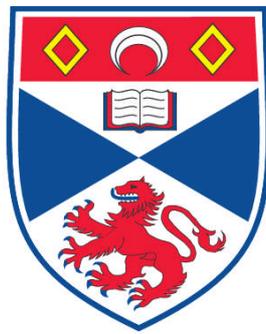


**RHETORICAL STRATEGIES OF LEGITIMATION:
THE 9/11 COMMISSION'S PUBLIC INQUIRY PROCESS**

Ryan William Parks

**A Thesis Submitted for the Degree of PhD
at the
University of St. Andrews**



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Rhetorical Strategies of Legitimation: the 9/11 Commission's Public Inquiry Process

by

Ryan William Parks

Submitted for the degree of Doctor of Philosophy



School of Management,
University of St Andrews

October 2011

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Abstract

This research project seeks to explore aspects of the post-reporting phase of the public inquiry process. Central to the public inquiry process is the concept of legitimacy and the idea that a public inquiry provides an opportunity to re-legitimize the credibility of failed public institutions. The current literature asserts that public inquiries re-legitimize through the production of authoritative narratives. As such, most of this scholarship has focused on the production of inquiry reports and, more recently, the reports themselves. However, in an era of accountability, and in the aftermath of such a poignant attack upon society, the production of a report may represent an apogee, but by no means an end, of the re-legitimation process. Appropriately, this thesis examines the post-reporting phase of the 9/11 Commission's public inquiry process. The 9/11 Commission provides a useful research vehicle due to the bounded, and relatively linear, implementation process of the Commission's recommendations. In little more than four months a majority of the Commission's recommendations were passed into law. Within this implementation phase the dominant discursive process took place in the United States Congress. It is the legislative reform debates in the House of Representatives and the Senate that is the focus of this research project. The central research question is: *what rhetorical legitimization strategies were employed in the legislative reform debates of the post-reporting phase of the 9/11 Commission's public inquiry process?*

This study uses a grounded theory approach to the analysis of the legislative transcripts of the Congressional reform debates. This analysis revealed that proponents employed rhetorical strategies to legitimize a legislative 'Call to Action' narrative. Also, they employed rhetorical legitimization strategies that emphasized themes of bipartisanship, hard work and expertise in order to strengthen the standing of the legislation. Opponents of the legislation focused rhetorical de-legitimation strategies on the theme of 'flawed process'. Finally, nearly all legislators, regardless of their view of the legislation, sought to appropriate the authoritative legitimacy of the Commission, by employing rhetorical strategies that presented their interests and motives as in line with the actions and wishes of the Commission.

To my loving and patient wife Colleen whose sacrifice was greater than mine.

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Chapter 1 - Introduction

1.0 Introduction and Rationale of Thesis

Public Inquiries are ceremonial occasions organised by governments (Gephart 1993). Their stated purpose is sensemaking and their recommendations can aid in the cultural readjustment of society to a new reality (Turner, 1976). Central to the public inquiry process is legitimacy. Public institutions require the confidence and trust of the public to maintain their legitimacy and this public trust can be lost when institutions fail to prevent, or inadequately respond to, a crisis-event. Public inquiries attempt to re-legitimize through the production of an authoritative narrative (Brown, 2003). As Brown (2003) suggests, there “[...] is a need for further discursive research to consider how authority claims are made in other putatively ‘authoritative’ texts such as government bills [...]” (p. 109). This need can be extended to include the debates that precede the implementation of such government bills, for example, the Congressional debates that led to the creation of the Intelligence Reform and Terrorism Prevention Act, 2004. Legislative debates produce a significant volume of text in the form of transcripts and these records can provide a rich account of the authority claims and rhetoric employed. If the creation of a public inquiry initiates a re-legitimation process, then it is unlikely that this re-legitimation process ends with the production of an inquiry report. Rather, the re-legitimation process extends beyond the production of an inquiry report and into the activities of the post-reporting phase of a public inquiry process.

The 9/11 Commission was an independent, bipartisan public inquiry body created to investigate the circumstances surrounding the September 11th terrorist attacks on the

United States. The Commission was mandated, by law, to report to the President and the US Congress. Their report was to provide a narrative of the attacks set within the relevant context, a description of institutional failures and a set of recommendations focused on preventing future attacks. In the case of the 9/11 Commission, the post-reporting phase of the inquiry process was a very active period in which the narrative and recommendations of the inquiry were supported, resisted and debated. This timeframe also encompassed the final months of the 2004 Presidential election. As such, Congress was under significant pressure to legislate the most extensive reforms to the United States' intelligence community in more than 60 years.

In the social science literature in general, and the organisation studies literature in particular, the study of legitimacy is common. Two popular views are that legitimacy has either institutional foundations (e.g. DiMaggio and Powell 1983, 1991; Meyer and Scott 1983; Zucker 1987; Meyer and Rowen 1991) or strategic origins (Dowling and Pfeffer 1975; Pfeffer and Salancik 1978; Pfeffer 1981; Ashforth & Gibbs 1990); however, more recent developments in the literature suggests that legitimacy can have rhetorical origins. These authors (e.g. Suddaby and Greenwood 2005; Vaara, et al. 2006; Van Leeuwen 2007; Erkama and Vaara 2010) study the rhetoric employed in creating and sustaining legitimacy. If an important function of a public inquiry process is re-legitimation, then it is appropriate to explore all potential sources of legitimacy, including rhetorical sources of legitimacy in the wake of the publication of a public inquiry report. Therefore, this research project will explore the rhetorical strategies of legitimation and de-legitimation employed during the legislative reform debates of the post-reporting phase of the 9/11 Commission public inquiry process.

1.1 Central Research Question

The primary interest of this research project is an examination of the re-legitimation phenomenon of a public inquiry process. Previous literature on the subject has focused either on the inquiry process (e.g. Turner 1976; Kemp 1985; Douglas 1986; Gephart 1992, 1993; Topal 2009) or the final report of such a process (e.g. Brown and Jones, 2000; Brown 2000, 2003; Boudes and Laroche 2009), whereas this thesis focuses on the re-legitimation process during the post-reporting phase of a public inquiry. In particular, this research is concerned with rhetorical strategies of legitimation and focuses on the legislative phase of the 9/11 Commission inquiry process. The main rhetorical and legitimating event of this post-reporting period was the congressional intelligence reform debates. As such, the central research question of this project is:

What rhetorical strategies were employed in the legislative reform debates of the post-reporting phase of the 9/11 Commission's public inquiry process?

A grounded theory analysis of the United States Congressional debates of the *9/11 Recommendations Implementation Act (H.R.10)* and the *Intelligence Reform and Terrorism Prevention Act (S.2845)*, in the House of Representatives, and the *National Intelligence Reform Act (S.2845)* and the *Intelligence Reform and Terrorism Prevention Act (S.2845)*, in the Senate, will provide insight into the rhetorical strategies for legitimising the narrative and the content of the legislative process, as well as rhetorical strategies of resistance employed by opponents of the reform proposals. The transcripts of these debates, which will provide the dataset for this research project, are contained

in the *Congressional Record* of the United States Congress. The following section will provide a brief outline of the research vehicle central to this thesis.

1.2 Research Vehicle

On July 22, 2004, after nearly eighteen months of investigation, the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) released its report detailing the “facts and circumstances relating to the terrorist attacks of September 11, 2001” (National Commission on Terrorist Attacks Upon The United States 2004b: xv). The 9/11 Commission Report was released into the midst of the 2004 Presidential campaign and it was in this context that the report and its recommendations were developed into legislative proposals and were introduced for debate into the House of Representatives and the Senate. These reform bills, the *9/11 Recommendations Implementation Act (H.R.10)* in the House of Representatives and the *National Intelligence Reform Act of 2004 (S.2845)* in the Senate were debated and were passed on October 16 and October 6 respectively. While the objective of both pieces of legislation was to implement intelligence reforms, as recommended by the 9/11 Commission, the substance and focus of the two bills were not identical. According to United States’ legislative practice, the Senate and the House of Representatives must pass identical bills before they can be sent to the President to be signed into law (MacKay 2005). As per Congressional procedure, the legislation was sent to a conference committee comprised of a bipartisan group of legislators from both chambers. These conferees negotiated a series of compromises resulting in a harmonised bill that was returned to both Houses for debate and a straight ‘up or down’

vote. After two failed attempts by conferees, *Conference Report (S.2845)* emerged from committee and was sent back to the House of Representatives and the Senate for final floor debates and voting. On December 7 the House of Representatives passed the *Intelligence Reform and Terrorism Prevention Act (S.2845)* and on December 8 the Senate passed this harmonised legislation allowing it to be sent to the President for his approval and signature. The *Intelligence Reform and Terrorism Prevention Act, 2004* was signed into law by President Bush on the morning of December 17, 2004, thus implementing many of the 9/11 Commission's recommendations and creating the largest restructuring of the American intelligence community since the end of the Second World War. During the course of this post-reporting, legislative phase of the 9/11 Commission's work, the Senate engaged in nine days of intelligence reform debate and the House of Representatives debated the reforms for two days. Collectively, these legislative sessions generated over 800,000 words of transcriptive records. It is these records that will form the dataset for this research project.

1.3 Overview of Thesis

Chapter 1 introduces the thesis and provides a rationale and justification for the research project. It articulates the central research question and situates it in the context of both the scholarship and the empirical context of the 9/11 Commission's public inquiry process. Finally, it provides a chapter by chapter outline containing a brief introduction to the purpose and content of each chapter.

Chapter 2 reviews the literature of the public inquiry scholarship, the relevant legitimacy literature and a recently published body of research that explores the rhetorical strategies of legitimation. The purpose of this chapter is to understand and to provide a critical evaluation of each of these three literatures in order to shape this investigation, identify key gaps in the literature, such as the lack of study of the post-reporting phase of a public inquiry's re-legitimation process and a need within the Rhetorical Legitimacy literature to examine this phenomenon in divergent empirical settings. Having explored the literature, identified the gaps in the scholarship the research question can then be refined in light of these considerations.

Chapter 3 provides a justification for the methodological choices for undertaking a grounded theory analysis, an explanation of the dataset that was examined and a description of how the analysis was carried out for this thesis. The chapter begins with a brief overview of the historical context of this research project. Next, a discussion of the philosophical assumptions of the nature of reality and the nature of the study of knowledge is presented and explains how these philosophical decisions helped to guide and justify the subsequent research design. A grounded theory approach was selected as the most appropriate choice for answering the research question, given the nature of the study. The source of data, approximately 800,000 words from the *Congressional Record* transcripts of the House and Senate intelligence reform debates, and methods of collection and organisation was detailed and an explanation of how the data was coded and analysed within the proscribed structure of a Straussian grounded theory approach was then provided. Finally, the chapter concludes with a brief preview of the structure of the Context chapter, which details the empirical context in which this study is set.

Chapter 4 outlines the practical context in which the congressional debates of the intelligence reform legislation took place. This chapter is divided into three sections. The first section focuses on the attacks of September 11, 2001, outlining this precipitating crisis-event, the institutional failures and the calls for an investigation. The second section of this chapter provides background on the creation of the 9/11 Commission, outlining its scope and mandate, discussing its activities as well as the production and release of its final report. The third section of the chapter outlines the post-reporting phase, the period of time in which the subject of our research, the Congressional reform debates, took place. This phase stretched from the 22nd of July, 2004 until the 17th of December of the same year. In this section a detailed accounting of the legislative process in both the House of Representatives and the Senate is provided. Finally, the last section of this chapter provides a summary of the above points and a brief overview of the findings contained in the following chapter.

Chapter 5 organises and presents the findings of the analysis of the congressional legislative reform process. The research question asks what are the rhetorical legitimation strategies employed in the Congressional reform debates. This chapter is structured with a view to answering that question. First, the chapter outlines the rhetorical strategies employed by proponents of the legislation to legitimise the legislative narrative that framed the Congressional debates. Second, the chapter outlines the rhetorical strategies employed by the proponents of the reforms to legitimise the content of the legislation. Third, the chapter examines rhetorical strategies used by opponents of the legislation to de-legitimise the legislative processes.

Fourth, the chapter examines how both sides in the debates sought to invoke the authority of the Commission's reputation and to further legitimise their respective positions. Finally, the chapter concludes by presenting a summary of the findings and outlining the themes for discussion in the following chapter.

Chapter 6 takes the findings from the previous chapter and explores them in the context of the relevant literature outlined in Chapter 2. The chapter begins with a brief introduction and a restatement of the research question. In the next section of the chapter, a discussion of the rhetorical strategies for legitimising both the legislative narrative and the legislative content is conducted. This is followed by an examination of the commonalities and differences of the rhetorical strategies to de-legitimise the legislative process in both Houses of Congress. The next part of this chapter explores the artificial inflation of the opposition by the proponents of legislative reform. It is clear that once, the limited threat of opposition was neutralised, the proponents used the claims of a robust opposition to increase the legitimacy of their narrative. The final portion of the discussion centres on the findings that show a tremendous deference which was afforded to the Commission and their recommendations during the Congressional debates by both proponents and opponents of the reform legislation. This phenomenon is explored in the context of the Public Inquiry literature and more specifically the re-legitimation function of a public inquiry process. Finally, the chapter concludes with a summary of the discussion and a brief overview of the structure and purpose of the final chapter of this thesis.

Chapter 7 begins with a brief introduction before providing an overview of the entire thesis. This overview is followed by an examination of the key contributions of this research. Next is a discussion of suggestions for future research and this is followed by a review of the various methodological, empirical and practical limitations of this thesis. Lastly, the chapter will conclude with a section dedicated to the author's final reflections on the subject matter of this thesis in particular and the doctoral process in general.

After a brief introduction, this chapter has explained the rationale and the justification for this research project. It then articulated the central research question guiding the entirety of this thesis. The next section provided a brief description of the research vehicle: the 9/11 Commission's public inquiry process and the subsequent intelligence reform legislative debates in Congress. It then detailed a chapter by chapter outline of the entire thesis, before concluding with a summary of the introductory chapter and a preview of the Literature Review. In the next chapter, the public inquiry literature, the relevant legitimacy literature and the rhetorical legitimation literature will be explored and examined critically. The aim is to provide a better understanding of the applicable scholarship, to identify under-researched areas in the literature and to illustrate and support the construction of the central research question

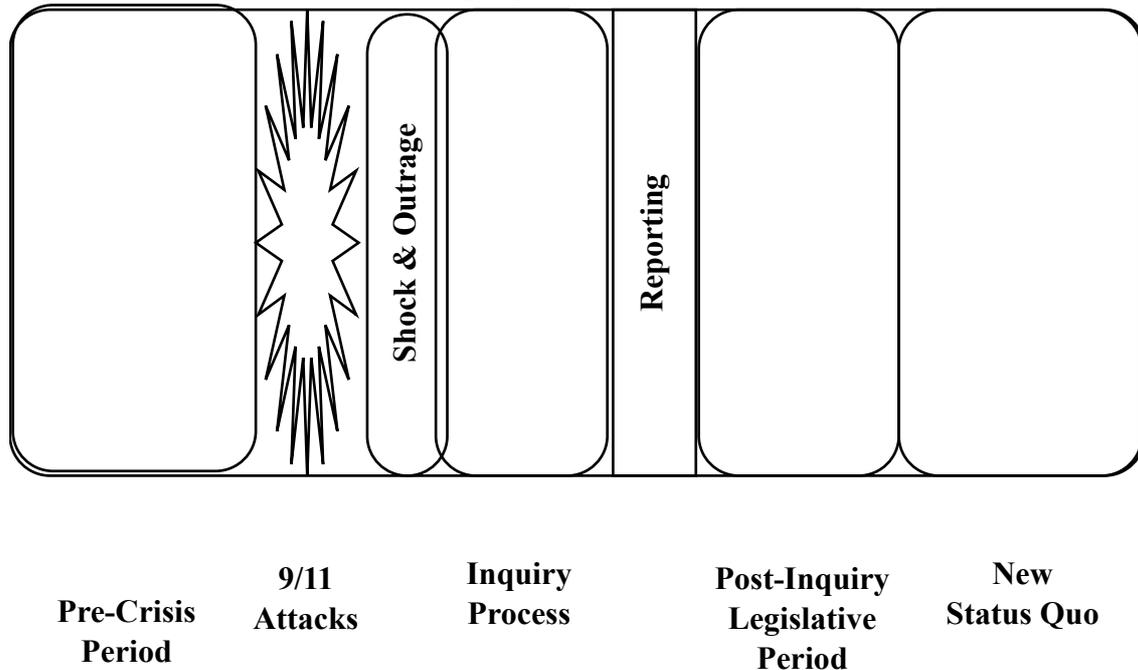
Chapter 2 - Literature Review

2.0 Chapter Introduction

The purpose of this literature review is to explore the phenomenon of re-legitimation in the context of the public inquiry process. As such, this review will examine three areas of scholarship: the study of public inquiries, legitimacy and rhetorical legitimation. The first section will focus on the phenomenon of public inquiries and the public inquiry process. There is a relatively small, but interesting body of public inquiry literature situated within organisation studies scholarship (e.g. Turner 1976; Gephart 1993, 1997; Brown 2000, 2003; Topal 2009). Authors in this area examine the public inquiry process, paying special attention to a number of common thematic areas including: sensemaking, legitimacy and hegemonic narrative creation. The public inquiry process is viewed as an opportunity to provide a comprehensive accounting of what has happened (sensemaking) and an opportunity for governments to re-establish the public's trust and confidence in their abilities (re-legitimation). As Brown (2000, 2003) and Topal (2009) assert, this is accomplished through the construction of an authoritative inquiry report containing a hegemonic narrative. Public inquiries create a single official narrative and often make recommendations to fix critical systemic weaknesses identified during the course of the investigation. By doing this, they attempt to appear authoritative thereby rebuilding public trust and restoring institutional legitimacy.

Figure 3.0 illustrates the phases of the 9/11 public inquiry process, from the pre-crisis period to the time at which significant organisational changes were implemented with the passing of the *Intelligence Reform and Terrorism Prevention Act of 2004*.

Figure 2.0 - Stages of a Public Inquiry Process



As scholars in this field have sought to understand the re-legitimation process, they have done so by focusing either on the public inquiry process, or on the final reports that these inquiries have produced. While the current research of public inquiries stops with the production of the public inquiry report, clearly the re-legitimation process does not. An inquiry report that is not acted upon risks the perception that no one is taking action to correct past institutional failures. Therefore it is important that the post-reporting phase, is explored and the ‘What comes next?’ question is examined. For scholars concerned with re-legitimation, within the context of the public inquiry process, this exploration of the post-reporting phase could yield valuable insights not currently present in the scholarship. As such, this is the gap in the public inquiry literature that this research projects seeks to fill.

From an examination of the literature on the public inquiry process, we will turn our focus next to concepts and theories of legitimacy. Clearly, an understanding of legitimacy is vital to the exploration of the re-legitimation process within the public inquiry literature. As the scholarship of legitimacy has a long history and spans numerous disciplines, it is important to understand how this knowledge has developed and what influences are present in the contemporary work on organisational legitimacy. An understanding of legitimacy is also vital to the exploration of our third academic literature of interest: the rhetorical legitimation literature. While this research project hopes to further an understanding of legitimacy, it will do so within the context of the public inquiry and the rhetorical legitimation literature. Particular attention will be paid to the work of Suchman (1995). In his attempts to reconcile the strategic/institutional dichotomy present in the current handling of legitimacy in the organisation studies literature, he provides a model of sources of legitimacy that opens the door to new ways of thinking about this concept. His work is also foundational to the work of authors engaged in both the public inquiry and rhetorical legitimation research. As such, familiarity with his work is important to a detailed examination of the public inquiry - rhetorical legitimation nexus. In general, however, the legitimacy literature reviewed in this chapter is included to enhance our understanding of legitimacy, but also to improve our ability to understand and contribute to the remaining two areas of study. The legitimacy literature will be important also, in an empirical sense, as the rhetorical strategies employed to legitimise and de-legitimise the legislative reform debates in Congress are explored.

