he felt strongly that the tape never should have been made.
- The Center Manager told us that had the Quality Assurance Manager asked his permission to destroy the tape, he would have approved it, based on his view that it was merely a temporary record. The Quality Assurance Manager told us that if presented with similar circumstances, he would again take the same course of action.
- No one we interviewed from outside the Center, including former FAA Administrator Jane Garvey, knew of the existence or destruction of the tape until the Commission's probe.
- Under FAA policy, and as supported by Air Traffic policy experts at FAA headquarters, the tape should have been considered an original record and retained for five years. Despite the stated intention that the tape serve as a temporary record, the tape's inherent value as a contemporaneous recordation is reflected in the following excerpt from FAA policy regarding the purpose of controller statements:

"Much of the information concerning the circumstances surrounding this accident/incident can be retrieved via some type of recorded data source [e.g., real-time radar data and transcripts of radio communications between pilots and controllers]. However, some of the facts concerning what you saw and what you did may not have been completely captured. The purpose of this statement is to provide any facts within your personal

knowledge that you believe will provide a more complete understanding of the circumstances surrounding this accident/incident. . .”

- It reflects poorly on the judgment and decision-making of the Quality Assurance Manager that, while unaware of the Center Manager’s agreement to the union’s stipulation that the tape be destroyed, he destroyed the tape of his own accord—without consulting anyone—based on factors stemming from his personal frame of mind.
- As a result of the judgments rendered by these managers, no one will know for certain the content of the tape or its intrinsic value, nor be able to compare the audiotaped statements with the controllers’ written witness statements—one of which was prepared three weeks later—for purposes of ensuring completeness⁴. Though technical details of the hijacked flights are well known based on radar data and pilot-controller radio communications, what those six controllers recounted in a group setting on September 11, in their own voices, about what transpired that morning, are no longer available to assist any investigation or inform the public.
- Moreover, it is fundamental in investigations that tape-recorded statements be retained for their potential evidentiary and probative value, including for purposes of comparison with written statements. The destruction of evidence in the Government’s possession, in this case an audiotape—particularly during times of national crisis—has the effect of fostering an appearance that information is being withheld from the public. We do not ascribe motivations to the managers in this case of attempting to cover-up, and we have no indication there was anything on the tape that would lead anyone to conclude that they had something to hide or that the controllers did not properly carry out their duties on September 11. The actions of these managers, particularly the Quality Assurance Manager, nonetheless, do little to dispel such appearances. Their actions did not, in our view, serve the interests of the FAA, the Department, or the public.
- In reviewing the circumstances of the Center Manager’s agreement with the union to destroy the tape, it is certainly plausible that the taping would not have occurred in the absence of the Center Manager’s agreement to the union’s condition that the tape be destroyed. However, this, in our view, does not explain why, once the tape was created and the records retention directive issued, the Quality Assurance Manager, along with the Center Manager, never

⁴ The written statements provided by the controllers, subsequent to their tape-recorded statements, were each two pages in length, except one that was four pages long.

notified superiors outside the Center or appropriate law enforcement authorities that the tape existed and was going to be destroyed. We are recommending to FAA that this be taken into account in considering appropriate administrative action for these individuals. We are also recommending that certain policy revisions be undertaken to strengthen procedures for aircraft accident/incident investigations.

Destruction of Audiotape – Summary Findings & Recommendations

We found that within a couple hours of the terrorist attacks on September 11, the Center Manager decided to tape-record contemporaneous controller statements in order to ensure their statements were quickly available to law enforcement, in the event agencies such as the FBI showed up at the Center. The Center Manager told us he was concerned that standard written statements, required under FAA policy, would be delayed due to controllers taking stress-induced sick leave, thus he intended the tape-recorded statements to serve as an interim measure to aid investigation by law enforcement. As part of an agreement with the local controllers' union president, the Center Manager told him that the controllers could use their taped statements to assist in preparing their written statements. Audiotaping of statements following accidents/incidents had not previously been conducted at the Center.

In advance of the taping, which began around 11:40 a.m. and lasted about an hour, the Center Manager consulted with the controllers' local union president on the issue of tape-recording the statements. The union president told us he agreed to the taping, on the condition that it only be a temporary record until such time as written statements could be obtained and that any tapes be disposed of once the written statements were provided. The local union president advised that he agreed to the taping so the controllers would not have to remain at the Center for an extended period of time preparing the required written witness statements.

The taping occurred in a group setting in a Center room known as the "Bat Cave." We identified six controllers who gave first-hand accounts of their actions in interacting with, or tracking, two of the hijacked aircraft that morning—*on a single, standard cassette tape*—after which the tape was logged into the Center's formal record of evidence. Our interviews of personnel present during the taping indicate that each controller's statement was about 5-10 minutes in duration. In the absence of the tape, however, we do not definitively know how many controllers provided taped statements or how long each individual spoke.

