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White House Hurdles Delay 9/11 Commission Investigation

Documents and Interviews Are Subject Of Tense Talks as Tight Deadline Looms

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WASHINGTON -- For the past seven months, the National Commission on Terrorist Attacks Upon the United States, otherwise known as the 9/11 Commission, has been looking into the events leading up to the 2001 attacks.

But so far the probes have made little progress. The commission is embroiled in tense negotiations over the level of access it will have to White House documents and the federal personnel it wants to interview. Investigators have received only a small portion of the documents they are seeking and have just begun conducting interviews within the last week, according to commission spokesman Al Felzenberg.

That means that the commission may not be able to complete an exhaustive investigation before its deadline next May, according to some of its 10 commissioners and others familiar with its work. The commission has almost 60 staffers, many of whom have clearances to see classified documents. At their disposal is a secure facility at a secret location so that they can read those documents. And they have a \$14 million budget to last until May. But from the commission's inception, commissioners and others say, the White House has put obstacles in its way.

At the White House's insistence, an adviser to Attorney General John Ashcroft has been reviewing all of the commission's requests for documents and interviews sent to federal agencies. While the law establishing the commission requires it to build on a classified, nearly 900-page report of a Congressional inquiry into intelligence agencies, the White House blocked the commission's access to that report until two months ago.

"While I don't want to believe such a basic lack of cooperation was intentional, it nonetheless creates the appearance of bureaucratic stonewalling," said Sen. John McCain, an Arizona Republican, at a commission hearing in May. "Excessive administration secrecy on issues related to the Sept. 11 attacks feeds conspiracy theories and reduces the public's confidence in government," added Mr. McCain, a main sponsor of the bill that

created the commission.

The commission expects to issue a report on its progress Tuesday.

Among the commission's many tasks is to examine what the Clinton and Bush administrations knew about the threat of terror in the years leading up to the attacks and how they responded to the information they had. Families of the victims and some members of Congress say that the commission represents the best chance to understand weaknesses in the federal government's antiterrorism policies and its response to the 2001 attacks -- until classified documents become available to historians years from now.

For the White House, there is little obvious benefit to handing over documents to a panel determined to look for vulnerabilities in the country's defenses. White House Communications Director Dan Bartlett says that the administration isn't reluctant to turn over documents, but he points out that some of the memos at issue are highly classified. "The president believes that the commission should carefully investigate the evidence and follow all the facts wherever they should lead," he says. "What the investigation or public record would show is that we took terrorism very seriously."

Family members of victims began pressing for a probe only weeks after the attacks. "We need to understand the role that each of these agencies and cabinet officers played and whether or not they were doing their jobs -- and if not find out why," says Robin Wiener, a board member of Families of September 11, whose 33-year-old brother Jeffrey was killed in the World Trade Center. "We don't want any other family to suffer the way we suffered," she says.

But President Bush successfully opposed the creation of the commission for more than a year. He said publicly that an independent investigation would distract leaders from his newly-declared war on terrorism. After a joint House and Senate intelligence committee inquiry found that some information related to the Sept. 11 hijackers had been mishandled by the Federal Bureau of Investigation and Central Intelligence Agency, Congressional support for a commission mushroomed. The White House then reversed itself and on Sept. 20, 2002, announced its "strong support" for a commission.

A fight then ensued over the bill creating the commission. Sen. McCain pushed for a 24-month deadline for the investigation. The White House demanded that the commission complete work in 12 months, and won a compromise for 18 months, according to Senate staffers.

Thomas H. Kean, the former Republican governor of New Jersey who serves as chairman of the commission, says that he intends to meet the deadline next May, although it will be difficult. He has ruled out asking for an extension because, he says, "the White House has made it known they don't want it to go into the election period."

Mr. Bartlett, of the White House, says that the administration has good reason for wanting the probe to move expeditiously. "The quicker we learn the information that can come from the commission, the better we can protect America from another 9/11," he says. The White House doesn't want the commission's work to drag late into the presidential campaign, he adds, because "the last thing we want is for the 9/11 commission to become politicized."

But the White House's influence has continued to affect the work of the commission, whose members are divided equally among Democrats and Republicans. President Bush insisted on the right to name its chairman. His first choice, former Secretary of State Henry Kissinger, resigned, rather than disclose his consulting clients after questions arose about possible conflicts of interest.

To issue a subpoena, six of the 10 commissioners must vote to do so. A split on party lines therefore would block a subpoena. The White House insisted upon the rule, according to Mr. Bartlett and others. Sens. McCain and Joseph Lieberman, another co-sponsor, argued that five votes should suffice. Mr. Bartlett said the issuance of a subpoena is an "extraordinary act" and that there should be a "high bar" to issue one.

The administration also decided that the commission would have to channel its requests to obtain documents and interview personnel from the executive branch through the Justice Department. Adam G. Ciongoli, counselor to the attorney general who was assigned to take on this role, says he has merely acted as a "facilitator."

