

THE 9/11 COMMISSION

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ABSTRACT

This article provides an overview of the 9/11 Commission's origins, investigation, report, and impact. Established by lawmakers who believed an independent commission was needed to carry out a credible investigation into the September 11, 2001 attacks, the bipartisan commission managed to produce a unanimous report that was widely read and acclaimed. The commission also had remarkable impact on policymaking, providing the impetus for legislation that established the position of Director of National Intelligence, created the National Counterterrorism Center, and instituted other intelligence and homeland security reforms.

INTRODUCTION

The 9/11 Commission, led by Thomas Kean and Lee Hamilton, conducted the most comprehensive investigation into the September 11, 2001 attacks and catalyzed the enactment of major intelligence reform legislation. This article describes the political context for the commission's establishment, discusses how the commission carried out its investigation and

dealt with political controversies, summarizes the commission’s final report, and explains how the commission induced Congress and President Bush to adopt many of its proposals, including its recommendations to establish a Director of National Intelligence and National Counterterrorism Center. The article also offers a brief summary of key scholarship on the commission.

THE COMMISSION’S ORIGINS

The creation of a commission to investigate Al Qaeda’s devastating attacks on the World Trade Center and Pentagon was proposed by a public official as early as September 12, 2001 – the day after the attacks – when U.S. Senator Robert Torricelli (D-NJ) called for the formation of an investigative commission. Two weeks later, U.S. Representative Nancy Pelosi (D-CA) introduced the first legislative proposal to establish an independent commission on the 9/11 attacks, and in December 2001, Senators Joseph Lieberman (I-CT) and John McCain (R-AZ) introduced a similar bill in the Senate. All of these lawmakers publicly argued that it was necessary to create an independent commission in order to carry out a credible investigation into the events leading up to and immediately following the attacks. As McCain said on the Senate floor on December 20, 2001, “Neither the administration nor Congress is alone capable of conducting a thorough nonpartisan independent inquiry into what happened on September 11.”

But the establishment of the 9/11 Commission – whose official title was the National Commission on Terrorist Attacks upon the United States – did not take place until November 27, 2002 – more than 14 months after the 9/11 attacks. This delay was primarily due to opposition from the George W. Bush administration. Publicly, the administration claimed that a commission

would unhelpfully take time and attention away from ongoing government counterterrorism efforts. But privately the Bush White House feared that a commission might uncover facts that would embarrass the administration, such as information that suggested the administration failed to take steps that might have prevented the attacks (1).

Legislation to establish an independent commission was also initially opposed by leaders of the House and Senate intelligence committees, who believed that they could carry out a thorough and credible investigation themselves. In February 2002, these committees began a joint investigation of the U.S. intelligence community’s activities related to the 9/11 attacks. This probe – officially called the Joint Inquiry into Intelligence Community Activities before and after the Terrorist Attacks of September 11, 2001 – became known simply as the “Joint Inquiry.” The Joint Inquiry’s December 2002 majority report detailed critical mistakes by intelligence agencies prior to 9/11, and offered 19 recommendations for intelligence reforms. But members of the Joint Inquiry also issued eight dissenting, or minority, statements – some of which criticized how the Inquiry was conducted. Ultimately, the legislative proposals in the Inquiry’s majority report received less public attention than the controversy associated with these dissents and the Bush administration’s unwillingness to declassify a portion of the report that concerned Saudi Arabia.

In the meantime, pressure grew on the Bush administration and members of Congress to establish an independent commission – comprised of distinguished private citizens – with the mandate to examine all aspects of the 9/11 attacks, rather than just the intelligence components (which were the only issues the Joint Inquiry examined). Starting in the spring of 2002, families of the 9/11 victims lobbied publicly for the formation of an independent commission, which

made it difficult politically for President Bush to oppose creating the commission and led a growing number of lawmakers to support the idea. In the fall of 2002, instead of continuing to simply oppose the congressional effort to establish a commission, the Bush White House began negotiating the details of the commission’s charter with congressional leaders.

