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INVESTIGATIVE OVERSIGHT OF THE AMERICAN INTELLIGENCE COMMUNITY: PROMISE AND PERFORMANCE

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In 2002, Senator Trent Lott (R-MS) rose to the floor and spoke on the subject of special commissions, specifically the creation of the 9/11 Commission. He observed that in his opinion congressional commissions were "an abdication of responsibility." Why, he wondered, "do we have an Armed Services Committee, an Intelligence Committee, a Government Affairs Committee, or a Foreign Affairs Committee?"¹ His objections were to no avail, and in November of that year the 9/11 Commission, formally known as the National Commission on Terrorist Attacks upon the United States, was created. Two years later, when President George W. Bush signed the Intelligence Reform and Terrorism Prevention Act of 2004, which incorporated one of the key 9/11 Commission reform proposals, that of establishing a director of national intelligence, he hailed the legislation as "the most dramatic reform of our nation's intelligence capabilities since President Harry S. Truman signed the National Security Act of 1947. Under this new law, our vast intelligence enterprise will become more unified, coordinated, and effective."² President Bush's comments did not translate into a general endorsement of commissions. In signing the 2008 National Defense Authorization Act in January 2008, he issued a signing statement asserting that four different provisions of the bill unconstitutionally infringed upon his powers and that therefore he was not obliged to obey them. One of those called for creating an independent bipartisan Commission on Wartime Contracting in Iraq and Afghanistan. Had it been created, its charge would have been to "investigate waste, mismanagement, and excessive force by contractors." The Pentagon would have been forced to provide requested information "expeditiously" to the commission. In his signing statement, Bush did not explain his position but only stated that he objected.

As suggested by Lott's remarks and the actions and comments by Bush, commissions are highly contentious features of the American political scene. Nowhere is this truer than with the establishment and operation of intelligence oversight commissions. These bodies are not created to manage intelligence organization but to investigate performance-related problems and provide recommendations for change. Drawing in equal parts on the secrecy of the world of intelligence and the carefully cultivated perception that commissions stand above and apart from partisan politics, recent intelligence oversight

commissions have come to take on an almost mystical quality as purveyors of truth. Reality is far more complicated. Demystifying the place of intelligence oversight commissions requires a twofold analysis. First we need to be more cognizant of the political context and conditions under which intelligence oversight commissions are established and operate. For example, while pictured by their supporters as neutral and above politics (and as such capable of generating widespread popular support for their findings), this is not necessarily how they are viewed by everyone. Lott's critical observation quoted about establishing commissions rests upon the view that it is Congress's job to hold inquiries into the operation of the executive branch and hold it accountable for its decisions. Creating commissions is, from this perspective, both an abdication

Table 8.1 Intelligence Oversight Commissions

<i>Commission on the Organization of the Executive Branch of the Government (1948): First Hoover Commission</i>
<i>Dulles Report (1949)</i>
<i>Commission on the Organization of the Executive Branch of the Government (1953): Second Hoover Commission</i>
<i>Schlesinger Report (1971)</i>
<i>Commission on the Organization of the Government for the Conduct of Foreign Policy (1975): Murphy Commission</i>
<i>Vice President's National Performance Review (1993): Gore Commission</i>
<i>Commission on the Roles and Capabilities of the U.S. Intelligence Community (1996): Aspin-Brown Commission</i>
<i>U.S. Commission on National Security in the 21st Century (1999): Hart-Rudman Commission</i>
<i>National Commission on Terrorist Attacks upon the United States (2004): 9/11 Commission</i>
<i>Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (2005): WMD Commission</i>

of congressional responsibility and potentially erodes its powers. Second, we need to take a more discriminating look at the types of recommendations they generate and how they are received by policy makers.

Before beginning this analysis, it needs to be noted that there exists no universally accepted definition of what constitutes a commission.³ Successive waves of researchers interested in different time periods have often found fault with definitions adopted by earlier scholars. Rather than select one of these definitions or try to reconcile them, we allow commissions to define themselves as relevant by the subject matter they examine: improving the quality of intelligence.⁴ The only definitional restrictions in place are those shared by most studies of commissions: they are ad hoc, permit the president or at least executive branch officials to appoint some of the members, and issue a public

report. For the purposes of this study, these intelligence oversight commissions begin with the First Hoover Commission on government reorganization done after World War II and end with the WMD Commission that looked into the flawed intelligence estimate on Saddam Hussein's nuclear weapons program that was central to the Bush administration's argument for going to war with Iraq. A listing of these commissions is found in Table 8.1.

CALM OR TROUBLED WATERS

Looking first at context it is important to recognize that commissions do not operate in a political void. They enter into an ongoing stream of activity. Much like the origins of a river are found in the merging of small tributaries, a policy arena is the product of several different forces coming together. Typically they involve the definition of a problem, the emergence of institutions to address that problem, and the identification of strategies and policies. Once underway, a river reinvents itself daily. The changes are not necessarily visible, but over time they become clear. International crises, accidents, bureaucratic politics, personalities, new technologies, and new ideas are typical driving and shaping forces in policy arenas. Given enough time, rivers themselves disappear by either merging into larger bodies of water or vanishing into the ground as their water flow is reduced to a trickle. Changing perceptions of a problem or the proper way to address it may cause the first phenomenon to occur in policy arenas whereas shrinking budgets and public apathy may lead to the second outcome.

