Calendar No. 369

107TH CONGRESS, 2d Session | SENATE | REPORT 107–150

TO ESTABLISH THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, AND FOR OTHER PURPOSES

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

S. 1867

TO ESTABLISH THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, AND FOR OTHER PURPOSES

MAY 14 (legislative day, MAY 9), 2002.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

99–010 WASHINGTON : 2002

COMMITTEE ON GOVERNMENTAL AFFAIRS

JOSEPH I. LIEBERMAN, Connecticut, *Chairman*

CARL LEVIN, Michigan
DANIEL K. AKAKA, Hawaii
RICHARD J. DURBIN, Illinois
ROBERT G. TORRICELLI, New Jersey
MAX CLELAND, Georgia
THOMAS R. CARPER, Delaware
JEAN CARNAHAN, Missouri
MARK DAYTON, Minnesota

FRED THOMPSON, Tennessee
TED STEVENS, Alaska
SUSAN M. COLLINS, Maine
GEORGE V. VOINOVICH, Ohio
THAD COCHRAN, Mississippi
ROBERT F. BENNETT, Utah
JIM BUNNING, Kentucky
PETER G. FITZGERALD, Illinois

JOYCE A. RECHTSCHAFFEN, *Staff Director and Counsel*
KEVIN J. LANDY, *Counsel*
RICHARD A. HERTLING, *Minority Staff Director*
JAYSON P. ROEHL, *Minority Professional Staff Member*
DARLA D. CASSELL, *Chief Clerk*

Calendar No. 369

107TH CONGRESS, 2d Session | SENATE | REPORT 107–150

TO ESTABLISH THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, AND FOR OTHER PURPOSES

MAY 14 (legislative day, MAY 9), 2002.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Governmental Affairs, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 1867]

The Committee on Governmental Affairs, to whom was referred the bill (S. 1867) to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes, reports favorably thereon with amendments and recommends that the bill as amended do pass.

CONTENTS

		Page
I.	Purpose and Summary	1
II.	Background and Need for Legislation	3
III.	Legislative History	13
IV.	Section-by-Section Analysis	17
V.	Regulatory Impact	22
VI.	CBO Cost Estimate	22
VII.	Additional Views	25
VIII.	Changes to Existing Law	27

I. PURPOSE AND SUMMARY

On March 21, 2002, the Committee on Governmental Affairs voted to report S. 1867, "a bill to establish the National Commission on Terrorist Attacks Upon the United States," as amended. S. 1867 is a bipartisan bill to establish an independent commission to investigate the facts and circumstances of the terrorist attacks of

September 11, 2001, to report on its findings, and to make recommendations as to how to prevent future terrorist attacks.

As stated by Senator Lieberman the day the bill was introduced:

> Like many of my constituents, I too want to know how September 11 happened, why it happened, and what corrective measures can be taken to prevent it from ever occurring again. The American people deserve answers to these very legitimate questions about how the terrorists succeeded in achieving their brutal objectives, and in so doing, forever changing the way in which we Americans lead our lives. * * *
>
> The overriding purpose of the inquiry must be a learning exercise, to understand what happened without preconceptions about its ultimate findings.[1]

Senator McCain, the lead cosponsor, further explained:

> To prevent future tragedies, we need to know how September 11th could have happened, and explore what we can do to be sure America never again suffers such an attack on her soil. * * *
>
> As we did after Pearl Harbor and the Kennedy assassination, we need a blue-ribbon team of distinguished Americans from all walks of life to thoroughly investigate all evidence surrounding the attacks, including how prepared we were and how well we responded to this unprecedented assault.
>
> It will require digging deep into the resources of the full range of government agencies. It will demand objective judgment into what went wrong, what we did right, and what else we need to do to deter and defeat depraved assaults against innocent lives in the future.[2]

The commission created by the legislation will have a broad mandate to examine and report upon the facts and circumstances relating to the September 11, 2001 terrorist attacks occurring at the World Trade Center and at the Pentagon. The scope of the investigation is not limited to the operations of the federal government, and the commission will have discretion regarding how to focus its efforts. The bill lists several possible areas of inquiry: intelligence agencies; law enforcement agencies; diplomacy; immigration, nonimmigrant visas, and border control; the flow of assets to terrorist organizations; and commercial aviation. The commission will submit to the President and Congress an initial report within six months of its first meeting and a final report, with findings and recommendations, a year after its first report.

The commission is composed of 14 members—four appointed by the President and 10 appointed by Congress. The Speaker of the House and the Senate Majority Leader, in consultation with the minority leaders, each appoint five members of the commission; they must pick from a pool of candidates designated by the chair, in consultation with the ranking member, of five specified commit-

---

[1] Remarks of Sen. Joseph Lieberman of Connecticut, Congressional Record, December 20, 2001, at S. 13951.

[2] Remarks of Senator John McCain of Arizona, Congressional Record, December 20, at S 13953.

tees each of the House and the Senate (armed services, commerce, judiciary, intelligence, and foreign affairs). The President selects the chair of the commission, not more than seven members of the panel may be from the same political party, and those appointed may not be an officer or employee of federal, state, or local government. The commission is authorized to hold hearings, to exercise subpoena power, and to secure information directly from executive branch entities. Commission members and relevant staff will be given security clearances to allow access to classified information bearing upon the commission's discharge of its duties. Existing law allows a commission to close its meetings to protect classified, law enforcement, and other types of information; the bill as amended further specifies that meetings may also be closed to prevent the disclosure of other information likely to harm national security. For the commission to discharge its duties, $3 million would be authorized, to remain available until expended.

II. Background and Need for Legislation

OVERVIEW—THE 9/11 TRAGEDY, THE NEED FOR ANSWERS AND RECOMMENDATIONS

On September 11, 2001, terrorists attacked the United States with a coordinated series of aircraft hijackings and suicide crashes into populated buildings. American Airlines Flight 11 from Boston to Los Angeles was hijacked and diverted to New York City where it crashed into the North Tower of the World Trade Center. United Airlines Flight 175 from Boston to Los Angeles was hijacked and diverted to New York City where it crashed into the South Tower of the World Trade Center. American Airlines Flight 93 from Newark to San Francisco was hijacked and crashed 80 miles southeast of Pittsburgh, Pennsylvania, apparently while heading toward a target in Washington, D.C. American Airlines Flight 77 from Washington, D.C. to Los Angeles was hijacked and crashed into the Pentagon complex in Arlington, Virginia.

The attacks of September caused more than three thousand fatalities. The numbers of dead or missing in New York have recently been estimated by New York agencies at 2,823, including 147 dead on two hijacked planes. At the Pentagon, there were 189 fatalities, including 64 fatalities on American Airlines Flight 77. There were 45 killed on United Airlines Flight 93, which crashed in Pennsylvania. By way of comparison, this total exceeds the number of casualties suffered by the United States on any day of fighting going back to the Civil War battle of Antietam, in 1862, and is almost as great as the number of Americans killed during the entire Revolutionary War. The losses sustained from the September 11 attacks were greater than any other foreign attack on United States soil. Of course, there is no comparison between battlefield losses and civilian casualties inflicted by a terrorist attack.

