

## **An interview with Dr. Philip Zelikow**

*Dr. Philip Zelikow served as the executive director of the 9/11 Commission and he is a professor of history at the University of Virginia. He is also on America Abroad's Advisory Board.*

**Deborah Amos (DA):** A U.S. warship had been attacked. Why didn't the Clinton Administration launch a military response?

**Dr. Philip Zelikow (PZ):** The leading officials of the Clinton Administration say that they didn't order the strikes for two reasons. One is they never really had a clear statement from the intelligence community that they were sure al-Qaeda was responsible. On that argument, lots of other people in the government at the time, including in the intelligence community, said, "That's hogwash." They actually gave the administration a very clear statement on this point. They just kept trying to raise the burden of proof higher and higher so that it would never be met.

The second argument that the leaders of the Clinton Administration make is that the military options they were given weren't very persuasive. They had already tried in 1998 by firing some missiles at camps in the desert that had been ineffectual and may have made matter worse. The military didn't really have any better options to offer them some more of those feckless strikes and so that didn't seem very credible to them.

The public story that the administration put out was the first point, that the proof isn't good enough yet – which was disingenuous. They didn't really come out publicly and say the better argument, which was that the military isn't giving us any good options.

**DA:** Many of the defendants were convicted but released from jail. One of the perpetrators is in Guantanamo and has not been brought to trial. Who is to blame when we look? Is it a feeble justice system in Yemen? Is it mistakes made in interrogation in Guantanamo?

**PZ:** There is no local justice system that works for these people because the Yemeni justice system is inadequate. Starting from that first problem which is fundamental, that now means you have to create some alternative justice system. We have run into two kinds of obstacles. The first obstacle was that after we captured one of these people Nashiri, we actually did not want to bring him to justice because we put him in a CIA detention system that we didn't want to acknowledge existed. Then [we] couldn't figure out how to bring him out of it because to bring him out of it, they would have had to acknowledge it existed. So they kind of dug themselves into a hole, so to speak and that delayed them for years. Even after they brought Nashiri out, they had a second problem which was "Okay, what justice system will we use? Do we try to treat him as if he is a civilian criminal and try him under federal law in ordinary federal court? Or do we try him in a military court as someone who has violated the laws of war?" The recent decision and recent leaning is to do Nashiri in a military court. That raises problems of its own because what is the crime for what you would charge Nashiri in a military court?

It's not a crime to be at war with the United States. It can be deadly to be at war with the United States because we can lawfully kill you as an enemy combatant. But if you are captured as an enemy combatant, it's not crime to be at war with the United States. We can treat you as a captive where we lock you up until you are no longer an enemy combatant but the crime there would have to be a war crime. There is no trouble making a case for war crimes against the 9/11 attackers because they attacked many noncombatants and did so quite deliberately.

Nashiri and the Cole attack was not an attack against noncombatants; it was an attack against soldiers in uniform in what Nashiri argues was a war. If you bring him into a military court and you say, "Yes, we agree we were at war and in this war, you attacked our soldiers," how do you then argue that attacking our soldiers is a war crime?

**DA:** I've read a quote from a former counterterrorism official in the Clinton and the Bush Administration who said that during the first Bush Administration, no one was willing to take ownership of the investigation of the Cole. It was something that happened under Clinton's watch. Do you think that there was some dropping of the ball as one administration passed to the other?

**PZ:** I am not sure that the ball was dropped. It's just that the ball was left lying on the desk and no one really picked it up. By the time they came into office, this attack is three months old. The notion that they would now pick it up and all of a sudden say, "Well, just because we have come into office, we are not

going to strike al-Qaeda for this thing that happened three months ago." They could have made that argument if they were looking for some reason to launch a strike, but they weren't looking for a reason to launch a strike.

Frankly, Secretary of Defense Don Rumsfeld was not very interested in doing anything about Afghanistan or about al-Qaeda before 9/11 and was not interested in developing a lot of new military options to deal with al-Qaeda. His main attentions at that time were focused elsewhere. It was frankly understandable but not necessarily excusable that the thing was just kind of left to lie on the table and seemed to become increasingly stale.

**DA:** Do you also agree with the argument that the Cole leads to 9/11 if there had been a different response – perhaps a military response? That perhaps 9/11 could have been averted?

**PZ:** That's a very tough counterfactual question. It's an interesting one. The operation itself was pretty clearly launched by the beginning of 2001. If we had disrupted them so thoroughly that they could no longer support the 9/11 attack plan... that they could not send out the additional 15-16 hijackers to help out in the spring and summer of 2001, yes, that could have disrupted the 9/11 attack. But I am not sure that our government by late 2000 or early 2001 had developed military plans that would have disrupted al-Qaeda that thoroughly.

**DA:** What would justice look like for the Cole?

**PZ:** Our government needs to find a public way of listing the evidence we have and indicating the punishment that is following up with this evidence. That needs to be done in a somewhat formal and ceremonial way that links our knowledge about the crime and the efforts to punish the perpetrators that would give the families and the American people a sense that there is due process here – that the government cares about what happened and is doing the best it could to indicate a way justice is being done.