Intelligence commissions have been injected into policy streams that varied greatly in the calmness of their waters. For some, the dominant characteristic of the existing intelligence policy stream was partisan controversy. The first three intelligence commissions depicted in Table 8.1 all were launched under these conditions, as was the most recent commission dealing with intelligence, the WMD Commission. The First Hoover Commission, the Commission on the Organization of the Executive Branch of the Government, was established on July 7, 1947, with the passage of the Lodge-Brown Act. Chaired by former president Herbert Hoover, its origins lay in the coming together of one long-term and one short-term factor. The long-term factor was the dramatic growth in the size of the federal government brought on by the New Deal and World War II. Where the executive branch under President Herbert Hoover employed 600,000 individuals and had a yearly budget of \$4 billion, under President Franklin D. Roosevelt it had grown to employ 2,100,000 individuals and have an annual budget of \$42 billion. The short-term precipitating factor was the anticipated Republican victory in the 1948 presidential election. The Hoover Commission Report was to be the basis for reorganizing the government in a "new Republican era."⁵

Overlapping the life span of the First Hoover Commission was the creation of a committee of outside experts by the National Security Council (NSC) that was tasked with studying the operation of the intelligence community. The committee was chaired by Allen Dulles, an Office of Strategic Services veteran who already had briefed Congress on several occasions over the nature of intelligence and its proper organization. Dulles and most observers expected to

hand the report over to a new Republican administration, and the report was to be a blueprint for reform.⁶

The Second Hoover Commission, the Commission on the Organization of the Executive Branch of the Government, was established in 1953. Three days after signing the legislation creating this commission, President Dwight Eisenhower named Hoover to the commission, and he was elected chair at its first meeting, not a surprising development since Hoover named all of the committee members and determined the commission's areas of inquiry. Eisenhower invited Hoover to create an intelligence task force hoping to short-circuit any investigation by Senator Joseph McCarthy into this area. Once the danger of a McCarthyite investigation passed, the Eisenhower White House indicated it was no longer interested in an intelligence task force and that the inquiry could be called off. Hoover, however, continued with the inquiry, which was now carried out under the direction of General Mark Clark.⁷

Partisanship was also the dominant environmental trait when the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction was established in 2004. Iraqi pursuit and possession of weapons of mass destruction had been cited by the Bush administration as a principal reason for going to war, yet none had been found. Calls for an independent commission to investigate the intelligence on Iraqi weapons of mass destruction grew in intensity as the occupation of Iraq became more and more violent, with Americans being treated as unwanted occupiers and not welcomed as liberators. Just as with the 9/11 Commission, President Bush sought to delay the formation of a commission to look into prewar intelligence on Iraq's WMD program, arguing such an inquiry should wait until a more exhaustive weapons search was completed. He changed his position reluctantly under mounting public pressure and finally established the WMD Commission on February 6, 2004, days after former weapons inspector David Kay told Congress "we were almost all wrong" about Iraq's weapons program and a day after Director of Central Intelligence (DCI) George Tenet spoke out publicly in defense of the CIA's "imminent threat" argument. Bush set March 31, 2005, as the due date for the commission's report. This put it four months after the election and two months after Bush would leave office if he were to be defeated in the 2004 presidential election.

After the Second Hoover Commission the subsequent three intelligence oversight commissions were established in less overtly political times, yet underlying tensions were present and easily recognized. Richard Nixon came to the presidency distrusting the CIA and convinced that it housed liberal opponents to his administration. Once in office, the Federal Bureau of Investigation (FBI) also became a target of his suspicions for its failure to bring under control either the antiwar movement or the constant leaks to the press that were coming from within his administration. In December 1970, Nixon tasked Deputy Director of the Bureau of the Budget James Schlesinger to examine the intelligence community's organization.

The Schlesinger Report was presented to President Nixon in March 1971. A little over one year later, another intelligence oversight commission, the Commission

on the Organization of the Government for the Conduct of Foreign Policy, better known as the Murphy Commission, was established. One needs only to read the preface of its report to sense the political divide that separated members of the commission depending upon their affiliation. The preface spoke of the existence of an increasingly pluralistic world characterized by interdependence and rapid technological change that was blurring the boundaries between domestic and foreign policy. As a consequence of these trends, it stated that the United States needed to reorganize the way it did foreign policy. Senator Mike Mansfield (D-MT) dissented to this characterization of the problem, contending that these global conditions were already widely recognized. He asserted that "the Commission paid little attention to the circumstances in which the legislative mandate for the Commission was created" and that the most prominent feature of the period was "intense confrontation between the executive and legislative branches of the U.S. Government." Rather than addressing these issues he characterized the commission's study as being "a sort of elaborate management study."

Two decades later, President Bill Clinton launched a wide-ranging review of government performance under the leadership of Vice President Al Gore. The Vice President's National Performance Review and the theme of reinventing government were widely interpreted as Clinton's response to H. Ross Perot's well-received campaign message of "making government work." Once underway, it also became a vehicle for the Clinton administration to blunt the reorganization proposals emanating from a now Republican Congress.

The next two intelligence oversight commissions were established in periods of strategic uncertainty. The first, the Aspin-Brown Commission, officially the Commission on the Roles and Capabilities of the U.S. Intelligence Community, was established after the end of the Cold War when the primary national security threat and intelligence target for the United States no longer existed. To use the language coined by Clinton's DCI, R. James Woolsey, the United States now faced a world in which it no longer confronted a dangerous dragon but a world populated by poisonous snakes. The precipitating event in the creation of the Aspin-Brown Commission involved an attack by two such snakes: the attack on U.S. Special Forces in Mogadishu, Somalia, and the 1993 terrorist bombing of the World Trade Center. There also existed a strong residue of dissatisfaction with the performance of the intelligence community and partisan distrust between the White House and Congress. The former stemmed from the failure of the intelligence community to police itself adequately as evidenced by the seemingly endless parade of high-profile spy cases in the news, most notably Aldrich Ames, John Walker, Jr., Ronald Pelton, and Jonathan Pollard. The latter grew out of the Iran-Contra investigation into the CIA's role in supporting the Contras in Nicaragua and the sale of weapons to Iran.

The second commission formed with intelligence responsibilities in this period of strategic uncertainty was the U.S. Commission on National Security in the 21st Century, better known as the Hart-Rudman Commission. Its charge was to undertake a comprehensive review of the national security environment in which the United States would operate in the 21st century.⁸ The Hart-Rudman Commission conducted its investigation over 2-1/2 years and divided its work

into three phases, issuing a report at the conclusion of each phase. Phase I examined the nature of the world into which the United States was entering. That report was issued in September 1999. Phase II examined existing national security strategies and was released in April 2000. The Phase III report was issued in February 2001.