Third, as we are concerned with the rhetorical strategies employed to legitimise and oppose intelligence reform efforts of the legislative debates that occurred subsequent to the release of the Commission's report, we will examine the rhetorical legitimation literature. This nascent area of study explores how rhetoric is employed to legitimate profound institutional change and contains fewer than a dozen articles. New and under-developed, the rhetorical legitimation scholarship provides a rich opportunity for scholarly contribution. Studies, conducted in a limited number of organisational settings, would benefit from similar research in a variety of empirical contexts. This research project will contribute to the emerging field of rhetorical legitimation by providing insight into a new and unique institutional setting. Given the centrality of the congressional reform debates to the post-reporting phase of the 9/11 Commission's inquiry process and the importance of the rhetoric of legislators in these debates, it is clear that an exploration of the rhetorical legitimacy literature is vital to the aims of this research project. Additionally, rhetorical legitimation scholars, such as Suddaby and Greenwood (2005) and Vaara, et al (2007) and Vaara and Tienari (2008), provide guidance on the structuring of rhetorically-focused research such as this project. Lastly, the literature review chapter will conclude by reviewing the existing gaps in the literature and inform our choices of focus and help to define the research question.

2.1 The Public Inquiry Literature

2.1.1 How does the literature define public inquiries?

While the primary impact of the public inquiry process rests in the realm of public policy, its analysis has proven valuable in uncovering the less obvious roles of public inquiries. The study of the public inquiry process within this context is well established and has produced a body of research with diverse themes (see: Turner 1976; Gephart 1992, 1993; Brown 2000, 2003; Boudes and Laroche 2009; Topal 2009). There is no singular and all-encompassing definition of public inquiries, however, there is a general understanding of the concept which often highlights common areas of emphasis. In this section, we will examine how the authors themselves define and attempt to explain the phenomenon of public inquiries with the intention of cultivating a general overview of how the relevant literature views this activity.

Sulitzeanu-Kenan (2006) notes that the definition of “[t]he term ‘public inquiry’ is a loose one [...] [and that it is] often used to denote different types of institutions and functions. Important distinctions can be made, for example, between planning, advising and investigating [public inquiries]” (p. 624). Howe (1999) makes a similar distinction and highlights three different types of public inquiries: the policy-driven public inquiry, the public inquiry conducted within a legislative body, and the public inquiry which is tasked with studying a particular and significant event for which it would be inappropriate to investigate from within a legislative body, given the likelihood for partisanship and potential conflict of interest. He focuses on this third type of inquiry: one that is non-partisan, extra-legislative and focused on a particular trigger event. He envisions a situation in which the establishment of a public inquiry is necessitated by “[...] some major disaster and [the purpose is] to learn lessons from it; or to consider some other matter of public concern, which requires thorough and impartial

investigation [...]” (Howe 1999: 295). The creation of the 9/11 Commission was for the purposes of investigating a crisis event and advising on a post-crisis course of action and, as such, fits within this third category.

The study of investigatory, post-crisis inquiries dominates much of the literature on the subject (e.g.: Brown 2003, 2000; Brown and Jones, 2000; Gephart 1997, 1993, 1992, 1991, 1990, 1988; Turner 1976). This research project follows in this tradition, as it seeks to examine retrospectively the crisis event of the terrorist attacks of September 11th 2001. This process was conducted by the 9/11 Commission which produced recommendations, a majority of which, were codified in law by the United States’ Congress through the creation and passage of the *Intelligence Reform and Terrorism Prevention Act of 2004*. It is clear that the literature would consider the 9/11 Commission’s public inquiry process to be an investigatory public inquiry with the roll of advising on a post-crisis course of action. Exploring the literature further, one can better understand the characteristics of this type of public inquiry.

To gain a better understanding as to the characteristics that a public inquiry might possess, and thereby clarify a working definition, one can review the criteria used by Sulitzeanu-Kenan (2006). Drawing from others in the field, the author develops a list of characteristics which help to define this category of inquiry further. It is:

- “1. An *ad hoc* institution: that is, one established for a particular task; once its primary task is concluded, the tribunal is dissolved;
2. Formally external to the executive;
3. Established by the government or a minister;
4. As a result of the appointer’s discretion: that is, not the result of a requirement prescribed by any statute or other rule;
5. For the main task of investigation: a criterion used to distinguish between investigative and advisory functions (Weare 1955, pp. 42-2);

6. Of past event(s);
7. In a public way: that is, it is not only directed *inward* (to the appointing body) but also *outward*, to the public, typically during a crisis of confidence between the public and government (Wade and Forsyth 1994, p. 1007), in a way which allows exposure of relevant facts to public scrutiny (Clarke 2000, p.8)” (p. 624).

While the above criteria are used to determine which public inquiries the author was to focus on for his 2006 article, it acts to define further the above mentioned post-crisis investigatory inquiry. Some of these characteristics suggest a role for the inquiry that is explored in detail within the existing literature highlighting issues of confidence between the public and the government [re-legitimation] and the exposure of relevant facts to scrutiny [in part, sensemaking]. These themes of re-legitimation and sensemaking will be discussed in further detail later in this chapter.

Turner (1976) offers a more general explanation of what a public inquiry is and what it does. A public inquiry is, “an explanatory account from the statements of witnesses, [that] publicly allocates responsibility and blame, and makes recommendations that provide evidence for societal and organizational learning” (p. 380). The idea that the public inquiry is an explanatory account is detailed further by Gephart (1993) when he asserts that:

“[a] public inquiry is a ceremonial event organized by a government agency that assembles, often using the power of subpoena, persons knowledgeable about a disaster. The purpose of the inquiry is generally to make sense of the causes and consequences of the disaster and the behavior of actors and organizations involved in the events.

The inquiry has the goal of producing native accounts, the testimony of people knowledgeable about the disastrous events. It does this by creating a spatially and temporally bounded set of face-to-face interactions among relevant parties, during which witnesses are examined and cross-examined to create a detailed record of their involvement in the disaster” (pp. 1474-1475).

In this definition, Gephart states that the purpose of an inquiry is to ‘make sense’ with the intent of producing ‘native accounts’ and to ‘create a detailed record’. It is through the collection of facts and hearing of testimony that allows a commission to create a detailed record of what has happened. This record, or narrative, often becomes the official history of the disaster event. In this sense, the commission is tasked with creating an official, monological narrative of what has happened. This official narrativisation is a theme that is explored in the literature. It is this detailed record, or public inquiry report, that is of primary interest to Brown (2003). He acknowledges common key elements of public inquiries found in the literature, but continues on to say that, “[w]hile public inquiries are interesting ceremonial occasions (Gephart, 1992) that play important roles in the cultural adjustment stage of critical events (Turner, 1976), it is the reports that they produce which are the main focus of attention [of this article]” (p. 95). Brown (2000) explains his preference for focusing on the texts produced by public inquiries, rather than simply on the crisis event being investigated:

“While some sensemaking research has drawn on the findings of inquiries (Douglas, 1986; Gephart, 1992, 1994; Gephart, Steier, & Lawrence, 1990; Kemp, 1985; Turner, 1976, 1978), these have tended to focus on the events described rather than on the texts they have produced. This is unfortunate because public inquiries are particularly interesting multilevel micro-macro events in "which micro-level sensemaking practices produce the macro social order as a set of representative meanings tracked across social settings" (Gephart, Steier, & Lawrence, 1990, p.44-45; Cicourel & Knorr-Cetina, 1981). [Therefore a] detailed focus on such texts may thus assist us in theorizing multiple levels of sensemaking” (pp. 5-6).

From a practical view, public inquiry reports provide a wealth of data for a researcher. As Topal (2009) notes: “Public hearings and inquiries have generally been a source of empirical data rather than a topic of study in their own right in organizational research” (p. 280). In contrast to much of the literature on public inquiries, this research

project will not use the 9/11 Commission simply as a source of empirical data and divorce itself from the study of the public inquiry process, as Topal suggests. Neither will it focus exclusively on the texts produced by the Commission, as Brown's work has done. Rather, this project will seek to extend its examination beyond the texts of the Commission and into the post-reporting period, and in particular, of the legislative debate and Congressional efforts to restructure significantly the intelligence community of the United States.

Brown (2000), Gephart (1993), Turner (1976), Kemp (1985) and Topal (2009), approach the study of the public inquiry process from the discipline of organisational studies and while their research attempts to understand a number of themes, there are significant common issues which emerge. Broadly, these themes can be categorised as Sensemaking, Narrative Creation, Organisational Learning, Re-Legitimation and De-politicisation. There is significant overlap and interaction of these themes and while this review will attempt to classify the literature in a thematic manner, it is not possible to separate these themes entirely. Accordingly, the common themes of sensemaking, re-legitimation and hegemonic narrative will be discussed in the following sections. However, to develop an enhanced understanding of the inquiry phenomenon, attention will now shift from addressing what public inquiries are, to exploring when they are appropriate and likely to have the most impact.

2.1.2 When Public Inquiries are needed most

Within the literature defining public inquiries, there have been general references to the sorts of events that have necessitated a close examination by the public inquiry process. However, some authors (Turner 1976; Gephart 1993; Boudes and Laroche 2009) within the literature write in more detail as to what events should trigger the public inquiry process and under what circumstances the public inquiry is most relevant. A public inquiry is an official retrospective investigation into a particular event. Clearly, not all past events undergo such scrutiny. However, Turner (1976) suggests why some events deserve this treatment and why others do not:

“In accounting for failures in foresight, undesirable events known about in advance but which were unavoidable with the resources available can be disregarded. In addition, little time need be spent on catastrophes that were completely unpredictable. Neither of these categories present problems of explanation. In the former case, because of lack of resources, no action was possible. In the latter, no action could have been taken because of total lack of information or intelligence” (p. 380).

In other words, an event that is worth being scrutinised through the lens of a public inquiry process must be both predictable and avoidable. That is not to say that either the prediction or the avoidance would be straightforward or easy. It may be that an organisation was structured in such a way that made the prediction nearly impossible given that structure. Equally, the sheer complexity in planning and overall cost of taking action to avoid a particular crisis may be immense, but in hindsight, post-crisis, such a significant effort and cost could and would have been mobilised.

The terrorist attacks of September 11, 2001 are prime examples of such a daunting event. Despite the sheer enormity of the intelligence information that needed to be sifted, and the disbelief that accompanied the attacks, there were intelligence fragments that could have been pieced together if, for example, the structure of intelligence

analysis at the time had allowed for the sharing of information between the Central Intelligence Agency and the Federal Bureau of Investigation (Gorman 2009). Likewise, the intelligence community did not entirely lack the imagination necessary to foresee these new and devastating terror tactics of airborne suicide attacks against significant and symbolic infrastructure. While it contained no actionable intelligence, the August 26, 2001 Presidential Daily Brief entitled *'Bin Laden Determined to Strike in US'* showed that the American Intelligence Community knew of Al-Qaeda's intentions and even suggested that its members might attempt airline hijackings as their preferred tactic. While it would have been a very significant leap in imagination and foresight to understand the details of their devastatingly effective hijacking tactics or timings and targeting information, there is a possibility that these attacks, under different circumstances, and with additional information, improved intelligence coordination and a number of other factors, there remains the possibility, if not the probability, that these attacks were both discoverable and knowable. If knowable, these attacks were certainly preventable. As with all human-caused disasters of this scale, given the right circumstances and level of resources they are preventable. Therefore being both preventable and knowable, the attacks of September 11, 2001 would qualify, according to Turner (1976), as a prime candidate for examination by a public inquiry process.

Having discussed what crisis events are best suited to an inquiry process, we can return to the commonly understood purpose of these inquiries. Boudes and Laroche (2009) cite Weick's (2005) formulation of the sensemaking process: "[...] making sense of an event implies providing answers to two questions: What's the story? and Now what should I do" (p. 1)? This is a straightforward and clear articulation of sensemaking;

however, Boudes and Laroche (2009) take Weick's definition and expand it with application to the public inquiry process:

“Going into further detail, we argue that a key feature of post-crisis inquiry report (PCIR) writing is how commonplace questions about crisis are dealt with: What happened?; Was it foreseeable?; Who is responsible?; What is to be done to ensure that [a] crisis never happen[s] again” (pp. 1-2)?

Indeed, with the exception of assigning ‘responsibility’ or blame for the institutional failures that contributed to the ‘success’ of the September 11, 2001 attacks, the Commission’s stated goals are very similar to Boudes and Laroche’s (2009) formulation. (The Commission intentionally formulated their assignment of responsibility/blame in the context of ‘what’ rather than ‘who’.) This can be seen in excerpts from the Preface of the Commission’s Final Report:

“The nation was unprepared. How did this happen, and how can we avoid such tragedy again? [...] Our aim has been to provide the fullest possible account of the events surrounding 9/11 and to identify lessons learned. [...] At the outset of our work, we said we were looking backward in order to look forward. We hope that the terrible losses chronicled in this report can create something positive -an America that is safer, stronger, and wiser. [...]

We have endeavored to provide the most complete account we can of the events of September 11, what happened and why. [...] We present this report as a foundation for a better understanding of a landmark in the history of our nation. [...] We have made a limited number of [recommendations]. We decided consciously to focus on “recommendations we believe to be the most important, whose implementations can make the greatest difference.” [And finally] We hope that our report will encourage our fellow citizens to study, reflect-and act” (National Commission on Terrorist Attacks Upon The United States 2004b: xv-xviii).

However, there are significant aims and impacts of the public inquiry process that, while not as explicitly stated, are of equal or greater significance. While the reconstruction of a plausible narrative of events is necessary to the process of sensemaking, understanding and possibly change, the creation of a single narrative, a dominant narrative, a hegemonic narrative also serves other, less obvious purposes.

These functions can include the creation of a hegemonic narrative to assist in the depoliticisation of fault and the re-legitimation of institutions that have failed or have appeared to fail in the eyes of society. We will examine the literature that explores these hidden functions of the public inquiry process in the following sections. But first, we must set the scene with a discussion of the literature that is concerned with the role of sensemaking in public inquiries.

2.1.3 Public Inquiry sensemaking

As noted above, public commissions and their reports are ‘ceremonial occasions’ organised by governments (Gephart, 1993). Their recommendations can aid in the cultural readjustment of society to a new reality, normally following a failure of foresight and concomitant disaster (Turner, 1976); but not always. Public commission reports are important because the sensemaking and sensegiving processes within them help to structure the unknown (Waterman, 1990). As such, a primary task of the public inquiry process is that of sensemaking, upon which many of its other explicit and implicit functions are based. Karl Weick (1995) summarises the views of several sensemaking scholars, as he outlines the concept of sensemaking:

“The concept of sensemaking, is well named because, literally, it means the making of sense. Active agents construct sensible and sensible (Huber & Daft, 1987, p. 154) events. They “structure the unknown” (Waterman, 1990, p. 41). [...] When people put stimuli into frameworks, this enables them “to comprehend, understand, explain, attribute, extrapolate, and predict” (Starbuck & Milliken, 1988, p. 51)” (p. 4).

The sensemaking in which public inquiries engage, is for the purpose of ‘making sense’ of a past event. They are charged with ‘constructing’ an official narrative with a number of motives according to the public inquiry literature. These motives include the

necessity that the board of inquiry ‘comprehend’ the event, ‘understand’ how and why it took place and to present their findings in such a way that promotes ‘explanation’, and often ‘attributes’ responsibility and blame. While not all inquiries are required to ‘extrapolate’ or ‘predict’ future events, extrapolation and prediction is often implicit in their recommendations, in that the inquiry body is suggesting that if changes, specifically the changes that they present, are not enacted then the problem will not be solved; thus risking a future reoccurrence of a similar crisis event.

Turner (1976), conceived of the public inquiry process as an opportunity to structure an ill-defined problem in a way that it could be ‘absorbed’ and understood by the ‘culture’. This reflects an understanding of the public confusion and outrage that commonly follows such disaster events and a subsequent need for the crisis to be understood, thus creating an official narrative, which is essential for reducing general anxiety, rebuilding trust in failed institutions and providing a basis for a series of proposals that further the goal of systemic re-legitimation (Brown 2000, 2003).

This idea that the crisis event needs to be understood, and subsequently framed, in such a way as to ensure that it can be digested by the culture is done so through the creation of an official accounting of the event in question. This official narrative must be both plausible and authoritative (Brown 2003; Gephart and Pitter 1996; Boudes and Laroche 2009). Providing a standard of success against which a public inquiry can be measured, Brown (2003) writes:

“In effect, a hegemonically successful report is one that is wholly or largely uncritically accepted as providing a comprehensive and accurate account of the events it purports to describe, which is seen to be fair in its assessment of

culpability and the allocation of blame, and which makes seemingly appropriate recommendations” (p. 96).

By these standards, the Final Report of the 9/11 Commission could be considered a hegemonic success. As the study will explore, the Commission’s findings were uncritically accepted. As Posner (2005) notes, “The media response to the 9/11 Commission’s report was on the whole uncritical, indeed perfunctory” (pp. 11-12). This ‘uncritical’ and ‘perfunctory’ nature of media coverage was observed in the early stages of the research for this thesis. Upon a review of the media coverage contained in three major American newspapers, (USA Today, the Washington Post and the New York Times, from July to December 2004), only descriptive accounts of the inquiry process were reported. Surprisingly, not even editorial content challenged either the primary assumptions or the formal narrative upon which the Commission’s recommendations and Congress’ legislative action was based. (Given the volume of news articles from these outlets, approximately 800 in total, and the existing volume contained in the *Congressional Record* transcripts of the reform debates in the House of Representatives and the Senate, over 800,000 words; it was determined that this research project would focus on the Congressional debates and that media coverage of this process would be left for possible future research.) In fact, the style, content and detail of the narrative portion of the Report was roundly praised (Kean, et al. 2007). The bi-partisan nature and approach of the Commission ensured that any individual or political responsibility or blame was omitted. This starved politicians, political parties and political interest groups of critical ammunition that would have had the potential to polarise debate and compromise the power of the Commission’s influence, narrative or recommendations. Alternatively, the Commission focused on the failure of institutions and organisations, and on the misallocation of limited resources. Finally, the recommendations were

focused, limited and imbued with a sense of appropriateness. This rich, monological narrativisation, de-politicisation of blame, and sense of appropriateness all make important contributions to the legitimacy of the process, the strengthening of public trust and the re-legitimation of failed institutions. It is this re-legitimation process that will be explored in greater detail in the following section.

2.1.4 An exercise in re-legitimation

As Brown (2000) asserts, “Public inquiries and the reports they produce are centrally concerned with establishing the legitimacy of organizations and institutions,” (p. 8) and he draws primarily upon Suchman (1995) to provide a relevant conception of legitimacy as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (Suchman, 1995: 574). However, Brown is not alone in emphasising the re-legitimizing role of the public inquiry process. Topal (2009) takes a critical view of the role of legitimation in the context of the public inquiry process. In his study of public hearings he asserts that the practice of legitimation is used to ‘enact institutional power’ (p. 227). His research project posits three main research questions:

“How do participants in a public hearing make sense of a risky economic development?; How does a governmental agency in a public hearing decide on a risky economic development?; How does [the hearing/inquiry body] use its decision to produce an image of legitimacy that conceals yet enables the operation of legitimate power” (p. 282)?

While the first two research questions deal with the subject matter of Topal’s case material in particular, and with a public hearing process that deals with the approval of planning requests in general, the final research question is readily generalisable with

implications for the legitimation role of the public inquiry process that we seek to examine in this thesis.

How then does an inquiry body produce an image of legitimacy? Topal (2009) finds that this image of legitimacy is created with three particular features:

“The participation of affected parties, compliance with the regulations established (and assumed) to represent general public interest with the Board is legally authorized to define and protect. [...] a cost benefit analysis based on expert knowledge which seems to result in rational evaluation (p. 290)”.

The 9/11 Commission appears to meet these three features required to produce an image of legitimacy. First, Thomas Kean, Chairman of the 9/11 Commission stated that it was his intention to: “[...] be nonpartisan and independent. We would stay in touch with the families who had a unique interest in our work, while staying in touch with the American people” (Kean, et al. 2007). Second, the Commission was very vigilant in adhering to their Congressionally authorised mandate. Third, the Commission’s recommendations seemed appropriate and plausible thereby generating considerable praise from the media, the public and from Congressional legislators, this approval was made clear during the subsequent intelligence reform debates in the House of Representatives and the Senate.

