

**MEMORANDUM FOR THE RECORD**

1. (U) Event. On August 26, 2003, Commissioner Ben-Veniste asked where it was documented that shutdown authority on September 11, 2001 resided with the President. Following is a preliminary paper that documents initial research conducted to answer that question.

2. (S) Executive Summary. The President's authority is probably not statutory and would be contained in NSC documents, according to persons so far consulted. By 1046 EDT General Eberhart had clear shutdown authority by virtue of JCS declaration of DEFCON 3 which, by policy, put Transitional ROE in place. [redacted]

E.O. 13526, section 1.4(a)

[redacted] By 1012 EDT JCS, and by extension NORAD, had verbal authority from the VP to take out aircraft threatening Washington DC. Prior to that, at least one CONR Sector (Western) asked for ROE clarification. CJCS and NORAD standing rules-of-engagement were written with an external threat in mind. Internal language, however, appears to give CINC NORAD latitude apart from the National Command Authority (NCA). CJCS defines the NCA to be the President and the SECDEF. [redacted]

E.O. 13526, section 1.4(a)

[redacted] Logs and transcripts reflect that he took positive action not to do so at 0913 (based on WTC events), 0940 (based on report of hijack out of JFK headed for DC) and 0948 (based on explosion at Pentagon) EDT, but did do so at 0959 EDT (after White House interest). [redacted]

E.O. 13526, section 1.4(a)

3. (U) Methodology. Three avenues were pursued. First, calls were made or received from selected individuals. Second, Rules-of-Engagement documents received from DoD/JCS were reviewed. Third, relevant information concerning September 11 was extracted from documents received to date. Staff has not yet seen the Air Threat Conference Call transcript.

**4. (FOUO) Calls made and received.**

- Stewart Aly, DoD OGC, opined that there was nothing in Title 10 USC that spoke to such Presidential authority. If the authority was in writing it would likely be in NSC documents.
- Dan Marcus, Commission General Counsel, based on calls he made, also observed that the Presidential authority was likely not contained in statutes and that NSC documents would be the most likely source.
- Sam Brinkley and Dana Hyde, Commission Staff, both assessed that such authority resided in the President's role as Commander-in-Chief and the oath he took to protect and defend the nation.

**5. (U) Rules of Engagement. (Emphasis Added)**

(U) Chairman of the Joint Chiefs of Staff Instruction 3121.01A, 15 January 2000, "Standing Rules of Engagement for US Forces" was in effect on September 11, 2001. (DoD document

DECLASSIFIED UNDER AUTHORITY OF THE INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL, E.O. 13526, SECTION 5.3(b)(3)

ISCAP APPEAL NO. 2012-042, document no. 24  
DECLASSIFICATION DATE: September 29, 2014

~~SECRET~~

delivery number NCT0010924) The instruction established "SecDef-approved standing rules of engagement (SROE) that implement the inherent right of self-defense and provide guidance for the application of force for mission accomplishment."

(U) The instructions apply to US forces during military attacks against the United States and during all military operations, contingencies, and **terrorist attacks occurring outside the territorial jurisdiction of the United States.**

(U) Peacetime operations conducted by the US military within the territorial jurisdiction of the United States are governed by use-of-force rules... **determined on a case-by-case basis.**

(U) For purposes of the instruction Commander, US Element NORAD, is referred to as a CINC.

(U) The NCA approve ROE for US Forces. **NCA is later defined in an attached glossary as: "The President and the Secretary of Defense or their duly deputized alternates or successors. Also called NCA."**

(U) It is policy that "these rules do not limit a **commander's inherent authority and obligation to use all necessary means available and to take all appropriate actions in self-defense of his unit** and other US forces in the vicinity.

~~(C)~~ The authority to exercise national self-defense resides with the NCA and CINCs who "within their designated areas of responsibility, have the authority to declare forces hostile." [Note: this begs a question since the instruction considers the NORAD Commander to be a CINC.]