The result was the enactment on November 27, 2002 of legislation – the Intelligence Authorization Act for Fiscal Year 2003 – which, among other things, established the National Commission on Terrorist Attacks upon the United States. The commission’s legislative charter mandated it to investigate the facts and circumstances related to the terrorist attacks of September 11, 2001, identify lessons learned, and recommend to the President and Congress corrective measures that could be taken to prevent acts of terrorism. The charter further indicated that the commission would be composed of ten members, including a chairman appointed by the president, a vice chairman appointed by the Democratic leader of the Senate, and eight other members appointed by an even balance of Republican and Democratic congressional leaders. The charter gave the commission the authority to issue subpoenas to compel individuals to testify at commission hearings or to provide the commission with requested documents.

The commission was initially given a budget of \$3 million. Soon after beginning their work, the commission’s leaders realized that this amount of funding would be insufficient to carry out a thorough investigation, but the White House and Republican congressional leaders resisted providing the commission with a larger budget. After protracted negotiations, the commission was provided with an additional \$11 million in April 2003, which covered its costs for the remainder of its lifespan.

THE COMMISSION’S INVESTIGATION AND REPORT

The commission got off to a rocky start, as the first choices of President Bush and Senate Democratic leader Thomas Daschle (D-SD) to lead the commission – Henry Kissinger and George Mitchell – both quickly resigned as a result of criticism about potential conflicts of interest. In their place, Bush appointed former New Jersey Governor Thomas Kean, and Daschle appointed former U.S. Representative Lee Hamilton (D-IN).

Congressional leaders also appointed former Watergate prosecutor Richard Ben-Veniste, former U.S. Senator Max Cleland (D-GA), former White House Counsel Fred Fielding, former Deputy Attorney General Jamie Gorelick, former U.S. Senator Slade Gorton (R-WA), former Navy Secretary John Lehman, former U.S. Representative Timothy Roemer (D-IN), and former Illinois Governor James Thompson to the commission. Partway through the commission’s investigation, Cleland was replaced by former U.S. Senator Bob Kerrey (D-NE) because Kean and Hamilton thought it would be impossible to produce a unanimous report if Cleland, who wanted the commission to investigate the Bush administration’s handling of the Iraq war, remained a member (2).

A staff of 81 people, led by foreign policy scholar and former Bush National Security Council official Philip Zelikow, supported the commissioners and carried out the commission’s investigation. Whereas most of the commissioners were distinguished former public officials with little experience in intelligence and counterterrorism policy, most of the staff members

possessed both government experience and expertise in counterterrorism and/or intelligence issues.

For the first year of the commission’s lifespan – which spanned the calendar year 2003 – the commission carried out its investigation relatively quietly, except for public hearings, which were convened by the commission on various topics related to the 9/11 attacks about every other month. There was frequent tension within the commission, however, concerning how aggressively the commission should press the administration for information that was being withheld from the commission by executive branch agencies and the White House. Whereas most Democratic members of the commission were inclined to use the commission’s subpoena power aggressively and frequently to insist on full access to all information and witnesses requested by the commission, most Republican commissioners opposed doing so. In the end, the commission was able to gain access to most of the information it sought, while using subpoenas very sparingly, through the skillful use of public pressure. Whenever Kean and Hamilton publicly complained about the executive branch withholding information from the commission, the 9/11 families and media commentators criticized the White House sharply, leading the administration to comply eventually with most of the commission’s requests (3).