There are a number of common themes in the Public Inquiry Literature; however, it is clear that the literature is concerned primarily with the creation, execution and reporting of the public inquiry process. This begs the question: What happens next? In the case of the 9/11 Commission, the release of the final report was followed by extensive legislative debates in both the House of Representatives and the Senate during the post-reporting phase of the inquiry process. These debates appear to be influenced by the

Commission, through its narrative, its final report and its recommendations. But how did these debates unfold. What rhetorical strategies were employed to legitimise and de-legitimise the legislative reform efforts? By focusing on this post-reporting phase of a public inquiry process, greater understanding can be acquired as to the public inquiry re-legitimation process. This current gap in the public inquiry literature has the potential to make an interesting and significant contribution to the discussion of the nature and the roll of re-legitimising institutions in a post-disaster setting.

2.2 Perspectives on Legitimacy

Legitimacy is an important social phenomenon and has drawn a significant amount of academic study across a variety of social science disciplines. Its importance is not surprising when one considers that legitimacy is central to the maintenance of society, social hierarchies and a whole range of human interactions from the economic to the political and from the personal to the societal. While contemporary literature in Organisation Studies deals with many focused applications of legitimacy, the roots of our modern understanding of this phenomenon, originates in its general application to the study of society and human interaction. This is not an attempt to create a comprehensive catalogue of the evolution of Western thought on the concept of legitimacy (for a comprehensive timeline see: Zelditch in Jost and Major, 2001). However, it is important to understand how the thinking on legitimacy has developed and to understand the theoretical foundations of contemporary thought on organisational legitimacy.

Traditionally, the focus of legitimacy has been within the broader societal context. More specifically, interest has been focused on the legitimacy of, and the legitimation of, authority and the authoritative exercise of power within society. How is it, and why is it, that societies are divided between those who rule and those who are ruled. How do rulers maintain their power and why do the ruled agree to this arrangement. This is not a new debate and can be traced back to the origins of ancient western philosophy. Broadly, two theories of society have emerged and dominated sociological debate: Consensus Theory and Conflict Theory (Horowitz 1962).

2.2.1 Consensus theory

The premise of this theory is, as the title suggests, that legitimacy is derived from a consensual agreement between the rulers and the ruled. Both parties agree to these arrangements, because they are based on a shared set of values and norms, and it is the voluntary nature of this agreement that allows this arrangement to be considered legitimate. The establishment of a legitimate regime, based on these shared values, ensures societal stability. It is this stability that further incentivises the people to consent to being governed.

The origins of a consensus view of social relations can be traced back to classical western philosophy. Aristotle (1991), writing in *Politics*, attempts to form a theory of political stability. He concludes that the legitimacy of a government depends on both constitutionalism and consent.

“[...] in democracies of the more extreme type there has arisen a false idea of freedom which is contradictory to the true interests of the state. For two

principles are characteristic of democracy, the government of the majority and freedom. Men think that what is just is equal; and that equality is the supremacy of the popular will; and that freedom means the doing what a man likes. In such democracies everyone lives as he pleases [...] [b]ut this is all wrong; men should not think it slavery to live according to the rule of the constitution; for it is their salvation” (p. 126).

First contemporary efforts towards the creation of a pure consensus theory of legitimacy were published by Parsons (1960). Parsons’ conception of legitimacy was that the acceptance of the social arrangement was voluntary, that this consent was based on a shared belief, between the rulers and the ruled, in societal values and norms, that it is this consensus that makes the social order right and therefore legitimate, and that only a legitimately ordered society can be stable (Zelditch, 2001). It is this stability that Aristotle is referencing when he refers to the salvation of men.

The benefits that legitimacy bestows upon the rulers of the regime, are perhaps more obvious. First, the more legitimate the rulers’ authority, the easier it is for them to exercise their power. This is of particular importance during challenging periods. As Tyler (2006) notes:

“When the public views government as legitimate, it has an alternative basis for support during difficult times. Further when government can call upon the values of the population to encourage desired behavior, society has more flexibility about how it deploys resources” (p. 126).

Second, legitimacy allows those in power “to believe that what they are doing is right [and in] accordance with some higher law [which allows them to fulfill the] need to justify themselves” (Mitchell 1979: 14). The people agree to the societal arrangement and in return receive the fruits of security and stability and the rulers, in addition to the more obvious comforts which accompany power, are able to believe that their actions

are in concordance with a higher authority. Providing a competing view of legitimacy arrangements within society are the proponents of Conflict Theory.

2.2.2 Conflict theory

Machiavelli, writing in the sixteenth century, provides the first fully descriptive account of legitimacy; however, his account deviates from the consensual view of society and is rooted in the dynamics of societal conflict. This conflict view of societal relations makes a number of assumptions:

“(a) the fundamental basis for both action and order is instrumental (i.e., governed by rational self-interest); (b) the real interests of the rulers and the ruled are in conflict; and (c) it is power that makes the rules binding. But (d) pure power cannot make people believe that a rule is “right”; (e) ideology, myth and ritual are necessary to legitimate rules, make them “right” by masking the real interests of the ruler and the ruled; and (f) in the long run, pure power is unstable unless legitimated, so legitimacy is a prerequisite of any social order” (Zelditch 2001: 42).

Therefore the self-interest of the rulers is masked from the population through the strategic use of myth and ideology. It is this strategic use of legitimacy that is necessary to ensure enduring stability within a society thus preserving the advantageous social structures and hierarchy of the rulers. It is this strategic element of legitimacy that has “[...] influenced all subsequent theories of legitimacy, whether conflict, consensus, or any mix of the two. Its basic principle is the economy of legitimacy. Princes make the unaccepted acceptable [...]” (Zelditch 2001: 3). While modern society has replaced princes with politicians, the preservation of state institutions remains vital. When these institutions are threatened or weakened, it is often a priority to re-legitimate in the wake of real or perceived failures. Ceremonial occasions or processes, which rely on myth

and ideology, such as public inquiries or Congressional legislative action can be vital tools for reasserting the dominance of the existing institutional structures.

Central to the development and dissemination of conflict theories to society is Karl Marx (Parkin 1972). Conflict in his world-view occurs between groups within society struggling to acquire limited resources.

“Marx’s hypothesis is that because the ruling class controls the means of mental production (e.g., religion, education, communications), ruling ideas in any epoch are the ideas of the ruling class. The function of these ideas is to conceal, rather than reveal, conflict of the real interests of the classes” (Zelditch 2001: 42).

As seen in the writings of Machiavelli, and central to the views of Marx, the primary function of legitimacy is to conceal the true interests of the elite. The view of conflict theorists is that if an objective observer were able to view society, it would be clear to that observer that the legitimating myths, values and norms are, in fact, ‘masking’ the self-interest of the ruling class. Non-dominant groups mistake these values and norms because of their ‘false consciousness’, which is evident to the objective observer. “The risk, highlighted by conflict theorists, is that justice judgements themselves will be the result of ‘false consciousness’, with the members of subordinate groups adopting the legitimating myths put forward by the dominant class” (Tyler 2006: 28). The concept of legitimating myths, or dominant narratives, is important in the public inquiry literature. The purpose of these myths and narratives is the re-establishment of the public’s trust and the re-legitimation of state institutions.

Despite the divergence in these theories of legitimacy, this is not an unreconcilable dichotomy. Consensus can exist in conflict theory and vice versa. Elements of both the consensus and conflict theories of legitimacy can be seen in the public inquiry process,

in general, and the 9/11 Commission process in particular and a number of theorists have taken a mixed view of legitimacy that incorporates elements of both paradigms. One of the most influential theorists to the modern understanding of legitimacy who adopted a hybrid view of this problem, is German economist and sociologist, Max Weber.

2.2.3 Max Weber

The writings of Weber have been foundational to the contemporary understanding of legitimacy and legitimation in many disciplines, but particularly in the area of Organisation Studies (Ruef & Scott 1998; Suchman 1995; Greenwood, et al. 2008).

Weber's "concept of "legitimacy" refers to the acceptance of the validity of an order of rules" (Lassman 2000, p. 87). This is similar to Aristotle's assertion that the legitimacy of a government is based on constitutionalism and consent. However, in a broader context, Weber is concerned with a central set of questions that focuses on the reasons why a given population consents to be ruled and when this behaviour occurs. Weber (2002) notes that:

"[...] the state is a relationship of rule by human beings over human beings, and one that rests on the legitimate use of violence [...]. For the state to remain in existence, those who are ruled must submit to the authority claimed by whoever rules at any given time. [...]"

[Given this observation, Weber (2002) asks two central questions:] "When do people do this, and why? What inner justifications and what external means support this rule" (p. 311)?

Weber (1958) proposes three sources of regime authority: legal domination, traditional domination and charismatic domination. Each of these forms of domination, to varying degrees, relies on the legitimacy enjoyed by the ruling elite. While authority can be exercised and maintained without legitimacy, the cost and allocation of resources to

employ the necessary levels of coercion can be extremely significant. As Tyler (2006)

notes:

[A weakness in the legitimacy of a regime] leaves society vulnerable because disruptions in the control of resources brought on by periods of scarcity or conflict quickly lead to collapse of effective social order. [However,] when the public views government as legitimate, it has an alternative basis for support during difficult times ” (p. 377).

This reservoir of legitimacy, allows for greater flexibility in allocating limited resources to more productive ends. This is not unlike the view of some organisational theorists who adhere to the strategic view of legitimacy. (The strategic/institutional dichotomy of legitimacy in an organisational context will be addressed later in this chapter.) These organisation theorists suggest that legitimacy should be viewed as an important operational resource of an organisation (e.g: Suchman, 1988; Ashforth & Gibbs, 1990; Dowling & Pfeffer, 1975).

Returning to Weber’s sources of authority, we can see how each seeks to harness legitimacy. Legal domination exists through the development of a transparent system of administrative rules, procedures and laws. Those in authority are seen to be lawfully appointed or elected and are more easily able to exercise power and authority over others. Their power is bounded by the very same rule-set from which they derive their power (Weber 1958). This ruling archetype is prevalent as the official source of authority in the modern liberal-democratic nation state. Leaders are elected by the population under rules laid down by constitutional documents and conventions.

Lawmakers, with an elected mandate, enact laws by which all are bound. These laws are interpreted, and disputes are settled, by the judiciary. In these societies, legal domination permeates down through all layers of government and is intended to

empower and restrict all in society. From broad constitutional rights to local bylaw matters, the tacit agreement of the population and the coercive power of the state ensure the continuation of the domination of the legal and regulatory framework. When these legal and regulatory systems fail, or even appear to fail, their legitimacy is damaged and their authority is threatened. Therefore, there is an urgent need to restore the legitimacy of these systems and institutions. Within the context of the public inquiry process this is done by an ad hoc, temporary investigatory body such as a public commission.

Ironically, the commission of inquiry derives some of its legitimacy from the very institutions that have been compromised and which it seeks to strengthen. In the case of the 9/11 public inquiry, the Commission itself derived some of its legal authority from the fact that it was created through an act of the Legislative Branch, in agreement with the Executive. Regardless, an understanding of this source of authority will be important as we deconstruct the rhetorical strategies employed to debate the intelligence reform legislation in Congress.

While this mode of domination is vital to the maintenance of a contemporary, functioning nation state, and while it is the most easily observable given that these laws and regulations are mostly written, it is important not to underestimate the power of Weber's two remaining domination types. Traditional domination occurs when legitimacy is drawn from a justification that one is in a position of power because one has always been in a position of power. This type of domination is evident, and of particular importance in a monarchy, where power and authority is inherited. Vestiges of this type of domination can be seen throughout Europe and the British Commonwealth and while these monarchs have varying degrees of authority and

responsibilities, almost exclusively restrained by a system of legal domination, their wealth and influence is maintained largely as a remnant of the feudal history of these societies. Finally, Weber (1978) describes charismatic domination in which legitimacy originates with the charisma of a leader. Charisma is “a certain quality in an individual personality by virtue of which he is set apart from ordinary men and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities” (p. 241). Societies with systems of legal or traditional domination are not immune to the influence of charismatic domination. The societies of some of the twentieth century’s most powerful nations were dramatically transformed by ‘charismatic leadership’ (e.g.: Russia, China, Germany). While purely charismatic domination appears to be of lesser importance, in contemporary liberal democratic society, the authority derived from the charisma of politicians appears to have a significant influence on election outcomes. Politicians encourage and cultivate personal imagery that they hope will sufficiently impress the electorate. Charisma, while not a primary source of authority in modern society, remains relevant in an electoral sense. It can be a contributing factor to the success of a politician standing for public office. Victory in an election then bestows upon the newly-elected leader further authority by virtue of the democratic traditions and the legal regime of a society. This example highlights the mutually inclusive, and often mutually reinforcing, nature of these Weberian sources of authority.

These archetypes draw their authority, either explicitly or implicitly, from the understanding between the governors and the governed. This pact is based on the premise that the population views the authorities as legitimate. Therefore authority,

whether coercive or consensual, must possess sufficient legitimacy within its relevant context. i.e. the degree of legitimacy required to govern is inversely proportioned to the degree to which a coercive relationship exist between the governing and the governed.

While Weber's writings have been highly influential within the Social Sciences to the conception of authority and legitimacy, his views have not received an uncritical acceptance. One of the main critiques of his treatment of legitimacy is that he attempts to insulate legitimacy from subjectivity. As Lassman (2000) notes: "Weber's use of the concept of "legitimacy" would appear to remove the possibility of saying that some states are simply "illegitimate" even though its citizens or subjects obey its commands or laws" (p. 87).

This moral agnosticism is echoed by Grafstein (1981) who concurs and states that:

"[i]n Weber's hands [...] legitimacy no longer represents an evaluation of a regime; indeed, it no longer refers directly to the regime itself. Rather, it is defined as the belief of citizens that the regime is, to speak in circles, legitimate. Legitimacy becomes, for Weber, simply a matter of fact, the fact that citizens hold a certain belief. [...] In the end, Weber virtually identifies legitimacy with stable and effective political power, reducing it to a routine submission to authority" (p. 456).

This is a major point of contention for critics of Weber's understanding of legitimacy and authority. (For further criticism of Weber's conception of legitimacy see: David Beetham, *The Legitimation of Power*, London: Macmillan, 1991; John H. Schaar, "Legitimacy in the Modern State," in William Connolly (ed), *Legitimacy and the State*, Oxford: Basil Blackwell, 1984.) One can see that aspects of all three of Weber's sources of domination: legal, traditional and charismatic are all, to varying degrees, relevant in the modern, western, liberal democratic state. As such, it is not difficult to understand why contemporary authors, writing on legitimacy, would look to Weber for a

greater understanding of the concept of legitimacy. These categories of legitimacy were used, in part, as a basis for subsequent and more contemporary models. For example, Suchman (1995) acknowledges the influence of Weber's sources of legitimacy when attempting to reconcile the dichotomy that exists in the recent organisation theory scholarship between strategic and institutional views of legitimacy. Therefore, understanding Weber's tripartite model of legitimacy is important when examining contemporary theorising on this topic.

2.2.4. Legitimacy in Organisation Studies

To this point, the discussion of legitimacy and legitimation has been applied to societal-level issues of governance and the just application of power and authority. An understanding of legitimacy in this broader context is helpful in understanding the ways in which legitimacy manifests within sub-societal units such as organisations and institutions. As Weber (1994) asserts the "modern state is an 'organisation' in exactly the same way as a factory; indeed that is its specific historical characteristic" (p. 146). Therefore, elements of these macro-theories of legitimacy and the legitimation process can be leveraged to explain these sorts of social relations at the institutional level.

Suchman (1995) notes that: "Drawing from the foundational work of Weber (1978) and Parsons (1960), [Organisation Studies] researchers have made legitimacy into an anchor-point of a vastly expanded theoretical apparatus addressing the normative and cognitive forces that constrain, construct, and empower organizational actors" (p. 571). Definitions of organisational legitimacy have centred around three primary sources:

self-justification (Maurer), cultural conformity (Dowling & Pfeffer 1975; Parsons 1960), and the primacy of understandability (cognitive) over their desirability (evaluative) (Meyer & Scott, 1983; DiMaggio & Powell, 1991) (Suchman 1995: 573).

Providing a detailed definition of the phenomenon of organisational legitimacy, Meyer and Scott (1983) assert that

“[...] organizational legitimacy refers to the degree of cultural support for an organization -the extent to which the array of established cultural accounts provide explanations for its existence, functioning, and jurisdiction, and lack or deny alternatives [...]. [Therefore, a] completely legitimate organization would be one about which no questions could be raised” (p. 201).

Traditional views of legitimacy, within Organisation Studies, can be divided broadly into two main approaches: the strategic approach and the institutional approach.

2.2.5 Strategic and institutional approaches to legitimacy

The strategic approach to legitimacy “adopts a managerial perspective and emphasizes the ways in which organizations instrumentally manipulate and deploy evocative symbols in order to garner societal support” (Suchman, 1995: 572); it also implies a degree of agency in which actors can manage and bolster organisational legitimacy (see: Ashforth & Gibbs 1990; Dowling & Pfeffer 1975; Pfeffer 1981; Pfeffer & Salancik 1978). In contrast to the strategic approach to legitimacy, the institutional approach “adopts a more detached stance and emphasizes the ways in which sector-wide structuration dynamics generate cultural pressures that transcend any single organization’s purposive control” (Suchman, 1995, p. 572). Institutional legitimacy views legitimacy as a byproduct of successful interaction with an existing structure.

(Authors who take this view include: DiMaggio & Powell 1983; Meyer & Rowan 1991; Meyer & Scott 1983; Powell & DiMaggio 1991; Zucker 1987). It is this divide in the view of legitimacy, between strategic and institutional, that motivated Suchman to attempt a compromise.

Suchman's Taxonomy of Legitimacy Types

As noted above, the debate on legitimacy in the discipline of Organisational Studies is spirited and very wide ranging. Suchman (1995) is concerned that without a 'careful and even-handed' synthesis "[...] research on organizational legitimacy threatens to degenerate into a chorus of dissonant voices, fragmenting scholarly discourse and disrupting the flow of information from theorists to practitioners" (p. 572). In an effort to avoid this outcome, Suchman (1995) synthesises "the large but diverse literature on organizational legitimacy, highlighting similarities and disparities among the leading strategic and institutional approaches" (p. 571). He attempts to navigate the path between the prominent view of organizational legitimacy as a primarily strategic concern and the competing view that organizational legitimacy is in essence an institutional phenomenon. He acknowledges that "cultural environments [...] [are] fundamentally constitutive of organizational life, and [he] adopt[s] a somewhat skeptical attitude toward the autonomy, objectivity and potency of managers" (p. 577). However, Suchman (1995) does address the challenges organisations are confronted with when they handle "symbolic relationships with demanding constituents" (p. 577). Ultimately, Suchman acknowledges agency with a series of recommendations for gaining, maintaining and repairing legitimacy in practice. In attempting to bridge the gap between these two conflicting views (strategic and institutional) of organisational legitimacy, Suchman (1995) groups types of legitimacy into three broad categories. He

labels these categories as: pragmatic legitimacy, moral legitimacy and cognitive legitimacy.

Pragmatic Legitimacy

Suchman's definition of pragmatic legitimacy asserts that legitimacy is granted because an individual within the organisation's audience determines that the actions of the organisation will directly benefit the individual. The legitimacy is considered pragmatic because the individual is making a practical decision that the organisation is contributing to their self-interest and therefore possesses legitimacy. At the most basic level, this is a type of exchange legitimacy between the individual and the organisation. The organisation provides some benefit to the individual and the individual considers the organisation to be providing a legitimate product or need. As a result, the organisation's legitimacy is strengthened. However, an organisation can enjoy pragmatic legitimisation even when there is not a direct exchange. It may be that the organisation provides a less-direct social, economic or political benefit that is valued by the individual. Being seen to provide this broader societal benefit can also help to bestow a form of pragmatic legitimacy. Suchman (1995) defines this sub-category of pragmatic legitimacy as influence legitimacy.

Finally, an organisation can be seen to hold views, priorities or values which are sympathetic or complimentary to the views of the individual. While there is no clearly tangible benefit to the individual, the perception of shared values is sufficient to contribute to the organisation's legitimisation efforts. Suchman (1995) refers to this final sub-category of pragmatic legitimacy as dispositional legitimacy (pp. 578-579).