Of all the intelligence commissions, the National Commission on Terrorist Attacks upon the United States, the 9/11 Commission, began its operation in what was perhaps the most complex setting, one that combined elements of uncertainty, partisan politics, and an acute sense of national crisis. It was more than one year after the terrorist attacks on the World Trade Center and the Pentagon that President George W. Bush and Congress created the 9/11 Commission on November 27, 2002. Political pressure for it had been slow to build. With U.S. forces engaged in a war against al Qaeda and the Taliban in Afghanistan, Republicans easily defeated efforts by some Democrats to establish an independent commission of inquiry. However, by December 2001 with victory in Afghanistan seemingly assured, senators Joseph Lieberman (D-CT) and John McCain (R-AZ) introduced legislation that would bring about the commission. The Bush administration objected, citing decisions by the House and Senate to set up their own studies. Upset with what they felt to be overly narrow terms of reference on the part of the congressional committees, the families of the victims of the 9/11 bombings continued to press for an independent board of inquiry. In July 2002, the House succumbed to their lobbying efforts and voted to endorse a bipartisan committee. The Senate and White House resisted until October. One of the White House's concerns was that the commission's report would be released in the middle of the 2004 presidential campaign and lay blame at the doorstep of the Bush administration. Accordingly, the commission's expiration date was set for May 27, 2004.

The 9/11 Commission got off to a rocky start. Both of its cochairs, former secretary of state Henry Kissinger (Republican) and former senator George Mitchell (Democrat), withdrew due to conflict-of-interest charges. They were replaced by former New Jersey governor Thomas Kean and former congressman Lee Hamilton, respectively. The commission held its first hearings in late January 2004 and by July was publicly complaining about the lack of cooperation it was receiving from the White House and Justice Department in obtaining documents and testimony from key administration officials. Another point of contention was the commission's expiration date. The Bush administration opposed any extension but again gave in to pressure from the families of the 9/11 victims. In February 2004, a 60-day extension was agreed upon.

THE CURRENTS OF WASHINGTON POLITICS

From a policy analytic perspective, strategies and programs are designed to solve a problem, and their relative merits can be judged accordingly. We will adopt this perspective later in this paper. But if we keep our attention on the policy stream into which intelligence commissions are placed, what stands out is not the problem they are trying to solve but the contours of the shoreline and the protrusion of rocks that threaten to undermine their efforts. Together they

can produce dangerous currents that threaten the success of presidential commissions. At any one time, four such currents can be found in the policy stream comprising Washington politics. They center on the symbolic politics associated with intelligence reform, control over and access to resources, control over the political agenda, and establishing accountability and responsibility (blame) for intelligence problems.

Symbolic Politics

Used in the most benign and neutral fashion, language can educate the public. This in fact is a purpose frequently ascribed to presidential commissions. In theory it is the one advanced by the bipartisan makeup of commissions and the presence of what might be described as professional commissioners on these panels. Typically enabling legislation setting up a commission specifies how many individuals the president, the Speaker of the House of Representatives, the Senate majority leader, or the Senate minority leader may appoint. The Lodge-Brown Act that established the First Hoover Commission specified a 12-person commission. Speaker of the House Joseph Martin, President of the Senate Pro Tem Arthur Vandenberg, and President Harry Truman each chose four members of the commission. One-half were to be Republicans and one-half Democrats. According to the legislation setting up the Murphy Commission in 1972, there were to be 12 members; 4 were to be appointed by the President with 2 coming from the executive branch and 2 from private life. The president of the Senate and Speaker of the House were each to appoint 4 members. In each case, 1 was to come from each party and 2 from private life.

Often, complex political bargaining is necessary in order to set up a commission. This was the case for the Aspin-Brown Commission because both the administration and the Senate were planning to go ahead on their own with investigations into the performance of the intelligence community in the wake of the Mogadishu terrorist attacks, and neither trusted the other to conduct a neutral inquiry. In the end it was agreed that President Clinton would name nine individuals from "private life" and Congress would select eight members, four of whom would be private citizens and the other four members of Congress. Considerable bargaining also went into creating the 9/11 Commission. Agreement was reached that the White House would name its chair and that Republican senators John McCain and Richard Shelby would have veto power over one of Senate Majority Leader Trent Lott's nominations. The 9/11 families wanted Rudman appointed. He was favored by McCain and Shelby, but Lott indicated that he would not (and did not) put Rudman's name forward.

One-time Republican senator Warren Rudman has been a prominent member of numerous presidential commissions, serving on the Aspin-Brown intelligence commission, the commission looking into Gulf War Syndrome, a special panel that investigated security problems in the Energy Department, the Sharm el-Sheikh fact-finding commission on Middle East violence, and cochairing the Hart-Rudman Commission on national security. Rudman is not unique. Milton Eisenhower, brother of President Dwight Eisenhower, served on some 20 commissions. From 1950–70, 7 individuals served on three commissions, and 25 served on two commissions. During the Reagan presidency, John Tower,

Brent Scowcroft, Chuck Robb, and Ed Muskie all served on multiple commissions.

The careful balancing of membership and the selection of trusted individuals to serve on these commissions is recognition of the fact that words matter. This is the heart of symbolic politics. Controlling the language and images of the policy debate gives a policy maker a heightened ability to advance policy options. Language can reassure the public that policy makers are aware of a problem and are addressing it. Language can also raise public concerns that all is not well and that immediate action is needed. The Dulles and Clark committees, neither of which had balanced or bipartisan memberships, issued reports only a few years apart that provide a sharp contrast in the use of language.

