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Moussaoui Probe Pushed U.S. Limits

By Dan Eggen

By early September of last year, after three weeks of intensive investigation, the FBI was running out of ways to figure out what Zacarias Moussaoui was up to.

The mysterious French national, who had raised suspicions as he tried to learn how to fly jetliners in Minnesota, refused to talk to federal authorities or allow them to examine his belongings. Sketchy information from French intelligence indicated he might be connected to Islamic militants, but FBI lawyers had too little evidence to secure a warrant to search a laptop computer that might provide answers.

So top FBI officials came up with a last-ditch plan: Moussaoui would be deported and escorted to Paris on his own U.S. government jet, guarded by officers from the FBI, the Immigration and Naturalization Service and the U.S. Marshals Service. His computer would be transported separately and handed over to French intelligence authorities, who would try to use their own laws to inspect its contents.

But Moussaoui never made it to Paris. Within hours of the jetliner attacks on the World Trade Center and the Pentagon, FBI agents had secured a warrant to search the computer that had been off-limits for so long.

The deportation plan was the last gasp of a frantic and wide-ranging effort by the FBI, the CIA, the INS, the National Security Agency, the French intelligence service and others to determine, before Sept. 11, whether terrorists were planning a major strike against the United States, according to interviews with U.S. law enforcement officials.

Moussaoui has since been charged with conspiring to join the Sept. 11 hijackers -- the only person in U.S. custody alleged to have been part of the plot. But the failure to link him to the plot -- even as he sat under guard in a Minnesota county jail -- has prompted Rep. James L.

Oberstar (D-Minn.) and other lawmakers to question the performance of the FBI and other agencies in the case. The topic is expected to be central as Congress begins to examine possible intelligence failures before the attacks.

Sources close to the investigation, eager to quell such criticism, argue that the Moussaoui case was pursued aggressively but was hampered by a lack of solid information and legal limits on the ability to search Moussaoui's computer, officials said.

Among the new details that have emerged about the early Moussaoui investigation, according to interviews and other sources:

- The concern about Moussaoui reached the top echelons of the FBI, prompting a flurry of unusual meetings between agents and bureau lawyers trying to secure a special intelligence warrant.
- FBI and INS agents viewed Moussaoui as combative and evasive during three short conversations with him in Minneapolis. Moussaoui accused them of harassing him because he was a Muslim and told them that he "always wanted to fly a big plane."

drove Moussaoui from Oklahoma to the Minnesota flight school in August, told the FBI that Moussaoui "is suspicious to me, too," but that he had not spoken of terrorism plans.

- French officials conducted interviews with Moussaoui's relatives and others on the FBI's behalf after his arrest but were unable to find a conclusive link between Moussaoui and Osama bin Laden's al Qaeda network.

"Everybody's antennas were up," one U.S. official said. "Obviously, something was screwy here. What it was was not clear, and it did not become clear until September 11th."

Frank Dunham, one of Moussaoui's attorneys, did not return a telephone call to his office seeking comment yesterday.

The case began on Aug. 15, when a program manager at Pan Am Flight Academy in Eagan, Minn., called the FBI in Minneapolis to report suspicions about a foreign student who was trying to learn how to fly a 747-400, though he had been trained only on a single-engine Cessna. Moussaoui, the manager reported, was reluctant to talk about his background and had paid his \$8,300 fee in cash. The manager was concerned that Moussaoui might be planning a hijacking, he told the FBI.

The next afternoon, FBI Special Agent Dave Rapp and an INS agent were waiting for Moussaoui to emerge from the Residence Inn where he and al-Attas were staying. Rapp, a trained fighter pilot himself, was immediately suspicious of Moussaoui.

The agents confronted Moussaoui about 5 p.m., just as he left for his first session on a Pan Am flight simulator. When asked about his immigration status, Moussaoui said he had permission to stay in the United States beyond his original May 23 deadline. He invited the agents to his hotel room to show them the document.

Once in the room, the INS agent determined that Moussaoui had applied for that extension but never received it. Moussaoui accused the agents of harassment, refusing to consent to a

search of his luggage or his laptop computer.