Moral Legitimacy

Suchman (1995) designates his second category of legitimacy: moral legitimacy. Moral legitimacy differs from pragmatic legitimacy in that there need not be an immediate calculation of self-interest; rather, the determining calculation is based on the degree to which the action is judged correct and in the interests of the wider society. “These judgements, in turn, usually reflect beliefs about whether the activity effectively promotes societal welfare, as defined by the audience’s socially constructed value system” (p. 579). This does not, however, mean that judgements of moral legitimacy are interest-free; however, they differ from the more narrowly considered self-interested determination of pragmatic legitimacy in that they contain a very pro-social element (Suchman, 1995). As with pragmatic legitimacy, Suchman (1995), divides moral legitimacy into four sub-categories. These sub-types of moral legitimacy are: consequential, procedural, structural and personal.

Cognitive Legitimacy

Suchman’s final category of legitimacy is that of cognitive legitimacy. He highlights two types of cognitive-based legitimacy: one which relies on comprehensibility and one which relies on taken-for-grantedness. Comprehensibility focuses on the ability of an individual to understand an organisation and its activities and the degree of fit between these actions and existing societal models. As Suchman (1995) notes: “Legitimacy, according to this view, stems mainly from the availability of cultural models that furnish plausible explanations for the organization and its endeavors (Scott, 1991; Wuthnow, Hunter, Bergesen, & Kurzweil, 1984)” (p. 582). Further, it is important to note that only those explanations that are compatible with the norms and values of the societal context and the individual’s day-to-day experiences of reality will gain legitimacy

(DiMaggio & Powell, 1991; cf. Geertz, 1973, as cited in Suchman 1995). Finally, the most powerful source of legitimacy is one that is taken-for-granted and therefore beyond the realm of evaluation or conscious cognitive evaluation. As Suchman (1995) explains “[i]f alternatives become unthinkable, challenges become impossible, [then] the legitimated entity becomes unassailable by construction” (p. 583). However, Suchman is quick to note that this is a very uncommon achievement, as very seldom in ‘market economies and pluralist political cultures’ is it assumed that only one organisation is capable of managing a given technology or programme.

While Suchman’s taxonomy of legitimacy is expansive, it does provide a helpful review of the multitude of sources of legitimacy. Its attempt to integrate the strategic and institutional approaches to organisation legitimacy is inclusive of the contemporary academic literature on the topic. This is one of the reasons that Suchman’s model has been highlighted. By recognising the increasingly counter-productive division between the strategic and institutional views of legitimacy within the field of organisation studies, Suchman attempts a new way of understanding legitimacy in an organisational setting. This approach attempts to reduce the dichotomous nature of the study of legitimacy which is particularly important for this research project that will seek to adopt a focus on legitimacy that elevates neither strategic nor institutional views of legitimacy, but rather attempts to engage with more recent literature which emphasises rhetorical sources of legitimacy. Suchman’s work opens the door to new views of legitimacy and his work has been important not only to authors such as Brown (2000) and Brown and Jones (2000) in the realm of the public inquiry literature, but also his model has proved important to rhetorical legitimisation scholars such as Suddaby and Greenwood (2005). It is for these reasons that we have highlighted Suchman’s

contribution to the legitimacy scholarship. Finally, as we move into the last section of the literature review, the appropriateness of Suchman's taxonomy will be made clear when discussing techniques of rhetorical persuasion and the models created by the scholars in this area.

2.2.6 Public Inquiries: An exercise in re-legitimation

General conceptions of legitimacy and its theoretical development in the academic literature have been explored in previous sections of this chapter. What follows is an examination of the issue of legitimacy as it relates to the public inquiry literature.

While not all authors speak of legitimacy directly, their work on public commissions discusses issues and concepts that require, or assume, a base level of legitimacy of the public inquiry process and its subsequent recommendations. This section will examine both the explicit (legitimacy) and implicit (blame, authority, sensemaking and narrative creation) manifestations of legitimacy in the public inquiry literature.

2.2.6.1 Legitimacy and the public inquiry process

For the purposes of this study, we draw upon Suchman (1995) for what he considers to be “an inclusive, broad-based definition of legitimacy that incorporates both the evaluative and the cognitive dimensions and that explicitly acknowledges the role of the social audience in legitimation dynamics” (p. 574). With this in mind, Suchman (1995) defines legitimacy as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of

norms, values, beliefs, and definitions” (p. 574). Under this definition of legitimacy it is clear to see how government agencies and institutions have their legitimacy diminished when their regulatory regimes fail to protect their constituents. In some instances it is a failure such as lack of sufficient oversight or resources in medical facilities (Brown 2000, Boudes & Larouche 2009), industrial accidents (Brown 2003; Gephart 1994; Topal 2009), or man-made, natural disasters (Turner 1976) which act to diminish trust in regulatory regimes and de-legitimize institutional reputation.

The failure of the United States’ Government, its institutions and agencies, to prevent the attacks of September 11, 2001 provide a clear example of multiple regulatory regime failures. These catastrophic failures, and the resultant destruction of property and loss of life, were not viewed as ‘desirable’ and the action, or the inability to marshal effective action on the part of the Government was not viewed as either ‘proper or appropriate’ by the American public. Within the ‘socially constructed system of norms, values, and beliefs’ of the United States, the primary role of the Government is to protect the nation. In this focal task, the Government failed. The scope and impact of this failure risked a serious de-legitimation and questioning of Government authority. As legitimacy is the key element to non-coercive authority and governance, the need to re-legitimate these failed institutions in the wake of this crisis was strong. As the public inquiry literature enumerates, the re-establishment of enforcement of institutional legitimacy is a central role for the public inquiry process.

The public inquiry literature deals with legitimacy in two main ways. Some authors are concerned directly with legitimacy in their exploration of the the re-legitimation process

(Gephart 1994; Boudes and Laroche 2009). However, even the authors for whom their primary concerns are for issues other than legitimacy, nevertheless, deal with motivations that imply or demand a certain level of legitimacy in order to succeed. These authors deal with authoritative narrative (Brown 2003), de-politicisation of disaster events (Brown 2000; Gephart 1992; Kemp 1985) and the re-enforcement of dominant institutions (Elliot and Smith 2006; Topal 2009). While not specifically mentioning the phenomenon by name, legitimacy plays a significant role in accomplishing these goals. As such, we will deal with both the explicit and implicit treatment of legitimacy within the public inquiry literature.

As Brown (2000) asserts, "Public inquiries and the reports they produce are centrally concerned with establishing the legitimacy of organizations and institutions," (p. 8) and he also draws primarily on Suchman (1995) to provide a relevant conception of legitimacy as "a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (p. 8). Within the public inquiry scholarship a few authors focus primarily on the issue of legitimacy and the re-legitimation process. However, a greater number of researchers choose to focus on other phenomena, of which, legitimacy is a secondary, underlying concept. In other words, gaining legitimacy or advancing the re-legitimation process is one contributing factor to the success of other activities.

For example, Brown (2003) in his analysis of the Cullen Report into the Piper Alpha offshore oil platform fire, is concerned with a related legitimation phenomenon:

authority. More specifically, the ability of a public inquiry report to “function hegemonically to impose a particular version of reality on their readers” (p. 95). He seeks to investigate “the means by which inquiry reports accomplish verisimilitude [and] how this form of public discourse depoliticizes disaster events, legitimates social institutions, and lessens anxiety by concocting myths that emphasize our omnipotence and capacity to control” (p. 95). A verisimilitudinous accounting of events or, more simply stated, an official narrative which possesses the appearance of being true or real, is a vital artefact of a ‘successful’ public inquiry process. As Brown (2005) acknowledges, it enables depoliticisation, institutional legitimation and can lessen general anxiety. It also sets the focus of the public discourse, sets the foundations from which recommendations are formed and creates or influences the environment in which changes in policy are debated and made. The foundational nature of the official narrative of the 9/11 attacks is stated directly in the preface to the 9/11 Commission Report: “We present the narrative of this report and the recommendations that flow from it to the President of the United States, the United States Congress, and the American people for their considerations” (National Commission on Terrorist Attacks Upon The United States 2004b: xv). Later in the preface to the report they acknowledge that they “were looking backward in order to look forward” (Ibid.: xvi). In other words, looking back to construct a narrative in order to look forward in making their recommendations.

Thus far this chapter has examined the public inquiry literature and elements of the legitimacy literature. From the public inquiry literature we have determined that the existing literature focuses either on the disaster-event, the inquiry process or the inquiry process’ final reports. There has been no focus on answering the question of: ‘What

comes next?‘ What happens to important and central phenomenon such as the re-legitimation process, after the final report has been published? While there has been significant study of the phenomenon of legitimacy, the majority of the Organisation Studies literature on the subject focusses on the divide between strategic and institutional sources of legitimacy. However, Suchman (1995) has sought to bridge this dichotomy and develop an inclusive model of organisational legitimacy. This consideration of legitimacy, that eschews the oppositional nature of the strategic/institutional divide, has been influential in both public inquiry scholarship and with more recent developments in the scholarship of rhetorical sources of legitimacy, which will be discussed in the following section.

2.3 The Linguistic Turn

During the twentieth century, the broader social sciences experienced a linguistic turn that emphasised the centrality of the relationship between language and philosophy (see: Wittgenstein, et, al 2001; Rorty 1967). In disciplines such as sociology, social psychology, communication theory and cultural anthropology there was an increasing focus on language and texts as a source of insight in to society, social institutions and social phenomenon (Brown 1990; Van Dijk 1997; Alvesson and Kärreman 2000). As Heracleous and Barrett (2001) assert: “[t]he linguistic turn in the social sciences prompted calls for a more complex understanding of organizations that would emphasize language not only as enabling information exchange but also as constructing social and organizational reality” (p. 755).

This focus on language in the social sciences had a significant affect on organisation studies research which led to a discursive turn during the later half of the century (Alvesson and Kärreman 2000; Heracleous and Barrett 2001; Oswick, et al. 2007). This was brought to bare on a wide-range of topics. For example, Pettigrew (1979) used a longitudinal-processual approach to investigate organisations; Thatchenkery (2001) employed hermeneutics; Phillips and Brown (1993) utilised a critical hermeneutic approach; Heracleous and Hendry (2000) and Golant and Sillince (2007) have explored structurational perspectives; and Alvesson & Kärreman (2000) and Phillips and Hardy (2002) made use of discourse analysis. More recently, authors have employed various forms of content analysis (Suddaby and Greenwood, 2005), and the abductive approach of critical discourse analysis (Vaara, et al. (2006); Erkama and Vaara (2010)).

In addition to the abundance of new methodological tools, the linguistic turn has sparked a debate about the relationship of language to social reality and the extent to which language is rightly the sole focus or whether it is simply one important element of social reality (Vaara, et al, 2006). Traditional views on this matter suggest that language simply reflects social realities. Therefore language is representational of social reality and the study of language can uncover social truths. However, post-modernists and those who embrace discourse analysis argue that “an emphasis on the representational capacities of language conceal and obfuscate the more productive question of its creative and functional capacities: what language actually accomplishes” (Alvesson and Kärreman 2000: 137) Authors such as Potter and Wetherell (1987) have used empirical research to show that “[...] people do not use language primarily to make accurate representations of perceived objects, but rather, to

accomplish things, and [that] [...] the variety of means employed to achieve these accomplishments are vastly underestimated in conventional research” (Alvesson and Kärreman 2000: 137). Findings such as these may challenge the mainstream view of language as a transparent vehicle for understanding. However, the recognition that language can be used to accomplish certain objectives dates to antiquity.

2.3.1 Rhetoric

Like legitimacy, the studies of rhetoric have an ancient past. In the fourth century AD, Plato wrote critically about rhetoric. In Plato’s view, communication could take two forms: dialectical and rhetorical. Dialectic was viewed as argumentation based in knowledge and logic; whereas, rhetoric was argumentation practiced by the sophists and lacking substance. In *The Gorgias*, Plato constructed a fictional discussion between Socrates and Gorgias, the father of sophistry, in which Socrates, arguing against the use of rhetoric, said “So when an orator is more persuasive than a doctor, a non-knower will be more persuasive than a knower among non-knowers” (Cooper and Hutchinson 1997: 804). While the doctor’s knowledge is based on experience and specialised understanding, if he were to be less persuasive than an orator with no medical knowledge then, despite having the correct information, he would not be able to convince the audience without a medical background that he was speaking the truth. Therefore, in the Platonic view, rhetoric is a tool for persuasion that is empty of knowledge, potentially deceitful and possibly dangerous if employed to further immoral or unethical ends. “The thrust of Platonic skepticism is that persuasion, by definition, renders onto its user immense power and control” (Hartelius and Browning 2008: 16).

In this critical view, rhetoric can be seen in the contemporary management and organisation literature and can be seen as well in the exploration of rhetoric as a tool of control exercised by management over workers (Barley and Kunda 1992; Oakes, et al. 1998; David and Strang 2006). However, there is an emerging view that rhetoric is more than a cynical tool of deceit and authors such as Sillince (1999) and Hartelius and Browning (2008) would advocate that rhetoric is a fundamental and unavoidable element of discourse and that it should be studied in accordance with the classical understanding as a stylistic resource. Treated in this manner, Suddaby and Greenwood (2005) argue that “[r]hetoric, and particularly the ‘new rhetoric’ (Freedman and Medway, 1994), restricts its focus to explicitly political or interest-laden discourse and seeks to identify genres or recurrent patterns of interests, goals, and shared assumptions that become embedded in persuasive texts ...” (p. 40). By acknowledging the importance and utility of rhetoric and using it as an instrument of investigation of organisational phenomenon, scholars have been able to engage with a broad spectrum of research themes. Hartelius and Browning (2008) call attention to five major themes of Rhetorical studies in managerial research. They are:

- “1. Rhetoric is theoretical and practical;
 2. Rhetoric creates, sustains and challenges organisational orders;
 3. Rhetoric is constructive and constitutive of identity;
 4. Managers are rhetors;
 5. Rhetoric is inextricably linked to both rationality and narrative form”
- (pp. 19-32).

As we continue to examine the connection between rhetoric and legitimacy in the following section, it will become clear that this literature ascribes to at least three of these five themes: the theoretical and practical implications of rhetoric, the need for

rhetorical appeals to shift institutional logics, thus legitimating a new organisational order, and the link between rhetoric (and legitimacy) to rationality and narrative.

2.3.2 Exploring rhetorical sources of legitimation

As has been explained in the previous section there are two distinct literatures on legitimacy within Organisation Studies. The first taking the view that legitimacy is institutional in nature and originates from an appropriate interface between the organisation and its broader context. The second focuses on the strategic sources of legitimacy and ascribes much more importance to agency and the ability of an organisation to actively pursue and enhance its legitimacy. While these are the dominant, competing views on legitimacy in the organisation studies literature, there is a small and emerging literature that focuses on a third view of legitimacy based on linguistic and rhetorical sources of legitimacy. This literature argues that legitimacy, as a social phenomenon, is linked very closely with the use of language and discursive practices. Berger & Luckmann (1966) assert that the act of language is the act of legitimation:

“Incipient legitimation is present as soon as a system of linguistic objectification of human experience is transmitted. For example, the transmission of a kinship vocabulary *ipso facto* legitimates the kinship structure. The fundamental legitimating ‘explanations’ are so to speak, built into the vocabulary” (p. 112).

This would suggest that a careful examination of discursive practices are central to understanding the concept of legitimacy. As such, the study of the role of language as central to the legitimation process, in addition to structural and strategic sources, is an emerging concern within legitimacy research in the field of organisation studies (see for

example: Fine (1996); Zbaracki (1998); Heracleous and Hendry (2000); Emrich et al. (2001); Philips and Hardy (2002); Philips, et al. (2004) & Golant and Sillince, (2007)).

2.3.3 A rhetorical focus

There is a small, but growing, body of literature that examines the ways in which rhetoric is used to build legitimacy (Suddaby and Greenwood 2005; Vaara, et al. 2006; Van Leeuwen 2007; Vaara and Tienari 2008; Erkama and Vaara 2010). Suddaby and Greenwood (2005) examine the role that rhetoric played in the legitimation of significant institutional change in the case of multi-disciplinary professional firms (MDP). This ‘legitimacy contest’ was precipitated by the purchase of a law firm by the Canadian division of Ernst & Young. This acquisition sparked debate as to whether it was appropriate to allow the co-mingling of legal and auditing services within a single organisation. The authors employ neo-institutional theory to answer how affected actors seek to confer or deny legitimacy to new institutional forms. They note that new institutional forms do not emerge frequently. Further, they assert that it is only through the displacement of the existing institutional logics, with an amended and supporting set of logics, that new institutional forms acquire legitimacy and come into existence. They argue that this displacement of logics, is achieved primarily through the use of persuasive language or rhetoric (p. 35). To examine the shift in institutional logics of MDPs, they took as their primary data the transcripts of testimony given to the American Bar Association (ABA) Commission to Study Multidisciplinary Practice and the Securities and Exchange Commission (SEC) Public Hearings on Auditor Independence.

“Collectively the transcripts and supporting documents provide[d] a comprehensive account of the language used to contest the legitimacy of the new organizational form. [...] The data thus capture the arguments used by key actors engaged in a legitimacy contest over institutional logics” (Suddaby and Greenwood 2005: 42).

The authors analysed their data using a modified version of content analysis, first focusing on manifest content and then focusing on the latent content of the data (p. 43-44). During the second stage of data analysis the authors categorised argumentation according to both classic rhetoric (kairos: sensitivity to time; audience: contextual focus of the argument; decorum: shaping the argument to both the moment and the audience.) and persuasive appeal (logos: appeal to logic; pathos: appeal to emotions; ethos: appeals made on the basis of character.) (p. 44). From this analysis, five categories of classification emerged: historical, value-based, teleological, ontological and cosmological. This work contributes to the understanding of the development of cognitive legitimacy by illustrating how rhetoric is used to shape institutional logics thus creating momentum for, and eliminating resistance to, institutional change.

Like Suddaby and Greenwood (2005), Vaara, et al (2006) also examine the phenomenon of organisational transformation. Whereas, Suddaby and Greenwood examined the legitimation process that allowed the amalgamation of legal and audit services in MDP firms, Vaara, et al examine the discursive legitimation of industrial restructuring. Vaara, et al, examined the merger between the Finnish pulp and paper firm Enso with the Swedish firm Stora. Using a CDA method, based on the work of Fairclough (1997; 2003) and the discourse historical method of Van Leeuwen & Wodak (1999) and Wodak and Meyer (2002), the authors examine the media accounts of the merger process exclusively (pp. 6-7). Their research takes the form of a three-stage analysis. In the

first stage they conduct a thematic analysis in order to highlight important issues within the case and in the arena of global industrial restructuring more broadly. (Important issues that emerged from their data were: price, ownership, synergy and other benefits, staff reductions, cultural differences and division of management positions and responsibilities.) Interestingly, as Vaara, et al. (2006) note, the authors chose to refine their dataset at this point by “removing more ‘factual’ news-like pieces of texts from [their] material” (p. 11). The second stage of analysis involved an inter-discursive analysis, with attention to discourses employed when addressing the previously identified themes. They were able to identify neoliberal, nationalistic, humanistic and entertainment discourses. Finally, they employed a textual analysis in order to discover how particular discourses were employed for either legitimation or de-legitimation purposes. The result was the identification of five main types of legitimation strategies: normalisation, authorisation, rationalisation, moralisation and narrativisation. The most important contributions, relevant to legitimating of organisational change, made by Vaara, et al. (2006) are two-fold. First, they contribute to the understanding of discursive elements of legitimacy through the creation of their framework of legitimation strategies. While perhaps not revolutionary, in that rationalisation and moralisation match the classic rhetorical categories of logos and ethos closely and normalisation and authorisation could be comfortably associated with Weberian concepts of traditional and legal domination, this framework is a useful synthesis of rhetorical and other strategies of legitimation. Second, as Vaara, et al. (2006) note, this research “helps understand the role of the media in the complex production, transmission, and consumption processes that create senses of legitimacy/illegitimacy around specific organizational phenomenon” (p. 26).