Not unexpectedly, alarmist language was front and center in the Dulles Committee's highly critical report of the operation of the CIA under the Truman administration. Dulles had taken time out from his work on the commission to campaign with Republican candidate Thomas Dewey and harbored hopes of becoming the professional head of the CIA that Dewey had told Secretary of Defense James Forrestal he would put into place in his administration.⁹ The report stated:

The principal defect of the Central Intelligence Agency is that its direction, administrative organization, and performance do not show sufficient appreciation of the Agency's assigned functions...the result is that the Central Intelligence Agency has tended to become just one more intelligence agency providing intelligence in competition with older established agencies...since it is the task of the Director to see that the Agency carries out its assigned functions, the failure to do so is necessarily a reflection of inadequacies of direction.¹⁰

The Dulles Report was equally unkind in its assessment of the CIA's intelligence collection and the production of intelligence estimates, stating that the Office of Reports and Estimates was "concerned with a wide variety of activities and with the production of miscellaneous reports and summaries which by no stretch of the imagination could be considered national estimates."¹¹

The Clark Report painted a very positive picture of the CIA and helped counter the fear of communist penetration inside the U.S. government raised by McCarthyite rhetoric and congressional investigations by the House Un-American Activities Committee. Reporting back to the full Second Hoover Commission in May 1955, the Clark Report concluded, "we discovered no valid ground for the suspicion that the CIA or any other element of the intelligence family was being effectively contaminated by any organized subversive or community clique." It held the director of central intelligence to be "industrious, objective, selfless, enthusiastic and imaginative."¹² On the negative side, the task force was concerned with the lack of adequate intelligence coming from behind the Iron Curtain.

Resource Politics

Resource politics takes as its starting point the political reality that policies are given life by people, budgets, bureaucratic routines, and jurisdictional mandates. Change any element in that equation and one changes the operation of organizations. Since virtually every reform proposal put forward contains implications for how resources are allocated, this is a frequent area in which the work of presidential commissions encounters the realities of Washington politics.

Intelligence oversight commissions are not exception to this rule. Where symbolic politics is played out boldly in the public eye, resource politics tends to be a game played out in the shadows and is often dominated by the work of congressional committees and bureaucracies. Resource politics, however, can on occasion become very public, as it did in the case of the 9/11 Commission's recommendation that a director of national intelligence be created. The director of national intelligence was to oversee all-source national intelligence centers, serve as the president's principal intelligence advisor, manage the national intelligence program, and oversee the component agencies of the intelligence community. Included in this power would be the responsibility for submitting a unified intelligence budget appropriating funds to intelligence agencies and setting personnel policies for the intelligence community. The director of national intelligence's office would be in the White House.

The commission's reform proposals met with different responses from Capital Hill and the White House. Congressional leaders promised to move quickly on overhauling the intelligence community's structure while the White House urged caution. Acting CIA director John McLaughlin, Secretary of Defense Donald Rumsfeld, and Homeland Security Secretary Tom Ridge all spoke out against creating a director of national intelligence. With Democratic presidential candidate John Kerry endorsing the commission's report, the Bush administration came under political pressure to do the same. It came out in favor of a director of national intelligence but with authority only to coordinate intelligence. Lieberman criticized Bush for wanting a "Potemkin national intelligence director" while then Republican senator Arlen Specter (PA) referred to it as a shell game.¹³

In fall 2004, the Senate and House each passed legislation establishing a director of national intelligence but differed on the powers to be given to that person. Under the Senate bill, the CIA director "shall be under the authority, direction, and control" of the director of national intelligence. In the House version the CIA director would only "report" to the director of national intelligence. The House bill also only gave the director of national intelligence the power to "develop" budgets and give "guidance" to intelligence community members. The Senate bill stated that he or she would "determine" the budget. The Senate bill would also make the intelligence budget public, require that most of the director of national intelligence's high-ranking assistants be confirmed by the Senate, and create a civil liberties panel to prevent privacy abuses.

Deadlock ensued. House Republicans led by Representative Duncan Hunter (CA), chair of the House Armed Services Committee, were adamant that the Pentagon not lose control over its intelligence budget and that the overall

budget remain secret. Family members of the victims of the 9/11 attacks unsuccessfully called upon President Bush to break the stalemate in favor of the Senate's version of the bill. Republican opposition in the House also did not budge, forcing Speaker J. Dennis Hastert (R-IL) to remove the bill from consideration in late November.

Behind-the-scenes negotiations produced a compromise bill acceptable to House Republicans and the White House. Title One of the act stipulated that the DNI not be located in the executive office of the President. It gave the DNI the power to "develop and determine" an annual budget for the national intelligence program based on budget proposals provided by the heads of intelligence agencies and departments. The DNI is to ensure the "effective execution" of the annual budget and "monitor the implementation and execution of the National Intelligence Program." After consulting with department heads, the DNI is authorized to transform or reprogram a maximum of \$150 million and no more than 5 percent of an intelligence unit's budget in any one fiscal year, but he or she may not terminate an acquisition program. Larger transfers may take place if the affected department head agrees. In addition, the DNI "establishes objectives and priorities for the intelligence community and manages and directs tasking of collection, analysis, production and dissemination of national intelligence." He or she is also given the power to develop personnel policies and programs in consultation with the heads of other agencies and elements of the intelligence community. And, the DNI is tasked with establishing a National Counterterrorism Center and National Counterproliferation Center and assigning individuals to protect the integrity of the analytical process and conduct alternative analysis as appropriate.

Agenda Politics

Intelligence commissions can do more than make recommendations to solve problems. They can also be part of a strategy for advancing the political agendas of policy makers. Commissions are able to do so by virtue of their ability to place intelligence reforms in a broader public policy context and to educate the public about the need for action. Most often intelligence commissions have played this role when their mandate was broadly cast and intelligence reform was but one area of focus and not the sole rationale for creating the commission.

One broad agenda category into which intelligence reforms have been inserted by commissions is improving the overall quality of government performance. As noted earlier, one motivating force behind the creation of the First Hoover Commission was the growth in the size of the federal government. In speaking of the commission's work, one observer commented, "government bigness is not necessarily evil" but that "the accomplishment of national and international objectives demands efficient government machinery" and that the present system of administration was "so creaky and complex that it often cannot move to achieve...[these goals] without costly delays."¹⁴ The Second Hoover Commission's mandate was even more expansive. Where the first commission concerned itself with how to improve the efficiency and effectiveness of government operations, the second commission was empowered to examine the

question of what government should be doing. Nonessential services were to be eliminated as well as those activities that competed with private enterprise. The Gore Report on intelligence was also part of a larger mandate to “reinvent government.” Its language was consistent with that used by the larger ongoing reform movement within the field of public administration, which sought to alter the behavior of bureaucrats rather than the formal structure and processes of the institutions they worked in.¹⁵ Rather than speak of consumers of intelligence, it spoke of customers. It spoke of the need for an overarching vision for the intelligence community and the need for a public affairs strategy. Concrete recommendations called for the DCI to convene a visionary conference to determine the intelligence community’s post-Cold War mission, to appoint a consumer ombudsman, and to appoint an integrated community congressional liaison office.

