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9/11 Commission Recommendations: New Structures and Organization

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Summary

Since the terrorist attacks of September 11, 2001, the structures and organization of the federal government have been modified, changed, and adjusted in various ways with a view to better achieving domestic security. Among the more visible entities to have been established in this regard are the Office of Homeland Security, the Department of Homeland Security, and two versions of the Homeland Security Council. The final report of the National Commission on Terrorist Attacks Upon the United States (9/11 Commission), issued on July 22, 2004, held out the possibility of further developments with several recommendations for new entities and the suggested merger of the functions of the current Homeland Security Council into those of the National Security Council. These proposals, offered to address perceived shortcomings concerning civil liberties protection, intelligence development, intelligence community management, and intelligence expertise, are set out in this report, along with some assessment of their implications, and discussion of efforts to implement them. A chronology of developments regarding the recommendations of the 9/11 Commission, including the progress of implementing legislation, is provided at the end of this report, which will be updated as events warrant.

Contents

Background	1
9/11 Commission Recommendations	3
Chronology	11

9/11 Commission Recommendations: New Structures and Organization

When the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) issued its final report on July 22, 2004, the panel recommended new structures with a view to strengthening the security of the nation. Statutorily established in November 2002, the commission was tasked with a fact-finding examination of the terrorist attacks of September 11, 2001, which would build upon the investigations of other government entities, and production of a full and complete accounting of the circumstances surrounding the attacks. The commission was directed to “report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.”¹

The day after receiving the report of the 9/11 Commission, House and Senate leaders announced an immediate effort to develop draft legislation to implement the panel’s recommendations, particularly two of them calling for new structures for better managing intelligence. Simultaneously, President George W. Bush ordered his chief of staff, Andrew H. Card, Jr., to lead an administration-wide review of the recommendations and to report to him “as quickly as possible.”²

The recommendations of the 9/11 Commission for new governmental structures are the most recent development in efforts to better organize and manage the federal government for domestic security. These previous efforts are reviewed in the paragraphs below, and are followed by an examination of the 9/11 Commission’s recommendations.

Background

In the aftermath of the terrorist attacks on the World Trade Center and the Pentagon, President George W. Bush issued E.O. 13228 on October 8, which established the Office of Homeland Security (OHS) within the Executive Office of the President to develop, and coordinate the implementation of, a comprehensive national strategy to secure the United States from terrorist threats or attacks, and to coordinate the efforts of the executive branch to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the nation. Later in the day, Tom Ridge was appointed as the Assistant to the President for Homeland Security and, by virtue of this position, became the director of OHS. The President’s

¹ 116 Stat. 2408.

² Sheryl Gay Stolberg and Philip Shenon, “Congress Plans Special Hearings on 9/11 Findings,” *New York Times*, July 24, 2004, pp. A1, A8; Dan Eggen and Helen Dewar, “Leaders Pick Up Urgency of 9/11 Panel,” *Washington Post*, July 23, 2004, pp. A1, A11.

order also established the Homeland Security Council (HSC) to “serve as the mechanism for ensuring coordination of homeland security-related activities of executive departments and agencies and effective development and implementation of homeland security policies.”

From the outset of Director Ridge’s leadership of OHS, concerns were expressed that he did not have adequate and clearly stated authority to carry out his responsibilities. During the early months of 2002, press reports indicated that he was “facing resistance to some of his ideas, forcing him to apply the brakes on key elements of his agenda and raising questions about how much he can accomplish,”³ and that, “instead of becoming the preeminent leader of domestic security, Tom Ridge has become a White House adviser with a shrinking mandate, forbidden by the president to testify before Congress to explain his strategy, overruled in White House councils and overshadowed by powerful cabinet members reluctant to cede their turf or their share of the limelight.”⁴

In late April, the President directed senior officials, including Ridge, to begin drafting a proposal for the creation of a Department of Homeland Security. This initiative reflected a decision to move beyond the indeterminate coordination efforts of OHS to a strong administrative structure for managing consolidated programs concerned with border and transportation security, making effective response to domestic terrorism incidents, and ensuring homeland security. This proposal was publicly unveiled on June 6, 2002, transmitted to Congress as a draft bill on June 18, and, five months later, with various modifications, was signed into law on November 25.⁵ The statute transferred 26 major components (22 agencies) to the new department, which counted 170,000 employees, only 18,000 of whom worked in the Washington, DC, area, indicating a considerable field organization.⁶