Erkama and Vaara (2010) are concerned with rhetorical strategies of legitimation as well. Specifically, they focus on the rhetorical legitimation of the closure of the Volvo-owned, Carrus manufacturing plant in Finland. Erkama and Vaara (2010) compiled a dataset in line with a 'classical qualitative case study' in which they examined transcripts of interviews, media reports, minutes of meetings, confidential company documents as well as official publications, through the use of an 'abductive' approach that allowed them to refine their theoretical ideas as their analysis progressed. The aim of their research was to provide a "more nuanced understanding of how contemporary industrial closures are legitimated and resisted [and] [...] increase the theoretical understanding of the role of rhetoric in legitimation more generally" (p. 813). The authors draw on the same classic rhetorical classification system as Suddaby and Greenwood (2005), that of logos, pathos and ethos, but add the categories of autopoiesis and cosmos. "Autopoiesis deals with narratives of purpose and identity [and] [...] cosmos deals with arguments of inevitability" (Erkama and Vaara, 2010: 829-831). In this instance the inevitability was the tide of globalisation. They assert that this allows a better understanding of "the multiple discursive facets in the legitimation of drastic organizational restructuring decisions such as industrial shutdowns" (p. 833). However, the authors note the need for future research of "cases in different socio-political and cultural contexts to be able to distinguish and compare rhetorical dynamics in more nuanced ways" (p. 835). One such case in a different cultural and socio-political context, in which rhetorical strategies were employed to legitimise profound institutional change, were the intelligence reform debates of the United States Congress. This research project has the potential to make a valuable contribution to the emerging,

yet under-developed, rhetorical sources of legitimation scholarship. As is clear from this recent body of literature on the rhetorical sources of legitimacy, scholars have formulated their own frameworks to account for the ways in which rhetorical strategies are deployed in legitimation processes. While a general consensus on a universal system of categorisation has not been reached, significant overlap in the categories, if not the nomenclature, is evident. As such, this body of literature will be central to informing both the theory and the method of this research project.

2.4 Chapter Summary

This chapter has reviewed the relevant literature in three important areas of scholarship. First, the public inquiry literature was examined, noting both how public inquiries are defined within the literature and in what situations they are most needed. As a primary function of most public inquiries is investigatory, sensemaking is a common theme within this scholarship and the topic of public inquiry sensemaking was examined. Finally in this section, the issue of legitimacy in the context of the public inquiry process was considered and in particular the research on the re-legitimation functions of the process was surveyed.

Next, a select history of the understanding of legitimacy in society was considered with a focus on elements of consensus theory, conflict theory and Weberian conceptions of authority and legitimacy. As these have informed the understanding and treatment of legitimacy in the field of Organisation Studies, it was important to review these salient concepts and theories. Recognising the strategic/institutional divisions within the

contemporary scholarship of legitimacy, we relied on an understanding of Suchman (1995) and his hybrid model of sources of legitimacy which attempts to move beyond this traditional split. This model is used both within the public inquiry literature and within the rhetorical legitimacy scholarship and its review within the context of this chapter is helpful to understanding other models and sources of legitimacy. The next section of the review, looked at the concept of legitimacy exclusively within the public inquiry literature. Finally, in this section of the Literature Review, after summarising the chapter's contents, we will review the gaps that present in the current literature and lastly make suggestions as to how this research project can make meaningful contributions to strengthen the existing literatures.

While the public inquiry literature deals with a number of theoretical issues, in practical terms, it focuses on either the inquiry process or the inquiry reports. While these are interesting phenomena, there is a significant omission in the focus of the literature. Currently, the literature does not examine the post-reporting phase of the public inquiry process. This appears to be a significant gap in the public inquiry literature. If public inquiries provide an opportunity for cultural readjustment (Turner 1976), or that their purpose is to facilitate a re-legitimation process to repair the damaged authority of failed institutions (Brown 2000, 2003; Topal 2009), then clearly a cultural readjustment or a re-legitimation process would not stop with the publication of the inquiry report. What remains under-examined in this literature is the actual impact of an inquiry's work on institutions and society well in to the post-reporting phase of the public inquiry process. Additionally, there has been relatively little attention paid to the re-legitimation process. Brown (2003) notes that this process is initiated through the production of an

authoritative inquiry report; however, there is scant empirical research that follows these reports and their recommendations from publication to implementation.

As noted above, research on sources of legitimacy, within the Organisation Studies literature, adhered to a fundamental split between those who attribute legitimacy to institutional factors and those who believe that agency has a role to play in the creation of legitimacy and that legitimacy can be strategically pursued. Following the linguistic turn in the social sciences in general, and in Organisation Studies in particular, a small, but interesting body of rhetorical legitimacy literature has emerged. This research space is occupied by less than a dozen articles, all conducted within different organisational and societal contexts, most adopting differing methods and all producing unique models that seek to create a taxonomic model to identify and explain rhetorical sources of legitimacy. As noted by authors in this field, there is a need to explore further rhetorical legitimization practices in new and diverse empirical context and in instances of profound institutional change.

The 9/11 Commission's public inquiry process provides such a previously unexplored opportunity which fits with the existing gaps in the literature. Within the public inquiry literature, not only has the 9/11 public inquiry process not been the subject of research, more broadly this literature has yet to examine the post-reporting phase of an inquiry process. From the perspective of the rhetorical legitimization literature, the Congressional debates of the 9/11 Commission's recommendations provide an opportunity to study rhetoric in the pursuit, or opposition, of significant institutional change. Few settings abound in rhetoric as the floor of a legislative chamber and with

the complete transcripts contained and available in the *Congressional Record of the United States Congress*, the rhetorical dataset is readily accessible for analysis.

Therefore, this research project will focus on the most rhetorically and procedurally significant event of the post-reporting phase of the 9/11 Commission's public inquiry process: the congressional debates of *the 9/11 Recommendations Act, H.R.10* and the *Intelligence Reform Act, S.2845*.

Chapter 3 - Methodology

3.0 Chapter Introduction

The previous chapter concluded that, while the public inquiry literature has made significant contributions to the understanding of how organisations and society make sense of, and attempt to recover from disaster-events, the post-reporting phase of the public inquiry process has received scant attention. Appropriately, the focus has been on how public inquiries attempt to construct a dominant narrative to aid sensemaking, organisational change, strengthen damaged institutional legitimacy and apportion blame. However, the subject matter of these studies has tended to focus on the earlier phases of this process. As such, there is little focus within the literature on the post-reporting phase of the public inquiry process. The 9/11 Commission provides a particularly rich post-reporting phase for examination. There is a clear and timely link between the publication of the Commission's recommendations and the implementation of many of its suggested reforms in the *Intelligence Reform and Terrorism Prevention Act, 2004*.

The Congressional legislative reform debates in both the House of Representatives and the Senate provide for a sizeable and untapped set of data. If we are to link the re-legitimation role of the public inquiry process with theories of legitimacy and contemporary Organisation Studies literature on rhetorical sources of legitimacy, as we have done in the previous chapter, we can study what has been said about the Commission's recommendations and the argument supporting and opposing such reforms. A substantial dataset can be assembled by focusing on key debates in Congress

to discover the rhetorical strategies employed to legitimise and de-legitimise legislative actions during the post-reporting phase of this particular public inquiry process.

Section 3.1 of this chapter will provide a brief overview of the research project, including the historical contexts and a re-statement of the central research question. This will provide background and focus the justification for the selection and structuring of the research design. The chapter will explore relevant philosophical considerations which underpin subsequent methodological choices and the suitability of the chosen methods to this research project will be explained and justified. Next we will provide an overview of both the selection of data and the method of their collection. Finally, before concluding, the chapter will provide a discussion of the procedures for coding and analysing the data. However, first a brief summary of the post-reporting phase of the public inquiry process under examination will follow. The structure of this chapter, and of the research process is presented in an organised and linear fashion. This is done for the sake of clarity and to meet the general expectations of a Methodology Chapter in a research project of this kind. As those familiar with the grounded theory approach to methodology will understand, the process of theory generation through an iterative process, moving between the dataset and emergent conceptual categories is necessarily less tidy and straightforward than presented in the following sections.

3.1 An Overview of the Research Project

This chapter will explain the rationale for the research design decisions that led to a grounded theory approach to the investigation of the rhetorical strategies employed in the reform debate of the post-reporting period of the 9/11 Commission inquiry process.

What is a research design? Yin (1994) provides an instructive definition:

“Colloquially, a research design is *an action plan for getting from here to there*, where *here* may be defined as the initial set of questions to be answered, and *there* is some set of conclusions (answers) about these questions. Between “here” and “there” may be found a number of major steps, including the collection and analysis of relevant data” (p. 19).

The ‘major steps’ to which Yin alludes consist of a clear statement of the ontological and epistemological foundations of the research project, a justifiable methodological approach and the selection of appropriate research methods to be used for the ‘collection and analysis of the relevant data’. Each of these elements must be chosen on the basis of coherence, appropriateness and utility and when done correctly, together they will provide the researcher with a powerful research design able to answer the relevant research questions. This research design engages a large textual dataset drawn from the major legislative debates of the post-reporting phase of the 9/11 Commission’s public inquiry process. Specifically, the data originates from Congressional transcripts of the debates of *S.2845* and *H.R.10*. The goal in assembling and analysing such a dataset is to provide the researcher with an understanding of the rhetorical strategies employed by those involved to legitimise or de-legitimise the proposed intelligence reform legislation.

3.1.1 The historical context

The commercial jetliner hijackings of American Airlines Flight 11, United Airlines Flight 175, American Airlines Flight 77 and United Airlines Flight 93 set in motion a string of events, which together have had an historic impact. The attacks set in motion a series of events that led to the creation of the *National Commission on the Terrorist Attacks Upon the United States*. The Commission, as outlined in the preface of its final report, was mandated to:

“ [...] investigate facts and circumstances [...] relating to intelligence agencies, law enforcement agencies, diplomacy, immigration issues and border control, the flow of assets to terrorist organizations, commercial aviation, the role of congressional oversight and resource allocation, and other areas determined relevant by the Commission” (National Commission on Terrorist Attacks Upon The United States 2004b: xv).

Nearly twenty months after its constitution, the Commission published its findings in the form of a 567 page volume containing a comprehensive narrative and a series of recommendations.

The timeframe of this study is clearly bounded. It focuses on the post-reporting phase of the 9/11 Commission’s inquiry process. This period begins with the release of the Commission’s final report on the 22nd of July 2004 and ends with the Presidential Bill signing of the Intelligence Reform and Terrorism Prevention Act, 2004 on the 17th of December, 2004. This piece of legislation contained a majority of the 9/11 Commission’s recommendations for change. During this time, the Senate and the House of Representatives introduced, debated and passed their respective reform legislation. Congress negotiated a compromise between the House and the Senate Bills, debated the compromise and jointly passed the amended legislation to be sent to the President for his signature. For what has been called the largest re-organisation of the American intelligence community since the start of the Cold War, a seventy-six day

interval, replete with recesses in the Congressional calendar and in the midst of a politically charged Presidential election year, it was a remarkable amount of organisational reform in a limited period of time.

The 9/11 Commission was a significant public inquiry and provides fertile ground for researching the re-legitimation process after the failure of state institutions. The post-reporting phase of this public inquiry is clearly bounded and dominated by the legislative processes of the United States Congress. In exploring the re-legitimation process of a public inquiry it is appropriate to explore various sources of legitimacy, including those of rhetorical origin. The transcripts of these reform debates contain more than 800,000 words of discursive action and rhetoric and, within these debates, legislators employed rhetorical strategies in order to either legitimise or de-legitimise the continuation of a process that originate with the 9/11 Commission's work.

(Transcripts of these legislative reform debates, the textual dataset for this investigation, can be found in the *Congressional Record* of the United States Congress, Volume 150., Nos. 118 to 125, 127 and 138 to 139. Electronic versions of which can be found online at: http://www.fas.org/irp/congress/2004_cr/index.html. These transcripts provide an excellent opportunity to explore the under-researched post-reporting phase of the public inquiry process, as well as the under-research rhetorical contribution to the larger public inquiry re-legitimation process. As such, this thesis is focused on answering the research question: *what rhetorical strategies were employed in the legislative reform debates of the post-reporting phase of the 9/11 Commission's public inquiry process?*

Having reiterated the central research question, the remainder of this chapter will provide a thorough explanation of the research design. This will involve a discussion of the philosophical assumptions, both ontological and epistemological, that underpin this study, a detailed justification for the selection of a methodological approach, an outline of the dataset and an explanation of the coding and analytical procedures employed.

3.2 Philosophical Considerations

While a majority of this chapter will focus on the consideration of a suitable methodological approach and the selection and deployment of particular research methods, it is appropriate to set first both the ontological and epistemological context for this thesis. The consideration of epistemological issues and the articulation of the chosen epistemological orientation underpins and justifies the methodological choices taken in this study. However, before a discussion of the epistemological foundation of this study, the underlying ontological perspective and the relationship between ontology and epistemology will be considered.

3.2.1 Ontology

A clear statement of ontological beliefs provides an important context to the decisions taken in designing a successful research project.

“To ensure a strong research design, researchers must choose a research paradigm that is congruent with their beliefs about the nature of reality. Consciously subjecting such beliefs to an ontological interrogation in the first instance will illuminate the epistemological and methodological possibilities that are available” (Mills, et al. 2006: 26).

Ontology is the study of the nature of reality. “[It] refers to our views as to what constitutes the social world and how we can go about studying it” (Barbour 2008: 20). While there are many perspectives on the nature of reality, in the social sciences, there are three broad and dominant categories and they can be imagined as being set along a continuum: Representationalism, Relativism and Nominalism.

Adherents to the Representationalist perspective understand truth to be discoverable through the verification of predictions and that facts are concrete, but not directly accessible. The second view is Relativism and it asserts that the truth ‘requires consensus between different viewpoints’ and that facts are dependent on the ‘viewpoint of the observer’. The third view is Nominalism and it asserts that ‘truth depends on who establishes it’ and facts are all human creations (Easterby-Smith, et al. 2003).

As an ontological position, the author sympathises most strongly with a hybrid ontological view that incorporates elements of both Representationalism and Relativism. This may appear problematic given the need to adopt an epistemological view that favours social constructionist, rather than positivist research methodology. However, despite their differences these ontological and epistemological choices can be reconciled. This reconciliation “[...] is based on the assumption that social reality is independent of us and exists regardless of whether we are aware of it. Therefore, the ontological debate of ‘What is reality?’ can be kept distinct from the epistemological question of ‘How do we obtain knowledge of that reality?’” (Collis and Hussey 2003: 52). Having stated the author’s Representationalist/Relativist hybrid view of Ontology –and thus acknowledging potential, pre-existing bias on the nature of reality, facts and

truth– the next section will examine briefly the basic epistemological debate and the epistemological position employed with this particular research project.

3.2.2 Epistemology

Whereas ontology focuses on our view of the nature of reality, epistemology deals with our assumptions of how knowledge of reality is obtained and used. From a research perspective, epistemology is vital as it:

“[...] assumes some vantage point, one step removed from the actual practice of science itself. At first sight this promises to provide some foundation for scientific knowledge: a methodological and theoretical beginning located in normative standards that enable the evaluation of knowledge by specifying what is permissible and hence the discrimination of warranted belief from the unwarranted, the rational from the irrational, the scientific from the pseudoscience” (Johnson and Duberley 2006: 3).

Epistemological perspectives within management studies can be imagined –in a most general sense– along a continuum, which includes the following groupings: Positivism, Interpretivism and Constructivism. These classifications correspond roughly to the ontological designations described above; however, these epistemological views are not necessarily tied to their respective ontological counterparts: Representationalism, Relativism, and Nominalism. As previously stated, one’s views on the nature of reality and one’s views on the nature of knowledge can be independent.

While successfully applied to the Social Sciences, positivism has its roots in the natural sciences and favours the quantitative methods of scientific investigation as the only legitimate investigative approach. It is an approach that “[...] has the elements of being reductionistic, logical, and [with an] emphasis on empirical data collection, [is] cause-

and-effect oriented, and deterministic based on *a priori* theory” (Creswell 2007: 22). This epistemological orientation is partial to research methods such as experiments, surveys, quantitative data and statistical analysis (Thietart, et al. 2001).

A positivist epistemological approach to the current study suits neither the author’s views nor the preferred treatment of text. Given the qualitative nature of the dataset, the lack of investigator control over past events, and the preference for an inductive, theory-building research design, a positivist epistemological approach will not be chosen.

The second major epistemological paradigm within management studies is Interpretivism. Unlike the adherence of positivism to the principles of natural scientific inquiry, interpretivism sees a fundamental difference between the subjects of study in the natural sciences (molecules, plants, animals, etc.) and the subjects of study in the social sciences (people, organisations, societies, etc.). This fundamental difference between the natural and social sciences is explained by Laing (1967), as he stresses the need to “[...] realise that there is an ontological discontinuity between human beings and it—beings [...] Persons are distinguished from things in that persons experience the world, whereas things behave in the world” (p. 53). The acknowledgment of human *experience* adds a new complexity to the study of the social sciences. Lee (1991) elaborates on the implications of the unique nature of persons when he writes that, “[...] the same physical artifact, the same institution, or the same human action, can have different meanings for different human subjects, as well as for the observing social scientist” (p. 347). Therefore, facts and meaning have a distinctly subjective nature based on a multiplicity of perspectives. As explained by Thietart, et al. (2001),

paraphrasing Guba and Lincoln (1994), “ [...] there is not one sole reality –which would be possible to apprehend, however imperfectly– but multiple realities; the product of individual or collective mental constructions that are likely to evolve over the course of time” (p. 113).

The possibility of evolving multiple meanings of realities and facts provides a unique challenge for the researcher who must:

“[...] interpret this empirical reality in terms of what it means to the observed people. In accepting these intersubjectively created meanings as an integral part of the subject matter the researcher [...] is studying, [he] must collect facts and data describing not only the purely objective, publicly observable aspects of human behavior, but also the subjective meaning this behavior has for the human subjects themselves” (Lee 1991: 347).

This undertaking requires different methodologies and methodological tools. Therefore, in opposition to the preference for quantitative methodologies and techniques in a positivist approach, qualitative methods of inquiry tend to populate the interpretivism epistemological approach. Interpretivism is relevant with respect to this project in that it recognises that both observable objects and phenomena, such as social interaction, power relationships and social institutions, are real and can be studied given an appropriate methodological approach.

Finally, at the other end of the epistemic spectrum is the social constructivist paradigm. While positivism recognises an external and true reality and interpretivism asserts a multiplicity of realities based on different observers, constructivism advocates that there is, in fact, no independent reality and that all facts and notions of reality are human constructions. Easterby-Smith, et al. (2003) outline the primary assignment of a researcher within the constructivist epistemological paradigm:

“In starting from a viewpoint which does not assume any pre-existing reality, the aims of the researcher are to understand how people invent structures to help them make sense of what is going on around them. Consequently, much attention is given to the use of language and conversations between people as they create their own meaning” (p. 34).

It should be noted that in addition to the view that reality and facts are human constructions, they are also in a constant state of revision and reinvention as a result of ongoing social interactions (Bryman and Bell 2007). While the constructivist attention to social phenomena is encouraging, the fact that it assumes absolutely no objective reality is perhaps epistemologically extreme. This research project is an examination of real events with very real implications. There is a practical, public-policy orientation to this work and while it will necessarily deal with many socially constructed phenomena, to embrace the more radical elements of a relativist/constructivist approach is not desirable.

The three paradigms (positivism, interpretivism, social constructionism), described above, represent rigid embodiments of epistemological orientations; however, in practice researchers often hold less dogmatic views. As such the boundaries amongst the paradigms can be crossed in instances when it is both practically useful and logically coherent to do so. Tsoukas (2000) makes a strong argument for bridging these paradigms in order to access the truth. To this end, he suggests that:

“Realists [positivists] are right in saying that there is a social world outside our heads. Constructivists are right in claiming that the social world is constituted by language-based distinctions which are socially defined and established. Both sides can be reconciled if it is accepted that social reality is causally independent of actors (hence realist have a point) and, at the same time, what social reality is depends on how it has been historically defined, the cultural meanings and distinctions which have made it this reality as opposed to that reality (hence the constructivists also have a point)” (p. 531).

Tsoukas' attempt to bridge elements of differing epistemological paradigms is helpful in accommodating both the researcher's ontological leanings and the epistemological needs of this research project. This compromise between two otherwise rigid and oppositional paradigms leads to, a viewpoint known as Critical Realism.

Critical Realism retains ontological elements of positivism, hence the term *realism*, while acknowledging that study within the social sciences can benefit from a more Interpretivist/Constructivist epistemological approach thus providing a broader range of methodological tools than would otherwise be available to a strict Positivist. As Easterby-Smith, et al. (2003) explain:

“[c]ritical realism makes a conscious compromise between the extreme positions: it recognizes social conditions (such as class or wealth) as having real consequences whether or not they are observed and labelled by social scientists; but it also recognizes that concepts are human constructions” (pp. 32-33).