At least twice over the following few months, the local union vice president asked the tape's custodian, the Center's then-Quality Assurance Manager, whether

anyone had listened to it. The Quality Assurance Manager assured him that no one had listened to the tape, it would not be provided to anyone, and that he would “get rid of it” once the Center’s “Formal Accident Package⁵”—to include the written statements—was complete. The Center submitted its “Formal Accident Package” to Headquarters in November 2001, but he excluded the tape from the Package because, as he told us, he would lose control of the tape and thus be unable to keep his word to the union.

The Quality Assurance Manager advised that sometime between December 2001 and February 2002, following completion of the “Formal Accident Package,” he, of his own volition and without consulting his superiors, destroyed the tape. He told us he did so by crushing the cassette case in his hand, cutting the tape into small pieces, and depositing the pieces in trash cans throughout the Center. He advised that he was unaware of the Center Manager’s agreement with the union, and maintained that he did not consider the union’s earlier contact with him as any pressure to destroy the tape; he noted that he has never been a member of the union.

The Quality Assurance Manager asserted that he destroyed the tape based primarily on the following two reasons:

- (a) He considered it contrary to FAA policy, which calls for handwritten statements after controllers are afforded the opportunity to review certain operational materials (e.g., radar data, radio transmissions). Therefore, he felt the tape was of minimal value relative to the actual written statements.
- (b) He felt the controllers—due to the distress of that day—were not in the correct frame of mind to have properly consented to the taping. His assessment was based on his experience, in part, on watching crime shows he had seen on television about due process and legal rights associated with investigations.

Regarding the Quality Assurance Manager’s first assertion, we reviewed the FAA Order that prescribes policy for the investigation of aircraft accidents and incidents, finding that it does not specifically prohibit tape-recorded statements, but rather is silent with regard to this specific issue. We interviewed staff from the FAA Air Traffic Evaluations and Investigations Staff (policy experts on aircraft accident/incident investigations), who advised that while the Order does provide

⁵ Materials ultimately included in the Center’s “Formal Accident Package” were provided to the FBI as they became available, beginning on September 12, 2001 (when duplicates of voice communications between air traffic controllers and pilots were forwarded to the FBI via FAA’s headquarters liaison.)

for only written statements, the tape—once created—should have been treated as an original record and thus kept in accordance with agency retention requirements—five years.

Secondly, irrespective of whether audiotaped statements were authorized under the applicable FAA Order, the Quality Assurance Manager had no authority to decide whether the taping violated FAA policy or the rights of the controllers. The proper course of action for the Quality Assurance Manager would have been to communicate his concerns to appropriate levels of authority, as opposed to substituting his own judgment and summarily destroying the tape.

Further, we found a directive from the Air Traffic Evaluations and Investigations Staff, communicated in the form of a September 14, 2001, email from FAA's then-Eastern Region Quality Assurance Manager, instructing that data and records from September 11 be retained. It stated in part as follows, "Retain and secure until further notice ALL Administrative/Operational data and records . . . If a question arises whether or not you should retain the data, RETAIN IT. Any questions, pls call . . ."

Both the Center Manager and Quality Assurance Manager received this email, but, as evident in their actions regarding the tape's destruction, did not follow the directive. The Quality Assurance Manager offered several explanations for not following the email directive, namely that he did not consider the directive to apply to the audiotape because he felt the tape had been created in violation of FAA Air Traffic policy. Furthermore, the Quality Assurance manager related that the email message could not have been intended to apply to the tape-recorded statements since the Region and FAA Headquarters did not know of the tape's existence. The Center Manager told us that had the Quality Assurance Manager asked his permission to destroy the tape, he would have approved it based on his original intention that the tape serve only as an interim measure until such time as formal written witness statements could be obtained.

We asked every pertinent witness if they had listened to the tape or were aware of it having been duplicated or transcribed. To a person, they all responded in the negative. When one of the six controllers asked to listen to the tape in preparing her written statement, the Quality Assurance Manager told her that the tape was not meant for anyone to hear. Per FAA policy, controllers are afforded the opportunity to review radar data and radio transcripts before submitting written statements, however, this manager declined her request to listen to her own oral statement. This same controller said she again asked to listen to the tape, at the time of the Commission's interviews (between September-October 2003), but did not know its whereabouts.

When we interviewed officials from outside of New York Center, including the then-FAA Administrator, Deputy Administrator, and Director of Air Traffic Services, they told us they were unaware that controller statements had been taped until the issue arose following the 9-11 Commission interviews of Center personnel in September and October 2003.

It reflects poorly on the judgment and decision-making of the Quality Assurance Manager that, while unaware of the Center Manager's agreement to the union's stipulation that the tape be destroyed, he destroyed the tape of his own accord—without consulting anyone—based on factors stemming from his personal frame of mind.