In the aftermath of the terrorists attack, Americans immediately began asking questions: Why was this plan so successful in achieving its evil goals? Were opportunities missed to prevent the destruction? What additional steps should be taken now to prevent any future attacks? These and similar questions have occupied the public, the media, American policy makers, and government agencies. Policymakers in Congress and the executive branch, facing a

range of policy options, must act quickly to authorize and implement new responses to the terrorist threat.

Inquiries related to the terrorist attacks of September 11 serve a variety of functions. Law enforcement and intelligence agencies are trying to bring the attack's surviving perpetrators and accomplices to justice; simultaneously, they are seeking information to prevent future attacks that terrorists may be currently planning. More broadly, policymakers are seeking to develop strategies and provide resources to prevent future attacks and improve the nation's responses to attacks; agencies may be conducting internal reviews to bolster those efforts, and Congressional committees have been holding both closed and open hearings to review particular aspects of the issue. Finally, many in the public and in government have called for a public accounting of how the attacks occurred—so responsible parties are held accountable if appropriate, and to provide some sense of closure to families of victims and to a grief-stricken nation.

S. 1867 is a bipartisan initiative to help answer the many remaining questions in a constructive, methodical, and non-partisan way. The commission would complement investigations being undertaken by Congress and the Executive Branch. Its reports could include non-classified and classified versions, to address the public's desire for more information and to convey to policymakers recommendations for addressing ongoing vulnerabilities.

BACKGROUND—PAST COMMISSIONS AND INQUIRIES

There are a range of precedents for the establishment of a national commission to investigate the September 11 attacks, as envisioned in S. 1867. At various times in recent memory, temporary national commissions, composed of impartial and knowledgeable individuals, have been created to examine events inflicting alarm, pain, and sorrow on the American populace. Sometimes the mandates for such panels have been legislated by Congress; at other times they have been established with a presidential directive. They include commissions headed by Associate Justice Owen Roberts to investigate the Pearl Harbor attack, by Chief Justice Earl Warren to examine the assassination of President John F. Kennedy, by Illinois Governor Otto Kerner to probe urban riots, and by Dr. Milton Eisenhower to investigate the causes and prevention of violence in American society. Commissions have also been created to assess some of the nation's most sensitive and serious national security questions, examples being the National Commission on Terrorism, the Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction, the Commission on National Security/21st Century (also known as the Hart-Rudman Commission), and the Commission to Assess the Ballistic Missile Threat to the United States (also known as the Rumsfeld Commission). Investigative panels have also been convened by cabinet level officials in the aftermath of terrorist attacks against U.S. military forces or diplomatic facilities. These investigations have reviewed the attacks both to determine whether particular individuals were at fault and to evaluate our vulnerability to future terrorist attacks.

Typically, temporary national commissions are tasked with gathering information and assessing it to provide Congress, the Presi-

dent, and the American people with findings, conclusions, and recommendations regarding the matters they have been called upon to scrutinize. Information may be gathered through hearings, field investigations, compulsory process, interviews, affidavits, and other forms of collection. Commission staff and special consultants, trained in legal, scientific, and other analytical capabilities, assist the commission members with assessing the information that has been obtained and preparing findings, conclusions, and the preparation of recommendations. As this process continues, commission members deliberate over the conduct of the panel's work and seek to build consensus for its end products. Ultimately, the offerings of the commission gain public acceptance from a combination of factors: the prestige of the commission members, a strong consensus of support for the commission's final report by its members, the transparency and thoroughness of the commission's inquiry, and the logic and research underlying the panel's findings, conclusions, and recommendations.

Such commissions are an instrument for conducting a comprehensive, but not an exclusive, examination of events. Commissions usually work cooperatively with others investigating some of the same matters. This may mean proactively sharing information or assuring that the commission's staff do not compromise law enforcement, judicial, or other proceedings paralleling the commission's inquiry. While a commission conducts a comprehensive examination of events, congressional oversight committees and subcommittees may probe related issues within their respective jurisdictions.

Pearl Harbor investigations

In the aftermath of the December 7, 1941, attack on United States military installations at Pearl Harbor in the Hawaiian Islands, four major panels were established to conduct investigations of that event. The first of these entities was created on December 18, 1941, by E.O. 8983, "to ascertain and report the acts relating to the attack." The President's chartering order named Supreme Court Associate Justice Owen J. Roberts as chair and two retired Navy admirals and two retired Army generals as members of the panel. After interviewing 127 witnesses in Washington and Hawaii, the commission concluded its work on January 23, 1942, when it presented its report of findings—placing responsibility for the disaster with the senior Army and Navy commanders in Hawaii—to the President.

The Roberts Commission was followed by three additional inquiries. On June 13, 1944, the President signed S.J. Res. 133, directing the Secretary of War and the Secretary of the Navy "to proceed forthwith with an investigation into the facts surrounding the [Pearl Harbor] catastrophe." The Army Pearl Harbor Board was in continuous session from July 24, 1944, to October 20, 1944, conducting a fact-finding investigation; the board heard a total of 151 witnesses. It assessed responsibility over a wider spectrum than did the Roberts report, and placed its findings in the context of United States relations with Japan before December 7, 1941. The Navy Court of Inquiry on the Pearl Harbor attack convened on July 24, 1944 and concluded its inquiry on October 19, 1944. An additional investigation ordered by the Navy was conducted during

May 2, 1945, to July 12, 1945. The Navy's inquiry concentrated on the guilt or innocence of the interested parties and did not analyze as comprehensively the background of the attack or assess the responsibilities of Washington officials.

With S. Con. Res. 27 of September 11, 1945, Congress mandated the Joint Committee on the Investigation of the Pearl Harbor Attack to "make a full and complete investigation of the facts relating to the events and circumstances leading up to and following the attack made by Japanese armed forces upon Pearl Harbor." Chaired by Senator Alben W. Barkley (D–KY), the panel was composed of five Senators and five Representatives, three Democrats and two Republicans in each case. It held hearings between November 11, 1945, and May 31, 1946, and reviewed the work of the Roberts Commission and Army and Navy panels investigating the Pearl Harbor attack. The bipartisan majority report of the committee, supported by eight members of the panel, blamed the American performance at Pearl Harbor on the national defense system.

Kennedy assassination investigation

The thirty-fifth President of the United States, John Fitzgerald Kennedy, was shot on November 22, 1963, while riding in a motorcade through downtown Dallas, TX. President Kennedy was fatally wounded; Texas Governor John Connally, riding in the same open automobile with the President, Mrs. Kennedy, and his own wife, was injured. Lyndon Johnson took the presidential oath that afternoon. One week later, on November 29, the new President issued E.O. 11130 creating "a Commission to ascertain, evaluate and report upon the facts relating to the assassination of the late President John F. Kennedy and the subsequent violent death of the man charged with the assassination." The order explicitly named Supreme Court Chief Justice Earl Warren as the chair of the panel with Senator Richard B. Russell (D–GA), Senator John Sherman Cooper (R–KY), Representative Hale Boggs (D–LA), Representative Gerald R. Ford (R–MI), and two distinguished public servants, Allen W. Dulles and John J. McCloy, as members. A White House announcement on the creation of the commission indicated that the full cooperation of all federal agencies was expected.