The foci of this study are key rhetorical strategies employed during the legislative reform debates of the post-reporting phase of the 9/11 Commission inquiry. These rhetorical acts, and the texts in which they are recorded, are socially constructed artefacts. An examination of these artefacts leads to a discussion of social constructs such as sensemaking, hegemonic narrative, legitimacy and authority, none of which can exist outside the boundaries of the social world. As such, Critical Realism's acknowledgement that social constructions have a consequential impact on the material world is epistemologically relevant to this research project. Simply because these social constructs do not have physical characteristics that can be easily measured or quantified through a positivistic approach does not mean that they do not exist. In the same way, that our inability to observe some natural scientific phenomena does not diminish the reality of their existence (Miles and Huberman 1994). Having outlined the

philosophical foundations of this research project and reconciled these ontological and epistemological influences, the next section of this chapter will concentrate on the selection and justification of a methodologically grounded theory approach.

3.3 Methodological Approach: Grounded Theory

The previous discussion of philosophical assumptions in *Section 3.2* is not undertaken in isolation; rather, it has an important role in the selection of an appropriate research methodology and, in turn, is influenced by the needs and the nature of the research project. Therefore, the previous rejection of a positivist epistemology and the embrace of a more phenomenological epistemic approach, encompassing both Interpretivist and Constructionist views, have informed the following choice of research methodology.

The selection of an appropriate methodological approach is vital to the success of any research project. There are three primary considerations that must be explored prior to choosing an effective and well-suited methodology. These considerations focus on: ensuring that the chosen methods are compatible with the epistemological beliefs of the researcher and the epistemological grounding of the research project, that the chosen methods are compatible with the dataset to be analysed, and that the methods engage the data in the most appropriate manner for accomplishing the aims of the research and for answering the research question. The purpose of this section is to introduce the chosen methodological approach and explain why this decision is a justifiably appropriate match with the epistemological grounding, the data and the research question. First,

however, an introduction to grounded theory, the chosen methodological approach, is needed.

3.3.1 Introduction to grounded theory

Grounded theory is an initially inductive qualitative research method used by researchers to develop theory from data of particular social phenomena (Martin and Turner 1986). Researchers engage in an iterative process that moves back and forth between data and the emergent theory. Corbin and Strauss (1998) define theory as “ [...] a set of well-developed categories (e.g., themes, concepts) that are systematically interrelated through statements of relationship to form a theoretical framework that explains some relevant social [...] phenomenon” (p. 22). This theory is generated from the data rather than being applied in an *a priori* fashion (Strauss and Corbin, 1998).

Grounded theory was formally introduced by sociologists Glaser and Strauss (1967), as a response to an academic context that was dominated by positivistic, quantitative approaches to research. Grounded theory was an attempt to provide a methodology which was better equipped to understand the individuals and phenomena under examination (Creswell 2007; Babchuk 2009). The grounded theory approach contrasted “with the logico-deductive approach, by arguing that, in principle, theory testing through hypothesis setting alone ignored the whole process of theory generation, and that variable-focused analysis was truly insensitive to the real-life problems” (Eriksson and Kovalainen 2008: 155). In summary, the aim of grounded research was to “[...] construct theories in order to understand phenomena. A good grounded theory is one

that is: (1) inductively derived from data, (2) subjected to theoretical elaboration, and (3) judged adequate to its domain with respect to a number of evaluative criteria” (Haig 1995: 1-2). With the publication of *The Discovery of Grounded Theory* (1967), and through their subsequent collaborations, Glaser and Strauss were able to generate a considerable following in qualitative research circles.

3.3.2 Development of grounded theory

Despite their landmark collaboration, Glaser and Strauss eventually developed divergent views of grounded theory. While Glaser (1978; 1992; 1998; 1999) is considered to have kept more closely to the classic approach to grounded theory (Heath and Cowley 2004), Strauss and Corbin (1990; 1994; 1998) evolved their approach to grounded theory creating a number of differences between Glaser and Strauss. These differences include, but are not limited to: an acceptance of the role of a researcher's prior knowledge of self and the literature (Strauss), limited pursuit of the literature until after theory has emerged (Glaser), embrace of a more rigorous coding framework (Strauss), concern that such a framework threatens the emergence of theory (Glaser), an increased focus on deduction (Strauss), maintaining the preeminence of induction (Glaser). (A complete assessment of the divergence of the Glaserian and Straussian approaches to grounded theory can be found in Heath and Cowley (2004)).

An important point of divergence was Strauss and Corbin’s (1990) development of a rigorous set of procedures for researchers to follow. Their approach has been criticised as being overly prescriptive (Glaser 1992; Creswell 2007). In particular, Glaser (1992)

was critical of what he considered Strauss’ overly-structured approach to grounded theory which he thought would force “data and analysis into preconceived categories and, thus, contradict fundamental tenets of grounded theory” (Charmaz 2006: 8). However, Strauss and Corbin (1998) have since clarified that their intention was never to impose a rigid procedure that would interfere with the emergence of theory from the data (Heath and Cowley 2004). It would suggest that, despite the development of a more specific coding rubric, Strauss remained supportive of the principle of flexibility. Therefore Strauss and Corbin’s approach, while more prescriptive, is not intended to be so driven by procedure that it jeopardises the emergence of theory grounded in the data, as intended by the classic grounded theory approach. The procedural differences between Strauss and Corbin and Glaser are outlined in Table 3.0 below.

TABLE 3.0 - Data analysis: Glaser and Strauss compared

	<i>Strauss and Corbin</i>	<i>Glaser</i>
Initial coding	<i>Open coding</i> Use of analytic technique	<i>Substantive coding</i> Data dependent
Intermediate phase	<i>Axial coding</i> Reduction and clustering of categories (paradigm model)	Continuous with previous phase Comparisons, with focus on data, become more abstract, categories refitted, emerging frameworks
Final development	<i>Selective coding</i> Detailed development of categories, selection of core, integration of categories	<i>Theoretical</i> Refitting and refinement of categories which integrate around emerging core
Theory	Detailed and dense process fully described	Parsimony, scope and modifiability

Source: (Heath and Cowley 2004: 146)

The more structured approach of Strauss and Corbin can be seen above in Table 3.0, as their method calls for three discrete phases of coding: open, axial and selective.

Whereas, Glaser provides a more flexible approach with less distinction between the

stages of coding and analysis. This divergence of approach between Glaser and Strauss, was foreseeable. As Charmaz (2006) notes, each researcher made unique contributions to their collaborative efforts.

“Glaser imbued grounded theory with dispassionate empiricism, rigorous codified methods, emphasis on emergent discoveries, and its somewhat ambiguous specialized language that echoes quantitative methods. [...] Strauss brought notions of human agency, emergent processes, social and subjective meanings, problem-solving practices, and the open-ended study of action to grounded theory” (p. 7).

While the division of Glaser and Strauss was the most significant development during the initial evolution of grounded theory, there have been subsequent attempts to reinterpret and reorient this methodological approach. More recently, some researchers have attempted to direct grounded theory in a more phenomenological direction (see: Brant 2003; Charmaz 2005, 2006; Clarke 2005). Charmaz (2005, 2006), one of the most prominent advocates for this approach, has developed what is referred to as a ‘constructivist grounded theory’.

“Constructivist grounded theory, according to Charmaz (2006), lies squarely within the interpretive approach to qualitative research with flexible guidelines, a focus on theory developed that depends on the researcher’s view, learning about the experience within embedded, hidden networks, situations, and relationships, and making hierarchies of power, communication and opportunity” (Creswell 2007: 65).

While there has been attempts to move grounded theory in a more phenomenological direction, others have sought to direct it on a more positivist course (see: Haig 1995).

3.3.3 Chosen grounded theory approach

The grounded theory approach of Strauss and Corbin (1990; 1994; 1998) has been chosen for this thesis. This more prescriptive approach to coding is appropriate given

the circumstances of this research project. First, given the volume of textual data under examination the structured approach of Strauss and Corbin will assist in managing the data in a more systematic manner (Heath and Cowley 2004; Creswell 2007). Second, the more structured and prescriptive approach of Strauss and Corbin is preferred, given that the approaches of Glaser (1978; 1992; 1998; 1999) and Charmaz (2005; 2006) are less structured and therefore better suited to researchers with prior experience with grounded theory (Heath and Cowley 2004; Creswell 2007). For these two reasons, this study will employ a Straussian grounded theory approach. With the particular approach selected, the following section will establish the further justification of this methodological choice, by outlining how a grounded theory approach fits with the epistemological orientation, the data and the central research question.

3.3.4 Epistemological fit

While grounded theory's introduction by Glaser and Strauss (1967), as discussed above, was an attempt to bolster qualitative research at a time when positivist, quantitative methodologies were dominant, the epistemological underpinnings of grounded theory contain elements of objectivism (Guba and Lincoln 1994). Glaser (1978, 1992) remained closest to positivist epistemology, with "assumptions of an objective, external reality, a neutral observer who discovers data, reductionist inquiry of manageable research problems, and objectivist rendering of data" (Charmaz, in Denzin and Lincoln (eds.) 1998: 248). Similarly, Corbin and Strauss' (1990, 1998) position "assumes and objective external reality, aims toward unbiased data collection, proposes a set of technical procedures, and espouses verification" (Ibid.: 248). As discussed above, in

Section 3.2, this research project’s epistemological underpinnings are of a critical realist nature. Therefore a qualitative methodological approach, informed by grounded theory, is epistemologically consistent and appropriate given the nature of this study.

3.3.5 Appropriate for the data

Having outlined the epistemological appropriateness of a grounded theory approach to this research project, the focus turns to the justification based on the suitability of grounded theory to the nature of the data at the core of this study. The textual dataset for this research project is significant, with over 800,000 words of Congressional debate contained in verbatim transcripts. As Strauss and Corbin (1998) note, “One of the advantages of grounded theory is that it provides researchers with analytic tools for handling masses of raw data” (p. 13). The prescriptive coding framework of a Straussian grounded theory approach allows for the initial disaggregation of large texts into emerging and comprehensible categories (open coding), the identification of relationships between these categories (axial coding) and the eventual integration of these categories to produce a model or theory (selective coding) (Saunders, et al. 2003). As such, a grounded theory approach is appropriate given the volume of the textual dataset under examination.

3.3.6 Appropriate for answering the research question

Within the academic literature there has been little attention paid to the process of re-legitimation during the post-reporting phase of a public inquiry process. The legitimacy

of governments, institutions, agencies and organisations that fail to prevent, or provide an inadequate response to, a crisis-event is damaged as their failures become evident. As the public inquiry literature suggests, one role of a public inquiry is to regain public trust and repair damage done to legitimacy. A recent development in the legitimacy literature in the area of organisation studies is a focus on the rhetorical sources of legitimacy. It can be argued that both literatures (public inquiries and rhetorical sources of legitimacy) are under-explored. Certainly, in the context of the post-reporting phase of the 9/11 Commission inquiry, no conceptual models or theories have been developed to explore the rhetorical strategies employed during this phase of the re-legitimation process. Creswell (2007) explains the appeal of a grounded theory approach in situations where there are no off-the-shelf theories or models available:

“Grounded theory is a good design to use when a theory is not available to explain a process. The literature may have models available, but they were developed and tested on samples and populations other than those of interest to the qualitative researcher. Also, theories may be present, but they are incomplete because they do not address potentially valuable variables of interest to the researcher” (p. 66).

While a number of academics have examined the re-legitimation role of public inquiries (see, for example: Gephart (1992); Brown (2000); Topal (2009)), their research has been focused either on the public inquiry process or the public inquiry reports which were produced by these inquiries. There is no academic work that explores the post-reporting phase of the inquiry process and therefore no available models to apply to this particular research project in an *a priori* manner.

In addition to a lack of empirical research on the post-reporting phase of a public inquiry process, the literature which examines the rhetorical sources of legitimacy in instances of significant organisational change focus on very different practical contexts

(e.g.: Multi-disciplinary professional firms or corporate mergers). While potentially related and informative, these conceptual models were not constructed with the legislative change process, during the post-reporting phase of an enormously significant public inquiry process in mind. As such, it is appropriate to leverage the iterative, process of grounded theory to explore this extensive and rich dataset with the aim of constructing a relevant conceptual model of rhetorical strategies in the context of the post-reporting phase of a public inquiry process.

This section defined and explored the development and use of a grounded theory approach to qualitative research. It outlined the justifications of this methodological choice by explaining how grounded theory is epistemologically consistent with the views of the researcher and the philosophical underpinnings of this research project and that grounded theory has a number of practical benefits given the nature of this research project's data and central research question. The following sections of this chapter will address the questions of 'what' and 'how': What data are to be examined?; and How was this analysis of the data conducted?

3.4 Data Source and Collection

The primary data for this research project focuses on key texts that record the rhetorical reform debates of the post-reporting phase of the 9/11 Commission's inquiry process.

This includes the official transcripts of the legislative debate of both Houses of Congress. This source of data will be explained and quantified below.

3.4.1 Source of data

Congressional efforts to act on the 9/11 Commission’s recommendations, legislating the largest reorganisation of America’s intelligence community since the start of the Cold War, is contained in the official record of the debate and proceedings of the United States House of Representatives and United States Senate. This official source is referred to as the *Congressional Record*. These transcripts provide a *verbatim* record of the legislators’ rhetorical strategies both in support and in opposition to the legislative embodiment of the Commission’s recommendations. This includes debates in the Senate of the *National Intelligence Reform Act of 2004 (S.2845)* and the House of Representatives debates of the *9/11 Recommendations Implementation Act (H.R.10)*. The breakdown of the legislative debate schedule for these two pieces of legislation, and the respective debate transcript lengths are outlined in Table 3.1 below.

TABLE 3.1 - Schedule of Congressional Debates: *H.R.10* & *S.2845*

Legislative Activity	Date (2004)	Transcript Length(words)
<i>US Senate</i>		
Introduction: <i>S.2845</i>	23 September	---
Day 1: Senate Debate on <i>S.2845</i>	27 September	32,286
Day 2: Senate Debate on <i>S.2845</i>	28 September	38,576
Day 3: Senate Debate on <i>S.2845</i>	29 September	59,833
Day 4: Senate Debate on <i>S.2845</i>	30 September	70,559
Day 5: Senate Debate on <i>S.2845</i>	1 October	79,523
Day 6: Senate Debate on <i>S.2845</i>	4 October	91,010
Day 7: Senate Debate on <i>S.2845</i>	5 October	44,571

Legislative Activity	Date (2004)	Transcript Length(words)
<i>US Senate</i>		
Day 8: Senate Debate on <i>S.2845</i>	6 October	60,801
Day 9: Senate Debate on <i>S.2845</i> . Senate passes amended <i>S.2845</i>	8 December	99,128
<i>US House of Representatives</i>		
Day 1: House Debate: <i>H.R.10</i>	6 October	182,198
Day 2: House Debate on <i>S.2845</i> . House passes amended <i>S.2845</i>	7 December	52,137
Total Congressional Debate		810,622

There are two elements of the information contained in Table 3.1 that require explanation. First there is a dramatic difference in the amount of debate on the respective bills between the House of Representatives and the Senate. This is due to the way each chamber conducts business and the different rules and procedures that regulate debate, as will be discussed in the following chapter. The second is the time between the second last and last days of debate in both Houses. At the end of Day 8 of Senate Debate, *S.2845* and at the end of Day 1 of the House Debate, *H.R.10* there is a considerable time gap. During this time a conference committee met to negotiate a compromise between *S.2845* and *H.R.10*, as the bills contained significant differences. The conference committee process is explained in greater detail in the next chapter as well.

These debates represent a lengthy series of rhetorical actions on behalf of legislators either supporting or opposing the changes recommended by the Commission. These

rhetorical acts are captured in text in the form of *verbatim* transcripts. These transcripts are freely accessible by the public and the lawmakers are aware that their comments are public and can be scrutinised. Filler (2001) identifies three functions of legislative debate. First the rhetoric employed during a debate can act to persuade other legislators to take or change a position on the particular item of legislation. Second, the debate can persuade a legislator not to change his opinion on the issue, but rather that voting in a particular manner would be politically advantageous. In this instance the debate can reflect public opinion or shape public opinion in such a way as to indirectly influence the votes of other representatives. Filler (2001) notes that “[i]n Congress particularly, where legislative debates are nationally televised, legislative rhetoric is particularly capable of capturing public attention and captivating voter interest” (p. 324). Finally, these debates are educational opportunities for the media and the public, as legislators are expected to understand and articulate the details of the particular public policy option under discussion. As such, the speeches of legislators are rhetorical in nature, in that their intent is persuasion. Legislators engage in these rhetorical acts to persuade others that their view of the issue is legitimate and it is these rhetorical sources of legitimacy that are of particular interest to this research project.

3.4.2 Characteristics of the data

The body of textual data derived from the transcripts of the Senate debate on *S.2845* was different from the body of textual data derived from the transcripts of the House debate in two important ways. First, the debate in the Senate was significantly longer than the debate in the House. As outlined in TABLE 3.2 above, the Senate debate

generated approximately 576,287 words of transcription; whereas, the House debate generated only 234,335 words. Second, the number of opponents to the legislation in the Senate was quite small. This is reflected in both the first Senate vote on *S.2845* in which only two Senators (Byrd, Hollings) voted against the legislation as well as the second vote of the *Conference Report S.2845* in which again only two Senators (Byrd, Inhofe) voted against the compromise legislation. With such a small number of opponents, the researcher sought out Senators who resisted the legislation initially, analysing their rhetorical strategies for de-legitimizing the reform-agenda, if only temporarily. In the House of Representatives, Speaker of the House, Representative Dennis Hastert was the sponsor of the Bill and there was a total of twenty-six co-Sponsors. Numerically, there was considerably greater opposition in the House than in the Senate. The final votes on *HR.10* and *S.2845* were 282 ‘For’-134 ‘Against’-17 ‘Not voting’ and 336 ‘For’-75 ‘Against’-22 ‘Not voting’ respectively. This section of the chapter has detailed the source and scope of the dataset. Next, *Section 3.5* details the coding and analysis of this dataset.

3.5 Data Coding and Analysis

In the previous section the source and scope of the textual dataset was quantified. The transcripts were downloaded from the Federation of American Scientist’s Intelligence Resource Program website. The Federation of American Scientist is an independent, nonpartisan think tank and registered 501(c)(3) non-profit membership organization. This website was chosen for its clear and chronological organisation of full *Congressional Record* transcripts of Congressional debates relating to issues of national

security and intelligence activities. The resources are made available in a commonly compatible, and unprotected, html format. This allows for the straightforward, wholesale copying and pasting of text into a wide variety of documents or programs. (The 2004 archive of this online database can be accessed at:

http://www.fas.org/irp/congress/2004_cr/index.html)

Given the considerable size of the dataset, it was decided that the use of computer software would be helpful in facilitating its management. NVIVO 8, a textual analysis software programme was selected for its ability to assist with the organisation and analysis of large amounts of textual information. However, the utility of this software programme, did not reduce the need for the researcher to read and analyse the data. Emersion in the data is important whether it is on the page or on the screen. Likewise, all coding and analysis closely followed the prescriptions of a grounded theory approach and all of the coding was done manually on a computer (i.e. coding and analysis were not automated). While NVIVO 8 was an immensely helpful tool, it did not create a separation between the researcher and the data.

Setting up the software

Like many computer programmes, the capabilities of the software far outstripped the needs of the researcher. As such, only the most basic functions of organisation and analysis within NVIVO were necessary for this research project. Data was copied and pasted from the FAS Intelligence Resource Programme website into folders in NVIVO according to 'Date' and by 'House of Congress'. For example, top level folders were created in NVIVO: 'Senate' and 'House'. Then in each folder a file was created for each day of debate. As such the 'House' folder contained two documents: 'Oct 8' and

‘Dec 7’. In the ‘Senate’ folder a document was created for each of the nine days of debate and these documents were labeled in the above manner according to date. The transcripts from the FAS website were copied and pasted into their respective documents. With this basic procedure, the entire 810,622 words of the Congressional intelligence reform debates were available for organisation and manipulation within NVIVO. At this point, the researcher began the process of understanding the landscape of these debates.