Of the six controllers we identified as having provided tape-recorded statements on September 11, five prepared subsequent written statements⁶. (One controller provided a written statement on September 11, followed by three others providing their statements approximately two weeks thereafter, and the fifth three weeks after the fact.) Of the five controllers, three told us that they believed their written statements were largely consistent with their taped statements. The remaining two thought their written statements were more accurate or contain more detail because they reviewed radar data and/or transcripts of radio communications between pilots and controllers to assist in preparing their written statements. However, they cannot be certain because they never listened to the tape and nobody was able to compare their subsequent written statements with their contemporaneously taped statements.

Our review of the controllers' written witness statements, in comparison with two sets of sparse and sketchy notes taken during the taping, suggests some measure of consistency. However, we, along with the Commission, FBI, and other investigating agencies, will not know for certain what was on the tape and its value as a contemporaneous recordation of September 11. Thus, the proper course of action would have been to safeguard the tape and offer to provide it to investigating agencies.

Neither manager consulted with higher level officials, including FAA's policy authority on aircraft accident/incident investigations, the Air Traffic Evaluations and Investigations Staff at headquarters, which would have instructed that the tape—as an original record—be retained, for five years, in accordance with agency

⁶ The Quality Assurance Manager told us that he obtained written statements from only those controllers who talked to the hijacked aircraft or were working radar positions that the flight path of the hijacked aircraft intersected.

retention requirements. Moreover, neither manager took any action to inform FAA's liaison to the FBI of the tape's existence. This was the case even though the Quality Assurance Manager began forwarding evidence materials, as they became available, to the FBI (through the liaison) beginning on September 12. FAA's liaison to the FBI advised that within a couple of days of September 11, he provided FBI with Air Traffic Control voice and radar data, in which FBI was primarily interested, along with several controller written statements that had been obtained, up to that point, from FAA's Boston and Cleveland Centers, as well as from personnel at Dulles Airport. He advised that FBI's requests for materials were verbal, not written.

Since FAA's liaison to the FBI was unaware of the tape's existence, he was not able to offer the tape to the FBI when he provided, within a couple days of September 11, the several written statements he had obtained, up to that point. Further, the Quality Assurance Manager made a conscious decision not to include the tape in the Center's "Formal Accident Package" of evidence because, as he told us, he would lose control of the tape and thus be unable to keep his word to the union.

Despite the stated intention that the tape serve as a temporary record, the tape's inherent value as a contemporaneous recordation is clearly reflected in the following excerpt from the FAA Order⁷, which prescribes policy relating to aircraft accident/incident investigations, regarding the purpose of controller statements:

"Much of the information concerning the circumstances surrounding this accident/incident can be retrieved via some type of recorded data source [e.g., real-time radar data and transcripts of radio communications between pilots and controllers]. However, some of the facts concerning what you saw and what you did may not have been completely captured. The purpose of this statement is to provide any facts within your personal knowledge that you believe will provide a more complete understanding of the circumstances surrounding this accident/incident. . ."

Moreover, it is fundamental in investigations that tape-recorded statements be retained for their potential evidentiary and probative value, including for purposes of comparison with written statements. The destruction of evidence in the Government's possession, in this case an audiotape—particularly during times of national crisis—has the effect of fostering an appearance that information is being withheld from the public. We do not ascribe motivations to the managers in this

⁷ FAA Order 8020.11b, "Aircraft Accident and Incident Notification, Investigation, and Reporting."

case of attempting to cover-up, and we have no indication there was anything on the tape that would lead anyone to conclude that they had something to hide or that the controllers did not properly carry out their duties on September 11. The actions of these managers, particularly the Quality Assurance Manager, nonetheless, do little to dispel such appearances. Their actions did not, in our view, serve the interests of the FAA, the Department, or the public.

In reviewing the circumstances of the Center Manager's agreement with the union to destroy the tape, it is certainly plausible that the taping would not have occurred in the absence of the Center Manager's agreement to the union's condition that the tape be destroyed. However, this, in our view, does not explain why, once the tape was created and the records retention directive issued, the Quality Assurance Manager, along with the Center Manager, never notified their superiors outside the Center or appropriate law enforcement authorities that the tape existed and was going to be destroyed.

As a result of the judgments rendered by these managers, no one will ever know for certain the content of the tape or its intrinsic value, nor be able to compare the audiotaped statements with the controllers' written witness statements—one of which was prepared three weeks later—for purposes of ensuring completeness. Though technical details of the hijacked flights are well known based on Air Traffic Control radar data and pilot-controller radio communications, what those six controllers recounted on September 11, in their own voices, about what transpired that morning, are no longer available to assist any investigation or inform the public.

Beyond these findings, we identified fundamental procedural problems in the way the Center handles potential evidence. The FAA Order does not provide for documenting the chain-of-custody and disposition of potential evidence collected for FAA, or external, investigative purposes. However, in this case, the Center Manager utilized an improvised chain-of-custody form to account for evidence. While the form was used to log items—including the audiotape—it contains no provision for noting the disposition of items and, therefore, is not adequate for documenting the chain-of-custody.