Controversy associated with the commission intensified in the spring of 2004. On March 24, 2004, Richard Clarke, who was the counterterrorism coordinator at the National Security Council when the 9/11 attacks occurred, made front-page news by testifying at a commission hearing that the Bush White House had given little attention to counterterrorism policy in the months leading up to 9/11. A few weeks later, Attorney General John Ashcroft testified at a commission hearing

that commissioner Jamie Gorelick was herself responsible for the failure to prevent 9/11 because of policies she had implemented concerning the separation between intelligence and law enforcement investigations when she served in the Justice Department during the Clinton administration. Following this testimony, some Republican lawmakers and conservative editorial writers called on Gorelick to resign from the commission. But Gorelick’s fellow commissioners – including the Republican commissioners – strongly defended her.

Commission unity on that issue aside, the commissioners needed to deliberate intensively to reach agreement on the narrative text of the commission’s final report, which had been drafted by the commission staff, and on the commission’s recommendations. There were initial disagreements among the commissioners on whether any blame should be placed on the Clinton or George W. Bush administration, and on whether to propose the establishment of a director of national intelligence (DNI). On the first issue, the commission established consensus by opting not to assign blame directly to either administration or to individual policymakers. On the second issue, the commissioners eventually coalesced around the DNI idea (4).

The commission’s 567-page report was released on July 22, 2004. Early on in the commission’s investigation, Kean, Hamilton, and Zelikow had decided to try to write the commission report by telling the 9/11 story through a gripping narrative that would attract and hold the attention of members of the public who might otherwise have limited interest in the finer points of counterterrorism policy. In this they succeeded, as the report immediately topped nationwide best-seller lists. The report was also highly praised by many commentators. In one particularly effusive comment, the novelist John Updike wrote in the *New Yorker* that the King James Bible

was “our language’s lone masterpiece produced by committee, at least until this year’s 9/11 Commission Report” (5). However, some experts argued that the commission’s recommendations were weaker than its historical narrative, and pointed out that the commission spent far less time formulating its recommendations than it spent investigating what happened on and before 9/11 (6).

The commission’s report begins by dramatically recounting Al Qaeda’s hijacking of four planes on the morning of 9/11, and goes on to detail the history of Al Qaeda, the evolution of U.S. counterterrorism policy during the decade preceding 9/11, missed signals and mistakes by the U.S. government in the months leading up to the 9/11 attacks, and various aspects of the U.S. response to those attacks (7). Following this narrative, the report outlines four kinds of failures that allowed the attacks to take place: failures of imagination, policy, capabilities, and management. Regarding imagination, the commission observes that few intelligence analysts took seriously the possibility of suicide airplane hijacking. Regarding policy, the commission argues that Presidents Clinton and Bush were never presented with policy options that could effectively address the threat presented by Al Qaeda. Regarding capabilities, the commission finds that agencies involved in counterterrorism policy did not move assertively to develop the tools they needed to counter Al Qaeda. Regarding management, the commission concludes that agencies often did not share important information with each other, and senior national security officials did not clearly assign duties across agencies.

The commission’s recommendations are grouped in two chapters. The first of these chapters outlines elements of counterterrorism strategy, including proposals to make a long-term

commitment to the future of Pakistan and Afghanistan, create a fund to build public schools in Muslim-majority countries, strengthen efforts to track terrorist finances, distribute federal homeland security grants based strictly on risks and vulnerabilities (rather than as pork-barrel spending), set federal standards for the issuance of birth certificates and driver’s licenses, and establish a biometric entry-exit border security screening system.

The second chapter outlines proposals for reforming the U.S. government with the goal of creating greater “unity of effort.” These recommendations include establishing a National Counterterrorism Center that would integrate intelligence across agencies and conduct joint operational planning, creating a National Intelligence Director with responsibility for managing the national intelligence program and overseeing intelligence agencies, establishing new incentives for information sharing among agencies, requiring disclosure of the overall intelligence budget, establishing a specialized national security workforce at the FBI, and reforming congressional oversight by creating standing homeland security committees and reorganizing the intelligence committees.