3.5.1 The pre-coding phase: Organising the data

Identifying the discursive actors

As the researcher read the transcripts, passages would be tagged with a case identifier that attributed the text to the speaker. For example, any discursive action by Senator Collins, the sponsor of the Senate legislation (*S.2845*), was coded according to the specific case identifier of ‘*Collins*’. The entire transcripts were coded in this manner, according to speaker, and NVIVO then allows the researcher to view the text according to speaker. By selecting a given legislator, one had access to an entire transcript of every contribution they made to the debates in question. In this way it was possible to identify and track the most prolific speakers, to identify those who had proposed key amendments, or those who were reluctant to support these legislative reforms.

Regardless, for any given individual one was able to read their comments in their entirety and understand how their position developed over the course of the debate and identify any rhetorical strategies which they employed. This initial sorting and labeling exercise not only organised the data according to source, it allowed for the identification

of actors' positions on particular issues and provided the researcher with an understanding of the general structure and dynamics of the rhetorical activity underpinning the reform debates of the post-reporting phase of the 9/11 Commission's inquiry process. While this organisation and coding of the data could have been done without computer assistance, it was significantly faster and the ability to save copies of queries (e.g.: everything that Senator McCain said during Senate debate on October 6) was extremely valuable.

Identifying the source's position with regard to the debate:

The House of Representative's debates on *H.R. 10* and *S.2845*, were analysed to identify each speaker's position on the legislation containing the Commission's recommendations. The goal was to identify if the speaker was in favour or opposed to the respective legislation. Three coding categories emerged from this analysis: '*Pro*', '*Con*', and '*Pro with reservations*'. In some instances it was clear that a particular legislator expressed strong support for the legislation. For example, Representative Dennis Hastert introduced *H.R. 10*. As such, it would be appropriate to assume that, as Sponsor of the legislation, he would strongly support the Bill and that his statements during the debate would reflect this bias and that analysis would support the categorisation of this particular actor as '*Pro*' throughout the coding process. Other legislators, were less supportive of the legislation and their statements during the debates reflected a bias against the legislation and, as such, their comments were coded as '*Con*'. As the number of speakers that were coded in this manner grew, a picture began to emerge as to the strength of different positions that were adopted within the debate.

It was clear from this analysis that there were legislators who were broadly supportive of the Commission's recommendations, but they expressed concern with the way in which the legislation was written. Some of these speakers offered amendments of their own that sought to address particular aspects of the legislation or they supported such amendments from others. While these individuals expressed reservations about the legislation in its current form, they were clear that, if these perceived weaknesses could be corrected, they would be in support of the legislation. From an analytical perspective, it was valuable to understand their reservations to the proposed legislation, but it would not be correct to interpret their resistance as complete opposition to either the process or the legislation. As such, a purely binary coding choice of 'Pro' or 'Con' would not properly capture these individuals and therefore they were identified and sorted into an additional category during the coding process. This third category was named '*Pro with reservations*'. While this sorting exercise involved the application of *a priori* categories, it was not intended as part of the open coding process. Rather it was intended as a pre-coding exercise that provided an opportunity for the researcher to engage in a close reading of the text and to structure the data in such a way as to facilitate the subsequent open, axial and selective coding phases of the chosen grounded theory approach. With the text having been sorted by both speaker and predisposition towards the dominant narrative for change, the process of open coding could begin.

3.5.2 The coding process

Strauss and Corbin (1998) identify five objectives to their grounded theory coding procedures. They are:

- “1. Build rather than test a theory;
 2. Provide researchers with analytic tools for handling masses of raw data;
 3. Help analysts to consider alternative meanings of phenomena;
 4. Be systematic and creative simultaneously;
 5. Identify, develop, and relate concepts that are the building blocks of theory”
- (p. 13).

More generally, “[c]oding is the central method in the transformation of the data to a theory. Coding is defined as the analytic process through which data are fractured, conceptualised, and integrated to form theory” (Strauss & Corbin 1998: 3). The fracturing of the data, during the first phase of coding is called ‘open coding’. As these groupings are formed, the researcher observes relationships amongst these categories and makes relevant connections amongst them. This second phase of coding is called ‘axial coding’. Finally, the process of ‘selective coding’ focuses on the identification of a core concept around which the single narrative storyline can develop. It should be noted, however, that although these phases of coding appear to form a linear process in the above description, they in fact occur in more of a concurrent manner than a consecutive way (Goede and Villers 2003).

Once the data was pre-coded for attribution and to identify the speakers’ orientation towards the reform legislation, a line-by-line disaggregation of the data was started. Broadly, the goal was to understand what was being said, what rhetorical strategies were being employed, and through the open coding process thematic categories began to emerge. As new themes were identified new categories were created; however, a conscientious effort was made to allow categories to emerge naturally from the text. At the end of a coding session, the categories would be reviewed. Categories were

exported in spreadsheet format and were manipulated and hierarchies were arranged and re-arranged to facilitate the visualisation of the emerging themes. Guided by Strauss and Corbin (1998), memos and diagrams were employed to facilitate the coding process. Table 3.2 contains an example of the categorising and coding process as explained thus far:

TABLE 3.2 - Example of categorisation and open coding

Original Text Excerpt	“Today, we continue debate on a bill to overhaul the intelligence community of the United States Government. [...] But nothing less than the security of the United States of America is at stake. We have determined enemies who will use any means available to take the lives of as many Americans as possible. They cheered when the Twin Towers fell. They dream of even larger calamities. They must be stopped. And that requires an intelligence system that finds them, before they harm us.”
Position	Position on Commission’s work: Pro
Emerging Theme	How problematized: Need to reform to protect

In the example above, the speaker emphasises the scope of the threat faced by the United States and suggests that it is an effective intelligence system that is required to protect from harm. This analysis was done repeatedly to identify any new categories as they emerged from the data. Working with NVIVO, passages from the legislative transcripts were coded with a descriptive category identifiers. In the initial stages of the open coding process, no limitations were placed on the creation of new category codes. Some examples of these thematic codes, as seen in Appendix F, were: anti-bureaucratic, need to protect, endorsement based on hard work/expertise, need to modernise, need for accountability, unprecedented/historic. Despite the volume of initial coding categories during the open coding phase of the grounded theory analysis, NVIVO allowed a significant number of options of how the researcher could view the data. Figure 3.0

shows a snapshot of the rhetorical themes identified in the congressional speeches of Senator Robert Byrd part way through the open coding process. The themes are listed in column one and the number of times a passage of his congressional speeches was coded with a particular category. While this is simply a snapshot taken during the open coding process, it seem clear that Senator Byrd is concerned with the rushed pace of the legislative process.

FIGURE 3.0 - Results of an NVIVO Query (Byrd + Rhetorical themes)

	A : Byrd
27 : Rushed	47
2 : Abuse of power	29
3 : Accountability	12
8 : Commission	12
12 : Expertise	11
5 : Bipartisanship	7
20 : Power	7
26 : Right past failures	6
1 : 9.11 Families	5
4 : Anti Bureaucratic	5
32 : To protect	5
15 : Historic	4
7 : Civil liberties	3
13 : Flawed recommendations	3
6 : Change for the sake of change	2
9 : Concerned about reform	2
22 : Quotes Posner	2
23 : Real Threat	2
30 : System is broken	2
33 : Too focused on 9.11	2

This provides an example of the utility of NVIVO as a tool of organisation and analysis. This query would have taken seconds to execute and it very quickly gives the researcher an overview of a) the rhetorical themes employed; b) the reliance on, or avoidance of, particular rhetorical themes; c) some impression of the degree to which the speaker participates in the debate. This, of course, would be a relative measure and would only

be evident once the researcher had the opportunity to execute a similar query for other legislators.

Once it was clear that certain initial categories were similar in nature some were merged during axial coding. As noted earlier, grounded theory analysis is abductive rather than linear. The researcher moved between the data and the emerging thematic groupings. The researcher also moved between open and axial coding, coding new sections of text, then merging and ordering categories before returning to the text and building the amended categories. The goal of the axial coding was the identification of a few key themes. As these thematic categories became apparent the open coding process continued and the researcher look for both confirmation of, and possible exceptions to, these themes.

As the continued analysis of the data persisted in confirming the key categories of the axial coding phase, the researcher moved the the selective coding stage. During selective coding, core categories from the axial coding, with strong explanatory power, were used as the core to construct the story of what rhetorical strategies of legitimation were being employed, as reflected in the data. As will be presented and explored in the findings chapter, the data revealed that supporters of the reform legislation were employing key rhetorical strategies to legitimise the overall legislative narrative and a distinct, but complimentary, set of rhetorical strategies to legitimise the legislative content. At the same time, opponents of the legislation employed particular rhetorical strategies to de-legitimise the legislative process.

3.6 Chapter Summary

The purpose of this chapter was to establish and justify a research design suitable to answering the central research question of: *what rhetorical strategies were employed in the legislative reform debates of the post-reporting phase of the 9/11 Commission's public inquiry process?* The chapter began with an introduction and overview of the research project, including a description of the historical context of this study. A discussion of the primary philosophical considerations was outlined, comparing and contrasting competing ontological and epistemological views. Based on this discussion, as well as the preferences of the author and the demands of the research project, a determination was made on both the ontological and epistemological orientations of this thesis. Once these had been established, a grounded theory approach was selected as an appropriate methodological fit for the philosophical and practical needs of this project. An overview of grounded theory, including a description, its history and its variants was provided. The justification for selecting grounded theory was based on its fit with the choice of epistemology and a large textual dataset of Congressional debate transcripts. As well, it was deemed to be a suitable method for answering the research question of this thesis. With the philosophical and methodological decisions made, attention was given to the question of data. The type, source and method of collection of data was outlined in the following section of the chapter. Once the dataset was established, focus was directed to what would be done with the data: the method of analysis. The specifics of a grounded theory approach were described, including open, axial and selective coding. The final section, provided a summary of the entire research design discussion, before supplying a preview of the context chapter.

The following chapter provides a discussion of the contextual backdrop of this research project. Divided into three phases: phase one will provide a brief overview of the September 11th attacks and their immediate aftermath, phase two will outline the key milestones in the creation of the 9/11 Commission and its public inquiry process. The third phase details the post-reporting phase of the inquiry process, including an in depth account of the legislative reform process, the debates of which are at the focal-point of this thesis.

Chapter 4 - Context

4.0 Chapter Introduction

This chapter will outline the events that led to the creation of the *National Commission on Terrorist Attacks Upon the United States* (9/11 Commission), provide a brief account of the Commission's activities and chronicle the events during the period after the *9/11 Commission Report* was released, but *before* the resultant legislation was signed into law. The context relevant to this thesis stretches from the initial crisis-event, September 11, 2001, to the culmination of the legislative reform efforts with the Presidential bill signing of the *Intelligence Reform and Terrorism Prevention Act on December 17, 2004*. This period of three years, three months and six days will be divided into three distinct phases. These phases will provide the structure of this chapter and will provide a clear and chronological accounting of the history of the 9/11 public inquiry process. The first phase contains the attacks and their immediate aftermath. The second phase encompasses the creation of the Commission and its investigation and the third phase is comprised of the post-reporting, legislative reform process.

This descriptive account will provide an important contextual overview of the entire public inquiry process, in general, and detailed clarification of the opaque and potentially confusing timeline of the legislative process of the post-reporting phase in particular. A clear understanding of the post-reporting phase and its place within the broader inquiry process is important, as the thesis focuses on the rhetorical legitimization strategies of the Congressional reform debates. Lastly, this chapter will conclude by

summarising briefly the phases of the inquiry process thus setting the context for the findings chapter of this thesis which will follow.

4.1 Phase I: The Attacks “We have some planes.”

4.1.1 An overview of the crisis-event

The terrorist attacks of September 11, 2001, were the paradigm-altering catalyst for the creation of the 9/11 Commission and the subsequent Intelligence Reform and Terrorism Prevention Act of 2004. On this morning, 19 hijackers took control of four passenger aircraft and used them as missiles to attack targets within the United States of America. On the morning of September 11, two flights, American Airlines Flight 11 and United Airlines Flight 175, departed from Logan International Airport in Boston. Both flights were bound for Los Angeles, California. Further south, two more Los Angeles bound planes, United Airlines Flight 93 departed from Newark, New Jersey and American Airlines Flight 77 departed from Dulles International Airport in Washington DC. Early in each flight, these four aircraft were commandeered by teams of hijackers.

The first two airplanes, American Airlines Flight 11 and United Airlines Flight 175, were crashed into the North and South Towers of the World Trade Center in New York City at 8:46:40 and 9:03:11 respectively. Approximately 35 minutes later, at 9:37:46, American Airlines Flight 77 was crashed into the west block of the Pentagon building, in Arlington, Virginia. At 10:02:23. the final aircraft, United Airlines Flight 93 crashed into a field in Shanksville, Pennsylvania. The aircraft was on a direct flightpath back to

Washington DC, approximately 20 minutes flying time from the capitol. The 9/11 Commission concluded that the aircraft was intentionally crashed by the hijackers, as the passengers were attempting to gain access to the cockpit to retake control of the plane (National Commission on Terrorist Attacks Upon The United States 2004b: 14). The hijackers' target was deemed to be either the Capitol Building or the White House in Washington, DC (Ibid.).

4.1.2 Institutional failures

The immediate impact of these attacks in terms of the loss of civilian lives was significant, as “[m]ore than 2,600 people died at the World Trade Center; 125 died at the Pentagon; 256 died on the four planes” (National Commission on Terrorist Attacks Upon The United States 2004b: 1). The attacks were unprecedented, in an historical context. This was the first instance when the United States of America had been attacked on its home soil since the Japanese attack on Pearl Harbor in 1941 and this was the first time the American mainland had come under attack. The hijackers' targets were chosen for their symbolic significance with the World Trade Center representing American financial power, the Pentagon a symbol of American military power and either the Capitol Building (The Congress) or the White House (The President) representing American political power. Although the intended destination of United Airlines Flight 93 cannot be verified, it is widely assumed that the attack would have been reserved for a target of extraordinary symbolic significance. During the trial of Salim Hamdan, Osama Bin Laden's former driver, he testified he had overheard that United 93 was headed for 'the dome'. This has been interpreted to mean the Capitol

Dome a part of the structure housing the United States Congress (National Commission on Terrorist Attacks Upon The United States 2004b). Even the method of attack was intended to be dramatic and create intensely public scenes of devastation which would be captured by the media thus creating indelible images that would be replayed *ad nauseum* (Weimann 2007). Combined, these factors created a crisis-event which had a very strong psychological impact on the American people.

Even without a clear and detailed accounting of what had transpired, it was evident that there had been a catastrophic failure of institutions and government agencies. While the failure to prevent the attacks was significant, the true extent of this failure is amplified when one considers that this was a failure of the central role of the United States Government. As Senator Jim Talent, former member of both the House and Senate Armed Services Committee, highlights:

First, the framers of the U.S. Constitution envisioned national defense as the priority obligation of the federal government. The first power granted to the president in Article 2 is “Commander-in-Chief of the Armies and Navies of the United States, and of the Militias of the Several States.” Of the 17 powers granted to Congress in Article 1, six relate specifically to defense, and the Constitution grants Congress the full range of authorities necessary to establish the defense of the nation (as it was then understood).

The other powers granted to Congress are permissive in nature; Congress can choose to exercise them or not. But the federal government is constitutionally obligated to defend the nation. Article 4, Section 4 states that the “United States shall guarantee to every State a republican form of government and shall protect each of them against invasion” (Talent 2010).

These Government institutions, which are constitutionally charged with the roles of national defence and the protection of the citizenry, had failed. In the aftermath of the September 11th attacks there was a growing chorus of voices calling for an independent investigation to determine what had happened and who was responsible. As the

literature confirms, a disaster-event of this nature and scope creates a circumstance fertile for the creation of a public inquiry (Turner, 1976). In fact, it was not long after September 11th that a chorus of support for the establishment of a Commission charged with investigating the terrorist attacks began to grow.

4.1.3 Calls for investigation

There were two main sources of vocal support for the creation of a public commission to investigate the attacks of September 11th and the related systemic failures. In the immediate aftermath of the attacks there was a general consensus amongst lawmakers that what the intelligence community needed to prevent further attacks was support and not recrimination. However, by mid-October opinions began to change as a small group of Senators and Representatives began publicly voicing their support for an independent inquiry. This group of legislators included Senators Joseph Lieberman and John McCain, Congressmen Timothy Roemer, Chris Shays and Chris Smith. Support began to grow within Congress and by May the Democratic leadership of both Houses was openly advocating for the creation of a public inquiry (CNN 2002). Despite the growing support for creating a Commission, however, the White House remained opposed to the idea. The President's position was that the Congressional Joint Inquiry was already operating and should be allowed to finish its investigation. The *Joint Inquiry into Intelligence Community Activities before and after the Terrorist Attacks of September 11, 2001* conducted its work between February and December 2002. The Congressional Inquiry was made up of the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence. The Joint Inquiry's final report

runs 832 pages and sets out both a narrative and recommendations that focus specifically on the intelligence failures that led to the 9/11 attacks. Additionally, the Administration was concerned that such a large public inquiry would consume time and resources and distract from the immediate priority of fighting the War on Terror (Firestone and Risen 2002).

The second major driving force behind the creation of the 9/11 Commission was the families of the victims. Family members of the victims of the September 11th attacks had created *Families of September 11th*, a not-for profit entity in October of 2001. The organisation was created as a resource for family members and as a point of contact for the multitude of 9/11 charities which were created in the aftermath. *Families of September 11th*, reflecting the frustration of many family members at the lack of definitive answers regarding details of the attacks, began meeting with these members of Congress and publicly supporting the creation of a Commission (Kean, et al. 2007: 16). “In June 2002, the families held a large rally in Washington, D.C.-- where their interest in a commission converged with the efforts of certain members of Congress. Immediately, the issue of the 9/11 Commission gained prominence” (Ibid.: 19). The families leveraged this momentum and began regular meetings with members of Congress advocating for the creation of the Commission. While this effort was building momentum for a public inquiry, there remained resistance to the idea within both Congress and from the White House. Central to this resistance was the view that any September 11th investigation should be dealt with by the Intelligence Committees in the Senate and the House of Representatives. The Administration’s view of the matter, as reported in the media in May 2002, was that “[...] the investigation should be confined

to Congress because it deals with sensitive information that could reveal sources and methods of intelligence. Therefore, [President Bush] said, the congressional investigation is "the best place" to probe the events leading up to the terrorist attacks" (Brush, 2002).

By September 10th, 2002, however, the single most significant obstacle to the creation of a Commission, opposition from the White House, was eliminated. In fact, the President's Press Secretary gave credit to the families for helping to change the President's position on the matter. "The administration has met with some of the families of the 9/11 groups, who have talked about the need for a commission to look into a host of issues, and they have made compelling arguments" (Firestone and Risen 2002). This shift in White House policy cleared the way for Congressional legislation to begin on the creation of a public Commission and within weeks, the legislative process began.

4.2 Phase II: The National Commission On Terrorist Attacks Upon the United States

4.2.1 Creating the Commission

Introducing the legislation to create the 9/11 Commission, Senators Joseph Lieberman (D) Connecticut and John McCain (R) Arizona introduced the *Terrorist Attacks Bill: A bill to establish the National Commission on Terrorist Attacks Upon the United States, and for other purposes (S.1867)* on December 20, 2001. Announcing their intentions in

bringing this bill to the Senate floor both sponsors of the legislation articulated their aims. Senator Lieberman stressed that:

"[...] [the] Commission to be nonpartisan and independent [...] [and that] [i]t must be a hunt for the truth, not a witch hunt. [...] and with many perplexing questions left unanswered - this is the right time to begin in earnest the process of finding answers to our questions" (Lieberman 2001).

Senator McCain stated that "[t]o prevent future tragedies, we need a thorough, nonpartisan, independent inquiry into what happened on September 11th, and what we can do to protect our people and our institutions against the enemies of freedom in the future [...]" (Ibid). Upon its introduction to the Senate, *S.1867* was referred to the Government Affairs Committee, debated by the Committee and reported back to the Senate on March 21, 2002. However the bill was never brought to a vote in the Senate, as the session ended prior to the scheduling of a vote on the matter. Any proposed legislation that has not passed by the end of a session is cleared from the books, but can be re-introduced by its sponsor during the next legislative session.