Recommendations

Beyond our findings concerning the judgments of the Center Manager and Quality Assurance Manager, the results of our investigation reflect that FAA needs to develop and implement better policy guidelines for post-incident handling of potential evidence in situations involving criminal activity, to include acts of terrorism. This investigation highlights an inherent conflict between current FAA

policy and operational reality in situations involving catastrophic criminal incidents such as September 11. In this case, absent clear policy and procedures, Center management devised means—i.e., the tape-recording of controller statements—of dealing with circumstances FAA policy did not contemplate.

Based on our findings, we are transmitting to FAA the following recommendations:

1. FAA should implement procedures in the Order establishing an evidence custody system for documentary and other potential evidence relating to aircraft accidents and incidents, including those involving possible terrorist activity. At a minimum, the system should cover documenting the collection, handling, and disposition of any items, as well as clearly defining records and materials required for collection and to be maintained.

Currently, the FAA Order does not call for a chain-of-custody to be created and maintained in connection with aircraft incident investigations. The lack of sound handling procedures in this case led to improper conclusions as to the whereabouts and disposition of the evidence in the Center's custody. We recognize the importance of evidence handling as the cornerstone in any good investigation. Failure to properly account for evidence may result in the failure of a key piece of evidence to be admitted into court and/or accusations of misconduct or mismanagement on the part of the evidence custodian.

Also, the Order does not presently address audio/videotaped statements from controllers. We are recommending that if FAA policy authorizes audio/videotaping under certain circumstances, the resultant tapes should be retained in accordance with FAA records retention requirements.

2. We believe that the Center Manager acted in a prudent and good faith manner, under exigent circumstances, in directing the audiotaping of controller statements on September 11. However, the Quality Assurance Manager, in destroying the subject audiotape, and the Center Manager, in not telling his superiors about the tape and his agreement to destroy it, did not, in our view, act in the best interest of FAA, the Department, or the public. They should have ensured that the tape—an original record—was maintained with FAA's "Formal Accident File" for at least five years, in keeping with the retention requirements associated with aircraft accidents/incidents⁸.

⁸ FAA Order 8020.11b, "Aircraft Accident and Incident Notification, Investigation, and Reporting."

We referred the facts of our investigation to the U.S. Attorney's Office in the Eastern District of New York for review as to whether any criminal statutes may have been violated. After consideration, the U.S. Attorney's Office declined potential prosecution based on an evident lack of criminal intent and prosecutive merit.

Further, with regard to the actions of the central figures in this investigation—the Center Manager and the then-Quality Assurance Manager—we are recommending to the FAA Administrator that their conduct be reviewed and appropriate administrative action taken. Leaders at the grade level of both of these managers are entrusted with exercising sound decision-making in the public interest. Their actions in this case do not reflect proper judgment expected of professionals in those management positions. It is particularly troubling to us that, even with the benefit of hindsight, the Quality Assurance Manager told us that if presented with similar circumstances, he would again take the same action (i.e., destroy the tape).

Our findings in this matter are addressed in further detail in the below sections of this report.

Background

In September and October 2003, the 9-11 Commission interviewed FAA employees from the New York Center. During its interviews, the Commission was told that on September 11, shortly following the terrorist attacks, Center management gathered controllers for a fact-finding session, which was audiotaped at the direction of the Center Manager. The Commission received differing accounts of the purpose and substance of the meeting and the rationale for the tape-recording. When the Commission requested the tape, FAA advised that it was reportedly destroyed. Upon learning of this, we initiated an investigation into the facts and circumstances of the taping and the tape's reported destruction.

Scope and Methodology

Our investigation of this matter entailed over 50 interviews of current and former FAA personnel, including the following:

- The six controllers who provided audiotaped statements on September 11.
- Jane Garvey, Monte Belger, and Bill Peacock, who were the FAA Administrator, Deputy Administrator, and Director of FAA's Air Traffic Service, respectively, on September 11, but are no longer with FAA.

- Evaluations and Investigations Staff Manager, FAA headquarters.
- Investigations and Analysis Branch Manager, FAA headquarters.
- Then-Air Traffic Evaluations Branch Manager, FAA headquarters.
- Then-Air Traffic Division Manager, Eastern Region.
- Then-Quality Assurance Manager, Eastern Region.
- New York Center Manager.
- New York Center Assistant Manager.
- Then-Quality Assurance Manager, New York Center.

In addition, we interviewed the approximately ten other FAA employees present when the controllers provided audiotaped statements on September 11, 2001, as well as representatives of the National Air Traffic Controllers Association (NATCA). Further, we examined numerous documents and materials maintained by FAA in connection with the events of September 11, including a sign-in sheet and handwritten notes from the meeting where the audiotaped statements were taken; email messages; and the “Formal Accident Package” and file, to include controllers’ written statements. We further reviewed FAA Order 8020.11b, “Aircraft Accident and Incident Notification, Investigation, and Reporting,” which is the Air Traffic directorate’s policy pertaining to the investigation of aircraft accidents and incidents.