The DHS statute also reconstituted the HSC and, in addition to advising the President on homeland security matters, directed it to “(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President; (2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and (3) perform such other functions as the President may direct.”⁷

As DHS began operations in the early months of 2003, the future of OHS came into question. In late July, a House report on appropriations legislation revealed that

³ Eric Pianin and Bill Miller, “For Ridge, Ambition and Realities Clash,” *Washington Post*, Jan. 23, 2002, pp. A1, A10.

⁴ Elizabeth Becker, “Big Visions for Security Post Shrink Amid Political Drama,” *New York Times*, May 3, 2002, pp. A1, A16.

⁵ 116 Stat. 2135.

⁶ Tim Kaufmann, “OPM Promises Homeland Security Personnel System by June,” *Federal Times*, Dec. 2, 2002, pp. 1, 5; Christopher Lee, “OPM Begins Sorting Security Personnel,” *Washington Post*, Dec. 9, 2002, p. A21.

⁷ 116 Stat. 2258.

the Bush Administration had changed the “Office of Homeland Security” account to one for the “Homeland Security Council.” The report also noted the shift of 66 staff from OHS to the HSC.⁸ Subsequently, the final funding legislation provided \$7.2 million for the Homeland Security Council in the White House Office account, but made no allocation for OHS.⁹ The President’s FY2005 budget made no mention of OHS, which, while not formally abolished, has become dormant.

9/11 Commission Recommendations

Among the many recommendations in its final report, the 9/11 Commission offered several pertaining to new structures with a view to strengthening the security of the nation. These are set out below, along with some assessment of their implications, and discussion of efforts to implement them. The first, calling for the creation of a civil liberties oversight board, traces its origins to the fifth and final report of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, chaired by former Virginia Governor James S. Gilmore III (Gilmore Commission). Its proposal, like the one of the 9/11 Commission, arose from a concern that efforts at combating terrorism could result in the erosion of civil liberties, and that the board could function as a watchdog in this regard.¹⁰

The second structural recommendation of the 9/11 Commission would transform the Terrorist Threat Integration Center, which also had been proposed by the Gilmore Commission in December 2003, into a National Counterterrorism Center (NCTC) with responsibility for both joint operational planning and joint intelligence by, and for, the intelligence community.¹¹ The NCTC would override the current bifurcated arrangement in which principal players — the Central Intelligence Agency and Departments of Defense and Justice — are seen as operating without effective coordination and cooperation.

The suggestion of the 9/11 Commission, made in passing, that the Homeland Security Council be merged into the National Security Council (NSC) is consistent with the February 2001 recommendations of the Commission on National Security/21st Century, cochaired by former Senators Gary Hart and Warren B. Rudman, which sought to concentrate coordination of a number of national security activities in the NSC.¹² The underlying view of both commissions in this regard appears to be that the President is better served by a single hub of coordinated

⁸ U.S. Congress, House Committee on Appropriations, *Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2004*, a report to accompany H.R. 2989, 108th Cong., 1st sess., H.Rept. 108-243 (Washington: GPO, 2003), p. 163.

⁹ 118 Stat. 321.

¹⁰ U.S. Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *V. Forging America’s New Normalcy: Securing Our Homeland, Preserving Our Liberty* (Arlington, VA: Rand Corporation, 2003), pp. 22-23.

¹¹ *Ibid.*, pp. 31-32.

¹² U.S. Commission on National Security/21st Century, *Road Map for National Security: Imperative for Change* (Washington: Feb. 15, 2001), pp. 51, 52, 80.

security policy advice with supporting staff resources. The President has the discretion to add to the NSC's statutory members and advisers such other participants, standing or otherwise, as he so desires.