~~(S)~~ As noted above, the instruction does not pertain to peacetime operations. Yet, the instruction also provides the following guidance to "a commander having air-defense responsibilities." He may direct engagement

E.O. 13526, section 1.4(a)

6. (U) That poses the question of whether or not the nation was at war on the morning of September 11, which leads to the distinction between Peacetime, Transition and Wartime ROE as contained in APPENDIX 13 to ANNEX C to CINC NORAD CONPLAN 3310-96 (U), "RULES OF ENGAGEMENT (ROE) (U) [as amended on 24 September 1999]

~~(C)~~ **Peacetime ROE apply during NORAD DEFCON 5 and 4.**

~~(S)~~ CINC NORAD retains the authority to declare forces "hostile" and order engagements when Peacetime ROE apply. "Hostile Force" is defined by CJCS to be "any civilian, paramilitary, or military force or terrorist(s), with or without national designation, that has committed a hostile act, exhibited hostile intent, or has been declared hostile by appropriate US authority."

E.O. 13526, section 1.4(a)

~~(C)~~ **Transition ROE apply during NORAD DEFCONs 3, 2, or 1.**

~~(S)~~ [redacted] **E.O. 13526, section 1.4(a)** [redacted] "airborne objects" which are participating in or indicate clear intent to participate in an attack against the US

~~SECRET~~

~~SECRET~~

or Canada. [E.O. 13526, section 1.4(a)] have emergency authority to declare forces "hostile" and, if necessary, to order engagements if in their judgment an actual attack is under way against the US or Canada. "Airborne objects" is later defined to include aircraft, missiles, and UAV.

(C) CINCNOAD may direct wartime ROE at DEFCON 1.

(C) [E.O. 13526, section 1.4(a)] may, if necessary to mount a defense against a surprise attack, implement Wartime ROE before binational command authorities have declared war. Wartime ROE are automatically implemented for NORAD upon CINCNOAD's declaration of Air Defense Emergency (ADE) or for individual sectors or regions by a sector or region commander's declaration of Air Defense Warning (ADW) RED. These declarations may be made anytime the situation requires, based on the judgment of the commander concerned, regardless of the DEFCON.

[E.O. 13526, section 1.4(a)]

7. (S) A reading of the NORAD document gives the sense that it was written for an attack expected from off shore. However, there appears to be no precluding language concerning an attack from within. A reading of the NORAD and JCS documents, combined, give the sense that "shootdown authority" may have existed at a level below the NCA, depending on how the developing situation was interpreted. That leads to an examination of information gleaned from documents received to date. Following is a chronological listing of events as captured in logs and transcripts reviewed to date. [all entries are considered to be SECRET until context for a lower classification can be established. All entries are EDT]

0913: The NORAD Missile Warning Center notes that two large passenger planes crashed into the WTC. CINCNOAD assessment was not necessary

0915: The NMCC chronology establishes that CIA convened a NOIWON

0920: The NMCC chronology reflects that the Assistant Deputy Director for Operations directed a Significant Event Conference (SIEC) with the CINCs and the Services

0925: The Secret Service timeline reflects that an open line with FAA Presidential Operations was established

UNK: The NORAD Command Director log has an in sequence but untimed notation that "VP directs that any threat aircraft over DC may be engaged. [Note: this is an anomaly]

0933: The NMCC chronology establishes that NORAD requested an Air Threat Conference and the DDO concurred

0934: The NMCC chronology reflects that the SIEC was dropped

0939: The NMCC chronology notes that the DDO entered the ATC, possible threat to CONUS

0940: The NMCC chronology contains a NORAD-related entry: "conflicting FAA reports on hijacks, one out of JFK enroute DC, no assessment. CINCNOAD not declaring Air Defense Event, recommends reconvene when more info available"

0943: The NMCC chronology contains an entry: [redacted] asks PEOC for instructions, is told to prepare to evacuate VP"

[E.O. 13526, section 1.4(g)]

~~SECRET~~

~~SECRET~~

**0943:** The NMCC chronology shows that the National Air Operations Center (NAOC) secondary aircraft is airborne out of Andrews [Note: this may be WORD ONE or SWORD ONE, as reflected in Andrews flight strips of that day]

**0944:** The NMCC chronology shows that the PEOC instructed [redacted] to remain on alert

**E.O. 13526, section 1.4(g)**

**0948:** The NORAD Missile Warning Center Log records a Pentagon explosion, Cheyenne MT is in force protection bravo, worldwide force protection alpha. CINC NORAD assessment was not necessary.