But Commissioner Max Cleland, a former Democratic senator from Georgia, says that Mr. Ciongoli is acting as a political gatekeeper, "cherry picking" the documents the White House wants to withhold. "It's obvious that they're sifting the information to the 9/11 commission now," he says. "We're way, way late here. The picture is not encouraging."

Mr. Ciongoli announced Monday that he is leaving the Justice Department to become a senior vice president at AOL Time Warner Inc. A spokesman at Justice said that another department official will assume his commission work.

Mr. Bartlett says that the White House has been trying to dissuade the commission from pushing for access to daily briefing memos to the president from the CIA and minutes of meetings of the National Security Council. The commission made its first official request for documents two weeks ago, but talks had begun months before.

Mr. Ciongoli says that no category of documents has been ruled out for turning over to the commission. Mr. Bartlett agreed, and added, "That's a question of what is contained in the most highly classified information provided to the president personally and only seen by less than a handful of people." He noted that the underlying intelligence information on which the briefing memos were based was available to the congressional investigators and that the White House is encouraging the commission instead to go to these original sources.

One reason the commission has only begun conducting interviews is that talks with Mr. Ciongoli over ground rules for interviews had become bogged down, according to people with knowledge of the talks. Among the sticking points were whether the administration will require minders to be present when staffers are questioned, and whether investigators will be able to interview staffers from federal agency field offices without first notifying their Washington headquarters.

"I think it's always a good idea to have administration people involved in the process as much as possible to make sure the information is being handled properly," says Mr. Bartlett. Mr. Ciongoli says that pending the outcome of the negotiations, the government has declined to turn over many documents and other information. "Obviously until an

agreement is reached in particular areas no one is going to produce anything in particular," he says.

Several commissioners, including Tim Roemer, a former Democratic Congressman from Indiana, complain that they were initially denied access to the still-classified Congressional report on which, by law, they are supposed to build their own investigation. In April, Mr. Roemer tried to visit the secure room in a House office building where the report and supporting documents are kept, he says. He asked to review the transcripts of several closed-door hearings, which he had participated in while still a congressman. He was told by a congressional staffer that he couldn't review the material, he says.

He says he then learned that the White House had requested the right to review much of the material so that it could assert executive privilege, and that the commission's executive director, Philip D. Zelikow, had agreed. After Mr. Roemer and others complained, the White House agreed to let the commission have access to the documents in the room.

Mr. Bartlett says that the administration wants to be careful that documents are "properly reviewed for national security reasons." He added that this is not being done as a "delaying tactic."

Mr. Zelikow, a historian and lawyer who spends a few days a week as the director of the University of Virginia's Miller Center of Public Affairs, has close ties to the White House. He was a senior staffer on the National Security Council under the first President Bush. In 1995 he co-wrote a book about Europe with Condoleezza Rice, now the president's national security adviser. He served on the Bush transition team, and afterward on the president's Foreign Intelligence Advisory Board until he took the commission job.

Mr. Zelikow was hired to work on the investigation after he was recommended by Commissioner Slade Gorton, a Republican who had served on the National Commission on Federal Election Reform. Mr. Zelikow was executive director of that and other commissions.

The commission's work also has been hampered by disagreements over its budget. Initially, the commission was allocated \$3 million, but essentially that figure was a mistake, inserted into a draft of the bill as a placeholder and never replaced. In late March, Mr. Kean warned that the commission would soon go broke. He visited the White House to request an additional \$11 million, he and others say. The White House told him to expect that an appropriation for the commission would be included in the president's supplemental budget for the Iraq War, according to Mr. Kean and others.

But in March, when the White House announced that budget, there was no allocation for the commission. Members of the commission and Congress complained publicly, as did families of victims. Within a week, the White House offered to come up with \$9 million, \$2 million less than what Mr. Kean had requested. But Congress appropriated \$11 million for the commission instead.

Mr. Bartlett denies that the White House promised an allocation to the commission in the supplemental budget. When the White House later offered the \$9 million, he says, Mr.

Kean, and the commission's vice chairman, Lee H. Hamilton, a Democrat, said that amount was sufficient.

Since the 2001 attacks, some administration critics have said that it failed to heed warnings about al Qaeda by Clinton staffers. For example, shortly before the change in administrations, then-National Security Adviser Sandy Berger warned Ms. Rice that al Qaeda would be the biggest issue she faced, Mr. Berger and others have said. Some Congressmen and victims' family members also say they want the commission to investigate whether the Clinton administration responded as forcefully as it could have to intelligence on al Qaeda's threat.

Mr. Roemer and other commissioners, including at least two Republicans, say they should interview officials from both administrations as well as Presidents Clinton and Bush. So far there has been no decision on whether to call them. A Clinton spokesman declined to say whether the former president would agree to be interviewed by the commission.

Mr. Bartlett says President Bush isn't likely to testify under oath but said "we have not ruled out" some sort of interview. Mr. Bartlett says the White House hasn't attempted to interfere with the commission's work. "Our concern is that enemies who hate America do not get information which could help them attack America," he says. "Our goal is to remove politics from the process."

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