Finally, the recommendation for a National Intelligence Director has its roots in a 1955 proposal of the Commission on Organization of the Executive Branch of the Government, chaired by former President Herbert Hoover, that the Director of Central Intelligence "employ an executive officer or 'Chief of Staff'" to manage the CIA.¹³ The 9/11 Commission's recommendation in this regard is the most recent of a series of such suggestions, and legislative measures, to vest a national director with responsibility and authority to manage and coordinate the intelligence community without functioning, as well, as the head of the CIA.¹⁴ The report pointed out, however, that the DCI currently "lacks the three authorities critical for any agency head or chief executive officer: (1) control over purse strings, (2) the ability to hire or fire senior managers, and (3) the ability to set standards for the information infrastructure and personnel."¹⁵

The structural changes recommended by the 9/11 Commission, as the *New York Times* editorially commented recently, "will not work unless Congressional oversight changes too." The 9/11 Commission has made recommendations in this regard, as well. "It makes no sense to streamline the executive branch," observed the *Times* editorial, "while leaving the legislative branch, which provides guidance and money, in chaos."¹⁶

"Recommendation: At this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we [the 9/11 Commission] recommend and the commitment the government makes to defend our civil liberties."¹⁷ This recommendation is the third and final one made in a section of the commission's report captioned "The Protection of Civil Liberties." In the other two, the commission recommended that (1) the President, in the course of determining the guidelines for information sharing among government agencies and by them with the private sector, "should safeguard the privacy of individuals about whom information is shared"; and (2) the "burden of proof for retaining a particular governmental power should be on the executive, to explain (a) that the power actually materially enhances security and (b) that there is adequate supervision of the executive's use of the powers to ensure protection of civil liberties. If the power is granted," the report added, "there must be adequate guidelines and oversight to properly confine its

¹³ U.S. Commission on Organization of the Executive Branch of the Government, *Intelligence Activities* (Washington: June 1955), p. 71.

¹⁴ See CRS Report RL32506, *The Position of Director of National Intelligence: Issues for Congress*, by Alfred Cumming.

¹⁵ U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: GPO, 2004), p. 410.

¹⁶ Editorial, "And Now, the Hard Part," *New York Times*, Aug. 8, 2004, p. WK10.

¹⁷ U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, p. 395.

use.”¹⁸ Read together, these recommendations call for a board to oversee adherence to presidential guidelines on information sharing that safeguard the privacy of individuals about whom information is shared, and adherence to guidelines on the executive’s continued use of powers that materially enhance security.

The report offered no additional commentary on the composition, structure, or operations of the recommended board. It might be similar to the eight-member U.S. Commission on Civil Rights, an independent agency within the executive branch that makes findings of fact but has no enforcement authority. The commission’s findings and recommendations are submitted to the President and Congress for consideration and appropriate action. The panel collects and studies information on discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin; or in the administration of justice in such areas as voting rights, enforcement of federal civil rights laws, and equal opportunity in education, employment, and housing.¹⁹

On August 27, 2004, President George W. Bush issued E.O. 13353 establishing the President’s Board on Safeguarding Americans’ Civil Liberties within the Department of Justice.²⁰ Chaired by the Deputy Attorney General and composed of 19 other senior counsels and leaders largely from within the intelligence and homeland security communities, the board may advise the President regarding civil liberties policy, gather information and make assessments regarding such policy and its implementation, make recommendations to the President, refer information about possible violations of such policy by a federal official or employee for prompt action, enhance cooperation and coordination among federal departments and agencies in implementing such policy, and undertake other efforts to protect the civil liberties of the citizenry as the President may direct.

It might be noted that, pursuant to Section 892 of the Homeland Security Act of 2002, the President is responsible for prescribing and implementing procedures under which federal agencies “share relevant and appropriate homeland security information with other Federal agencies, including the Department [of Homeland Security], and appropriate State and local personnel.”²¹

Of related interest in terms of new structures is the August 27, 2004, establishment, with E.O. 13356, of an Information Systems Council, which shall be chaired by a designee of the Director of the Office of Management and Budget and composed of 10 other designees of the Secretary of State, the Treasury, Defense, Commerce, Energy, and Homeland Security; the Attorney General; the Director of Central Intelligence; the Director of the Federal Bureau of Investigation; and the Director of the newly created National Counterterrorism Center.²² The council is

¹⁸ *Ibid.*, pp. 394-395.

