

# CONSEQUENCES

I just finished Philip Shenon's *The Commission*. I found it, overall, a worthwhile book. All other debates about the book notwithstanding (for example, I actually think it's reasonably fair to Philip Zelikow, balancing his tremendous writing talents against the detrimental effect of his asshole personality), I kept thinking about the consequences of two decisions made over the course of the report—made primarily by Thomas Kean and Lee Hamilton. The Commission decided to avoid laying blame—on many people, including Bush, Clinton, and Tenet, but most of all on Condi Rice. And, after a great deal of lobbying from Robert Mueller, the Commission did not call for the break up of the FBI.

What if the 9/11 Commission had made it clear that Condi, above all other people, failed to do the things that might have stopped 9/11? What if the 9/11 Commission had called for drastic changes in the FBI?

## **Condi**

To be fair, if Condi had received the blame she deserved, the some of her salutary influences on Bush would have been absent. For example, at several times in the last four years, Condi was probably the biggest thing standing between Dick Cheney and the war he wanted in Iran. Condi is incompetent, but incompetence notwithstanding, she may have saved us from World War III.

That said, I kept thinking of Condi's ham-handed attempts to secure a legacy in the Middle East. In particular, I think of David Rose's recent Vanity Fair article detailing how Condi's inept attempts to install a strong-man in Palestine led to the Gaza coup and the strengthening of Hamas.

In essence, the program was simple. According to State Department officials, beginning in the latter part of 2006, Rice initiated several rounds of phone calls and personal meetings with leaders

of four Arab nations—Egypt, Jordan, Saudi Arabia, and the United Arab Emirates. She asked them to bolster Fatah by providing military training and by pledging funds to buy its forces lethal weapons. The money was to be paid directly into accounts controlled by President Abbas.

Not just in Palestine, Condi has a habit of taking bad situations and making them worse, with tremendous costs in terms of lives and American stature. The question is, if she had received the blame she should have for 9/11, would we have avoided those mistakes? And if we did, how much more would that have empowered Cheney?

Update: MadDog reminds me I intended to link to this, from Laura Rozen.

So why did Rice meet this week, asks a former US government official, with the former Lebanese militia leader Samir Geagea, recently released from prison for murdering Dany Chamoun and his family, and perpetrator of numerous other atrocities? This source, no shrinking violet, described Geagea as truly a war criminal. "This guy is a psychopath." How can you tell Hezbollah to disarm if you are working with this militia leader, he further asks. For the Bush administration, Geagea has one important credential, apparently: he's anti Syrian. "As they say, the enemy of my enemy gets my visa," Al Kamen writes. And a meeting with the White House's Stephen Hadley.

## **FBI**

The Commission had more pragmatic reasons, I think, for backing off calls to revamp the FBI (even if it came to those pragmatic conclusions as a result of some heavy lobbying). An MI5

organization would present all sorts of civil liberties problems. It would be difficult to call for major changes to both the CIA and the FBI at one time.

But then I think about two things that—arguably—might have been different had the 9/11 Commission called for such drastic changes. The first is the FBI's computer systems. Shenon describes the sheepishness with which the FBI agents interviewed by the Commission directed staffers to send them stuff via snail mail—they simply had no workable email. That lack of automation has long prevented the agency from automating investigative files. Partly as a result of the Commission's reluctance wrt the FBI, two years after the 9/11 report recommended that,

The president should lead the government-wide effort to bring the national security institutions into the information revolution...

...the FBI and DOJ were still struggling to establish a standard computer system (and that struggle was used to justify John McKay's firing). Significantly, it was a failure of leadership that led to such struggle. As McKay explained in an email:

...mid level bureaucrat nay-sayers at FBI, DEA, ATF, Main Justice and **an array of consultants who sniff lucrative contracts** are picking us apart.

And it has taken until this month to make real progress on an integrated investigative database.

As federal authorities struggled to meet information-sharing mandates after the Sept. 11, 2001, terrorist attacks, police agencies from Alaska and California to the Washington region poured millions of criminal and investigative records into shared

digital repositories called data warehouses, giving investigators and analysts new power to discern links among people, patterns of behavior and other hidden clues.

Those network efforts will begin expanding further this month, as some local and state agencies connect to a fledgling Justice Department system called the National Data Exchange, or N-DEx. Federal authorities hope N-DEx will become what one called a "one-stop shop" enabling federal law enforcement, counterterrorism and intelligence analysts to automatically examine the enormous caches of local and state records for the first time.

And even so, multiple incompatible systems remain.

At least 1,550 jurisdictions across the country use Coplink systems, through some three dozen nodes. That's a huge increase from 2002, when Coplink was first available commercially.

At least 400 other agencies are sharing information and doing link analysis through the Law Enforcement Information Exchange, or Linx, a Navy Criminal Investigative Service project built by Northrop Grumman using commercial technology. Linx users include more than 100 police forces in the District, Virginia and Maryland.

Hundreds of other police agencies across the country are using different information-sharing systems with varying capabilities. Officials in Ohio have created a data warehouse containing the police records of nearly 800 jurisdictions, while leaving it to local departments to provide analytical tools.

If the 9/11 Commission had made improvements at FBI a greater priority, would DOJ have been able to hold off on such databases two years ago because a USA challenged Paul McNulty?

More importantly, I can help but wonder whether the FBI had been reorganized as a result of the 9/11 Commission, whether we'd still be seeing frequent headlines about the FBI's abuse of powers it received under the PATRIOT Act. As Shenon portrays it, one of the most compelling cases not to reorganize the FBI was made by Dame Eliza Manningham-Buller, the Director General of Britain's MI5. She argued that the US couldn't tolerate an MI5 because of our greater protection for civil liberties.

She reminded the commissioners that there were also important civil liberties differences between Britain and the United States.

[snip]

The level of electronic surveillance carried out by MI5 would raise severe constitutional issues if the United States government tried to carry out something similar.

Admittedly, even with the warrantless wiretap dragnet, we ostensibly still have greater privacy protections than the UK. Even legally, though, that's increasingly a fiction hiding behind the fig leaf of bad legislation. More importantly, the NSLs debacle shows that one of the biggest threats to our privacy comes from the continued incompetence of the FBI.

In total, Fine said, the FBI issued almost 200,000 national security letters from 2003 through 2006, and they were used in a third of all FBI national security and computer probes during that time. Fine said his investigators have identified hundreds of possible violations of laws or internal guidelines in the use of the letters,

including cases in which FBI agents made improper requests, collected more data than they were allowed to, or did not have proper authorization to proceed with the case.

And, once again, a critical issue is the automation of the FBI.

FBI Assistant Director John Miller said a new automated system will keep better tabs on the letters, and they are now reviewed by a lawyer before they are sent to a telephone company, Internet service provider or other target.

In other words, the areas of incompetence FBI identified by the 9/11 Commission have only begun to be addressed—and that incompetence has led to the erosion of privacy that suggested against a larger overhaul.

If the 9/11 Commission hadn't been seduced by Mueller's lobbying, would we have fixed these problems?