

The Politics (and Profits) of Information: The 9/11 Commission

By Max Holland

The commission that investigated the events of 9/11 has been highly praised and sharply criticized, but one aspect of its task has virtually escaped notice: its responsibility to leave behind a complete, lasting, and easily accessible public record of its investigation. For all the good work that the panel did, some of its decisions have eroded the public's right and ability to understand what happened on September 11, 2001.

Raising this issue may seem a quibble, given that the *9/11 Report* is one of the best-selling government documents of all time. But history shows that reports of comparable magnitude, and the first reaction to these reports, have been inexorably colored by exigencies of the day. Time has a way of changing initial public opinion. Indeed, one media flap (like the still-unresolved questions about the Pentagon's ABLE DANGER data-mining program), can destroy a commission's carefully cultivated reputation in a matter of days. Consequently, the true measure of such investigations is not just their final reports or recommendations. These panels are ultimately judged on the totality of information they bring into the public realm; what they make knowable, in other words.

Traditionally, this deeper purpose has meant that final reports of important commissions have been supplemented by publication of the public and private hearings, staff reports and the actual documents used to compile the findings. Take a look at the shelf space occupied by some major probes since 1945: these include the 1946 congressional inquiry into the Pearl Harbor attack (40 volumes); the 1964 Warren Commission investigation of President Kennedy's assassination (27); and the 1975-76 Church Committee investigation of the intelligence agencies (15).

By contrast, the 9/11 Commission climaxed in the publication of a single, 567-page volume—without an index. The relative poverty of this effort at the culmination of a twenty-month, \$14 million investigation reflects a downward trend in the government's obligation to disseminate information to the public. This policy began in the 1980s, when, for ideological reasons, the Reagan administration reduced the number and availability of government publications. The worrisome tendency has accelerated with the advent of the Internet.

Much of this story concerns the US Government Printing Office (GPO), whose lineage as the principal agent for delivering public information goes back to 1860. "Keeping America Informed" is the GPO's motto, and over the years its imprimatur has acquired symbolic and legal significance. The sober look of a GPO volume conveys weight and

authenticity. The symbolism is embedded in the law as well. The US Code still states that “all [federal] printing . . . shall be done at the Government Printing Office.”

The 9/11 Commission’s first departure from customary practice was its decision not to use the GPO. On May 19, 2004, the commission announced that W.W. Norton, a private New York publisher, would publish the “authorized edition” of its final report. According to the commission’s press release, Norton was selected based on the criteria “affordability, accuracy, availability, and longevity.” There was no mention of a role for the GPO, which had long done a sterling job by these standards.

Nothing in the law stops private publishers from also printing government documents, as such documents are not covered by a copyright. Sometimes several different publishers will put out an edition of the same report. About 35,000 commercial copies of the *Warren Report* were in bookstores one day after the GPO published it in 1964, and there was every reason to believe the same phenomenon would occur with the *9/11 Report*. Certainly, never before had a publisher other than the GPO been the first to publish the report of a comparable government investigation.

Five days after the commission’s announcement, *The New York Times* pointed out that Norton had a long-standing relationship with Philip Zelikow, the commission’s executive director. This relationship was not known to the commissioners when they selected Norton; nor had Zelikow, who was responsible for pushing the idea of a commercial publisher, recused himself during the process.

While Zelikow was not in a position to receive a tangible benefit from the 9/11 contract, the fact remained that anointing Norton was akin to giving his publisher a license to print money (Norton’s gross proceeds would amount to approximately \$6 million). After the *Times* article ran, the commission altered its stated plans. It was announced that the GPO would post the final report on-line the day of release and would also print an “official government edition.”

Two factors in the commission’s decision to privilege a private publisher were the supposed cost and availability of a GPO edition. But the GPO edition ended up costing only \$8.50, while the retail price of the Norton paperback, an inferior book in terms of its manufacture (binding, paper quality, and size), was \$10. Nor was it true, as Zelikow reportedly presumed, that the GPO would produce something that would be hard to get. There is no provision in the law that prohibits GPO-published works from being sold in chain stores or local bookshops.

According to historian Ernest May, a consultant to the commission, the unprecedented arrangement with Norton precipitated a “dreadful moment” the day before publication. Writing in *The New Republic*, May recalled that “an aide to a powerful member of the House telephoned the commission asking angrily about a rumor that the report would be issued by a private publisher. “It’s a report to Congress,” the aide thundered. The person on our end of the line remarked that stories about the commission’s publication plans had been featured in *The New York Times* weeks earlier. “We don’t read *The fucking New*

York Times,” was the reply. “Fortunately,” observed May, “the individual decided not to pursue the complaint.”

The 9/11 Commission’s second departure from long-standing tradition is possibly even more troubling. It concerned how the panel chose to disseminate other aspects of its inquiry, ranging from its staff reports to its public hearings. Historically, only the GPO could be expected to publish the entire opus of an investigative body at anything approaching an affordable price to the public. Of greater significance, GPO publication also assured inclusion in the permanent holdings of the 1,250 institutions that participate in the Federal Depository Library Program (FDLP), an arrangement between research libraries and the federal government that dates back to 1813. Every depository library, in return for free copies of GPO publications, becomes legally bound to make these authentic documents freely available to all citizens without discrimination. Depository libraries, which are scattered across the nation, are thus the bedrock upon which public access to government information has always rested.