To assist the panel in its investigation, Congress, by joint resolution, vested it with subpoena power on December 13, 1963. By this time, the Warren Commission had already convened, holding its first meeting on December 5. During the month and into early January, the commission, by its own account, "received an increasing volume of reports from Federal and State investigative agencies." Among the most detailed and comprehensive were those of the Federal Bureau of Investigation and the U.S. Secret Service.

> Beginning November 22, 1963, the Federal Bureau of Investigation conducted approximately 25,000 interviews and reinterviews of persons having information of possible relevance to the investigation and by September 11, 1964, submitted over 2,300 reports totaling approximately 25,400 pages to the Commission. During the same period the Secret Service conducted approximately 1,550 interviews and submitted 800 reports totaling some 4,600 pages.

In addition to reviewing relevant documentation, the Warren Commission, beginning on February 3, 1964, received the testimony of 552 witnesses. "Of this number," the panel subsequently reported, "94 appeared before members of the Commission; 395 were questioned by members of the Commission's legal staff; 61 supplied sworn affidavits; and 2 gave statements." Unless an open hearing was requested by a witness, these proceedings were closed to the public, with the result that the testimony of one witness was taken in a public hearing on two occasions. Presenting its report and 26 volumes of appendices to President Johnson on September 24, 1964, the Warren Commission made an exhaustive investigation and found no evidence of conspiracy in the assassination of President Kennedy.

Commissions reviewing national security issues

A number of recent commissions have demonstrated an ability to probe highly sensitive national security issues and issue reports demonstrating a consensus among their members. Several of the reports, such as those of the National Commission on Terrorism and the Hart-Rudman Commission, appear prescient when read in light of the attacks of September 11. Reports can also have a significant impact on policy makers, as did the Rumsfeld Commission, which reported that the threat posed by the proliferation of ballistic missile technology was much greater than had been previously believed.

The National Commission on Terrorism was chartered by provisions of the Omnibus Appropriations Act for FY1999 to review counter-terrorism policies regarding the prevention and punishment of international acts of terrorism directed at the United States. The ten-member panel was composed of former diplomats, international relations experts, international trade and finance experts, a retired army general officer, a former Director of Central Intelligence, and a former member of the House. Reporting in June 2000, the commission recommended immediate reinvigoration of the collection of intelligence about terrorists' plans, the use of all available legal avenues to disrupt and prosecute terrorist activities and private sources of support, and greater efforts to ensure that federal, state, and local officials are prepared for attacks that may result in mass casualties. In brief, the commission conducted a comprehensive assessment that provided an understanding of the strengths and weaknesses of the U.S. counter-terrorism system. Although legislative efforts to enact the commission's major recommendations began immediately, the tragedy of the September 11 attacks has provided new momentum towards implementing reforms.

The Commission on National Security/21st Century was established by the Secretary of Defense in September 1999 to conduct a comprehensive review of the early 21st century global security environment; develop a comprehensive overview of American strategic interests and objectives for the security environment the nation likely will encounter in the 21st century; delineate a national security strategy appropriate to that environment and the nation's character; identify a range of alternatives to implement the national security strategy; and develop a detailed plan to implement the alternatives. Co-chaired by former Senators Gary Hart and

Warren Rudman, the 14-member panel accomplished its mission with the issuance of three sequenced reports, the final one offered in mid-February 2001. The commission's reports envisioned an emerging security environment in which terrorists and rogue nations would acquire weapons of mass destruction and "mass disruption": "Americans will likely die on American soil," the commission warned, "possibly in large numbers."

The Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction was mandated by the Intelligence Authorization Act for FY1997. To carry out its charge to conduct a thorough study of the organization of the federal government with respect to combating the proliferation of weapons of mass destruction, the commission reviewed the efforts of individual agencies, evaluated the mechanisms by which the interagency process develops policy alternatives and reaches decisions on government-wide policies and programs to combat proliferation, and scrutinized the management of resource allocation. Among its findings, the Commission highlighted the grave danger that weapons of mass destruction would fall into the hands of terrorist groups, and recommended a number of changes in the way the government addresses the issue.

As these commissions illustrate, the reports of such panels, including those dealing with sensitive information, are usually expected to be public documents. However, in view of the subject matter of a commission, its reliance upon classified information to prepare its report, and the specificity of recommendations regarding a sensitive policy area, strategy, or practice, some protection may need to be exercised. A report might be issued publicly with non-public annexes; a report might be issued in public and confidential versions; a report might be issued publicly with unacknowledged confidential communiques to congressional leaders, the President, or executive branch officials; or a summary of a secret report might be issued publicly.

Inquiries into terrorist attacks—lessons learned: Beirut to U.S.S. Cole

In the last two decades, investigative panels were convened in the aftermath of terrorist attacks against a U.S. Marine barracks at Beirut International Airport in Lebanon (1983), a U.S. Air Force billeting facility at Khobar Towers in Saudi Arabia (1996), U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania (1998), and a U.S. Navy destroyer (the U.S.S. *Cole*) in the port of Aden, Yemen (2000). All four commissions were convened by cabinet level officials, three by the Secretary of Defense and one (the Kenya-Tanzania panel) by the Secretary of State. All four were headed by retired military officers of four star rank or retired diplomats of ambassadorial rank. Other members included U.S. officials, both retired and active, and in some cases private citizens with particular expertise.

Although these inquiries were not Congressionally chartered, in several respects they represent a precedent for the national commission that will be created under S. 1867. Most importantly, the convening of investigative panels in these cases is a recognition of the value of immediately reviewing terrorist attacks. The panels were seen as providing vital information about possible

vulnerabilities to terrorism which could be corrected. The investigative panels were established to operate without governmental interference or pressure, and they were led by distinguished retired officers and officials. Finally, the panels and their sponsoring agencies released the investigations' findings and conclusions.

DOD Commission on Beirut International Airport Terrorist Act (Long Commission)

On October 23, 1983, a truck bomb explosion detonated by a suicide bomber destroyed a U.S. Marine barracks at Beirut International Airport in Lebanon, killing 241 and injuring 78 U.S. Armed Forces personnel. The Marines were part of a multinational force originally sent to Beirut to supervise an orderly evacuation of Palestinian guerrillas after the Israeli invasion of Lebanon in 1982. U.S. force contingents had the added mission of bolstering a pro-Western Lebanese government. The State Department now suspects that the suicide bomber belonged to Hizballah, an extremist pro-Iranian Shi'ite Muslim group seeking to overthrow the Lebanese government or alter its policies and to expel western military forces.

On November 7, 1983, Secretary of Defense Caspar Weinberger established a five member commission under retired Navy Admiral Robert L. J. Long "to conduct a thorough and independent inquiry into all of the facts and circumstances" surrounding the attack. Specifically, the commission was directed to examine rules of engagement and security measures in force at the time of the attack; to assess the adequacy of security measures adopted after the attack; and to report findings and make recommendations. The commission's report, which it submitted to the Secretary of Defense on December 20, 1983, is unclassified, and it was released by the White House on December 29, 1983. Many of the interviews conducted by the commission contained classified information which presumably exists in back-up files. Also, because some of the information it obtained was time sensitive, the commission forwarded two interim memoranda, respectively, to the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. These memoranda dealt mainly with urgent security measures.