Details

1. Shortly before noon on September 11, Center management directed the audiotaping of controllers’ statements regarding their actions and observations that morning about the hijacked aircraft.

We found that on September 11, within a couple hours of the morning’s terrorist attacks, Center management summoned to a conference room controllers involved in working radar positions during the hijackings, and resultant crashes into the World Trade Center, of American Airlines Flight 11 and United Airlines Flight 175. At this meeting controllers were asked to make tape-recorded statements—a novel action for the center—in a group setting, describing their first-hand accounts of their actions in interacting with, or tracking the hijacked aircraft that morning.

We found that the Center Manager, after obtaining concurrence from the local president of NATCA, directed the tape-recording based on his presumption that law enforcement might have an immediate need for controller information about the hijackings. He explained that due to the traumatic circumstances, he presumed that controllers would take stress-induced leave and thus be unavailable to provide

timely conventional written witness statements. As such, he was concerned that the controllers' recollections of the day would not be as clear when they returned from leave⁹. The Center Manager told us his intention was for the tape to serve as an interim measure, for law enforcement, until such time as written statements could be obtained.

The Center Manager told us that in seeking the local NATCA president's agreement to tape, the president expressed concern because taping statements was not standard procedure. The Center Manager assured the local NATCA president that the tape would be available only to law enforcement, would serve as a temporary measure until written statements could be prepared, and that employees could use their taped statements to prepare written ones. The Center Manager advised that the NATCA president wanted the tape disposed of once it served its purpose, to which he agreed in order to get the president's concurrence.

The local NATCA president largely corroborated the Center Manager's account. He told us he agreed to the taping, on the condition that it be a temporary record until such time as written statements could be obtained, and that any tapes be disposed of once the written statements were provided. The local union president advised that he agreed to the taping so the controllers would not have to remain at the Center, on September 11, for an extended period of time preparing written statements.

We determined, based on a sign-in sheet from the meeting, that approximately 16 Center personnel were present, though witnesses have indicated that others may have been in the room who did not sign-in. Because the tape was destroyed, we do not know precisely how many controllers gave tape-recorded statements; however, notes taken during the meeting and witness accounts indicate that six controllers provided statements that were recorded—*on a single, standard cassette tape*—as a microphone was passed from controller to controller.

Based on our interviews and review of documents, we found that during a meeting, held in a Center room commonly known as the "Bat Cave" at around 11:40 a.m. (Eastern Daylight Time), lasting approximately one hour, statements from approximately six controllers were audiotaped, with as many as ten witnesses

⁹ Two of the controllers we interviewed, who had provided taped statements, told us that they were out of work on Workers' Compensation leave for 41 and 60 days, respectively. The controller who told us he was out for 41 days had provided his written statement on September 20, and the controller who was out for 60 days provided his written statement on September 11.

present¹⁰. We interviewed all 16 individuals identified as being present at this meeting. Witnesses told us that after gathering as a group, a microphone was passed around as each of the approximately six controllers provided their statement. The statements were recorded by a Center Quality Assurance Specialist on a standard cassette recorder. Our interviews of those present during the taping indicate that each controller's taped statement was about 5-10 minutes in duration. In the absence of the tape, however, we do not definitively know how many controllers provided taped statements or how long each individual spoke.

In order to establish what transpired during the meeting in the "Bat Cave," we (a) interviewed the controllers present; (b) reviewed notes, which were sketchy at best, made contemporaneously during the meeting; and (c) reviewed handwritten statements subsequently provided by the controllers. Of the six controllers we identified as having provided tape-recorded statements on September 11, five controllers, who had talked to the hijacked aircraft or were working radar positions that the flight path of the hijacked aircraft intersected, prepared subsequent written statements¹¹. (One controller provided a written statement on September 11, followed by three others providing their statements approximately two weeks thereafter, with the fifth providing a written statement three weeks after the fact.) The written statements provided by the controllers, subsequent to their tape-recorded statements, were each two pages in length, except one that was four pages long.

Of the five controllers, three told us that they believed their written statements were largely consistent with their taped statements. The remaining two thought their written statements were more accurate or contain more detail because they reviewed radar data and/or transcripts of radio communications between pilots and controllers to assist in preparing their written statements. However, we cannot state for certain, categorically, that the taped statements and written statements closely correlate since the logical step of comparing the taped, contemporaneous accounts with the subsequently-produced handwritten statements was not taken. Further, controller witness statements are intended to augment the recorded data—

¹⁰ We found that on September 11, following the crashes of American Airlines Flight 11 and United Airlines Flight 175 into the World Trade Center Towers, Center management conducted two separate meetings with controllers involved in handling or tracking hijacked aircraft in Center airspace. Initially, an informal crisis management meeting was held in the Center's main conference room, to address any medical, psychological, and other counseling needs of the controllers. Witnesses we interviewed advised that this meeting was not tape-recorded.

A second meeting was held at the Center in a room commonly referred to by some personnel as the "Bat Cave" because of its lack of windows.