A second broad agenda category is the content and conduct of foreign policy. The Murphy Report fits into this category. As noted earlier, its preface argued that given the increased interdependence of world politics, the boundary line between foreign and domestic politics was no longer as sharp or defining as it once was. Consequently, the United States needed to consider “a fresh organization of the government for the conduct of foreign policy.” Intelligence was viewed in this context. The overall tenor of its report was supportive of the intelligence community and the role it played in the foreign policy-making process although it was somewhat critical of the NSC’s oversight of it. It also identified three obstacles to the exercise of more effective leadership and oversight over the intelligence community: the multitude of agencies comprising the intelligence community, the fact that the bulk of the resources lay within the Department of Defense, and the tendency to pursue new collection technologies without closely examining their potential costs and benefits.

Also falling into this category was the Hart-Rudman Commission. It was established in 1998 by Secretary of Defense William Cohen to undertake a comprehensive review of the national security environment in which the United States would operate in the 21st century. Among its overall conclusions were the beliefs that weapons of mass destruction would continue to proliferate and that the United States would become increasingly vulnerable to hostile attack on its homeland. A core recommendation was the creation of a Department of Homeland Security. Its analysis of the intelligence community began with the observation that “the basic structure of the intelligence community does not require change.” Rather than endorse calls for increasing the DCI’s power, the Hart-Rudman Commission concluded that “efforts to strengthen community management while maintaining the ongoing relationship between the DCI and the Secretary of Defense are bearing fruit.” What the commission was most interested in with regard to community management was that greater attention be paid to setting national intelligence priorities. In terms of intelligence collection it urged that 1) greater attention be paid to the recruitment of human intelligence sources especially against terrorism; 2) a new emphasis should be placed on collecting and analyzing economic and science/technology intelligence; and 3) greater use should be made of open intelligence sources.

Accountability Politics

Questions of accountability operate on multiple levels. At the macro level, accountability issues direct our attention to the White House and senior policy makers such as heads of the CIA, Department of Defense, and other agencies. At the micro level they involve the distribution of responsibility and authority within agencies. Most intense and public are the politics of accountability at the macro level. They were front and center in both the establishment and operation of the 9/11 Commission and the WMD Commission. Fearful that the 9/11 report would be critical of its handling of intelligence on terrorism leading up to September 11, 2001, the White House agreed to establish the 9/11 Commission with the proviso that its report not be issued during the presidential campaign. The WMD Commission was limited to an examination of how the intelligence community performed in making its judgment about Iraq's possession of WMD. Off limits was any assessment of how intelligence was used by the White House. Unlike the 9/11 Commission, it did not hold public hearings or interview members of the administration. The commission's report contained a strongly worded critique of the intelligence community that termed much of its data "worthless or misleading" and its analysis "riddled with errors." The intelligence community itself was described as "fragmented, loosely managed, and poorly coordinated." As a corrective the commission urged greater reliance on competitive analysis, improved information sharing, the creation of a new national proliferation center to coordinate efforts against WMD, the creation of a human intelligence directorate within the CIA, and supported the notion of a powerful director of national intelligence.¹⁶

DOWNSTREAM LANDING

Having made its recommendations, it remains an open issue as to what impact a commission's findings will have. Wide-ranging disagreement exists on this point. The two end points of the debate over the effectiveness of commissions as instruments of policy are represented by the observations that they are "so many Jiminy crickets chirping in the ears of deaf Presidents, deaf Congressmen, and perhaps a deaf public"¹⁷ and that they are "generally created by presidents who seriously want policy advice."¹⁸

Intelligence oversight commissions have encountered a variety of downstream landings. First, the recipient of the commission's report is sometimes not fully anticipated. The First Hoover Commission and the Dulles Committee both began their work expecting to produce a blueprint for a Republican administration that would take office following the 1948 election. Little was done to implement the Hart-Rudman Commission's recommendations because by the time its final report was issued the George W. Bush administration had just entered office after a bitter and controversial campaign and was interested in distancing itself from the Clinton administration as much as possible.

Second, personnel changes occur that reduce the impact of proposed reforms by removing key supporters from the policy process. Schlesinger's Report led to modest changes in large measure because Schlesinger, who moved over from his position in the Bureau of the Budget to become DCI, stayed in that position for only a short time. Anne Karalekas in her history of the CIA states that

Schlesinger came to the position with a clear set of management ideas for improving the quality of intelligence. The changes he made in his limited tenure as DCI promised "to alter the Agency's and DCI's existing priorities."¹⁹ Neither his predecessor (Richard Helms) nor his successor (William Colby) was as committed to the reforms contained in his report.

The Dulles Report also encountered an unexpected change in personnel. Secretary of Defense Forrestal warmly received the Dulles Report and was expected to push through its recommendations. It was Forrestal who had recruited Dulles to chair the commission and who at that time had characterized the CIA as being staffed with "deadwood." Forrestal was suffering from mental illness and resigned in March 1949 and committed suicide in May. His successor, Louis Johnson, quickly became embroiled in conflict with Secretary of State Dean Acheson and delegated the task of evaluating the merits of the report to General Joseph McNarney and Carlisle Humelsine from the State Department. McNarney took the lead and generally endorsed its conclusion that the CIA needed strengthening through internal organizational reforms and that it had not met its responsibility for coordinating intelligence. In an important dissent, McNarney rejected the notion of collective responsibility for intelligence estimates by the entire set of national security organizations through the Intelligence Advisory Committee in favor of individual responsibility by the director of central intelligence, who headed the CIA. His position was endorsed by the NSC when it adopted the Dulles Report as amended by the McNarney Report in July 1949.