In drawing its conclusions, the commission critiqued a wide range of topics, including inconsistencies in the military mission, lack of a single set of rules of engagement, problems in the operational chain of command, lack of timely intelligence, inadequate security measures, and some deficiencies in medical planning. At the same time, it praised the quick responses of many individuals, especially in emergency evacuation and medical care. Of note, the commission concluded that the U.S. force in Lebanon was not trained, organized, staffed, or supported to deal with the current terrorist threat and added that "much needs to be done to prepare U.S. military forces to defend against and counter terrorism."

Downing Assessment Task Force (Khobar Towers Task Force)

On June 25, 1996, a truck bomb estimated to contain between 3,000 and 8,000 pounds of explosives destroyed the Khobar Towers apartment complex near Dhahran, Saudi Arabia, killing 19 U.S. Air Force personnel and injuring over 500. At the time, Khobar Towers housed U.S. Air Force personnel supporting allied over-

flights over southern Iraq (Operation Southern Watch). On June 28, 1996, Secretary of Defense William J. Perry appointed retired Army General Wayne A. Downing "to conduct an assessment of the facts and circumstances surrounding the Khobar Towers bombing." The panel director, General Downing, assembled a task force composed of active and retired military personnel, Defense Department civilians, and representatives from other U.S. Government agencies including the Departments of State and Energy and the FBI. Members of the panel were qualified in various specialties and disciplines including intelligence, counterintelligence, terrorism, force protection, physical and operational security, explosives, programming and budgeting, command relationships, training and medical matters, and Middle East studies.

The Downing Task Force conducted its investigation in two phases: (1) research and analysis of reports prepared after previous terrorist acts in the region (including the Long Commission) together with other pertinent documentation; and (2) personal interviews, supplemented by on-site assessments. General Downing submitted the report of the Task Force to the Secretary of Defense on August 30, 1996. The bulk of the report was released; however, six of its findings were deleted in whole or in part from the published version because of their security classification. The report of the Task Force contains 26 findings and 79 related recommendations. The report grouped these into general conclusions, including a comprehensive approach to force protection is required, division of responsibility between the Departments of State and Defense does not provide U.S. forces adequate protection, and the intelligence community provided warning of the potential for a terrorist attack.

Accountability Review Boards on the Embassy Bombings (Crowe Commission)

Near simultaneous vehicular bombings of the U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania on August 7, 1998, killed 213 persons including 12 U.S. Government employees and family members and injured more than 5,000 others. On October 5, 1998, Secretary of State Madeleine Albright convened two Accountability Review Boards to review the circumstances of the August 7 bombings in Kenya and Tanzania, respectively. The boards were charged with examining whether the incidents were security related; whether security systems and procedures were adequate and implemented properly; the impact of intelligence and information availability; whether any U.S. Government civilian employees or military personnel breached their duties in connection with the bombings; and any other circumstances that might affect security management of U.S. missions abroad. Because of the similarity of their missions, the two boards were combined under a single chairman and submitted a combined report.

Members of the Accountability Review Boards were selected by Secretary of State Madeleine Albright and Director of Central Intelligence George Tenet. Retired Admiral William J. Crowe, Jr. was named chairman for both Boards. Each of the two component Boards, the Nairobi Board and the Dar es Salaam Board, consisted of five members, including four ambassadors (three of them retired) and other representatives of the public and private sectors. The Boards also drew on the expertise of outside specialists, particu-

larly in the fields of terrorism and national security. The Boards completed an extensive review of available information in Washington, and conducted further reviews in Nairobi and Dar es Salaam, respectively. Board members interviewed over 110 persons from the Department of State, the military services, and the two U.S. embassies targeted by the attacks. In addition, Board members were briefed by representatives of the Department of Justice, FBI, CIA, and the National Security Agency.

The Accountability Review Boards produced a single report consisting of a combined executive overview and two individual reports dealing with the attacks in Nairobi and Dar es Salaam, respectively. The report, which was submitted to Secretary of State Albright on January 8, 1999, was released as an unclassified document following some deletions from the classified version on grounds of security. In its executive overview, the report of the Accountability Review Boards contains 21 recommendations to improve security systems and procedures at U.S. missions abroad and three more recommendations to enhance the flow of needed intelligence. The Boards did not find that any U.S. officials breached their duties in connection with the bombings, but did determine that there was a collective failure by several Administrations and Congresses over the past decade to reduce the vulnerability of U.S. diplomatic missions.

DOD U.S.S. Cole Commission

On October 12, 2000, a small boat laden with explosives rammed the U.S. Navy guided missile destroyer *Cole*, which was refueling in the port of Aden, Yemen, killing 17 sailors and injuring 39. On October 19, 2000, Secretary of Defense William S. Cohen appointed two senior U.S. military officers (one retired and one about to retire) to lead a review of the lessons learned from the attack. Their panel, generally known as the Cole Commission, was directed to review applicable Defense Department policies and procedures and address force protection matters, rules of engagement, logistical support intelligence and counter-intelligence efforts, and any other pertinent topics. The Cole Commission's review was to be conducted separately but in coordination with an FBI investigation designed to identify the perpetrators of the attack and with internal Navy reviews of the preparations by the *Cole* for the Aden refueling stop.

The co-chairmen submitted their report to the Secretary of Defense on January 9, 2001. An unclassified version of the report, consisting of the executive summary, was released at that time; other parts of the report were classified. The report found significant shortcomings in security throughout the region and recommended improvements in training and intelligence designed to deter future terrorist attacks. With regard to training, for example, the Commission concluded that U.S. military forces need to develop rigorous anti-terrorism and force protection training programs and integrate them into unit-level training plans and pre-deployment exercises. With regard to intelligence, the Commission concluded that the Defense Department does not allocate sufficient resources, analysis, and collection efforts to combating terrorism.

CONGRESSIONAL HEARINGS AND INVESTIGATIONS RELATED TO THE SEPTEMBER 11 ATTACKS

Since the September 11 terrorist attacks, a number of Congressional committees have held hearings examining the terrorist threat from different perspectives. These have included hearings into border security and visa reform, aviation security, protection of critical infrastructure, bioterrorism, tracing terrorist funds, and the international implications of the war on terrorism. There has also been one Congressional inquiry launched specifically to examine the activities of the intelligence agencies with respect to the September 11 terrorist attacks. In each case, the committees are probing areas within their jurisdictions and areas of expertise. Congress has not established a special inquiry or panel to conduct a comprehensive examination of the September 11 terrorist attacks.

On February 14, 2002, the chairs and ranking members of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence announced that the committees would conduct a joint inquiry into the intelligence community's activities before, during, and since the September 11, 2001 terrorist attacks. In a statement issued that day, the Senate Chairman, Senator Bob Graham, indicated that the purpose of the inquiry would be "to identify any systemic shortcomings in our intelligence community and fix these problems as soon as possible." House Chairman Porter Goss concurred in Senator Graham's comments and added that the two committees would seek "to determine whether previous concerns regarding the Intelligence Community's capabilities are viable." And Senate Vice Chairman Richard Shelby stated that "[t]he purpose of this joint investigation is to explain why the Intelligence Community failed to warn us of the attacks on September 11."

