



Night skyline of New York City featuring twin towers of light that evoke the World Trade Center buildings destroyed on 9/11. (Photo: Jesse Mills)

Present at the Beginning: Creating the Intelligence Reform and Terrorist Prevention Act

Susan Collins with a personal reflection from Jane Harman

Senator Susan Collins (R-Maine) has served in the US Senate since 1997. She chaired the Senate Homeland Security and Governmental Affairs Committee (2003–7) and later served as the committee’s ranking member (2007–13).

Remember that old saying that there are two things you never want to see made: sausage and legislation? In this article, I’m going to provide an insider’s account of the sausage factory in Congress, a behind-the-scenes look at how the most significant intelligence reforms in more than 50 years became law in 2004. It combines the sweep of global events, the urgency of national security, and the intrigue of Capitol Hill machinations.

Perhaps the best place to start is on July 22, 2004, when the bipartisan 9/11 Commission headed by former New Jersey Governor Tom Kean and former Congressman Lee Hamilton released its final after-action report on the tragedy. This report was both a thorough reconstruction of events that led to that terrible day and a powerful narrative of the heroic response. It also made clear that the intelligence failures it chronicled—the so-called dots that went unconnected—were not isolated occurrences but rather systemic problems.

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As the commission put it, the agencies that comprise our IC were using people, processes, and technologies designed for the Cold War that were ill equipped to fight the threats of the 21st century.

As the commission stated, “Some of the saddest aspects of the 9/11 story are the outstanding efforts of so many officials straining, often without success, against the boundaries of the possible. Good people can overcome bad structures. [But] they should not have to.”

To illustrate the strain between good people and bad structures, consider this passage from the commission’s report. In late 1998, it had become apparent that Usama bin Ladin posed an immediate and deadly threat to the United States. On December 4, 1998, CIA Director George Tenet issued a memorandum that warned, “We are at war. I want no resources or people spared in this effort, either inside the CIA or the Community.” What was the result of this clear, concise, direct order from our nation’s chief intelligence official? According to the commission, the memorandum had little overall effect on mobilizing CIA or the Intelligence Community.

The 9/11 Commission’s report described case after case in which good people could not overcome bad structures. In January 2000, elements of our IC Community observed suspected Middle

Eastern terrorists converging in Malaysia. As this information was passed from one IC component to another, it was misinterpreted or delayed. A Cold War barrier (in effect, a stove-piped culture) separating our overseas and domestic intelligence agencies kept this information from being passed along to the FBI.

In the spring of 2000, the first two 9/11 hijackers obtained visas and entered the United States. On the night of September 8, 2001, one of the hijackers was pulled over for speeding while driving from Baltimore to Newark. The Maryland state trooper had no way of knowing that the speeder had been in violation of his visa for more than a year. The trooper had no reason to do anything but write the ticket and send the speeder on his way. Three days later, that speeder took the controls of United Airlines Flight 93, the plane that was deliberately crashed into a field near Shanksville, Pennsylvania, killing 40 passengers and crew.

The 9/11 Commission’s report did much more than present a devastating indictment of intelligence failures. It also gave us strong, urgent recommendations for reform. That is where my partner, Sen. Joseph Lieberman, the ranking Democrat on the Senate Homeland Security and Governmental Affairs Committee, and I, as the committee’s chair, came in, as well as our terrific counterparts on the

House Intelligence Committee, Representatives Jane Harman and Peter Hoekstra. On the evening of July 22, 2004, the very day the report was released, the Senate leadership assigned Senator Lieberman and me the task of developing legislation to implement those recommendations.

The key to the eventual passage of the landmark intelligence legislation was an agreement that Joe Lieberman and I made on July 23. We agreed that the bill we would write had to be bipartisan and that our approach would be nonpartisan. To the greatest extent possible, we decided to work out any differences we had behind closed doors, and to always present a united front. This agreement proved to be critical to our prevailing in committee mark-up, the floor debate, and the conference negotiations.

