

## 9/11 Panel Issues Subpoena to Pentagon

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By PHILIP SHENON

ASHINGTON, Nov. 7 — The federal commission investigating the Sept. 11 attacks stepped up pressure on the Bush administration to cooperate by issuing a subpoena on Friday to the Pentagon.

Members said they were still weighing a subpoena to the administration for Oval Office documents President Bush received in the days before Sept. 11, 2001, although the panel chose not to issue one today.

The 10-member panel said in a statement that it had encountered "serious delays" in obtaining information from the Defense Department. It voted to subpoena the Pentagon for documents, tapes and transcripts involving the actions of the North American Aerospace Defense Command, or Norad, on the morning of Sept. 11, as the suicide hijackings were being carried out. The Defense Command is responsible for protecting American airspace.

"In several cases we were assured that all requested records had been produced but we then discovered, through investigation, that these assurances were mistaken," the panel said. "We are especially dismayed by problems in the production of the records of activities of Norad and certain Air Force commands on Sept. 11."

Commission members say they are trying to determine how Norad responded to the first reports of the hijackings and whether the military could have done anything to prevent the attacks on the World Trade Center and the Pentagon, possibly by using fighter jets to shoot down the passenger planes.

Members of the panel, which is known formally as the National Commission on Terrorist Attacks Upon the United States, say they also want access to information about communications between Norad and Air Force One, on which President Bush was traveling on Sept. 11.

The Pentagon referred questions about the subpoena to Norad headquarters in Colorado, and spokesmen there had no immediate comment.

Members of the commission said the panel — in a separate, close vote — had decided in a closed meeting here on Friday against an immediate subpoena to the administration for the Oval Office intelligence reports.

They would not say whether the vote on the commission, which has five Democratic members and five Republican members and which was created last year by Congress, followed partisan lines.

But they said the issue of a subpoena, which would technically be served on the Central Intelligence Agency, which prepares the intelligence reports, would be revisited within days if the White House failed to meet the panel's demands for access to copies of the highly classified reports, known as the President's Daily Brief or P.D.B., that Mr. Bush and his top aides received in the days and weeks before Sept. 11.

"There is a clear message today to the White House and the C.I.A. and the rest of the agencies that we're dealing with," said Timothy J. Roemer, a Democratic member of the commission and a former member of the House of Representatives from Indiana.

"The commission is very serious about getting access to the P.D.B.'s and extremely interested in maintaining our credibility and independence," he said in an interview. Mr. Roemer, who was a member of the joint Congressional committee that investigated the Sept. 11 attacks last year, said that a White House offer made this month for partial access to the Oval Office documents was "completely unacceptable."

The White House refused to provide copies of the daily intelligence reports to the joint Congressional committee last year, citing executive privilege and the need to prevent leaks of highly classified material.

The White House acknowledged last year, in response to news reports, that one of the daily Oval Office intelligence reports in August 2001, the month before the terror attacks, referred to the possibility that Al Qaeda would hijack passenger planes.

Last month, the chairman of the federal commission, Thomas H. Kean, the former Republican governor of New Jersey, said that the White House would be unable to assert executive privilege with his panel in denying document requests and that he was willing to subpoena the intelligence reports if they were not made available.

The subpoena to the Pentagon today was the second that the commission has issued and reflected the panel's growing antagonism with the Bush administration, which had initially opposed the creation of an independent commission to investigate law-enforcement and intelligence failures before the Sept. 11 attacks. The first subpoena was issued last month to the Federal Aviation Administration.

Another Democratic member of the commission, Richard Ben-Veniste, a Washington lawyer, said in an interview that the panel's inability to obtain documents from Norad had seriously set back the work of the panel. "The result of Norad's noncompliance will be to delay hearings which we had previously scheduled for January and which will require a significant amount of staff backtracking," he said. "The information that we need bears not only on the events of 9/11, which we are charged with reconstructing in a complete and accurate manner, but it also bears on the level of preparedness of our nation's air defenses."

In its statement, the commission said it had alerted Defense Secretary Donald H. Rumsfeld about the panel's problems in obtaining documents related to the Sept. 11 attacks, and that Mr. Rumsfeld had "pledged to do everything in his power to address the commission's concerns — he has already taken strong steps to back up this pledge."

The commission said that its problems in obtaining Pentagon documents were "not general" and that "other components of D. O. D. have provided vital assistance to the commission."

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