¹⁹ See 42 U.S.C. § 1975-1975a.

²⁰ *Federal Register*, vol. 69, Sept. 1, 2004, p. 53585-53587.

²¹ 116 Stat. 2253.

²² *Federal Register*, vol. 69, Sept. 1, 2004, pp. 53600-53601.

tasked with planning for, and overseeing, the establishment of an interoperable terrorism information sharing environment to facilitate automated sharing of terrorism information among appropriate agencies.

“Recommendation: We recommend the establishment of a National Counterterrorism Center (NCTC), built on the foundation of the existing Terrorist Threat Integration Center (TTIC). Breaking the older mold of national government organization, this NCTC should be a center for joint operational planning *and* joint intelligence, staffed by personnel from the various agencies. The head of the NCTC should have authority to evaluate the performance of the people assigned to the Center.”²³ The report emphasized that the recommended NCTC, to be located in the Executive Office of the President, would combine operational planning and intelligence functions, while “keeping overall policy coordination where it belongs, in the National Security Council.” It “should lead strategic analysis, pooling all-source intelligence, foreign and domestic, about transnational terrorist organizations with global reach” and “should task collection requirements both inside and outside the United States,” according to the report. The new center also “should perform joint planning,” which would result in the assignment of “operational responsibilities to lead agencies, such as State, the CIA, the FBI, Defense and its combatant commands, Homeland Security, and other agencies.” It should not, however, “direct the actual execution of these operations” or “be a policymaking body.”²⁴

The report indicated that the “head of the NCTC should be appointed by the president, and should be equivalent in rank to a deputy head of a cabinet department,” and “would report to the national intelligence director,” a new position recommended by the commission. The individual nominated to head the NCTC “should be confirmed by the Senate and he or she should testify to the Congress.” In an unusual gesture, the report proffered that “the head of the NCTC must have the right to concur in the choices of personnel to lead the operating entities of the departments and agencies focused on counterterrorism,” and “should also work with the director of the Office of Management and Budget in developing the president’s counterterrorism budget.”²⁵

Finally, acknowledging that the “proposed NCTC would be given the authority of planning the activities of other agencies,” the report specified that a “[l]aw or executive order must define the scope of such line authority.” Furthermore, to “improve coordination at the White House,” the commissioners declared: “we believe the existing Homeland Security Council should soon be merged into a single National Security Council.”²⁶

²³ U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, p. 403.

²⁴ *Ibid.*, pp. 403-404, 411.

²⁵ *Ibid.*, p. 405.

²⁶ *Ibid.*, p. 406.

TTIC, which the NCTC would replace, arose from the President's January 28, 2003, state of the union address, where he announced he was instructing the leaders of the Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), Department of Homeland Security, and Department of Defense to develop a center "to merge and analyze all threat information in a single location."²⁷ TTIC was subsequently established with a memorandum of understanding (unpublished) signed on March 4, 2003, by the Attorney General, DCI, and Secretary of Homeland Security. Its mission is to bring together and analyze all terrorist threat-related information available to the federal government from overseas and domestic collections, and to disseminate this information and analysis to appropriate recipients. Supervised by a director who reports directly to the DCI, TTIC began with "a little over one hundred (100) officers drawn from partner agencies," and anticipated a workforce of "several hundred" by the end of its first year of operations.²⁸

Speaking from the Rose Garden of the White House on August 2, 2004, President Bush announced, "we will establish a National Counter-Terrorism Center," which "will build on the analytical work, the really good analytical work of the Terrorist Threat Integration Center, and will become our government's knowledge bank for information about known and suspected terrorists." He indicated that the director of the new center "will report to the National Intelligence Director, once that position is created." The President endorsed the establishment of this latter position at the same news conference.²⁹

Several days later, United Press International reported that the recently retired Deputy Director of Central Intelligence, Richard J. Kerr, had warned, in a secret report to departing DCI George J. Tenet in March or April, that TTIC could undermine the CIA's offensive operations against suspected terrorist operations overseas. The concern was that CIA's offensive international efforts would be diluted by deploying its best personnel outside the agency to a center performing largely defensive work. The creation of NCTC, it was thought, could make the situation even more critical.³⁰

On August 27, 2004, President Bush signed E.O. 13354 establishing a National Counterterrorism Center headed by a director who is appointed by the Director of Central Intelligence (DCI) with the approval of the President.³¹ This NCTC is mandated to serve as the primary organization for analyzing and integrating all

²⁷ *Weekly Compilation of Presidential Documents*, vol. 39, Feb. 3, 2003, p. 113.