During the six weeks that followed the release of the report, our committee held eight hearings. We heard from more than two-dozen witnesses, including Secretary of State Colin Powell, Homeland Security Secretary Tom Ridge, the directors of the FBI and the CIA, and, of course, the leaders of the 9/11 Commission.

We heard from intelligence experts, from field operatives, and, with some of the most compelling testimony of all, from members of the 9/11 families, whose testimony reminded everyone of what was at stake. By late September, we were

ready to mark-up the bill in committee. We never had a single vote on party lines. Joe Lieberman and I worked together and defeated every single attempt to weaken the bill. We produced legislation that was comprehensive, bipartisan (in fact, unanimous), and historic.

Our legislation was not, however, merely the product of two months of work by our committee. It was based upon the work of the 9/11 Commission's investigation that spanned 20 months, with 19 days of hearings and 160 witnesses, the review of 2.5 million documents, and interviews with more than 1,200 individuals in 10 countries. And it was constructed on the findings of countless commissions going back decades. Rarely has legislation been built upon such a rock-solid foundation of inquiry and information.

Rarely, too, has legislation been developed in such a fraught atmosphere. Our work began as Washington, New York City, and northern New Jersey were under elevated terrorist alert, a status made evident by the sudden security barriers and checkpoints all around the Capitol. Our work neared its conclusion as terrorists murdered children at a schoolhouse in Russia.^a Our hearings coincided with the third anniversary of that terrible morning in America that saw the loss of 3,000 lives. We had no doubt that the

enemy had both a global reach and an unlimited capacity for cruelty. We knew our legislation had to unleash America's capacity to meet any challenge.

The details of the legislation we produced eventually filled some 600 pages, too many to describe here, but I'd like to touch upon four key elements. First, the bill created a new Director of National Intelligence to give our IC what Colin Powell called "an empowered quarterback." Second was the establishment of the National Counterterrorism Center to combine the experience and expertise of analysts from a wide range of intelligence agencies. Third, we included provisions to promote information-sharing among federal agencies and with state and local law enforcement. And, fourth, a new civil liberties board was included to help ensure that freedom and privacy were not sacrificed as we tightened security.

After our committee's unanimous vote, it was on to the full Senate. We had a vigorous debate for nearly two weeks. One of the most persistent objections during this period was that we were moving too fast. What, our opponents asked, was the rush? For an answer, I had a poster listing all the studies, going back a half century, calling for intelligence reform that would keep pace with a changing world. The names on these studies read

like a Who's Who of 20th century military, intelligence, and diplomatic expertise. Despite the rising incidents of terrorism, nothing was done.

As studies were being ignored, elements of our IC had started to recognize that bin Ladin had started some kind of terrorist army called al-Qa'ida. Unfortunately, every element had a different idea of how to deal with this threat, so nothing was done, and they were not sharing those ideas, nor were they collaborating on a joint solution. Meanwhile, in 1998, terrorists bombed our embassies in Kenya and Tanzania. Suicide bombers struck the USS *Cole* in October 2000. Something called the "Planes Operation" was taking shape in the minds of al-Qa'ida leadership.

After much debate and consideration of some 300 amendments, the bill—now referred to as the Collins-Lieberman National Intelligence Reform Act—passed in the Senate by a vote of 96 to 2 in early October. This was a victory, but rocky shoals lay ahead of us: reconciling the Senate bill with the substantially different version passed in the House. I was the chairman of the Senate conferees.

The key issues in the conference were the powers of the DNI and the National Counterterrorism Center, the relationship between the new DNI and the Department

a. In September 2004, Chechen terrorists seized some 1,100 hostages at a school in Beslan, North Ossetia-Alania, Russia. At least 334 children and adults were killed.

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of Defense, and the extent to which criminal law and immigration provisions included only in the House bill should be made part of the final version of the legislation. Complicating matters was the fact that several powerful House members really did not want any bill to pass, and some Pentagon officials were working against the bill despite the President George W. Bush's strong position in favor of it. Change is always difficult in Washington, but especially so when one is taking on an entrenched bureaucracy with powerful congressional advocates.