**0949:** The NMCC chronology shows that CINC NORAD directed all air sovereignty aircraft to battle stations – fully armed

**0950:** The NORAD Command Director Log notes that Exercise Global Guardian was cancelled per NORAD J3

**0955:** The NMCC chronology notes that AFOPS reported that the White House requested fighter coverage, NORAD will process and provide ETA

**0955:** The Joint Surveillance System radar files show that Air Force One is airborne

**0958:** The NMCC chronology notes that WHCA broke into conference and told DDO to stand by—COL ? from PEOC relays request from Hadley: [redacted] fighter escort for President, fighter CAP over DC

**E.O. 13526, section 1.4(g)**

**0959:** The NMCC chronology and the NORAD Command Director Log both note that CINC NORAD assesses concern

**0959:** The NMCC chronology contains a cryptic entry, without explanation: “EA goes to box, ADDO confirms, then holds. Box is not opened.”

**1000:** The CONR chat transcript records that White House has directed fighter coverage over the White House

**1010:** The Joint Surveillance System radar files show that AF One diverted to the west

**1011:** The CONR chat transcript reflects that WADS [Western Air Defense Sector] asked “What ROE are we working under”

**1012:** The NMCC chronology notes that the PEOC directs NAOC airborne

**1012:** The NMCC chronology records that “PEOC COL ? states “VP has directed that fighters can confirm a/c is hijacked they are cleared to take it out”

**1014:** The CONR chat transcript reflects that WADS requested an ATO (Air Tasking Order) change real world requesting to load “slammers”

**1014:** The CONR chat transcript reflects that the CONR DCO told WADS/SEADS (Southeast Air Defense Sector) to “bring up with live missiles, cleared to load slammers”

**1016:** The NMCC chronology records that PEOC confirms that VP has cleared a/c to engage any a/c inbound to DC without authorization

**1016:** The CONR chat transcript records that CONR DCO established “Peacetime ROE still

~~SECRET~~

~~SECRET~~

**1018:** The NMCC chronology records DDO telling PEOC UA93 is reported crashed in PA. PEOC asks that VP wants to know if it is a result of fighter engagement DDO asked NORAD to confirm how a/c went down. NORAD has no info on engagement FAA has no info

**1024:** The CONR chat transcript records the WADS Director of Operations telling CONR he got the word on armament, more than guns. Can you please help us with ROE

**1025:** The Secret Service timeline shows that the VP protection detail notified that VP has directed military to shoot down the a/c if it gets too close to the WH

**1026:** The NORAD Air Warning Center Log reflects that CONR said present set of a/c has guns, next set will have missiles. The CONR chat transcript records that CONR DCO told WADS, "still peacetime ROE, NCA working modifications"

**1030:** The Secret Service timeline reflects a collective decision to not return POTUS to WH until conditions in WDC stabilize

**1030:** The NMCC chronology reflects that Steve Hadley wants to get word to VCJCS that there is an aircraft 5 miles out and that the VP's guidance is to take it out.

**1031:** The CONR chat transcript records that VP has cleared us to intercept tracks of interest and shoot them down if they do not respond, per CONR

**1032:** The NMCC chronology reflects that Hadley added that any information about the a/c that can be gathered before you have to take it out would be useful

**1034:** A JCS chronology reflects that MG Ward discussed "authority" and "decision made by" with an u/I person. General Arnold, CONR, was mentioned

**1034:** The NMCC chronology reflects that VP told SECDEF he had talked to the President VP asked if forces were on a heightened state of alert SECDEF confirmed

**1035:** The NMCC chronology reflects that VP reiterated instructions to SECDEF to take them out. SECDEF asked who the instructions were given to VP said instructions were relayed from PEOC to operations center and to the Air Force

**1038:** The CONR chat transcript records that VP has cleared us to intercept tracks of interest and to shoot them down if they do not respond, per CC [Commander, probably Arnold]

**1041:** The NMCC chronology reflects that SECDEF told VP he is recommending DEFCON 3. VP told SECDEF he should confer with POTUS and let him make decision, but he agrees.

**1042:** The CONR chat chronology clarifies that clearance to shoot from VP is to save lives on the ground if a/c do not respond

**1043:** The NMCC chronology reflects that DDO directed conferees to wait on implementing DEFCON 3

**1046:** The NMCC chronology reflects that DEFCON 3 is declared by VCJCS at 1046 EDT

**1057:** The NORAD Air Warning Center log reflects that CJCS directed world-wide DEFCON 3, CINC NORAD reviewing for appropriate actions

~~SECRET~~