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Cassette Tape of 9/11 Controllers' Recollections Destroyed

If in doubt, do not destroy evidence that may be important in an investigation. If directed not to destroy evidence, but the directive's applicability seems doubtful, obey the order.

This is the essence of a report covering the destruction of an audiotape of air traffic controllers' recollections taken hours after the 9/11 terrorist attacks. The dismay and disbelief of the sequence of events comes through clearly in the May 6 report by the **Department of Transportation Office of the Inspector General** (DOT/IG). With respect to the two **Federal Aviation Administration** ([FAA \(/search/?query=FAA\)](#)) managers involved, their

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unauthorized actions clearly impeded the investigation, since any material evidence should have been properly secured and retained.

The controversial case reinforces the need to capture and document all evidence related to a security or safety-related accident at the outset.

This is the second time in recent years when authorities have challenged the destruction of evidence.

The general sequence of events of the audiotape saga is as follows:

Sept. 11, 2001, terrorists seized four airliners and flew two of them into the twin towers of the World Trade Center. Those airplanes, **American Airlines** [AMR] Flight 11 and **United Air Lines** [UALAQ] Flight 175 were tracked by controllers at the **New York Air Route Traffic Control Center** (ARTCC, hereinafter, the Center).

The Center manager, Mike McCormick, asked six controllers involved to participate in the making of a cassette tape recording, providing their first-hand accounts of the morning's actions interacting with, or tracking, the two hijacked airplanes. McCormick knew that the six would have to prepare written statements, but those writings might not be undertaken until the controllers returned from stress-induced sick leave. He was seeking an immediate "contemporaneous recording" which could assist the controllers later in preparing their written statements. The tape also could assist law enforcement officials who might have an immediate need for controller information about the hijackings. The DOT/IG considered the manager's taping initiative "prudent under the circumstances."

McCormick coordinated this initiative with the controller's local union president. The local union president agreed to the taping, on the condition that the taping was temporary, and that the tape was to be destroyed once standard written statements were obtained. This agreement was never relayed to the proper authorities. More on this below.

At about 11:30 a.m., the controllers met in a room known as the "Bat Cave" - because of its lack of windows - at the Center and participated in the recording of the morning's events. Each talked for about 5-10 minutes. The tape was about an hour long, in total.

After the recording session, the tape was handed to Kevin Delaney, the Center's quality assurance manager. Its existence was entered in the Center's evidence log. However, neither Delaney nor McCormick informed [FAA \(/search](#)

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[/?query=FAA](#) regional or national headquarters authorities of the tape's existence, or of their separate agreement with the union to destroy it. If higher authorities had been aware of the tape, it would have been regarded as an original record requiring five-year retention, the DOT/IG said.

September 12. Delaney began forwarding evidence materials (e.g., voice radio and radar data) to the **Federal Bureau of Investigation** (FBI), through the FAA's liaison. Despite one of the stated purposes of the taping to assist law enforcement, the tape was not forwarded and its existence was not disclosed to the FBI.

September 14. The Center received a regional e-mail directing that all data and records for September 11 be retained and secured. The e-mail stressed, "If a question arises whether or not you should retain the data, RETAIN IT. If any questions, please call." Delaney told DOT/IG investigators he believed the e-mail did not apply to the tape-recorded statements since higher headquarters were unaware of its existence. Whether higher authorities were aware or not, whether the tape was a temporary or permanent record, is immaterial, according to experienced criminal investigators.

November 2001. The tape was not included in the Center's "Formal Accident Package" finalized that month. Delaney did not do so, apprehending that he would lose control of the tape and thus be unable to keep his word to the union to "get rid" of it once the "Formal Accident Package" was submitted.

No one ever listened to, transcribed, or duplicated the tape. When one of the six controllers asked to listen to the tape that month in order to prepare her written statement, her request was denied. As the DOT/IG noted, "Per FAA policy, controllers are afforded the opportunity to review radar data and radio transcripts before submitting written statements; however, this manager declined this controller's request to listen to her own oral statement."

December 2001 and February 2002. Sometime during this period Delaney, acting on his own initiative, destroyed the tape by breaking up the plastic housing and cutting the tape into small fragments, depositing the remnants in trash cans throughout the Center. McCormick told DOT/IG investigators if Delaney had asked permission to destroy the tape, he would have granted it.

As a former criminal investigator remarked, "[blind musician] Ray Charles could see that this was a cover-up."

In justifying his action to the DOT/IG, Delaney said 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. The DOT/IG report noted, "His

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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."

September - October 2003. The Center's evidence log was provided to the independent **9/11 Commission**, in response to its probe for all records surrounding the 9/11 events. Examination of this document, plus 9/11 Commission interviews with Center personnel, brought to light the fact that the tape recording had been made. Up to this point, the then-FAA administrator, deputy administrator, and director of air traffic services had been unaware that controller statements had been taped in the immediate aftermath of the attacks.

The DOT/IG said, "We found in the group of materials the Center prepared for submission to the 9/11 Commission 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 DOT/IG's palpable disappointment in the actions of the two Center managers is evident in its report:

"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 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 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, the DOT/IG found "fundamental procedural problems" with the way evidence is handled. The relevant document is FAA Order 8020.11b, "Aircraft Accident and Incident Notification, Investigation, and Reporting." The order does not provide for documenting the chain-of-custody of potential evidence, or of the *disposition* of any such evidence.

In addition, the order is silent on the issue of taping controller statements. "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 requirement," the DOT/IG found. Nonetheless, FAA officials interviewed as part of the DOT/IG inquiry affirmed that the tape, once created, should have been treated as an original record and kept in accordance with records retention requirements.

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The DOT/IG referred the facts of its investigation to the **U.S. Attorney's Office** in the Eastern District of New York for review as to whether the two Center managers had violated any criminal statutes. The U.S. Attorney's Office declined to prosecute based on the evident lack of criminal intent.

However, given their seniority, the two Center managers should have exercised better judgment, the DOT/IG said. In late April, McCormick was suspended for 20 days without pay. He appealed the action. Disciplinary action is still under consideration for Delaney, an official at FAA headquarters said.

This is not the first time the destruction of evidence has created controversy. On Nov. 29, 2000, an **AirTran Airways** [AAI] DC-9 made an emergency landing at Atlanta, Ga. An in-flight electrical fire had burned a hole through the floor. AirTran employees removed a prominent streak of black soot on the outside of the fuselage. At a press conference the next day, then-**National Transportation Safety Board** (NTSB) Chairman James Hall charged the airline "should know better than to tamper with evidence of a federal investigation." A sharp exchange of letters followed. On Dec. 1, 2000, AirTran general counsel Richard Magurno wrote to the NTSB, complaining that "Chairman Hall's statements were factually inaccurate."

NTSB general counsel Ronald Battochi responded in a Dec. 13, 2000, letter to AirTran:

"We are deeply troubled that AirTran destroyed the soot patterns from the fuselage of the accident aircraft without the express consent of NTSB or FAA officials.

"Other actions by AirTran personnel contributed to the tenor of the Chairman's remarks. For example, despite the fact that the crew and passengers were compelled to conduct an emergency evacuation ... emergency exits were reinstalled ... without express permission."

The basic lesson from both cases is plain: do not destroy evidence. Whether it's soot or sound, or anything else, leave it alone.

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