²⁸ U.S. Congress, House Committee on the Judiciary and Select Committee on Homeland Security, *Terrorist Threat Integration Center (TTIC) and Its Relationship with the Departments of Justice and Homeland Security*, joint hearing, 108th Cong., 1st sess., July 22, 2003 (Washington: GPO, 2004), p. 11.

²⁹ White House Office, "Remarks by the President on Intelligence Reform," Washington, DC, Aug. 2, 2004, available at [<http://www.whitehouse.gov/news/releases/2004/08/print/20040802-2.html>].

³⁰ Shaun Waterman (UPI), "CIA Insider Warns Against Reform," *Washington Times*, Aug. 13, 2004, p. A6.

³¹ *Federal Register*, vol. 69, Sept. 1, 2004, pp. 53589-53592.

intelligence possessed or acquired by the federal government pertaining to terrorism and counterterrorism; conduct strategic operational planning for counterterrorism activities, integrating all instruments of national power, including diplomatic, financial, military, intelligence, homeland security, and law enforcement activities within and among agencies; assign operational responsibilities to lead agencies for counterterrorism activities; and otherwise serve as a central and shared knowledge bank and provider of all-source intelligence support for agencies to execute their counterterrorism plans or perform independent, alternative analysis. The relationship of this NCTC to the DCI Counterterrorism Center, operative since 1986, or the Terrorist Threat Integration Center (TTIC), operative since May 2003, was not immediately clear. Another executive order, issued the same day as the one establishing this NCTC, indicated that a representative of the NCTC director, upon that official's appointment, would serve on the newly created Information Systems Council, and that a representative of the TTIC director would serve on the council in the interim.³²

“Recommendation: The current position of Director of Central Intelligence [DCI] should be replaced by a National Intelligence Director [NID] with two main areas of responsibility: (1) to oversee national intelligence centers on specific subjects of interest across the U.S. government and (2) to manage the national intelligence program and oversee the agencies that contribute to it.”³³

In addition to the NCTC recommended earlier, the report anticipated the establishment of other national intelligence centers on, specifically, counterproliferation, crime and narcotics, Middle East, Russia/Eurasia, and China/East Asia, which “would be housed in whatever department or agency is best suited for them.” The management of these centers — their manner of creation, number, and replacement or elimination — was not discussed. While the report anticipated that the “National Intelligence Director would retain the present DCI’s role as the principal intelligence adviser to the president,” the commissioners also expressed the “hope that the president will come to look directly to the directors of the national intelligence centers to provide all-source analysis in their areas of responsibility, balancing the advice of these intelligence chiefs against the contrasting viewpoints that may be offered by department heads at State, Defense, Homeland Security, Justice, and other agencies.” In addition, “the National Intelligence Director should manage the national intelligence program and oversee the component agencies of the intelligence community.”³⁴

Concerning current arrangements, the report offered the following critical commentary on the responsibilities of the DCI.

The DCI now has at least three jobs. He is expected to run a particular agency, the CIA. He is expected to manage the loose confederation of agencies that is the intelligence community. He is expected to be the analyst in chief for the government, sifting evidence and directly briefing the President as his principal

³² *Federal Register*, vol. 69, Sept. 1, 2004, p. 53600.

³³ U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, p. 411.