On March 7, 2002, the House of Representatives passed a resolution providing additional funding for the Permanent Select Committee on Intelligence to conduct its inquiry. Several speakers again emphasized that the joint inquiry was to focus on the activities of the intelligence community. Representative Bob Ney, Chairman of the Committee on House Administration, in bringing the resolution before the House, explained that the chief purposes of the joint inquiry were "ascertaining why the intelligence community did not learn of the conspiracy to launch the September 11 attacks in advance and to identify what, if anything, might be done to better position the intelligence community to warn of and prevent future terrorist attacks and other threats in the 21st Century."[3] Representative Nancy Pelosi, Ranking Democrat of the House Permanent Select Committee on Intelligence, defined the limits of the inquiry:

> The performance of the intelligence agencies is an essential part of the September 11 story, and it is the responsibility of the House and Senate intelligence committees to thoroughly assess that performance * * *
>
> It should be made clear that, although we intend for this inquiry to be comprehensive as far as the intelligence agencies are concerned, it will not be exhaustive of all the

[3] Remarks of Rep. Bob Ney of New Jersey, Congressional Record, March 7, 2002, at H 768.

issues surrounding the September 11 attacks. Other committees may want to examine matters within their jurisdiction and, at some point, it may be appropriate to consider the creation of an entity outside of Congress to take an across the board look at all the components of the September 11 disaster.[4]

III. Legislative History

S. 1867 was introduced on December 20, 2001, by Senators Lieberman and McCain, and referred to the Committee on Governmental Affairs. The bill was subsequently co-sponsored by Senators Dorgan, Cleland and Miller. Senator Torricelli, who had introduced similar legislation, co-sponsored S. 1867 after an amendment at mark-up reconciled the two approaches. Senator Grassley, an original co-sponsor of Senator Torricelli's legislation, also co-sponsored S. 1867 after the mark-up.

COMMITTEE HEARING

On February 7, 2002, the committee held a hearing on S. 1867. The Committee heard testimony from the following four witnesses:

Norman Augustine, Chairman of the Executive Committee, and former Chief Executive Officer, Lockheed Martin Corporation; former Commissioner, United States Commission on National Security;

Professor Richard K. Betts, Director, Institute of War and Peace Studies, Columbia University; former Commissioner, National Commission on Terrorism;

The Honorable Dave McCurdy, President, Electronic Industries Alliance; former Commissioner, Commission to Assess the Organization of the Federal Government to Combat the Proliferation of Weapons of Mass Destruction; and former U.S. Representative and Chair of the House Intelligence Committee; and

Maurice Sonnenberg, Senior International Adviser, Bear, Stearns & Co., Inc.; former Vice Chair, National Commission on Terrorism.

In addition the Committee received a statement submitted by Dr. James Schlesinger, former Commissioner, United States Commission on National Security. Dr. Schlesinger has served as Director of the Central Intelligence Agency, Secretary of Defense, and Secretary of Energy under three Presidential Administrations.

All of the witnesses supported the establishment of a national commission along the lines described in S. 1867 to investigate the terrorist attacks of September 11. The witnesses discussed important unanswered questions related to the attacks, questions that require further investigation and analysis so that the nation would be better able to defend itself against terrorism in the future. The witnesses also discussed why an independent national commission would serve a unique function in the analysis of the terrorist attacks. Finally, witnesses recommended a few changes to the bill's text.

[4] Remarks of Rep. Nancy Pelosi of California, Congressional Record, March 7, 2002, at H 769.

Unanswered questions

The witnesses discussed a number of unanswered questions that surround the circumstances of the September 11 attacks. These questions related to the underlying facts and to the need to use that information to enhance our defenses against future terrorism. For example, Congressman McCurdy listed a series of important issues that need to be addressed, including the responsibility and accountability at each level of the chain of command, organizational impediments to effective gathering and dissemination of intelligence, coordination between agencies, and standards for security in the airline industry. Congressman McCurdy noted that nothing must interfere with the war against terrorism, but added:

> Nevertheless, the requirements of this ongoing war must be balanced with the right of Americans to know why our intelligence, defense and law enforcement agencies were unable to prevent the attacks. Without question, now is not the time to point fingers or look for scapegoats. But we must understand the causes, identify the weaknesses, and correct the lapses that allowed this catastrophe to occur. The American people deserve a forthright and complete accounting of the circumstances of that day. Above all, we must do all we can to ensure that such an attack never happens again.

Professor Betts discussed the unanswered questions surrounding the attacks, as well as the role an independent commission would play in addressing these issues:

> It is painfully obvious that a lot went wrong before September 11 in how the U.S. government coped with the potential for catastrophic terrorist attacks. The intelligence system did not get sufficient warning of the plot; the border control and immigration systems did not keep out or keep track of dangerous visitors; security arrangements for air travel failed to intercept the hijackers or keep them from gaining control of the planes; and more. Because of the classification of information and, perhaps, some plain confusion, we do not yet have a full and integrated picture of exactly what went wrong. There will be many rumors and half-truths leaking out to explain why the warning process failed, how organizational structures were unprepared, and so forth. There is great need for an official postmortem that brings the full story out in a thorough, careful, balanced, and non-partisan manner.
>
> The main benefit of a national commission to examine the tragedy of the September 11 attacks would be political credibility. A commission of the sort described in S. 1867 would be ideally constituted to provide a detailed and sober investigation that the public could have confidence is as objective as humanly possible. In the next few years there will inevitably be many exercises attempting to explain the events and to lay blame for failure to prevent them. It is important to have one serious effort that has high credibility in terms of two important criteria: access to all relevant information, and disinterest in scoring polit-

> ical points. A commission with adequate authority and with members of the sort envisioned in Section 3(c) of the bill would be well positioned to accomplish this purpose.

Similarly, Dr. James Schlesinger wrote in his submitted statement that "[t]he country needs an authoritative review regarding how our own attitudes, habits, laws, and organizations may have contributed to the stunning effectiveness of the terrorist attacks." Dr. Schlesinger's statement focused on intelligence, airport security, and immigration, among other areas, that need to be addressed: "The purpose of a National Commission would be systematically and comprehensively to address such questions—and to give a complete public accounting of the events leading up to 9–11."

The role of a commission

Congressman McCurdy testified that an independent commission would have to complement, rather than compete with, the investigations of the numerous Congressional committees that might have relevant oversight jurisdiction. And he also testified that commissions play a role different than that of an investigating committee:

> [A] commission has the advantage of being independent, singularly focused and able to work outside the glare of the media. * * *
>
> In my experience, commissions work because they are not constrained by arbitrary jurisdiction or turf-wars and thus have the ability to step back and take a more holistic view. In this instance, a commission can objectively collect facts, evaluate the evidence and review the mission and effectiveness of the federal, state, local and private organizations charged with our safety. Commissions are valuable because they are generally non-partisan and, when effectively chaired, seek consensus based recommendations and solutions. Operating an effective commission on the September 11 attacks will not be an easy task, but there already has been much valuable forensic work performed by the intelligence community, law enforcement and the media to build upon.