THE COMMISSION’S IMPACT

The commission had remarkable impact both on public debate and on major legislation enacted by Congress. The commission’s bipartisanship contributed to very high public approval ratings for the commission. A July 2004 opinion poll conducted by Pew found that Americans approved of the commission’s work by a margin of 61 percent to 24 percent, and leading newspapers across the country ran numerous editorials endorsing the commission’s proposals (8). Members of the commission and the 9/11 families sought to further intensify public pressure on Congress

and President Bush to adopt the commission’s proposals by advocating publicly for their adoption through hundreds of media interviews and public speaking engagements in Washington and across the country.

In a remarkable response to the strong public support for the commission, congressional leaders decided to convene hearings on the commission report in August 2004, when Congress otherwise would have been in recess. In all, at least 27 congressional hearings were held on the report in August and September of that year. On September 23, Senator Susan Collins (R-ME) and Senator Lieberman – the chair and ranking member of the Governmental Affairs Committee – introduced legislation to adopt most of the commission’s proposals, and their bill was approved by the Senate on October 6. The House approved a commission implementation bill that differed in some respects on October 8, and a House-Senate conference committee then sought to reconcile the two measures.

The key difference between the House and Senate bills concerned the establishment of a director of national intelligence: the House bill granted the DNI weaker budgetary and personnel powers. On this central issue, an ambiguous compromise was ultimately reached that gave the DNI the authority to develop intelligence agency budgets and direct their allocation, as well as the power to concur in the nomination of agency heads and to transfer a limited amount of personnel and funds from one agency to another, while stipulating that the DNI’s establishment did not “abrogate the statutory responsibilities” of other departments. With this compromise reached, the House and Senate passed the Intelligence Reform and Terrorism Prevention Act of 2004 (the

Intelligence Reform Act) by overwhelming margins, and the legislation was signed by President Bush on December 17.

In addition to establishing the Office of the DNI, the Intelligence Reform Act adopted a number of other commission recommendations, including the creation of the National Counterterrorism Center, the formation of a Privacy and Civil Liberties Oversight Board, the establishment of new requirements for information sharing among agencies, and the institution of new procedures for expediting the appointment of national security officials during presidential transitions.

Yet some important commission recommendations were left out of the Intelligence Reform Act due to opposition from the Bush administration, influential members of Congress, and/or interest groups. For example, the legislation did not mandate public disclosure of the overall intelligence budget, reorganize congressional intelligence committees, or require that antiterrorism grants be allocated based on assessments of risks and vulnerabilities.

With implementation of the commission’s proposals incomplete, some of the commission’s members and staff sought to maintain pressure on Congress and the Bush administration to act on the remaining recommendations by creating a nonprofit organization, called the 9/11 Public Discourse Project, that was supported by nearly \$1 million in private funding raised after the commission had issued its report. The Project, led by 9/11 Commission Deputy Executive Director Christopher Kojm, kept public and congressional attention on the commission’s proposals by helping commissioners prepare congressional testimony and speeches on commission-related issues, and by issuing a report card in December 2005 on government action

with respect to each of the commission’s recommendations. The report card, which included many D’s and F’s, was covered on the front page of many newspapers.

During the 2006 congressional election campaign, House Minority Leader Nancy Pelosi pledged that implementation of all of the 9/11 Commission recommendations would be one of the Democrats’ top six legislative priorities if they regained control of the House. That November’s election did in fact return Congress to Democratic control, and Pelosi made the Implementing Recommendations of the 9/11 Commission Act the first bill introduced in the new Congress on January 5, 2007. This bill passed the House four days later, and a similar bill was approved by the Senate in July. Following a conference committee that reconciled the bills, the legislation, generally known as the 9/11 Commission Implementation Act, was enacted on August 3, 2007.