¹¹ The sixth controller did not handle or interact with the hijacked aircraft and thus was not required to provide a written statement.

pilot-controller radio communications and radar data—with information that may not have been captured by the recorded data, in order to provide a more complete understanding of the circumstances surrounding an accident or incident.

Our review of their written statements in comparison with two sets of sparse, sketchy notes taken during the meeting—two Quality Assurance Specialists took notes during the taping that, when combined, amount to just three pages—suggests some consistency. One such example is provided below. (*Note: This example is provided—in the absence of the subject audiotape—simply to illustrate some relative consistency between the notes from the taping and the controller’s written statement. This example is not intended as any critique of the actions of this controller, or any other FAA personnel, in handling air traffic on the morning of September 11.*)

Some consistency between the notes and controller written statements is reflected in the account of one New York Center controller describing his interaction with United Airlines Flight 175 (UAL175) shortly before it was hijacked, in which the pilot of UAL175 radioed the controller at 8:41 a.m. EDT that he heard a suspicious transmission (from American Airlines Flight 11)¹². FAA’s radio communications transcript includes, in part, the following transmission from the UAL175 pilot:

“ya we figured we’d wait to go to your center ah we heard a suspicious transmission on our departure out of boston ah with someone ah da it sounded like someone keyed the mike and said ah everyone stay ah in your seats”

One set of notes taken during the tape-recorded meeting states, in part:

“USA [sic] heard a transmission – ‘everyone remain in your seats.’”

The other set of notes from the tape-recorded meeting states, in part:

“Statement about . . . ‘seats’”

The controller’s handwritten statement¹³, dated September 20, states, in part, as follows:

¹² By the time of this radio transmission (8:41 a.m. EDT), FAA’s Boston Center was already aware that American Airlines Flight 11 may have been hijacked and had so notified FAA’s New York Center.

¹³ The controller told us that he reviewed the operational radio transcripts to help him prepare his written statement and, therefore, he thought his written statement was more accurate than his taped statement.

“Then UAL175 says we figured we’ed wait until we got to your Center – we heard suspicious transmissions from the AAL [American Airlines Flight 11] like – everyone stay in your seats.”

As reflected in the above example, the notes taken during the tape-recorded meeting are too sketchy to serve as a substitute for the audiotape, and the subsequent written statements were prepared without the benefit of comparison with the audiotape. Thus, it is unknown whether the controllers’ written statements would have been more complete had they been able to access their tape-recorded statements—made within about three hours of the hijackings. We found no indication there was anything on the tape that would lead anyone to conclude that the Center Manager and Quality Assurance Manager had something to hide or that the controllers did not properly carry out their duties on September 11.

We asked every pertinent witness if they had listened to the tape-recorded statements or were aware of the tape having been duplicated or transcribed. To a person, they all stated they had not.

The Quality Assurance Manager told us that in November 2001, one of the six controllers asked to listen to the tape-recorded statements, one of which was hers. She was told by the Quality Assurance Manger that the tape was not meant for anyone to hear. While FAA policy affords controllers the opportunity to review radar data and radio transcripts before submitting written statements, this manager declined her request to listen to her own oral statement—a position that was contrary to one of the original purposes of the tape-recorded statements. This same controller told us that she again asked if she could listen to the tape in preparation for meeting with the Commission (in September/October 2003) but at that time the tape could not be located.

None of the witnesses we interviewed from outside of New York Center, including Ms. Garvey, former FAA Administrator; Mr. Belger, former Deputy Administrator; and Mr. Peacock, then-Director of FAA’s Air Traffic Service, told us they were aware that controller statements had been taped until they were interviewed by the OIG in November 2003.

We have confirmed that the tape was destroyed, and, as such, it was not made available to the FBI for their investigation and is not available to the Commission and other investigating agencies to assist in their investigations. Thus, the proper course of action would have been to safeguard the tape and offer to provide it to investigating agencies.

2. The Center's Quality Assurance Manager decided on his own to destroy the audiotape within several months of its creation.

The Center's NATCA vice president advised us that following September 11, he asked the Center's Quality Assurance Manager if anyone had listened to the tape, to which he was told that no one would hear the tape.

The Quality Assurance Manager recalled speaking with the local NATCA vice president about the tape in October 2001 and again in February 2002, assuring him that no one had listened to the tape, it would not be provided to anyone, and that he would "get rid of" it once the Center's "Formal Accident Package"—containing the written statements—was complete. He maintained that he felt there was no pressure from NATCA, of which he has never been a member, to destroy the tape.

The Center Manager stated that he did not tell the Quality Assurance Manager that the tape was to be temporary, which comports with the recollection of the Quality Assurance Manager.

The Quality Assurance Manager advised that sometime between December 2001 and February 2002, following completion of the "Formal Accident Package"¹⁴,—containing the written statements—he, of his own volition, and without consulting his superiors, destroyed the tape. He told us he did so by crushing the cassette case in his hand, cutting the tape into small pieces, and depositing the pieces in trash cans throughout the Center.