³⁴ *Ibid.*, pp. 411-412.

intelligence adviser. No recent DCI has been able to do all three effectively. Usually what loses out is management of the intelligence community, a difficult task even in the best case because the DCI's current authorities are weak. With so much to do, the DCI often has not used even the authority he has.³⁵

The NID recommended by the report “should be located in the Executive Office of the President ... would be confirmed by the Senate and would testify before Congress,” and “would have a relatively small staff of several hundred people, taking the place of the existing community management offices housed at the CIA.”³⁶ Thus, it appears that the commission wants the NID to be structurally in close proximity to the President — he is, after all, an adviser to the Chief Executive — but also subject to congressional approval and availability in terms of briefings and testimony. The report was silent regarding a particular term of office for the NID; allowing or proscribing a second appointment to the position; conditions for removing an incumbent from the position; or reporting to Congress when such a removal would occur. Also, shortly after the 9/11 Commission issued its report, a *Washington Post* news analysis speculated that President Bush would take exception to having the leaders of units within the Executive Office of the President — the NID and the head of the NCTC — confirmed by the Senate. The analysis pointed out that, when a legislative effort was made in 2002 to install a Senate-confirmed counterterrorism director in the White House, a presidential veto was threatened because, the White House said, the bill “seeks to interject Congress into the daily operations of the Executive Office of the President by requiring the director and a senior advisor to the president, within the president’s own executive office, to report directly to Congress and participate in agency budget processes in a statutorily mandated fashion that is unacceptable. The creation of this office,” it was contended, “represents undue interference with presidential prerogatives and management of his own staff and support structures.”³⁷ Another press account, however, reported that two senior Senators had expressed concern about the political independence a National Intelligence Director would have if located in close proximity to the President within the Executive Office of the President.³⁸ Reporting on the President’s videoconference with senior advisers regarding the 9/11 Commission’s recommendations indicated that among the many questions the administration was exploring were whether the NID “would be part of the cabinet or part of the executive office of the president and whether its term would overlap the president’s.”³⁹

Speaking from the Rose Garden of the White House on August 2, President Bush asked Congress to create the position of a National Intelligence Director (NID) to oversee and coordinate the foreign and domestic activities of the intelligence

³⁵ *Ibid.*, p. 409.

³⁶ *Ibid.*, p. 414.

³⁷ Dana Milbank, “White House Notebook: Keeping the Power,” *Washington Post*, July 27, 2004, p. A21.

³⁸ Walter Pincus, “Bush, Aides Discuss Findings of 9/11 Panel,” *Washington Post*, July 27, 2004, p. A2.

³⁹ Richard Stevenson and David D. Kirkpatrick, “Administration Moves to Regain Initiative on 9/11,” *New York Times*, July 27, 2004, pp. A1, A12.

community and to serve as the President's principal adviser on intelligence matters. He indicated that this official should be appointed by the President with Senate confirmation, but should not be placed in the White House Office, the Executive Office of the President, or the Cabinet. In response to a question, the President said the office of the NID "ought to be a stand-alone group," such as an independent agency within the executive branch. Creating the position, he acknowledged, "will require a substantial revision of the 1947 National Security Act." It was not clear, however, if a draft proposal would be offered in this regard.⁴⁰

Some senior Senate and House members, including some serving on the Senate Committee on Governmental Affairs and the House Committee on Government Reform where NID legislation is being developed, called for giving the new director more authority — budgetary and personnel powers — than proposed by President Bush. Without this authority, it was contended, the NID would be a "figurehead," by one estimation, or a "shell game," according to another view. Recognizing the issue to be a flashpoint of disagreement, a White House spokesman reportedly indicated that President Bush may be willing to negotiate on the matter.⁴¹ At a August 4 hearing of the House Permanent Select Committee on Intelligence concerning the recommendations of the 9/11 Commission, five senior intelligence officials said they believed the NID would be ineffective without budget authority.⁴²

In an August 22 appearance on the CBS news program "Face the Nation," Senator Pat Roberts, chairman of the Senate Select Committee on Intelligence, outlined an intelligence community and activities reform proposal, which he said had the support of eight Republican members of his panel.⁴³ The measure, which appeared to be more extensive than the reorganization recommended by the 9/11 Commission, would break up the CIA and divide its responsibilities among three new intelligence entities — national assessments, national clandestine service, and technical support — under the direct supervision of a NID, who would have virtually complete control over the intelligence budget, including the counterterrorism and counterintelligence programs of the FBI. The Pentagon would surrender its current sizable authority over the intelligence budget, as well as some of its intelligence agencies, such as the National Geospatial Intelligence Agency, National Reconnaissance Office, and the National Security Agency. The proposal reportedly was a surprise to the White House and Senate Democrats.

