

ANOTHER POSSIBILITY WITH MUKASEY'S 9/11 STORY

While we're talking about Mukasey's claim that Bush could have prevent 9/11 and didn't, I want to raise one more possibility. Mukasey's story, remember, is that the US had noted a phone call from an Afghan safe house to somewhere in the US—but the US couldn't track the call because didn't know where the phone call went.

And before 9/11, that's the call that we didn't know about. We knew that there has been a call from someplace that was known to be a safe house in Afghanistan and we knew that it came to the United States. We didn't know precisely where it went."

Glenn Greenwald (who has been flogging this issue heroically), reviews the 9/11 Commission report and concludes that such an intercept didn't happen.

Critically, the 9/11 Commission Report — intended to be a comprehensive account of all relevant pre-9/11 activities — makes no mention whatsoever of the episode Mukasey described. What has been long publicly reported in great detail are multiple calls that were made between a global communications hub in Yemen and the U.S. — calls which the **NSA did intercept** without warrants (because, contrary to Mukasey's lie, FISA does not and never did require a warrant for eavesdropping on foreign targets) but which, for some unknown reason, the NSA failed to share with the FBI and other agencies. But the critical pre-9/11 episode Mukasey described last week is nowhere to be found in the 9/11 Report or anywhere else. It just does not

exist. [emphasis Glenn's]

And Glenn is not alone. Chairman Conyers says he doesn't know anything about it.

And Philip Zelikow says he doesn't know what Mukasey is talking about.

Not sure of course what the AG had in mind, although the most important signals intelligence leads related to our report – that related to the Hazmi-Mihdhar issues of January 2000 or to al Qaeda activities or transits connected to Iran – was not of this character. If, as he says, the USG didn't know where the call went in the US, neither did we. So unless we had some reason to link this information to the 9/11 story ...

In general, as with several covert action issues for instance, the Commission sought (and succeeded) in publishing details about sensitive intelligence matters where the details were material to the investigative mandate in our law.

Thus far, Lee Hamilton refuses to answer Glenn's question, and Glenn hasn't yet gotten a response from Tom Kean. Given that evidence, then, the most likely possibility is that Mukasey's talking outtahisarse.

But I'd like to suggest another possibility. As Philip Shenon's book makes clear, one of the most serious problems with the scope of the 9/11 Commission's inquiry is that it did not review the NSA's files on Al Qaeda until just before the release of the report. Shenon describes how Colonel Lorry Fenner, an Air Force officer who had worked with the NSA, realized early on that the Commission needed to review the NSA's files., and grew increasingly disturbed when she realized no one was working on the NSA's files.

Lorry Fenner was dumfounded by what she

was hearing. No one from the commission—no one—would drive the twenty-seven miles from downtown Washington north to the headquarters of the NSA, in Fort Meade, Maryland, to review its vast archives of material on al-Qaeda and terrorist threats.

[snip]

Philip Zelikow had made it clear that he was fixated on George Tenet and the CIA's performance before 9/11, and his obsessions drove the workings of the rest of the staff.

[snip]

It was all the more frustrating to Fenner given the obvious willingness of the NSA, unlike so many other parts of the government, to cooperate with the 9/11 commission. The NSA's director, General Michael Hayden, had thrown open its archives on al-Qaeda; Zelikow and others were impressed by his eagerness to help. But perversely, the more eager General Hayden was to cooperate, the less interested Zelikow and others at the commission seemed to be in what was buried in the NSA files.

Fenner started to investigate the files herself—secretly. When she discovered records of early cooperation between Iran, Hezbollah, and Al Qaeda, she grew alarmed that the Commission was missing important details. Fenner got other of the staffers to read the files. Until finally, in June 2004, after significant portions of the Commission report had already been drafted, Fenner and the other staffers revealed what they had found to Zelikow. He immediately arranged a trip to the NSA for several staffers to go through the records, in one long day.

To his credit, Zelikow immediately understood the implications of what

Fenner had discovered: A huge archive of the intelligence community on al-Qaeda and terrorist threats had not been adequately reviewed. And he understood there was almost not time left to do it.

The staffers were able to get some mention of the connections between Iran and Al Qaeda into the report. Shenon's narrative continues, citing from the final report.

"We believe this topic requires future investigation by the U.S. government."

What was left unsaid in the report, although the staff knew it perfectly well, was that **the NSA archives almost certainly contained other vital information about al-Qaeda** and its history. But there was no time left to search for it. [my emphasis]

In other words, on the matter of what the NSA intercepted before 9/11, **on that matter above all**, the 9/11 Commission report is not complete. **The Commission (in spite of the laudable efforts by Fenner) did not adequately review all the NSA archives relating to Al Qaeda.** Particularly since the Report calls explicitly for more investigation (at least of the ties between Iran and Al Qaeda), it is perfectly plausible that someone has subsequently reviewed those files and found something new, something not included in the Commission Report.

Which would make the collection of responses that Glenn has elicited thus far all the more fascinating. As Glenn notes, Zelikow does not deny knowledge of such an intercept—and he certainly doesn't deny the possibility that such an intercept exists. Zelikow simply says that the Commission published "details about sensitive intelligence matters **where the details were material to the investigative mandate in our law.**" [my emphasis] Suggesting that if something fell outside the Commission's investigative mandate, they didn't get it, and

therefore didn't publish it.

And then there's Hamilton's response. Even before the 9/11 Commission, Hamilton was famous for his service as a spineless Democrat who, on bipartisan committees, routinely gets rolled by Republicans trying to cover something up (see, for example, how his friend Dick Cheney rolled him when they co-chaired the House investigation into Iran-Contra). As Shenon's book shows, Hamilton continued that tradition of cowing to bipartisanship on the Commission. When Glenn called for comment, Hamilton refused to respond, ever, because he had not read Mukasey's speech.

When asked if he would comment today or whenever he had time, **he said he was not going to comment on this ever**, since he had not read Mukasey's speech. [my emphasis]

Which leaves Kean, from whom Glenn is still waiting a response (after Kean asked him to email his question, suggesting Kean was unwilling to respond except in writing). So, to review:

- Mukasey claims he knows about this intercept
- Zelikow issued a non-denial denial
- Hamilton refused to respond
- Kean may or may not respond
- Conyers has never heard of this intercept

These responses could mean any of several things—that Zelikow purposely directed the 9/11 Commission away from damning intercepts; that Zelikow's focus away from NSA was perfectly innocent, but that after the report came out, someone did do a review of those files and found an incredibly damning intercept ... but didn't tell anyone aside from the Commission leaders and, apparently Michael Mukasey. Hell, perhaps

discussion of this secret intercept is one of the things that Jello Jay got briefed on, when he was briefed on FISA with just the Republicans after the illegal program was exposed. These responses could mean any of a variety of things.

But the inattention of the 9/11 Commission to NSA intercepts and Mukasey's claims about an intercept that has never before been revealed leaves open a possibility besides the one Glenn deals with—that it never happened. Indeed, it leaves open the distinct possibility that the Bush Administration—either before or after the 9/11 Commission—discovered the smoking gun intercept that, if they had noticed it, could have prevented 9/11. And that they found this intercept, but never told Democrats or the American people about it.