This change in personnel did not mean that the Dulles Report had no impact. Quite the opposite was the case. When General Walter Bedell Smith assumed the position of DCI, many of the problems identified by the Dulles report remained in place. Recommendations from the national security organizations to the NSC were often "watered-down compromises," departmental intelligence organizations often withheld "operational" information and "eyes only" information from the CIA, and the CIA could not enforce its collection requests on other agencies.²⁰ More vigorous implementation of the Dulles organizational reforms soon took place as Jackson joined Smith as deputy director. Dulles would also join the CIA and rise to the position of DCI. The reforms they oversaw created the foundation for the CIA's organizational profile for the next 20 years.

Third, there can be a major change in the political climate from when the commission was established. Part of the reason for the limited impact of the Murphy Commission's report was that before it was completed, Washington politics increasingly became focused on Watergate and the CIA's role in the break-in and covert action. These concerns spawned a series of investigations by Congress and the president. On January 4, 1975, President Gerald Ford appointed Vice President Nelson Rockefeller to head a commission on CIA activities within the United States. It reported out the same month as the Murphy Commission. Ford had hoped this inquiry would forestall action by Congress. This was not to be the case as both the Senate (the Church Committee) and the House (the Pike Committee) began their own broader investigations into allegations of CIA wrongdoing. Just before the Church and

Pike committees were to release their findings, Ford again tried a preemptive move. He signed Executive Order 11905, which put into place some of the more limited recommendations of the Murphy and Rockefeller commissions. It recognized the DCI as the president's primary intelligence advisor and spokesperson for the intelligence community, gave him added budget-making responsibility, and established an Intelligence Oversight Board to review intelligence activities. Murphy was named its first chair.

The 9/11 Commission's findings also were released in a changed political environment. Gone was the sense of urgency and crisis that once existed. This is particularly noteworthy given the scope of its proposed reforms. Overcoming the many political and institutional obstacles that stand in the way of reforms that entail a major redirection or restructuring of policies, resources, and institutions requires special circumstances. When those conditions are present we can speak of the existence of a window for reform.²¹ Once opened, reform windows operate in predictable ways. At their base is a pressure for action.

"Confessions of impotence are not acceptable; leaders are expected to act."²² Reorganization, or more accurately the announcement of reorganization, is a highly visible and symbolic action that addresses the political imperative of calming public fears. Not all reform windows are alike in their ability to sustain a reorganization proposal or prevent rollback once the window closes. John Keeler in his cross-national study of reform windows notes that "windows opened principally by crisis effects...tend to feature a perilous context for reform." The result is a hollow mandate, one where no large-scale electoral victory has empowered or authorized the reform effort.²³

By the time the 9/11 Commission released its report the reform window opened by the events of 9/11 had largely closed. Even the events of 9/11 and the independence shown by the commission failed to generate and sustain a robust reform window. For example, speaking of the 9/11 Commission's call to create a powerful director of national intelligence and locate the office in the White House, Congressman Jack Murtha (D-PA) commented in September 2004 that "public indifference will make Congress able to resist changes [to the intelligence community]." Earlier the Bush administration succeeded in resisting early pressures to create an independent commission and acceded only under public pressure from the families of 9/11 victims. A similar pattern of resistance and then bending to public pressure generated by these families characterized its pattern of cooperation with the commission and its endorsement of the commission's proposal for a DNI.

THE LOGIC AND COHERENCE OF REFORM PROPOSALS

Quite apart from questions about the nature of the political context within which intelligence oversight commissions operate is the matter of the soundness of their recommendations. Answers to this question can be sought from two different directions. The first approach starts with an examination of the specific reforms suggested by intelligence commissions. The second looks at the underlying logic that guides the decision making of commissions more

generally.

Intelligence Reforms

Taken as a collective, intelligence oversight commissions have not moved forward in a linear fashion, addressing one problem and then moving on to the next. Often commissions have revisited the same issue again and again. A personnel system that prevents the effective use of expertise among the intelligence community agencies has been a repeated complaint, as is dissatisfaction with the quality of scientific intelligence and the need for greater cooperation among intelligence agencies and communication between intelligence producers and consumers.

Moreover, in making recommendations, intelligence commissions did not speak with one voice. Nowhere is this more evident than with calls for establishing a director of national intelligence. The 9/11 Commission was not the first or last to call for a DNI-type figure to sit atop the intelligence community. The Schlesinger Report concluded that the main hope for realizing improvements in the operation of the intelligence community lay in a "fundamental reform" of its decision-making bodies and procedures. What was needed were "governing institutions." The DCI was seen as currently unable to perform a community-wide leadership role effectively because of time limitations, his multiple roles, his lack of control over intelligence community resources, the fact that he is a competitor for resources, and that he may be outranked by other department heads who report directly to the president while he reports to the National Security Council.

Suggested areas of improvement included the following:

- Increasing the power of the leader of the intelligence community over resources; providing that individual with a stronger staff
- Consolidating intelligence collection and production activities by function
- Giving increased importance to competitive intelligence analysis and creating new estimating centers
- Strengthening independent review mechanisms
- Increasing centralized control over military intelligence units

The Schlesinger Report identified three fundamental approaches to solving this leadership problem. The option it favored was creating a director of national intelligence who would control all major collection assets as well as research and development. The director of national intelligence would also direct the government's principal intelligence production and national estimating center. The CIA would retain responsibility for covert action. The other two options identified were providing the director of central intelligence with a strong presidential mandate and stronger staff and creating a coordinator of central intelligence who would act as White House or NSC overseers of the intelligence community. All three were seen as having pluses and minuses, but creating a director of national intelligence was seen as

having the greatest promise.