Whack-A-Mole

Let me describe what the conference was like. There's an arcade game where players with big mallets try to clobber little creatures as they pop their heads up through holes: Whac-A-Mole. Clobber one, and another pops up somewhere else. By November 20, 2004, we thought we'd had all the moles whacked. The four of us—Sen. Lieberman, Rep. Peter Hockstra, Rep. Jane Harman, and I—who were the principal negotiators had reached a deal after midnight the night before. We literally were minutes away from success. Joe Lieberman and I had briefed the other Senate members of the conference committee that morning, and I had a victory statement in hand.

Then, in the late afternoon, the House adjourned for Thanksgiving without voting, due to the objections of Rep. Duncan Hunter, chairman of the House Armed Services Committee (HASC), and Rep. Jim Sensenbrenner, chairman of the Judiciary Committee. My staff, many of whom had worked throughout the night putting in the final touches, called this Black Saturday. It was the darkest moment in the arduous battle to get this bill passed. At this point, the conventional wisdom was that intelligence reform was dead for that Congress. Nobody would want to come back for a few days after Thanksgiving to do something so difficult. Opponents were rejoicing. But those of us who believed in the bill just could not let it die. None of us who were there will ever forget the words spoken at one of our committee hearings by Mary Fetchet, whose son, Brad, died in the World Trade Center:

When American lives are at stake, indifference or inertia is unacceptable. . . . When critical reforms are implemented to make our country safer, I will know that neither Brad's life, nor the lives of nearly 3,000 others who perished on September 11th, were lost in vain.

We redoubled our efforts. House and Senate leadership stepped up. The president and the vice president were very strong and persistent advocates.

Final Push

Here's the inside story on how the final deal was struck. In order to get a bill, we had to figure out how to satisfy Chairman Hunter's concerns. He was convinced that a strong DNI would somehow compromise the intelligence that flowed to our troops in Iraq. Sec. Powell, a former general, testified that our bill would improve the quality of intelligence, but we couldn't convince the chairman of that.

On the evening of December 5, Senator Lieberman was taking a well-deserved break for a concert at the Kennedy Center, in Washington, DC. I was working late that Sunday night, consulting with my staff and the White House. We had to get an agreement by the next day, or time would simply run out. I had proposed language that I was certain the Representative Hunter would accept to clarify the role of the DNI vis-à-vis the defense secretary. The White House had blessed it as well, but, much to my surprise, the chairman objected; his counteroffer was completely unacceptable to Senator Lieberman and to me.

At this point, I was beginning to lose hope. I needed Representative Hunter's support to persuade the speaker of the house to schedule the bill for a vote, but I wasn't willing to cripple the DNI to get that support. Then my Blackberry buzzed with a message from my brilliant staff counsel: let's

Jane Harman Reflects on IRTPA

Former Representative Jane Harman (D-California) represented California's 36th District (1993–99 and 2001–11). She was the ranking member on the House Intelligence Committee (2002–6) and chaired the Homeland Security Committee Intelligence Subcommittee (2007–11).

After the massive intelligence failures of 9/11 and Iraq WMD, it was clear that major changes had to be made in how we compiled intelligence. At the time, I was ranking member of the House Intelligence Committee and in a position to have some influence over reform. The 9/11 Commission had just made a series of recommendations, including a “joint command” structure over our intelligence agencies. It was also 2004, less than two decades after the Goldwater-Nichols legislation created the Joint Chiefs of Staff.

Several of us, on a bipartisan basis, took the 9/11 Commission’s recommendation and Goldwater-Nichols to fashion legislation that was introduced in both chambers of Congress. We anticipated an easy ride toward adoption. We were wrong.

It became clear almost immediately in the House that we had strong opposition from HASC Chair Duncan Hunter, who felt our effort would interfere with military readiness. We also got negative feedback from the Secretary of Defense Rumsfeld and Vice President Cheney, but we kept on pushing. The good news was that there was considerable bipartisan support in the House and Senate, and that Pete Hoekstra, who then chaired the Intelligence Committee, was a strong ally.