The 9/11 Commission, however, never submitted a printing requisition to the GPO for publishing the many supplemental volumes that are in fact part of the report. The panel regarded this obligation as having been discharged when it made its staff monographs, interim reports, and public hearings available on the Internet. To be sure, such access is highly desirable and ought to be part of standard procedure now. But should web publication alone be the new norm? The American Library Association (ALA) thinks not, with respect to significant government documents.

The ALA’s “Key Principles on Government Information” make clear that Internet access is no substitute for publication of a work in that most venerable of forms: a book. Information should be presented in a format that promotes usefulness, and that means complex information must be disseminated in a printed and bound volume. The reasons are not hard to understand. For one, publication via the Internet discriminates against citizens without on-line access, as well as those without a broadband connection. Reading a document amounting to hundreds of pages is unwieldy on a computer, even one with a fast connection. Printing it out is one solution, but that unfairly shifts the burden and cost of production onto readers, and still results in something less accessible than a bound book. Internet publication, argues the ALA, should complement the printed dissemination of government information, not replace it, particularly when the subject is something as critical as the September 11 attacks.

A May 2005 article, “Government Information in the Digital Age,” written by three University of California–San Diego librarians, also makes some important points about the problems inherent in Internet-only publication. In contrast to the robust FDLP system, which establishes multiple collections of printed documents, Internet publication concentrates power in the government’s hands, allowing it to retract information whenever it sees fit.

Some small publishers have bridged the gap left by the 9/11 Commission. For a hefty price of \$395, Oceana Publications is putting out a complete, four-volume set of the 9/11

Commission's hearings. Hillsboro Press has published the commission's staff monograph on terrorist travel, and PublicAffairs Reports has printed twelve of the seventeen initial staff studies and excerpts from some of the commission's hearings. Such entrepreneurship is desirable, but runs against the grain of long-standing practice regarding the dissemination of vital government documents.

Because there is no GPO version of them, two of the staff monographs, one on terrorist financing and the other on civil aviation, will probably never be published in book form. The commission's hearings—which represent the inquiry's only unscripted venue—are not likely to be purchased by many libraries given the cost, a sum well in excess of what the GPO would likely have charged. Put another way, for the foreseeable future, the one-volume final report is the only guaranteed bibliographic entry to be found for the 9/11 Commission at depository libraries.

If making a private publisher the printer of first resort and relying exclusively on the Internet for dissemination of supplements to the report were the first two departures from accepted practice, what the 9/11 Commission chose not to publish at all is at least equally remarkable.

Comparable investigations have made available at least some portion of the raw information upon which the respective reports were erected, even at the risk of challenging the very conclusions a particular report might have drawn. The Warren Commission, for example, decided it was far better to present the entirety of the evidence in all its rich complexity than be charged with hiding information. Other, comparable panels have weighed the evidentiary part of their responsibility differently, but in no instance was a final report released without publication of some portion of the primary documents accumulated during the investigation. This is the only method by which the public can assess the accumulated evidence and judge the soundness of the investigation itself.

The overwhelming majority of records cited in the *9/11 Report* are not only unpublished—worse yet, by the commissioners' collective hand they are closed to the public until at least January 2009. Undoubtedly, there is highly classified information about intelligence sources and methods that must remain secret. But it is equally certain that the great bulk of this information could be released sooner. There is no better authority for this assertion than Thomas Kean, chairman of the 9/11 Commission. "You'd just be amazed at the kind of information that's classified," Kean told *The New York Times*. "We're better off with openness."

It's easy to talk about openness, of course, but harder to do something about it. In this case, there is a real chance to do it. The National Security Archive in Washington has filed Freedom of Information Act requests for all the documents cited in the *9/11 Report's* footnotes; the results to date prove that the release of redacted documents was, after all, feasible. That the commission made no effort in this direction speaks volumes about the nature of its bipartisanship, because the timing of the availability of sources always has meaning.

What is the meaning of opening the files, now in the possession of the National Archives, only after January 2009? Well, that is the month that a new president will be inaugurated, which means vital information will have been denied at least through the November 2008 election. Neither George W. Bush nor a likely candidate related to Bill Clinton will have run for president having faced a public steeped in the primary information from the government's own files.

Postscript: While Lee Hamilton and Thomas Kean were conspicuously lacking in discipline when it came to making their panel's documentary trail available, they nonetheless found the time and energy to reap the benefit of their service. In August 2006, the co-chairmen published *Without Precedent: The Inside Story of the 9/11 Commission*. Not to be outdone, Ernest May, in February 2007, published his own edited and abridged version of the *9/11 Report*, complete with a "first-hand account" of how the panel went about its work.

Exploiting one's service for personal gain is hardly a new phenomenon, and not even objectionable most of the time. But in this case, the behavior of these public servants leaves a bad odor given the 9/11 Commission's lack of respect for a fundamental obligation.