Professor Betts agreed that the commission should complement other inquiries:

> Neither presidential nor congressional commissions ever completely settle the questions with which they are tasked. That is because questions important enough to provoke creation of a prestigious commission are necessarily so important that all centers of political power have to get their own oars in on them. That is as it should be in a democracy. Moreover, other efforts, particularly congressional investigations, can do things that a commission cannot do effectively. On a matter as crucial as September 11, some redundancy in investigation is not only unavoidable, it is useful.

And Mr. Augustine testified that the commission would be most valuable "if those involved in the Commission's work are able to

take a forward-looking perspective coupled with a broad view of lessons to be learned which can impact our future security."

Recommended changes

Several of the hearing witnesses also suggested modifications to S. 1867. For example, several witnesses discussed the importance of ensuring that commission meetings could be closed to the public when necessary. Senator Lieberman noted that existing law allowed commission meetings to be closed to the public whenever the meetings would disclose classified material, or information compiled for a criminal investigation. The Federal Advisory Committee Act covered the commissions on which the witnesses had served, and, as Congressman McCurdy and Mr. Sonnenberg noted, had not precluded their commissions from closing all of their meetings to the public. Nevertheless, Mr. Augustine suggested that the legislation provide extra flexibility in case the commission wished to discuss unclassified issues that would nevertheless be sensitive; for example, the commission might wish to "hypothesize future threats and discuss them, to discuss vulnerabilities that we have." Other witnesses agreed that holding public meetings might in some cases inhibit frank discussion. Mr. Sonnenberg and Professor Betts suggested that public hearings might be more appropriate in the latter stages of the commission's investigation.

Professor Betts also questioned whether the original legislation, as drafted, included the most appropriate appointment process for achieving a balanced commission membership. As introduced, S. 1867 provided that the 10 commission members selected by Congress would be named by ten designated House and Senate committee chairmen. Professor Betts noted the importance, as required by the bill, of "balanced representation not only of parties, but of experience and professional backgrounds, and that all members be genuinely accomplished leaders in their fields." Professor Betts testified that such a balance would be more likely if there were greater concentration of the appointing power; he suggested amending the bill to give the final appointment authority to the House and Senate leadership.

COMMITTEE MARK-UP

The Committee met on March 21, 2002, to consider S. 1867. An amendment offered by Senators Lieberman, Torricelli and McCain was adopted by voice vote. In part, the changes were made to reconcile differences between S. 1867 and similar legislation introduced by Senator Torricelli, S. 1837. After the mark-up, Senator Torricelli co-sponsored S. 1867. Other changes resulted from suggestions made by witnesses who testified before the Committee, and by others. The amendment incorporated four substantive changes to the bill's text.

Composition of the Commission.—As introduced, S. 1867 provided that the 10 commission members selected by Congress would be named by ten designated House and Senate committee chairmen, in consultation with the ranking members of the committees. S. 1837 provided that members of the commission would be selected by the Congressional leadership. Under the amendment, ten designated Congressional committee chairmen, in consultation with the ranking members, will each nominate three candidates for the

commission. The leadership from the House and Senate, in consultation with the minority leaders, will each appoint five commission members from the nominated candidates. This change allows the Congressional leadership to ensure that the commission will have the necessary balance, while still preserving a role for committees with relevant jurisdiction.

Mandate of the Commission.—The commission will have discretion as to how to focus its investigation, but the amendment specifically listed several possible areas of inquiry: intelligence agencies; law enforcement agencies; diplomacy; immigration, non-immigrant visas, and border control; the flow of assets to terrorist organizations; and commercial aviation. The amendment also makes clear that the commission's investigation need not be limited to the actions and policies of the federal government; it can also review facts and circumstances related to the private sector and state and local governments.

Enforcement of Subpoenas.—The amendment provided an additional means of enforcing subpoenas. As introduced, S. 1867 authorized the commission to pursue a criminal contempt of Congress citation under 2 U.S.C. 192 and 194 (2000). Because that mechanism may not be adequate or appropriate in most circumstances, the amendment provided an alternative course of action: bringing a civil action in a United States District Court.

Closed Meetings.—The amendment included a provision allowing commission meetings to be closed to prevent the disclosure of matters that could endanger national security. The new language was added in response to concerns that matters potentially useful to terrorists, but not covered by the exceptions to the Federal Advisory Committee Act, would not be shielded from disclosure.

On the same date the Committee ordered the bill reported, as amended, by voice vote, with no members present dissenting. Senators present were Levin, Akaka, Cleland, Thompson, Stevens, Voinovich, Cochran, Bennett and Lieberman.

IV. SECTION-BY-SECTION ANALYSIS

SECTION 1.—ESTABLISHMENT OF COMMISSION

Section 1 establishes the National Commission on Terrorist Attacks Upon the United States as an independent commission.

SECTION 2.—PURPOSES

Section 2 states the purposes of the commission. They are to examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001; ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks; make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and response to, the attacks; and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

SECTION 3.—COMPOSITION OF THE COMMISSION

Section 3 specifies that the commission shall have 14 members. Four of the members shall be appointed by the President, one of

whom shall be designated the chair. The remaining ten appointments are allocated to the Congressional leadership. No more than seven members of the commission may be affiliated with any one political party. Commission members may not be an officer or employee of the federal government or any state or local government. Vacancies in the commission are filled in the same manner as the original appointment.

The Speaker of the House and the Senate Majority leader will make their selections from a pool of candidates created by committee chairmen. In the Senate, the chairs of five committees (Armed Services; Commerce, Science, and Transportation; Judiciary; Intelligence; and Foreign Relations), in consultation with the respective ranking members, shall each nominate three candidates for the commission. The Senate majority leader, in consultation with the minority leader, will then appoint five members for the commission from among the fifteen candidates. Similarly, the Speaker of the House, in consultation with the minority leader, will appoint five members from among fifteen candidates nominated by five designated committee chairs and ranking members. The Committee intends that the consultation between committee chairs and ranking members, between the Senate majority leader and minority leader, and between the Speaker of the House and House minority leader, shall be meaningful.

The ten House and Senate committees involved in the nomination process were included because aspects of their jurisdictions are relevant to questions the commission may be investigating. The committee leaders are therefore in a good position to suggest candidates who could make valuable contributions. Other committees also have relevant jurisdiction, and the list of committees in the bill is not intended to suggest that the commission limit its inquiry to subject matters covered by the named committees.

As stated in Section 3(c), individuals appointed to the commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, legal practice, public administration, intelligence gathering, commerce, including aviation matters, and foreign affairs. It is the intent of the Committee that the findings of the commission will receive greater credibility and broader acceptance as a result of the prestige, expertise, and independence of its members.

Section 3(c) also provides that the commission may begin to operate if, 60 days after enactment of the legislation, 8 or more members of the commission have been appointed. The appointed members may hire necessary staff and, if necessary, select a temporary chairperson.

As provided in Section 3(d), after its initial meeting the commission shall meet upon the call of the chairperson or a majority of the commission's members. Eight members shall constitute a quorum, and a vacancy shall not affect the commission's powers.