⁴⁰ White House Office, "Remarks by the President on Intelligence Reform," Washington, DC, Aug. 2, 2004, available at [<http://www.whitehouse.gov/news/releases/2004/08/print/20040802-2.html>].

⁴¹ Walter Pincus, "Intelligence Plan Reviewed," *Washington Post*, Aug. 4, 2004, p. A17; Philip Shenon, "The Recommendations: Critics Say Bush's Intelligence Chief Would Be Toothless," *New York Times*, Aug. 4, 2004, p. A12..

⁴² Walter Pincus, "Caution Is Urged in Intelligence Overhaul," *Washington Post*, Aug. 5, 2004, p. A10.

⁴³ Dan Eggen, "GOP Plan Calls for Revamping Intelligence," *Washington Post*, Aug. 23, 2004, pp. A1, A7; Philip Shenon, "A G.O.P. Senator Proposes a Plan to Split Up C.I.A.," *New York Times*, Aug. 23, 2004, pp. A1, A14.

On August 27, 2004, President Bush issued E.O. 13355, which was intended to strengthen the capability of the DCI to manage the intelligence community.⁴⁴ The order emphasized the authority of the DCI as the principal adviser to the President, the National Security Council, and the Homeland Security Council for intelligence matters; for ensuring the timely and effective collection, processing, analysis, and dissemination of intelligence; for structuring the national foreign intelligence program (NFIP); and for establishing, operating, and directing new national intelligence centers, among other matters. Of particular importance, the order appeared to some to vest the DCI with coequal status vis-a-vis the Secretary of Defense regarding the establishment of collection requirements for the intelligence community and the tasking of national collection assets. Similarly, some noted that the DCI was authorized not only to develop and present to the President the annual consolidated NFIP budget, but also to “determine” that budget. Others were less certain that any significant change had occurred regarding these matters.

“Recommendation: A specialized and integrated national security workforce should be established at the FBI consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, rewarded, and retained to ensure the development of an institutional culture imbued with a deep expertise in intelligence and national security.”⁴⁵ This proposal, which the report indicated should be implemented by the President through the issuance of an executive order, appears to have been offered in support of FBI Director Robert Mueller’s proposed creation of an Intelligence Directorate within his agency, as well as “to ensure that the Bureau’s shift to a preventive counterterrorism posture is more fully institutionalized so that it survives beyond Director Mueller’s tenure.”⁴⁶ Establishing the recommended workforce would heighten the need to create, administratively or statutorily, organizational arrangements for its successful utilization.

Chronology

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| July 22, 2004 | The National Commission on Terrorist Attacks Upon the United States (9/11 Commission) issued its final report. |
| July 23, 2004 | Leaders of the House of Representatives and Senate announced plans for August committee hearings preparatory to the drafting of legislation to implement recommendations of the 9/11 Commission. The Senate majority and minority leaders deputized the chair and ranking minority member of the Committee on Governmental Affairs to produce bills by October 1 that would carry out commission recommendations for a National Intelligence Director and a National Counterterrorism Center. |

⁴⁴ *Federal Register*, vol. 69, Sept. 1, 2004, pp. 53593-53597.

⁴⁵ U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report*, pp. 425-426.

⁴⁶ *Ibid.*, p. 425.