The 9/11 Commission Implementation Act fully or partially adopted most of the commission’s proposals that had not been part of the Intelligence Reform Act. For instance, the law cut in half the proportion of federal antiterrorism grants provided to states without regard to risks and vulnerabilities, declassified the total annual intelligence budget, and authorized the establishment of an International Arab and Muslim Youth Opportunity Fund to support educational programs in predominantly Muslim countries. Ironically, however, the commission’s proposals for reorganizing congressional oversight of intelligence and homeland security policy remained largely unaddressed by Congress, as powerful committee chairs resisted efforts to take away some of their turf.

Since the enactment of the 9/11 Commission Implementation Act, Kean and Hamilton have sought to maintain public attention on implementation of the commission’s proposals and on related homeland security issues by serving as the leaders of the Bipartisan Policy Center’s National Security Preparedness Group and Homeland Security Project. In September 2011, they issued a 10th anniversary status report on implementation of the commission’s recommendations, which argued that the government has made uneven progress in addressing the problems highlighted by the commission’s report. For example, the report card asserted that there has been significant improvement in sharing information across agencies and in conducting airline passenger screening, but noted that the Privacy and Civil Liberties Oversight Board has been dormant for more than three years and the federal government has still not set standards for the issuance of birth certificates and driver’s licenses.

SCHOLARSHIP ON THE COMMISSION

There is a substantial literature on the 9/11 Commission, which includes detailed accounts of the commission’s operations and impact, as well as analysis of whether its recommendations were sound. A summary of the literature follows.

The most in-depth accounts of the commission’s operations are *Without Precedent*, by Kean and Hamilton, and *The Commission*, by Philip Shenon (9). *Without Precedent* explains how the ten commissioners were able to overcome partisan pressures to reach consensus on their findings and recommendations. *The Commission* offers a more critical view of the commission’s activities, arguing that Philip Zelikow, the staff director, used his position to try to protect the

Bush White House from scrutiny or criticism. Case studies by Kenneth Kitts and Kirsten Lundberg provide further detail on how the commission operated, and Kitts argues that the Bush administration made a political mistake by not establishing a presidential commission shortly after 9/11 that would have preempted congressional efforts to establish a commission (10). In *Terrorism and National Security Reform*, I offer an in-depth account of the commission’s impact, showing how the magnitude of the 9/11 crisis, the commission’s distinct bipartisan political credibility, and the commission’s sustained advocacy enabled the commission to induce Congress and the president to adopt most of its recommendations (11).

Other scholars have assessed the merits of the commission’s recommendations, particularly its proposal to establish a DNI. On this point, many scholars, including Loch Johnson, Paul Pillar, Gregory Treverton, and Amy Zegart, argue that the DNI has not significantly improved intelligence performance (12). But opinion among these scholars differs on whether the idea of creating a DNI was a bad one in the first place (the view of Pillar), or whether Congress is to blame for failing to give the DNI stronger budgetary and personnel powers for directing the intelligence community (the view of Johnson, Treverton, and Zegart). Others offer a more positive, or neutral, assessment: Thomas Fingar and Mary Margaret Graham argue that the DNI has facilitated greater information sharing and coordination across the intelligence community, Richard Harknett and James Stever argue that the DNI has been helpful but has so far taken the United States only half the distance needed for true intelligence transformation, and Brent Durbin argues that it is too early to draw a definitive conclusion on whether the DNI has improved the intelligence community’s performance (13).

CONCLUSION

The 9/11 Commission was established by Congress to conduct an independent investigation of the September 11, 2001 attacks. Despite facing intense political pressures, the commission’s five Republicans and five Democrats reached consensus on a final report that described significant U.S. government shortcomings in counterterrorism policy prior to 9/11 and offered 41 reform recommendations. The commission’s bipartisan credibility generated strong public support for these recommendations and led Congress and the president to adopt most of them, including the commission’s proposals to establish a Director of National Intelligence and National Counterterrorism Center. Debate continues on whether these recommendations were sound – and whether the reforms have improved government performance. But the 9/11 Commission is now considered by many to be the gold standard for the conduct of an independent investigation into a disaster or crisis.

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