SECTION 4.—FUNCTIONS OF THE COMMISSION

Section 4 sets forth the functions of the commission. The commission will investigate facts and circumstances relating to the terrorist attacks. It will evaluate and analyze what it has learned. Fi-

nally, the commission will issue two reports, containing its findings, conclusions, and recommendations.

The first subsection describes the parameters of the commission's investigation. The committee intends that the commission has the discretion to focus its investigation within the parameters listed in section 4, as it may not be possible or desirable to fully explore all avenues. Most broadly, the commission is directed in section 4(1)(A) to investigate relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including the bearing and significance of any relevant legislation, Executive order, regulation, plan, practice, or procedure on the occurrence of these events. The commission is given the discretion to determine which facts are relevant and should be investigated, and which policies and actions of the federal government are relevant. The committee generally intends that the commission's investigation of the terrorist attacks will shed light on how and why the terrorist attacks succeeded, and what steps were taken to mitigate the damage once the attacks occurred. This may include a broad examination of the nation's efforts to detect, prevent and respond to terrorist attacks.

Section 4(1)(B) lists specific areas the commission may investigate. These include intelligence agencies; law enforcement agencies; diplomacy; immigration, nonimmigrant visas, and border control; the flow of assets to terrorist organizations; commercial aviation; and other areas of the public and private sectors deemed relevant by the commission. This list of issues represents possible areas of inquiry. It also makes clear that the commission's investigation need not be limited to the actions and policies of the federal government; it can also review facts and circumstances related to the private sector and state and local governments. For example, the commission may wish to investigate the actions, policies, and procedures of private sector entities with respect to ensuring the safety of commercial aviation.

Section 4(2) directs the commission to identify, review, and evaluate the lessons learned from the terrorist attacks of September 11. Specifically, the commission should review the structure, coordination, management policies, and procedures of the federal government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to terrorism. Here, the commission has the opportunity to assess the adequacy of existing arrangements to counter terrorist threats.

Section 4(3) directs the commission to submit to the President and Congress reports containing such findings, conclusions, and recommendations as the commission shall determine, including proposing organization, coordination, planning, and management arrangements, procedures, rules, and regulations.

SECTION 5.—POWERS OF THE COMMISSION

Section 5(a) provides the commission with the power to hold hearings and meetings, and take testimony under oath, as it deems advisable. The commission is authorized to require, by subpoena if necessary, the attendance and testimony of witnesses at hearings and the production of books, records correspondence, memoranda, papers, and documents as it deems advisable. Subpoenas may be issued by the chairman of the commission, the chairperson of any

subcommittee created by the commission, or any member designated by a majority of the commission.

Subpoenas may be enforced, at the discretion of the commission, by means of either of two alternative, but not mutually exclusive, courses of action. The first allows the commission to bring a civil action applying to a United States district court for an order requiring a person who has refused to obey a duly issued subpoena to appear at any designated place to testify or to produce documentary or other evidence. A failure to obey the court's order may be punished as a contempt of that court and result in a fine or incarceration until the order is obeyed, or both. Alternatively, the commission is authorized to pursue a criminal contempt of Congress citation under 2 U.S.C. 192 and 194 (2000). Under those provisions, a person who has been subpoenaed to testify or produce documents before the House or Senate and who fails to do so, or who appears but refuses to respond to questions, is guilty of a misdemeanor punishable by a fine of up to $100,000 and imprisonment for up to one year. A contempt citation must be approved by the full House or Senate after a report to it detailing the contumacy (or by the presiding officer if Congress is not in session). After a contempt has been certified by the President of the Senate or the Speaker of the House, it is the "duty" of the United States attorney "to bring the matter before the grand jury for its action."

In exercising its discretion with regard to which course of action to take to enforce a subpoena, the commission may decide that it is important to secure testimony or the production of documents expeditiously and that a civil enforcement action is quicker and more effective in achieving these purposes. In light of the short reporting deadlines imposed by the bill, it is anticipated that most enforcement actions will be undertaken by the civil process. In other cases, the commission may decide it is important to punish the individual or entity who has refused to comply with a commission demand and thereby deter violations by others. Moreover, at the end of the commission's investigation, a criminal contempt citation may be referred to the Department of Justice by the commission through the statutory criminal contempt process if the commission deems it appropriate, even if civil contempt has previously been sought. Such a prosecution for criminal contempt would present no double jeopardy problem. In re *Chapman,* 156 U.S. 211 (1895); *Yates* v. *United States,* 355 U.S. 66 (1957); *United States* v. *Rollerson,* 449 F. 2d 1000 (D.C. Cir. 1974).

Section 5(b) describes the circumstances under which the commission may hold closed meetings. Because the commission will be governed by the Federal Advisory Committee Act (5 U.S.C. App.), commission meetings would ordinarily be open to the public. Under subsection 10(d) of the Federal Advisory Committee Act, meetings could be closed when the President determines that the meetings would be likely to disclose information falling into one of ten categories listed in subsection (c) of section 552b of title 5. These categories of information, described in the Freedom of Information Act, include classified materials, investigatory records compiled for law enforcement purposes, and personal information the disclosure of which would constitute an unwarranted invasion of personal privacy.

Section 5(b)(2) provides an additional authority by which the commission may close meetings or portions of meetings. It provides that the Federal Advisory Committee Act will not apply to any portion of a commission meeting if the President determines that such portion or portions of that meeting is likely to disclose matters that could endanger national security. In such an instance, the President and the commission shall be required to follow the procedures required under section 10(d) of the Federal Advisory Committee Act. Under Section 10(d) of that Act, the President's determination would be made in writing, and contain the reasons for the determination. If such a determination was made, the commission would issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of title 5 U.S.C. section 552(b).

Section 5(d) requires federal departments, agencies, and other federal entities, to the extent authorized by law, to furnish information directly to the commission upon a duly authorized request. Receiving information directly from executive agencies will be a vital tool for the commission, which itself will have limited resources; cooperation between the commission and executive agencies will therefore be essential.

Section 5 also provides that the commission may enter into contracts. The General Services Administration shall provide the commission support and services on a reimbursable basis. Other departments and agencies are authorized to support the commission. The commission may accept gifts or donations, and use the United States mails in the same manner as departments and agencies.

SECTION 6.—STAFF OF THE COMMISSION

Under section 6(a), the chairperson of the commission is authorized to appoint a staff director and other necessary staff, and to fix their compensation, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates. Pay for commission employees may not exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code. Employees of the commission are to be considered employees under section 2105 of title 5, United States Code, for purposes of chapters 63 (leave), 81 (compensation for work injuries), 83 (retirement), 84 (federal employees' retirement system), 85 (unemployment compensation), 87 (life insurance), 89 (health insurance), and 90 (long-term care insurance).

Section 6 also provides that federal government employees may be detailed to the commission without reimbursement from the commission, and that the commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

SECTION 7.—COMPENSATION AND TRAVEL EXPENSES

Section 7 provides that members of the commission may be compensated at rates not to exceed the daily equivalent of the annual

rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the commission. Members of the commission shall also be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

SECTION 8.—SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF

Section 8 provides that the appropriate executive departments and agencies shall cooperate with the commission in expeditiously providing to the commission members and staff appropriate security clearances in a manner consistent with existing procedures and requirements.