In addition, we developed great chemistry with the prime sponsors in

the Senate—Senators Susan Collins and Joe Lieberman. It was serendipitous that they were chosen to be our counterparts rather than the chair and ranking member of the Senate Select Committee on Intelligence. One very special and personal benefit of our collaboration was that Susan Collins and I became dear, lifelong friends and remain so two decades later.

Over time, we also received support from President Bush 43—notwithstanding the continued opposition of the vice president. And we were able to fashion some compromises to increase other support. One thing we did was to take the individual service intelligence agencies out of the bill to meet objections about impairing military readiness.

At my request, we included a structure to protect civil liberties and personal privacy, which developed the atrocious acronym PCLOB (for Privacy and Civil Liberties Oversight Board). Speaking of acronyms, early in the process we struggled with what to call the joint intelligence commander. The going idea was to call the person National Intelligence Director with the acronym NID. I objected, saying that it sounded like a bug. My alternative name—Director of National Intelligence—was adopted and we have lived with a structure called ODNI for two decades.

A few more stories. When different versions of the bill had passed the House and Senate, Hoekstra, Collins, Lieberman, and I were named the “big four” conferees. Because of the nature of our work, we did not have any public sessions and instead met in the evenings around a large conference table in Speaker Dennis Hastert’s office in the Capitol. As I recall, we drank all his wine as we worked out differences. I also joked that since two of the big four were women, Susan and I did 98 percent of the work. One evening, she and I went for a late-night drink at Bistro Bis, where someone sent us extra drinks as we talked at a window table. I was very surprised and asked the waiter where the drinks came from. He pointed to a person at the bar who had told him that he was impressed by two sisters having a clearly personal and lovely conversation late into the evening.

As the years have gone by, I think that IRTPA was “50 percent law and 50 percent leadership.” Mistakes were made and gaps created, along with opportunities. We never envisioned a large ODNI staff—our thought was a small group of government detailees along with the small Community Management Staff of the CIA director would be adequate. Instead, a large permanent staff has evolved and I’m not certain that was a better outcome. But are we better off with IRTPA? My answer is an unqualified yes. ■

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propose language saying that the bill shall “respect and not abrogate” the authority of the Defense Secretary, he wrote. Just four words that would not in any way detract from the power of the DNI but would make clear that we were not trying to alter the military chain of command.

I sent a Blackberry message to Sen. Lieberman at the Kennedy Center. In the middle of Billy Joel playing a tribute to Elton John, he got my message and concurred with the change, without missing a beat. Once I had Sen. Lieberman’s concurrence, I contacted the White House and suggested that Vice President Cheney present the compromise four words to Chairman Hunter. He did, and the chairman

signed off. At 11:24 p.m. on that Sunday night, we finally had an agreement at the very last possible minute.

Finally, on December 7, (Pearl Harbor Day, ironically) the conference report passed in the House. The next day, it passed in the Senate. On December 17, 2004, President Bush signed the Intelligence Reform and Terrorism Prevention Act.

Have these reforms made us safer? Yes, although the threat of a terrorist attack in the United States is currently high due to a porous southern border, the fall of Afghanistan, the continued role of Iran in sponsoring terrorist proxies, and tensions in the Middle East

and elsewhere. Had the reforms this legislation created been in place during the late 1990s, there are several points at which the 9/11 conspiracy might have been uncovered. Of course, no piece of legislation can ever guarantee that we will not experience another attack, but these reforms have increased our ability to detect and dismantle plots before they can be carried out. More important, this new structure gives us the flexibility to adapt to changing threats. The Intelligence Reform and Terrorism Prevention Act implemented the most significant reforms since the end of World War II, and I am proud to have been part of this landmark, bipartisan, and bicameral effort.^a ■

a. For additional information, see interview with Jon Rosenwasser, “Intelligence Integration: A Congressional Oversight Perspective,” *Studies in Intelligence* 65, No. 3 (September 2021).