The WMD Commission's report described the intelligence community as "fragmented, loosely managed, and poorly coordinated."²⁴ As a corrective it urged greater reliance on competitive analysis, improved information sharing, the creation of a new national proliferation center to coordinate efforts against WMD, the creation of a human intelligence directorate within the CIA, and supported the notion of a powerful director of national intelligence.²⁵

Aligned against these intelligence oversight commissions were others that rejected a director of national intelligence. The Murphy Commission concluded "it was neither possible nor desirable to give the DCI line authority over that very large fraction of the intelligence community which lies outside the CIA." Instead it recommended increasing the DCI's political clout by placing this office "in close proximity to the White House and be accorded regular and direct contact with the President."²⁶ The AspinBrown Commission's report endorsed a similar conclusion decades later.²⁷ It examined but rejected a restructuring proposal that would give the DCI more direct authority over the "national elements" of the intelligence community along with one that would have reduced his responsibility for the CIA so as to allow more time for community-wide tasks.

Judging the contributions made by intelligence oversight commissions to improving the functioning of the intelligence community is difficult because of the stream-like quality of policy making. The ripple effect of action taken at any one point in time may not be immediately apparent, and it, in turn, is subject to future downstream activity. For example, according to the CIA's official historian, Arthur Darlington, the Eberstadt Report that was part of the First Hoover Commission inquiry "seems not to have been read by many" and had little influence on the 1949 Central Intelligence Agency Act.²⁸ Yet one positive impact attributed to the Hoover Commission's work is the later creation of the Board of National Estimates as a collective body to review the quality of estimates produced. (The Hoover Commission said, "there be established within the agency at the top echelon an evaluation board or section composed of competent and experienced personnel who would have no administrative responsibilities and whose duties would be confined solely to intelligence evaluation.")²⁹

The Board of National Estimates was created in 1950 as part of the Office of National Estimates, a reform pushed through after members of the Dulles Report joined the CIA. Over time it became less of a community-wide coordinating and review body and more of a component of the CIA. Gradually, the Board of National Estimates became isolated from the policymaking process, and in 1973, with one-half of the board's seats vacant, DCI Colby disbanded the Office of National Estimates and in its place created the National Intelligence Officers (NIO) system.³⁰ NIOs were not given a staff but instead relied upon the work of the CIA and other intelligence agencies to produce intelligence estimates. That changed in 1980, when they were placed under the supervision

of a newly created National Intelligence Council (NIC), given an analytic staff, and moved from under the control of the DCI to the CIA's deputy director for national foreign assessments. Under President Ronald Reagan, the NIOs were moved back to reporting to the DIC only to have their status changed again in 1992 when DCI Robert Gates made the NIC an independent body.

A similarly complicated chain of downstream events characterizes commission calls for civilian presidential advisory boards. The Clark Report called for the creation of a committee of private citizens to periodically meet and examine the work of the intelligence community. President Eisenhower acted on this recommendation in 1956, creating a President's Board of Consultants on Foreign Intelligence Activities. In 1962, this board was renamed the President's Foreign Intelligence Advisory Board. Eisenhower acted largely to forestall a move to bolster congressional oversight of intelligence. Similar political logic was responsible for Gerald Ford's endorsement of several of the Murphy Commission reform proposals, including the strengthening of the President's Foreign Intelligence Advisory Board. Ford did so as part of a unilateral strategy to forestall unwanted congressional action that might result from the Church and Pike committee investigations. The Gore Report called for merging the President's Foreign Intelligence Advisory Board and the President's Intelligence Oversight Board. Clinton acted on this recommendation by an executive order in September 1993. In March 2008, President Bush took away much of the power of the Intelligence Oversight Board.³¹ Under the rules established by Ford, when the board uncovered intelligence actions that were "unlawful or contrary to executive order" it had to report that finding to both the president and the attorney general. Under Bush's executive order, its authority to inform the attorney general was deleted and the president was to be informed only if other officials were not "adequately" addressing the matter. Also changed was the requirement that the inspector generals of intelligence agencies file a quarterly report with the board.

One of the 9/11 Commission's recommendations was the creation of a Privacy and Civil Liberties Oversight Board to ensure that citizens' rights were not violated in the war on terrorism. A compromise between Congress and the White House resulted in having a provision creating this board included in the Intelligence Reform Act of 2004. This compromise allowed the president to appoint its members and have them serve at his pleasure, although they are confirmed by the Senate. Housed in the White House, the administration exercises control over the board by the ability to deny it subpoena power and giving the attorney general veto power over any request for documents. Five months after the act was passed, the White House had not yet named members to the board or provided it with a small budget. The Privacy and Civil Liberties Board held its first meeting in March 2006 and its first public hearing in December 2006 and was only briefed by the administration on the existence of the warrantless wiretap program in October of that year, almost one year after its existence had become public knowledge. In its first report to Congress submitted in March 2007, the board noted that it had concentrated on three activities during its first year of existence: establishing organization and administrative processes, engaging in education and outreach, and prioritizing its tasks.³²

Downstream politics also affected the implementation of Aspin-Brown Commission reforms. Although it did not endorse the creation of a director of national intelligence, the commission did favor giving the DCI additional tools to carry out his community role. Among the measures proposed that would aid the DCI were the addition of a deputy director for the intelligence community and a deputy director for the Central Intelligence Agency. The DCI would concur in the appointments of the directors of the National Security Agency, the National Reconnaissance Office, and the Central Imagery Office and be consulted on the appointment of the director of the Defense Intelligence Agency along with a number of other key intelligence officials housed outside the CIA. Intelligence analysis was to be improved by promoting closer ties between producers and consumers of intelligence, making greater use of expertise outside the intelligence community, and taking advantage of the revolution in open source material. To further these changes in operating habits the commission recommended restructuring the National Intelligence Council as a National Assessments Center.

Congressional action on the recommendations of the Aspin-Brown Commission report and the House Intelligence Committee staff study led to the creation of the National Imagery and Mapping Agency and the establishment of two NSC intelligence committees as well as granting the DCI a strengthened voice in budgetary and appointment matters. It also established two deputy DCI positions as recommended and three assistant DCIs, all of who would be approved by the Senate. In signing this legislation, Clinton pointedly objected to the requirement that the DCI be consulted or concur in the appointment of certain intelligence officials and the restructuring of the NSC system. DCI John Deutch voiced his opposition to the addition of new assistant DCIs who would require Senate confirmation. Given this opposition, it is not surprising that the implementation of provisions to strengthen the intelligence system in this manner was not pursued vigorously. George Tenet, who succeeded Deutch, stated he felt his statutory power was sufficient to coordinate the work of the intelligence agencies.