"You wouldn't be doing this if I was an American," Moussaoui said, according to sources. He said he was a businessman and contractor who traveled internationally. "I just want to learn how to fly a big plane," he added.

Moussaoui was arrested that night for overstaying his visa. The next day, Aug. 17, the FBI in Minneapolis alerted counterterrorism officials in Washington. Moussaoui was interviewed for the final time while in INS detention, when he denied wrongdoing and asked if he could be released to finish his flight training course at Pan Am.

Al-Attas was more cooperative, officials familiar with his interrogation said. He talked at length with investigators, describing Moussaoui as a hotheaded radical who frequently spoke of Muslims being killed around the world.

Al-Attas allowed investigators to search his belongings and his Subaru sedan, which contained shin guards and elbow pads that he and Moussaoui used in wrestling matches.

Al-Attas was charged with violating the terms of his student visa by working at a mosque in Norman, Okla., but was freed on bond. After Sept. 11, he was arrested and is being jailed in New York as a material witness.

During the three weeks after Moussaoui's arrest, dozens of agents, lawyers and analysts within the FBI, the CIA and other agencies scrambled to learn more about his background and debated the proper strategy for dealing with the case.

FBI investigators in Minneapolis wanted to seek a criminal search warrant to inspect the laptop. But during often heated debates from Aug. 18 to 20, officials at headquarters opposed the request, arguing that investigators could not show probable cause that a crime had been committed.

The FBI counsel in the Minneapolis office concurred, according to one senior official, arguing that the U.S. attorney's office there would be unlikely to grant approval.

Investigators' other option was a Foreign Intelligence Surveillance Authority warrant, which allows the FBI to conduct surveillance and searches on people who are believed to be agents of a foreign power or of a recognized terrorist group such as al Qaeda.

The problem, senior U.S. law enforcement officials said, was that investigators had no reliable evidence that Moussaoui was connected to any group designated a terrorist organization by the State Department. Requests for information from Britain, where Moussaoui had lived for years, came up empty, authorities said.

But on Aug. 23, the FBI received a lead from Moussaoui's native France, where intelligence officials said he had been linked to a young man who had died fighting alongside anti-Russian Islamic rebels in Chechnya. The French said the dead man's family blamed Moussaoui for radicalizing their son. The United States transmitted photos of Moussaoui to the French for display to the dead man's family.

U.S. officials suspect that the Chechen rebel group had a relationship with bin Laden and the

Taliban militia in Afghanistan, but it is not designated as a terrorist organization. Moussaoui's connection to it could not form the basis for an intelligence warrant, the FBI concluded. Even if it had, FBI lawyers said, it was doubtful that Moussaoui's casual connection to one of its alleged fighters would lead to a FISA warrant.

"We were in a box, and there was really no way out of it," one official said.

As Moussaoui ended his second week of detention, FBI officials had not discovered information linking him to al Qaeda training camps in Afghanistan, as prosecutors now allege. Nor had they yet tied him to al Qaeda operatives in Malaysia, home to the consulting firm he claimed to work for, or a payment from an alleged al Qaeda co-conspirator that is listed in the indictment against him.

U.S. officials began discussing Plan B: deporting Moussaoui to Paris, where French authorities could hold him for as long as three days while they sought a legal way to search his laptop. Within a week, the plan was set. Moussaoui would be in Paris by Sept. 17.

That all changed on Sept. 11, when the suicide attacks, carried out by foreign pilots who trained at U.S. flight schools, provided all the evidence the FBI needed to secure a search warrant for Moussaoui's belongings, sources said. Authorities discovered a commercially available flight simulation program, information about wind currents, jetliners and crop-dusting airplanes.

The last discovery helped prompt orders to ground the agricultural dusters on two occasions after Sept. 11. But investigators maintain that the importance of the information is clear only in the context of the Sept. 11 attacks, and that there was nothing found on the laptop to indicate a connection with terrorism or extremist groups.

"There was nothing in that computer that we would have been able to use to link him to terrorists, or to predict what happened on 9-11," one official said. "We just didn't have it."

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