It is clear this manager went to great lengths to destroy the tape so that it would never leave the Center intact, thereby enabling him to keep his word to NATCA that he would "get rid of" the tape. The Quality Assurance Manager further explained that he did not think that the tape should have been created because:

- In his view, it was contrary to FAA policy, which calls for hand-written statements after controllers are afforded the opportunity to review certain operational materials, namely radar data and radio and intercom transmissions—as described below, FAA's Order concerning aircraft accident and incident investigations does not address this question. Since the controllers did not have this opportunity, he concluded that the tape was of minimal factual value as compared with written statements.

¹⁴ FAA's Evaluations and Investigations Staff advised that the Center submitted an initial copy of the Formal Accident Package in November 2001. The Package was returned to the Center in December 2001 for additional work and then returned and finalized in May 2002.

- He believed the controllers were not in an appropriate frame of mind due to the distress of the day, and thus were unable to properly consent before making the audiotaped statements. His assessment was based on his experience from watching television crime shows.

Our review of the FAA Order, which prescribes policy for the investigation of aircraft accidents and incidents, revealed that it is silent on the issue of taping controller statements (i.e., the policy does not prohibit tape recorded statements). In the opinion of the staff we interviewed from the FAA's Evaluations and Investigations Staff, the Air Traffic Division's policy experts on aircraft accident and incident investigations, they advised that FAA policy calls for all personnel that were either involved or had knowledge of the accident to provide a written statement, hence, taped statements are outside of the requirement¹⁵.

Despite the intention of the Center Manager that the tape serve as a temporary record, the tape's inherent value as a contemporaneous recordation is reflected in the following excerpt from the FAA Order regarding the purpose of controller written statements:

“Much of the information concerning the circumstances surrounding this accident/incident can be retrieved via some type of recorded data source [e.g., real-time radar data and transcripts of radio communications between pilots and controllers]. However, some of the facts concerning what you saw and what you did may not have been completely captured. The purpose of this statement is to provide any facts within your personal knowledge that you believe will provide a more complete understanding of the circumstances surrounding this accident/incident. Therefore, speculations, hearsay, opinions, conclusions, and/or other extraneous data are not to be included in this statement. Additionally, this statement may be released to the public through FOIA [Freedom of Information Act] or litigation activities including pretrial discovery, depositions, and actual court testimony.”¹⁶

Given the lack of prohibition surrounding creation of taped statements and the Center Manager having directed its creation, the Quality Assurance Manager, as a subordinate, was obligated to fulfill the tape's intended purpose. Furthermore, given his personal concerns about the tape, especially, in his view, it having been

¹⁵ FAA Order 8020.11b, Appendix 2(p), Personnel Statements, requires that personnel “[s]tatements shall be hand written...”

¹⁶ This text, verbatim from FAA Order 8020.11(b), Appendix 2(p), appears on the pre-printed portion of the controller statement form used by the Center.

made contrary to FAA policy and without the proper consent of the controllers, he should have sought advice and counsel from the Evaluations and Investigations Staff and/or FAA's Chief Counsel, which he told us he had not done.

The Quality Assurance Manager advised that he never informed the FBI (through FAA's liaison), or anyone else, of the tape's existence. He destroyed the tape without having told anyone outside the Center about it, and that nobody had listened to it, copied it, or transcribed it. The Quality Assurance Manager made a conscious decision not to include the tape in the Center's "Formal Accident Package" of evidence because, as he told us, he would lose control of the tape and thus be unable to keep his word to the union that he would get rid of the tape. He further related that he did not inform Center management that he had destroyed the tape until asked about it pursuant to inquiries by the 9-11 Commission in about September 2003.

FAA's liaison to the FBI advised that within a couple of days of September 11, he provided FBI with Air Traffic Control voice and radar data, in which FBI was primarily interested, along with several controller written statements that had been obtained, up to that point, from FAA's Boston and Cleveland Centers and personnel at Dulles Airport. He advised that FBI's requests for materials were verbal, not written. He further advised that FBI indicated that there did not appear to be much evidentiary value to the written statements. Notwithstanding, FAA's liaison to the FBI was never informed of the audiotape's existence, thus he was unable to fulfill its original, stated purpose of being available for law enforcement. Had the New York Center Manager or Quality Assurance Manager informed FAA's liaison of the tape's existence, he could have provided it to the FBI at the time he forwarded those few written statements from the Boston and Cleveland Centers.

3. The audiotape of statements from New York Center controllers should not have been destroyed.

In the view of the staff from the FAA Air Traffic Evaluations and Investigations Staff (policy experts on aircraft accident/incident investigations) we interviewed, they advised that while the Order does provide for only written statements, the tape—once created—should have been treated as an original record and thus kept in accordance with agency retention requirements. Among the several Staff members we interviewed, each of whom expressed this position, was the author and principal interpreter of the FAA's policy concerning aircraft accident and incident investigation for the Air Traffic Directorate. The FAA Order requires that a "Formal Accident File" containing original documents and a facility Accident Package "... be destroyed 5 years after the accident date."