The Logic of Commission Reforms

Commissions have been found to search for information and solutions in quite predictable ways.³³ A key element in their approach is to try and solve problems by increasing control and improving efficiency. The problem is that bureaucracies are too decentralized. What is needed is "strong managerial leadership, clear lines of authority and responsibility, manageable spans of control, meritocratic personnel procedures, and the utilization of modern techniques for management."³⁴ However, as the impetus behind the reform movement weakens, political considerations begin to cast their shadow over commission recommendations.³⁵ Talk of effectiveness and centralization are joined and then surpassed by concerns that all constituencies are listened to and that there be both managerial and political control over new and restructured organizations.

The 9/11 Commission's call for a strong DNI located in the White House is fully

consistent with the logic of a centralized management approach to reorganization. Clear lines of accountability would be created and a direct link to the president established. Where the Bush administration supported locating Homeland Security in the White House to keep congressional influence to a minimum, it balked at placing the DNI in the White House because doing so invited Congress in through its confirmation and budgetary powers. The countering political logic of reorganization quickly emerged here, too, as key Bush administration officials spoke out against the creation of a strong DNI. Even more significantly, an alliance between the Pentagon and its congressional overseers asserted itself and imposed its will on the reform process. Finally, advocacy of a DNI is fully consistent with the overall thrust of previous investigations of the intelligence community and the limited nature of the search for information produced by reorganization efforts. A recurring criticism was the managerial problem presented by having the DCI serve simultaneously as head of the CIA and head of the intelligence community while a large portion of the intelligence budget resided beyond this person's reach. The solution was equally obvious to previous commissions. The two positions should be split and a new position established that would have true control of the intelligence community's budget to provide centralized control and direction. Richard Posner notes that apparently unexamined was the experience of other countries that experienced strategic surprise and the lessons they learned. Most notably he points to Israel and the findings of the Arganat Report issued after the 1973 Yom Kippur War, which stressed the value of diversity in intelligence and rejected greater centralization as a solution.³⁶

Other commissions, while not calling for a DNI, did embrace the logic of administrative reforms in other ways. The First Hoover Commission called for vigorous efforts to improve the internal structure of the CIA and the quality of its products. The Second Hoover Commission recommended that the director of central intelligence concentrate on the coordination of community-level intelligence efforts and leave the day-to-day administration of the CIA to an executive officer or chief of staff. The Murphy Commission called for delegating much of the DCI's day-to-day authority for running the CIA to a deputy. The Gore Report spoke of the need for the DCI to place greater emphasis on his community responsibilities and the need for greater information sharing among community members. In an observation similar to those made by earlier commissions, the Gore Report saw a need to reform personnel policies by calling for the adoption of a common set of personnel standards and practices throughout the intelligence community as a means of furthering collaboration and efficiency.

The principle of efficiency was also applied by commissions to relations between intelligence agencies and Congress. The Clark Report called for Congress to consider creating a joint intelligence committee similar to the Joint Committee on Atomic Energy. The Murphy Commission recommended creating a Joint Congressional Committee on National Security to oversee all activities in this area but wanted omitted any requirement that the president personally certify covert action operations. The 9/11 Commission revisited this solution, putting it forward as one of two alternatives it recommended to Congress as means for organizing intelligence oversight. The other was to increase the status of the

existing intelligence select committees by transforming them into standing committees with authorization and appropriation authority.³⁷

The principal limitation to commission reform recommendations based on the logic inherent in administrative reorganization as a solution to policy problems is that not all problems have solutions. Some are “wicked problems for which there are only temporary and imperfect solutions.”³⁸ Intelligence failures fit nicely into this category. Virtually all accounts of intelligence analysis and estimating stress that the causes of intelligence failures are multiple and that surprise is endemic to the fundamental nature of world politics. Surprise cannot be avoided in any absolute sense. There is no magic formula for anticipating the future, and intelligence analysis should not be confused with fortune-telling. Additionally, any organizational solution imposed from above or outside the organization likely will come with diminishing returns built in. As Richard Betts notes, if reforms in procedure do not fulfill day-to-day organizational needs, or should they complicate organizational decision-making procedures, they will fall into disuse or be given little more than lip service by those in the organizations. Only those reforms that are seen as providing frequent practical benefits and meeting one’s own needs will survive.³⁹

CONCLUSION

Demystifying intelligence commissions requires obtaining a clearer understanding of the conditions they operate under as well as the content of their recommendations. Only then will we be in a position to make informed and impartial judgments about their value as instruments of intelligence oversight. An inspection of the conditions under which intelligence commissions operate from their point of entry into an ongoing policy stream through navigating the politics of Washington to the circumstances under which their conclusions are presented leads to caution in making any generalizations about what constitutes the politics of a “normal” intelligence oversight commission. Three summary observations stand out. First, politics matters. Intelligence oversight commissions do not receive a free pass in conducting their investigations. They are not seen as politically neutral in spite of their tendency to be bipartisan in composition and receive words of praise by presidents upon presenting their report. Second, both intelligence commissions that advance particularly far-reaching intelligence reforms such as the 9/11 Commission and those, such as the Murphy Commission, that make modest suggestions for improving the functioning of the intelligence community, or what critics such as Senator Mansfield referred to as limited tinkering with its structure, are equally likely to touch upon, and encounter, opposition in the major political rocks found in the waters of Washington intelligence politics. In turning to the matter of content, it is evident that intelligence oversight commission recommendations are a decidedly mixed bag falling somewhere in between the two extremes noted earlier. They have not been totally dismissed but are seldom totally embraced. It perhaps is fitting to end by citing Frank Popper’s observation that “presidents do not establish commissions to hear unrelieved criticism of their own policies.”⁴⁰ To the extent that intelligence oversight commissions heed this rule, their recommendations may influence policy.

NOTES

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