SECTION 9.—REPORTS OF THE COMMISSION; TERMINATION

Section 9 provides that the commission shall submit to the President and Congress two reports containing those findings, conclusions, and recommendations for corrective measures that have been agreed to by a majority of commission members. The first report shall be submitted not later than 6 months after the date of the first meeting of the commission. The second report shall be submitted one year after the submission of the first report.

Section 9 also provides that the commission, and all the authorities provided under it under the legislation, shall terminate 60 days after the second report has been submitted. The commission may use this 60-day period to conclude its activities, including providing testimony to committees of Congress concerning its reports and disseminating the second report.

SECTION 10.—AUTHORIZATION OF APPROPRIATIONS

Section 10 provides that $3,000,000 shall be authorized to be appropriated to the commission to carry out its duties, to remain available until expended.

V. Regulatory Impact

Paragraph 11(b)(1) of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out this bill."

The enactment of this legislation will not have significant regulatory impact.

VI. CBO Cost Estimate

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee was provided the following cost estimate of the cost of S. 1867, as prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 3, 2002.

Hon. JOSEPH LIEBERMAN,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1867, a bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for this estimate are Matthew Pickford (for federal costs), Susan Sieg Tompkins (for state and local costs), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 1867—A bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes

S. 1867 would establish the National Commission on Terrorist Attacks Upon the United States. The commission would be made up of 14 members appointed by the President and the Congress, and charged with analyzing the terrorist attacks of September 11, 2001. It would evaluate the evidence developed by government agencies regarding the attacks, detail the circumstances surrounding the attacks, and report its findings to the President and the Congress, including recommendations for corrective measures to prevent future acts of terrorism. The commission would prepare an initial report within six months of its first meeting and a final report a year later. S. 1867 would authorize the appropriation of $3 million for the commission to carry out its duties.

CBO estimates that implementing S. 1867 would cost about $3 million over the 2002–2004 period, subject to the availability of appropriated funds. Because S. 1867 would authorize the commission to accept and spend gifts, which could affect both governmental receipts and direct spending, pay-as-you-go procedures would apply. CBO estimates that any effect on receipts or direct spending would be insignificant.

S. 1867 would require state, local, or tribal governments and entities in the private sector, if subpoenaed, to provide testimony and evidence related to matters the commission determines to be advisable. Such a requirement would be both an intergovernmental and private-sector mandate under the Unfunded Mandates Reform Act (UMRA). CBO expects that the commission would likely exercise its subpoena power sparingly and that the costs to comply with a subpoena would not be significant. Thus, CBO estimates that the intergovernmental and private-sector cost of the mandate would be below the relevant thresholds established by UMRA ($58 million for intergovernmental mandates and $115 million for private-sector mandates in 2002, adjusted annually for inflation).

The CBO staff contacts for this estimates are Matthew Pickford (for federal costs), Susan Sieg Tompkins (for state and local costs), and Paige Piper/Bach (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ADDITIONAL VIEWS OF SENATOR FRED THOMPSON

On March 21, 2002, the Committee on Governmental Affairs voted to report S. 1867 as amended. I voted to report S. 1867 favorably out of the Committee because the bill addresses an important issue that the full Senate should have an opportunity to consider. The Senate should have the opportunity to evaluate and assess the need for an independent commission to review the terrorist attacks of September 11. I remain concerned, however, about the undefined nature of the mandate of the Commission that would be created under the S. 1867.

The bill would establish a National Commission on Terrorist Attacks Upon the United States, which would be given wide latitude to investigate any matter relating to the terrorist attacks of September 11, including any legislation, policy, regulation, plan, practice, or procedure that had a bearing on the events that occurred that day. While the legislation does suggest potential specific areas for investigation, S. 1867 vests in the Commission full discretion in determining the direction of its inquiry. The legislation also makes clear that the Commission's inquiry need not be limited to the actions and policies of the federal government; it can also review facts and circumstances related to the private sector and state and local governments.

I would have preferred that the Governmental Affairs Committee develop a legislative proposal to create a Commission to focus solely on the intelligence problems that contributed to the events of September 11. The intelligence community had both numerous warnings and several prior examples of a terrorist attack against symbols of America. Like the rest of the federal government, intelligence agencies may have been lulled into a false sense of security following its successes during the millennium celebrations. Moreover, the intelligence community appears to have gravely underestimated the growing capabilities of international terrorist networks, despite several significant successes such as the bombings of the U.S. embassies in Kenya and Tanzania and the bombing of the U.S.S. *Cole*. Moreover, according to public sources, there appear to have been warnings received from foreign intelligence services since the arrest of Ramzi Yussef, of the possibility of suicidal attacks using passenger aircraft.

Further eroding the effectiveness of the intelligence community were the policy decisions made with regard to intelligence functions over the last decade. Combined with cuts in resources and increases in costs due to modernization, these policy decisions may have limited the ability of the intelligence community to gather critical information. For instance, the regulations for securing the services of informants possibly hindered the intelligence community's ability to acquire new, vital human intelligence assets.

I believe an outside investigation could reveal systemic problems in the collection, analysis, or dissemination of intelligence, or other systemic problems within the intelligence community or with its relationship to other government entities that contributed to its failure to detect and prevent the attacks of September 11. The investigation could also provide helpful recommendations for improvement and reform that may need to be undertaken in order to prevent another such catastrophe.

Another area that I believe deserves review by an independent commission of experts is the foreign policy decisions that may have contributed to the events leading to the terrorist attacks of September 11. From my view, our national policy failed in two principal ways. First, United States policy and responses towards state sponsors of terrorism have been inadequate. Although our government routinely publishes lists of state sponsors of terror and imposes economic sanctions on these countries, these measures were not taken seriously. In fact, many of our allies scoffed at our efforts by continuing to maintain close diplomatic and economic ties with state sponsors of terror. Even today, six months after the attacks on September 11, many of our European allies continue to maintain relations with states such as Iran and Syria, which remain on our list of state sponsors of terrorism.

Second, the United States did not effectively leverage its resources to track down and destroy international terror networks. Many terrorists moved freely from country to country under assumed identities without detection. Indeed, many of the terrorists that participated in the attacks on September 11 had arrived in the United States without the detection by either the FBI or any other domestic security agency. Furthermore, many of these terrorists networks received funding from private charities that raised money in support of some militant cause. Some of this money was even raised in the United States. Our policy toward the fund-raising activities of these terrorist networks was flawed and proved to be wholly insufficient.

By creating a commission with so broad a mandate, the legislation attempts to study and evaluate too many subjects. The effect will be a report that merely skims the surface of many significant issues. It would be far better for Congress to create one or more commissions with limited scope to get deeply into the heart of any subject that needs to be studied for its contributions to September 11. I fear this legislation will not significantly assist our national evaluation of the causes that helped lead to the terrorist attacks and the failures and gaps in our policies and government institutions that may have contributed to the success of those attacks.

FRED THOMPSON.

VIII. Changes to Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that the legislation is a free standing bill that will make no changes to any existing law.

○