Further, we found a directive from the Air Traffic Evaluations and Investigations Staff, communicated in the form of a September 14, 2001, email from FAA's then-Eastern Region Quality Assurance Manager, instructing that data and records from September 11 be retained. It stated in part as follows, "Retain and secure until further notice ALL Administrative/Operational data and records . . . If a question arises whether or not you should retain the data, RETAIN IT. Any questions, pls call . . ." We were told by the Manager of the Evaluations and Investigation Staff that the intent of the directive was to preserve all voice communications, radar data, and facility records that would have been returned to service after the normal fifteen-day retention period.

Both the Center Manager and Quality Assurance Manager received this email, but, as evident in their actions regarding the tape's destruction, did not follow the directive. The Center's Quality Assurance Manager advised us that he read the message but did not associate it with the taped statements. He understood the message to be applicable only to the collection and retention of "Operational" data (i.e., operational voice recordings), to which he felt he was in compliance. He acknowledged that the message also contained a reference to "Administrative" data but did not believe he had anything administrative in nature, since, in his view, activity on the operations "floor" is not "Administrative." The Quality Assurance manager also related that the email message could not have been intended to apply to the tape-recorded statements since the Region and FAA Headquarters did not know of the tape's existence. Additionally, even if he had considered the message as applicable, given that the tape was not supposed to have been made, according to FAA policy, they could not require it to be kept.

The Center Quality Assurance Manager offered several explanations for not having followed the instructions in the Regional Quality Assurance Manager's email, namely that he did not consider the directive to apply to the audiotape because he felt the tape had been created in violation of FAA Air Traffic policy. However, it is clear that based on our investigation, the audiotaped statements of New York Center controllers on September 11 had relevance to FAA and external investigations, thus the tape should have been retained.

We concluded that the Quality Assurance Manager and the Center Manager exercised poor judgment concerning the issue of retention of the audiotape. The Quality Assurance Manager was, in part, fixated on the fact that the FAA Order prescribes that controllers provide written statements, and does not address tape-recording of statements. This, combined with his mindset that the controllers were under emotional duress and could not have properly consented to the taping, led

him to conclude that the tape should never have been created and was of minimal factual value, thus it needed to be destroyed.

Despite such explanations for the destruction of the tape, in our view, the Quality Assurance Manager and the Center Manager did not act in the best interest of the FAA and the Department. They failed to recognize that the tape—once it had been created—became an original agency record that was logged into the Center’s evidence record. As such, the tape’s destruction violated FAA’s policy pertaining to accident/incident investigations, requiring that it not be destroyed until five years after the date of the accident.

Neither manager consulted with higher level officials, including FAA’s policy authority on aircraft accident/incident investigations, the Air Traffic Evaluations and Investigations Staff at headquarters, which would have instructed that the tape—as an original record—be retained, for five years, in accordance with agency retention requirements. Moreover, neither manager took any action to offer the tape to FAA’s liaison to the FBI. This was the case even though the Quality Assurance Manager began forwarding evidence materials, as they became available, to the FBI (through the liaison) beginning on September 12. Further, the Quality Assurance Manager made a conscious decision not to include the tape in the Center’s subsequent “Formal Accident Package” of evidence because, as he told us, he would lose control of the tape and thus be unable to keep his word to the union.

4. We found fundamental procedural problems in the way the Center handled potential evidence.

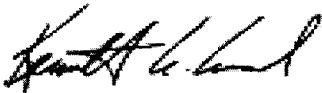
Beyond these findings, we identified fundamental procedural problems in the way the Center handled potential evidence. Existing FAA policy relating to aircraft accident/incident investigations does not provide for documenting the chain-of-custody and disposition of potential evidence collected for FAA, or external, investigative purposes. In this case, the Center Manager utilized a chain-of-custody form to account for evidence. While the form was used to log items—including the audiotape—it contains no provision for noting the disposition of items and, therefore, is not adequate for documenting the chain-of-custody. Further, we found in the group of materials the Center prepared for submission to the 9-11 Commission was a chain-of-custody index indicating that the tape still existed when in fact it had been destroyed about a year-and-a-half earlier.

The FAA Order relating to aircraft accident/incident investigations, does not provide for documenting the chain-of-custody and disposition of potential evidence collected for FAA or external investigative purposes. The Center’s

chain-of-custody form was originally created and used for the investigation of an aircraft accident in the mid-1990's; however, this important measure, even despite its flaw, has yet to be incorporated into the FAA Order, which was last revised in May 2003. Without such a policy provision, uniformity and standardization in accounting for evidence cannot be assured.

If I can answer any questions or be of further assistance in this or any other matter, please feel free to contact me at 202-366-1959, or my Deputy, Todd J. Zinser, at 202-366-6767.

Sincerely,



Kenneth M. Mead
Inspector General