- July 26, 2004 From his Crawford, TX, ranch, President Bush spoke with nearly all of his most senior advisers by videoconference regarding the recommendations of the 9/11 Commission.
- July 29, 2004 President Bush held a second videoconference with his senior advisers regarding the recommendations of the 9/11 Commission.
- July 30, 2004 The Senate Committee on Governmental Affairs held a hearing to receive testimony from 9/11 Commission chairman Thomas H. Kean, a former Governor of New Jersey, and vice chairman Lee H. Hamilton, a former member of the House of Representatives.
- August 2, 2004 In remarks from the Rose Garden of the White House, President Bush asked Congress to create the position of a National Intelligence Director to oversee and coordinate the foreign and domestic activities of the intelligence community and to serve, as well, as the President's principal intelligence adviser. To be appointed by the President with Senate confirmation, this official, according to the President, should not be placed in the White House Office, Executive Office, or Cabinet. The President also indicated his intent to establish a National Counterterrorism Center, which would build on the work of the Terrorist Threat Integration Center.
- August 3, 2004 The Senate Committee on Governmental Affairs held a hearing to receive testimony on the 9/11 Commission's recommendation to establish a National Counterterrorism Center.
- The House Committee on Government Reform, Subcommittee on National Security, held a hearing to receive testimony on the 9/11 Commission's recommendations.
- August 4, 2004 The House Permanent Select Committee on Intelligence held an initial hearing on recommendations of the 9/11 Commission concerning counterterrorism analysis and collection.
- August 6, 2004 The House Committee on International Relations held a hearing on the 9/11 Commission recommendation on denying sanctuaries to terrorists.
- August 10, 2004 The House minority leader held a meeting with the 9/11 Commission for House Democratic members.
- The House Committee on Armed Services held a hearing on the 9/11 Commission report.
- August 11, 2004 The House Committee on Armed Services held a hearing on the 9/11 Commission report.

The House Permanent Select Committee on Intelligence held a hearing on recommendations of the 9/11 Commission concerning sufficiency of time, attention, and legal authority.

August 16, 2004 The Senate Committee on Armed Services held a hearing on proposals to reorganize the intelligence community.

The Senate Committee on Commerce, Science, and Transportation held a hearing on the transportation security recommendations of the 9/11 Commission.

The Senate Committee on Governmental Affairs held a hearing on reorganization of the intelligence community.

August 17, 2004 The House Select Committee on Homeland Security held a hearing on the information sharing findings and recommendations of the 9/11 Commission.

The Senate Committee on Armed Services held a hearing on the 9/11 Commission's report concerning intelligence and the military.

The Senate Committee on Governmental Affairs held a hearing with representatives of the families of 9/11 victims regarding the need for implementing the recommendations of the 9/11 Commission.

August 18, 2004 The House Permanent Select Committee on Intelligence held a hearing on recommendations of the 9/11 Commission concerning intelligence community operational considerations.

The Senate Select Committee on Intelligence held a hearing on intelligence reform.

August 19, 2004 The House Committee on International Relations held a hearing on the Department of State's strategy for diplomacy in the age of terrorism.

The Senate Committee on the Judiciary held a hearing on the 9/11 Commission report concerning the future of federal enforcement and border security.

August 20, 2004 The House Committee on the Judiciary, Subcommittee on Commercial and Administrative Law and Subcommittee on the Constitution, held a hearing on the 9/11 Commission report and the Department of Defense Technology and Privacy Advisory Committee.

August 22, 2004 Senator Pat Roberts, chairman of the Senate Select Committee on Intelligence, outlined, during an appearance on CBS' "Face

the Nation,” an intelligence community and activities reform proposal endorsed by eight Republican members of his committee.

August 23, 2004 The House Committee on Financial Services held a hearing on further steps to be taken to impede terrorist financing and money laundering in light of the 9/11 Commission report.

Senator Pat Roberts, chairman of the Senate Select Committee on Intelligence, released the draft text of an intelligence community and activities reform bill endorsed by eight Republican members of his committee.

August 24, 2004 The House Committee on Government Reform, Subcommittee on National Security, Emerging Threats, and International Relations, held a hearing on overclassification as a barrier to information sharing.

The House Committee on International Relations held a hearing on 9/11 Commission recommendations for U.S. diplomacy.

August 25, 2004 The House Committee on Transportation and Infrastructure, Subcommittee on Aviation, held a hearing on the 9/11 Commission’s aviation security recommendations.

The House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, held a hearing on 9/11 Commission recommendations.

The House Permanent Select Committee on Intelligence held a hearing on recommendations of the 9/11 Commission concerning intelligence community reconstruction.

August 26, 2004 The House Committee on Veterans Affairs held a hearing on the preparedness of the Department of Veterans Affairs to fulfill its homeland security roles.

The Senate Committee on Governmental Affairs held a hearing to reorganize the intelligence community, focusing on the authority of the National Intelligence Director over intelligence funding and the operational planning authority of the National Counterterrorism Center.