A subsequent agreement was struck between the Democratic and Republican leadership in the Senate on October 10th that the Senate would include the text of *S.1867*, the enabling legislation for the creation of a Commission to investigate the attacks of September 11th, 2001, in the upcoming intelligence authorisation bill. Included as TITLE VI to *An Act To authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes (Intelligence Authorization Act for Fiscal Year 2003)*, the creation of the Commission was ensured with the passing by both Houses of Congress and its subsequent approval by the President (Bash 2002). On November 27,

2002, the *Intelligence Authorization Act for the Fiscal Year 2003* was signed by President Bush creating Public Law 107-306 which allowed for the establishment of the *National Commission on Terrorist Attacks Upon the United States* (9/11 Commission).

4.2.2 Structuring the Commission

Contained within the *Intelligence Authorization Act for Fiscal Year 2003* is TITLE VI - NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES. TITLE VI outlines the mandate, membership, powers and responsibilities of the 9/11 Commission. Additionally, the legislation covered an assortment of administrative matters including legal exemptions and funding. (For a full listing of Sections 601 to 611 of TITLE VI of the Intelligence Authorization Act for Fiscal Year 2003 see Appendix A.) This enabling legislation is divided into ten sections (Section 601 to Section 611); however, for the purpose of this chapter, it is necessary to focus only on the following sections: Purposes (Section 602) Functions (Section 604), Composition of Commission (Section 603), and Reports of Commission; Termination (Section 610).

Section 602 & 604: Purpose and Functions of the Commission

‘Sec. 602. Purposes.’ provides an overview of the mandated responsibilities of the Commission. The Commission is charged with five main responsibilities with the first two being investigatory in nature. The legislation required that the Commission was to:

“examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York, in Somerset County, Pennsylvania, and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;” (U.S. Congress 2003: Section 603(1)(2)).

Further direction was provided in subsection (a) (1) of ‘Sec. 604. Functions of Commission’. This subsection, outlined potential sources of evidence, “including any relevant legislation, Executive order, regulation, plan, policy, practice, or procedure.”

Secondly, Section 604 outlines the broad scope of the Commission’s investigatory mandate. It is suggested that the focus of the Commission:

“may include relevant facts and circumstances relating to— (i) intelligence agencies; (ii) law enforcement agencies; (iii) diplomacy; (iv) immigration, nonimmigrant visas, and border control; (v) the flow of assets to terrorist organizations; (vi) commercial aviation; (vii) the role of congressional oversight and resource allocation; and (viii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;” (U.S. Congress 2003: Sec. 604 (a)(1)(B)).

The mandate of the Commission was sweeping and the Commissioners were empowered to look into other, unenumerated areas as they deemed appropriate. Clearly there was a significant amount of new investigative territory to be covered by the Commission; however, lawmakers wanted to ensure that previous investigative efforts into the September 11th attacks and existing terrorism and national security studies, in general, would be utilised to inform the Commission’s work. As such a specific directive was included in Sec. 603 (3). The Commission was directed to:

“build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of--

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001, (hereinafter in this title referred to as the “Joint Inquiry”); and

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;” (U.S. Congress 2003: Section 602(3)(a)(b)).

Once the Commission had completed their investigation into the precipitating factors and the events of the September 11th attacks it was directed to construct an accurate and exhaustive picture of what had happened. The Commission was to: “make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and immediate response to, the attacks;” (U.S. Congress 2003: Section 602(4)). It was from this comprehensive narrative that the Commission was required to draw conclusions and create recommendations that would form the basis of a national preventative counter-terrorism strategy. As such, the Commission was required to “investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism” (U.S. Congress 2003: Section 602(5)). The legislation both empowered and directed the Commission to investigate, to construct a comprehensive narrative of events and to provide solutions to strengthen defences and minimise the risks of a repeat attack. It was this narrative and these recommendations that would have a dramatic effect on the subsequent legislative debates, and impact significantly the rhetorical strategies for legitimisation, as will be explored in the finding chapter.

Section 603: Composition of the Commission

The legislators ensured that the Commission was politically balanced. ‘Sec. 603. Composition of Commission’ outlines the equal distribution of Commission membership along two political dynamics. Half of the members would be appointees of the Democratic Party and the remaining half of the members would be appointed by the Republican Party. In addition to this partisan balancing, appointees would come from both political branches of Government. The Republican President would be given the

right to appoint the Commission's Chairman and the Vice-Chairman would be appointed by the Democratic Leadership of both Houses of Congress. The remaining eight appointments would be apportioned equally between the US House of Representatives and the US Senate (See Appendix B). This deliberate balancing of appointment powers was intended to foster a sense of bi-partisanship and reflected the interests of both parties that individual and political blame be avoided in the pursuit of broad institutional failings (Kean, et al. 2007).

Sec. 610. Reports Of Commission; Termination.

The Commission draws two of its primary mandates from this section of the legislation. The first, Sec. 610 (b) states that the Commission must issue its report within 18 months of the enactment of this Law. As will be discussed later in this chapter, the Commission sought and was granted an extension that placed the release of its Final Report in the midst of the politically pressurised context of a Presidential election campaign, thus causing the legislative phase of this inquiry process to fall during a challenging late autumn period. Scheduling can be a challenge, given the nature of the Congressional calendar during an election year. In addition to the regular summer and Thanksgiving recess breaks, Congress also recesses in the week around election day in early November. This reduces the time and flexibility available to the Congress for legislative work. Secondly, Sec. 610 (c)(1) requires that the Commission will terminate within 60 days of submitting its Final Report. Section 610 (c)(2) outlines what these administrative activities might entail. "The Commission may use the 60-day period [...] for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report." (U.S. Congress

2003) As will become clear later in this chapter, the Commission pursued its administrative duties of dissemination in a very energetic manner. The Commissioners undertook a very aggressive promotion and lobbying campaign with the hope of creating sufficient momentum in public opinion that Congress would legislate the Commission's recommendations.

4.2.3 The Commission's work

With the enabling legislation in place, Congress and the President were free to make their Commission appointments. The first two members of the Commission to be appointed were the chairman and vice chairman. President Bush selected former National Security Advisor, Secretary of State and Nobel Peace laureate, Henry Kissinger and the Democratic Congressional leadership appointed former US Senator, former Senate Majority Leader and US Special Envoy for Northern Ireland, George Mitchell. Both Kissinger and Mitchell were well-respected public figures and both had very prominent and lengthy records of public service; however, neither appointee, after initially accepting these positions, was ultimately able to discharge their duties due to potential conflicts with their private sector careers. After this brief setback, both posts were filled with prominent American public figures. President Bush appointed Thomas H. Kean and the Congressional Democrats chose Lee Hamilton. While the new chairman and vice chairman were not as prominent as the initial appointees, they nevertheless, had respected careers in public service. The appointment of Kean and Hamilton, the President and the Democratic Congressional leadership was in keeping with requirements of Sec. 603(b)(3) of TITLE VI that:

“It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, law, public administration, intelligence gathering, commerce (including aviation matters), and foreign affairs” (U.S. Congress 2003).

With an appropriate Chairman and vice-Chairman in place, the remaining eight Commissioners were appointed in the manner directed by the legislation. These individuals were: Richard Ben Veniste, former Senator Bob Kerry, former White House Council Fred F. Fielding, former Secretary of the Navy John Lehman, former Deputy Attorney General Jamie Gorelick, former Congressman Timothy Roemer, former Senator Slade Gorton, and former Governor James Thompson (For further details see Appendix C). These individuals each have accomplished records of public service and amongst the Commissioners there was a significant level of experience in many of the areas of expertise outlined within the legislation. As required by the legislation, the appointment of Commissioners was completed by December 15, 2002.

With the Commissioners in place, the Commission began the process of assembling a staff and at the first meeting of the Commission on January 27, 2003, the Commissioners announced Philip Zelikow as the Commission’s executive director. Within two months, the Commission’s offices were staffed and operational and the Commission began its work. On March 31, 2003, the Commission held its first public hearing in New York City. The Commission established a schedule of public hearings to receive testimony on a number of relevant topics and to attempt to engage the public with their work (National Commission on Terrorist Attacks Upon The United States 2004b: xv). The Commission would go on to hold twelve public hearings over nineteen

days in the period from March, 2003 to July 2004. Each public hearing focused on an aspect of the Commission’s investigatory mandate. The following table outlines the topics and dates of each public hearing.

TABLE 4.0 - The 9/11 Commission’s public hearing schedule

Hearing	Topics	Dates
1	Inaugural Hearing: New York City	31/03 to 1/04/2003
2	Congress and Civil Aviation Security	22&23/05/2003
3	Terrorism, al Qaeda, and the Muslim World	09/07/2003
4	Intelligence and the War on Terror	14/10/2003
5	Private/Public Partnerships for Emergency Preparedness	19/11/2003
6	Security and Liberty	08/12/2003
7	Borders, Transportation, and Managing Risk	26-27/01/2004
8	Counterterrorism Policy	23-24/03/2004
9	Condoleezza Rice and President Bill Clinton	08/04/2004
10	Law Enforcement and Intelligence	13-14/04/2004
11	Emergency Response	18-19/05/2004
12	The 9/11 Plot and National Crisis Management	16-17/07/2004

Summarised from 9/11 CR, Appendix C

Testimony from the Public Hearings were not the only evidence the Commission and its staff were collecting. During the process of the investigation, the Commission interviewed more than 1,200 people in ten countries and reviewed more than 2.5 million pages of documents (National Commission on Terrorist Attacks Upon The United States 2004b: xv). Among these interviews, were almost every senior official from both the Bush and Clinton administrations (Ibid.) While the September 11th attacks took place nearly a year into President Bush’s first term, the planning of the attacks and the

precipitating events and influences stretched back years and well into the Clinton administration (1992-2000). With the 18 month deadline approaching, imposed on the process by its enacting legislation, it was clear that the Commission would require more time. As such, the Commissioners requested a six-month extension to complete their work. This gave the Commission more time, but it moved the initial March 2, 2002 release date to late July and deeper into the heated election process.

4.2.4 The final report

The Final Report of the National Commission on Terrorist Attacks Upon the United States was released to the public at a press conference on July 22, 2004. It is monological, meaning with a single line of reasoning, in its presentation of the facts and unanimous in the proposal of its recommendations. As Commission Chairman, Thomas Kean highlighted at the release of the Final Report “[we] file no additional views [...] We have no dissents. [...] We will [...] work together in support of the recommendations of this report” (Kean, et al. 2007: 203). The Final Report itself is 567 pages, including appendices and endnotes, and draws upon the extensive work of the Commission detailed above. The majority of the Report’s thirteen chapters (See Appendix C) are a retrospective construction of past events. Following their legislative mandate, the Commission investigated “facts and circumstances relating to the terrorist attacks of September 11, 2001” (National Commission on Terrorist Attacks Upon The United States 2004b: xv). This included both a nearly minute-by-minute reconstruction of the timeline of the 9/11 attacks and also a narrative that traced the planning and origins of

the attacks. A broader context was explored through a chronicling of al Qaeda's past attacks on American interests including, but not limited to, the USS Cole and the US Embassy bombings in Kenya and Tanzania. However, the Report does not focus solely on the attacks and the threat of attack. It examined the institutional limitations and failures that allowed the attacks to succeed. The Report is structured in such a way as to move its focus from the terrorist threat to America's response and counter-terror efforts a number of times: focusing on threats and then shifting to deterrence before shifting back again. Through both a better understanding of the threat, and an identification of the relevant security failures, the Commission was able to make a series of recommendations for significant and sweeping change. It was these recommendations that formed the basis for the Congressional reform legislation and it is the rhetorical strategies employed in the debates of this reform that is the focus of this research project.

4.2.5 Releasing the report

It was not the goal of the Commission, to simply hand over their report to decision-makers and the publisher. Rather, the Commissioners believed that they should have a sustained role as active promoters of the report and its recommendations and their commitment to this role extended beyond their legislated mandate. Once the Commission was disbanded, the Commissioner's founded the 9/11 Public Discourse Project. In a description provided on their website, this organisation was a privately funded vehicle which sought to "initiate a nationwide public education campaign for the purpose of making America safer and more secure" (9/11 Public Discourse Project,

2010). Therefore, the first post-reporting activity of the Commission was to create a momentum in support of their recommendations that could withstand the arduous legislative process. Chairman Kean and vice-Chairman Hamilton acknowledged that their “ [...] first task [...] would be to seize the momentum at [the] rollout. [...] [From their perspective] “[...] for one day, the commission had to use its moment of maximum attention to stress the necessity of action, and the country’s desperate need to move beyond partisan politics” (Kean, et al 2007: 299). As such, they viewed the rollout of the report as incredibly important in that it was the single opportunity they would have to present the report and the recommendations on the commission’s terms, unblemished by critique (Ibid.). Such momentum could not be accomplished through a passive release or publication of the Commission’s Final Report. The release of the Final Report would require a carefully planned and executed public relations effort. To this end, the Commission hired a major public relations firm, the Edelman Group, to orchestrate the release of the Report and manage the ensuing media relations campaign over the subsequent weeks and months during which the Commissioners would spend significant time and effort promoting the Commission’s work.

The day on which the Commission released the Final Report and its recommendations, July 22, 2004, was carefully choreographed. First, Chairman Kean and vice-Chairman Hamilton, visited Capitol Hill to meet with and brief the Congressional leadership of both Houses on the Commission’s findings. Their second meeting of the day was at the White House where they presented President Bush with a copy of their report, engaged in a brief discussion and joined the President in the Rose Garden for a statement to reporters. From the White House, Kean and Hamilton joined their fellow

Commissioners to meet with the families of the victims of the September 11th attacks, which was already in progress, to discuss their findings. After their meeting with the families, the main press event for the official public release of the report was held at the Andrew W. Mellon Hall in Washington D.C. This impressive neo-classical hall has hosted a number of important events including the 1949 signing of the international agreement that established the North Atlantic Treaty Organisation (NATO). Immediately following the public announcement of the Final Report, Kean and Hamilton returned to Capitol Hill to hold a joint press conference with a bi-partisan group of high-profile Senators, including John McCain, Joseph Lieberman, Evan Bayh and Arlen Specter, all of whom supported Congressional action on the Commission's recommendations. Finally the remainder of the day saw Commissioner's conducting high profile, back-to-back media interviews to disseminate the message of the Commission's findings.

The reception of the Commission's work was strongly positive and there was significant public interest in the Commission's findings. Within the first week over 350,000 copies of the Report had been sold to the public and on the day that the Report was released, the commission website where the report was made available for free, had over 1 million hits. The Commissioners were pleased that the public seemed to be interested in their Report and they were optimistic that this would create additional pressure on Congress to act. "We were also pleased at the prospect that Americans might ask their representatives and senators, home for the August recess, what action they were taking on our recommendations" (Kean, et al. 2007: 307) While Congress was scheduled to take its annual August recess the following day, the Commission did secure a pledge

from the leadership that they would convene committee meetings over the break and report back to their respective chambers with legislation to move forward with the implementation of the Commission's recommendations for the fall. With these commitments the legislative process would begin. The post-reporting phase had begun, and by all accounts, it appeared as if the Commission would be successful in creating the momentum necessary for Congress to adopt their reform agenda. Appropriately, this is the point in the historical record at which our enquiry begins. Congress did introduce legislation based on the Commission's recommendations, and it is this Congressional debate with which this thesis is concerned. More specifically, the central research question is: what rhetorical strategies were employed in the legislative reform debates of the post-reporting phase of the 9/11 Commission's public inquiry process?

4.3 Phase III: The Post-Reporting Phase (July 2004 to December 2004)

4.3.1 An election year

The Commission's Final Report was not released in a contextual vacuum. By July of 2004 the US Presidential campaign season, including the Democratic Party's primary processes, had been ongoing for nearly twenty-six months. The Democratic National Convention, at which presidential candidate Senator John Kerry was to accept his party's nomination to challenge Republican President George W. Bush, took place in Boston, MA from the 26th to the 29th of July, less than a week after the release of the Final Report. (The Report was scheduled to be released on July 26th, but it was released earlier to avoid conflicting with the Democratic National Convention.) A

month later, President George W. Bush would accept his party's second nomination at the Republican National Convention in New York City. Officially, the Presidential election campaign would begin and for the next two months, national security would be one of the prominent issues of the campaign (Crotty 2005). Both presidential candidates endorsed the work and recommendations of the Commission on the day that the Report was released. At the morning Rose Garden ceremony with Commission Chairman Kean and Vice-Chairman Hamilton, immediately following a private meeting in the Oval Office, President Bush spoke positively of the Commission and its work and thanked those involved in the process. However, as is evident in the following passage of his remarks, the President was providing general support and not an immediate and unqualified acceptance of the Commission's findings:

“They've done a really good job of learning about our country, learning about what went wrong prior to September the 11th, and making very solid, sound recommendations about how to move forward. I assured them that where Government needs to act, we will. [...]

And the report that they are about to present to me puts out some very constructive recommendations. And I look forward to studying their recommendations and look forward to working with responsible parties within my administration to move forward on those recommendations. [...]

As well, we look forward to working with the Congress on the implementation of ways to do our duty. And the most important duty we have is the security of our fellow countrymen” (Bush 2004a).

While complimentary of the Commission's work and expressing a willingness to act in the defense of the country, as highlighted in the quotation above, the President used cautious language that did not convey an immediate or indiscriminate commitment to implement the Commission's reforms.

By contrast, Senator John Kerry gave a wholesale endorsement of the recommendations contained in the Commission's Final Report immediately upon its release. Three days later, Senator Kerry reiterated his strong approval for the Final Report and its recommendations by stating:

"If I were president today, or yesterday, I'd be appointing one person in the White House responsible for liaison with the Congress and the agencies immediately to implement immediately the vast majority of the recommendations of the 9/11 commission [...] I regret that many of these have not been put in place over the course of the last few years. [...] They would have made America a great deal safer" (Nagourney 2004).

Kerry's immediate and enthusiastic support for the Commission and its recommendations is clear. Certainly, the dynamics of the election campaign played a role in Kerry's position. An element of Kerry's election strategy was to focus on his past as a decorated war veteran to present an image of a strong and decisive leader on issues of national security and foreign affairs. Public opinion, in recent decades, had consistently favoured the Republican Party on these issues while Democratic Presidents were often viewed as less strong on their commitment to the military and in their execution of foreign affairs. A less enthusiastic endorsement from the Kerry campaign could have eroded his favourability in these areas (Halbfinger 2003). With the endorsement of the *de facto* leadership of both political parties, the next steps were to be taken by the US Congress. If the recommendations of the Commission's report were to be enacted, it would need to be done through legislation and this legislation would need to garner the majority support of both the House of Representatives and the Senate before being sent to the President for his signature.

4.3.2 The legislative process

The Congress of the United States is a bicameral institution of the federal government and is made up of the House of Representatives and the Senate. The House of Representatives is comprised of congressional members from each state. A state's population determines the number of representatives it sends to Washington DC and there are 435 members of congress in the House. The membership of the Senate is made up of two Senators from each state, regardless of a state's population. As such there are 100 United States Senators in total. In attempting to legislate the recommendations of the 9/11 Commission, separate pieces of legislation were introduced in each House of Congress. The Senate Bill, entitled the National Intelligence Reform Act of 2004 (*S.2845*) was introduced in the Senate by Senators Susan Collins (R-Maine) and Joseph Lieberman (D-Connecticut) on September 23rd, 2004. The legislation in the House of Representatives, entitled the 9/11 Recommendations Implementation Act (*H.R. 10*) was introduced by the Speaker of the House, Representative Dennis Hastert (R-IL) on September 24th, 2004. (In the American system the Speaker of the House is the leader of the majority party in the House of Representatives and is unlike the non-partisan Speaker found in legislatures within the Westminster parliamentary tradition.) When both Houses of Congress consider and pass legislation on the same issue, an *ad hoc* House-Senate Conference Committee is formed to negotiate compromise where there is disagreement between the two bills. If this process is successful, a harmonised bill is sent back to both Houses for a simple 'yes' or 'no' vote without the opportunity for further amendment. If the differences between the legislation are significant and an agreement cannot be reached by House and Senate Committee representatives a harmonised bill, with the approval of both Houses of Congress, cannot be sent to the President for his signature and therefore

does not become law. It was these differences between the House and the Senate versions of the 9/11 Commission's recommendations for reform, and the challenges in finding compromise, that occupied much of the latter part of the legislative period during October and November of 2004. The entire legislative period, from the release of the Commission's report in July to the Presidential bill signing of the IRTPA, 2004 can be seen below in Figure 4.0.

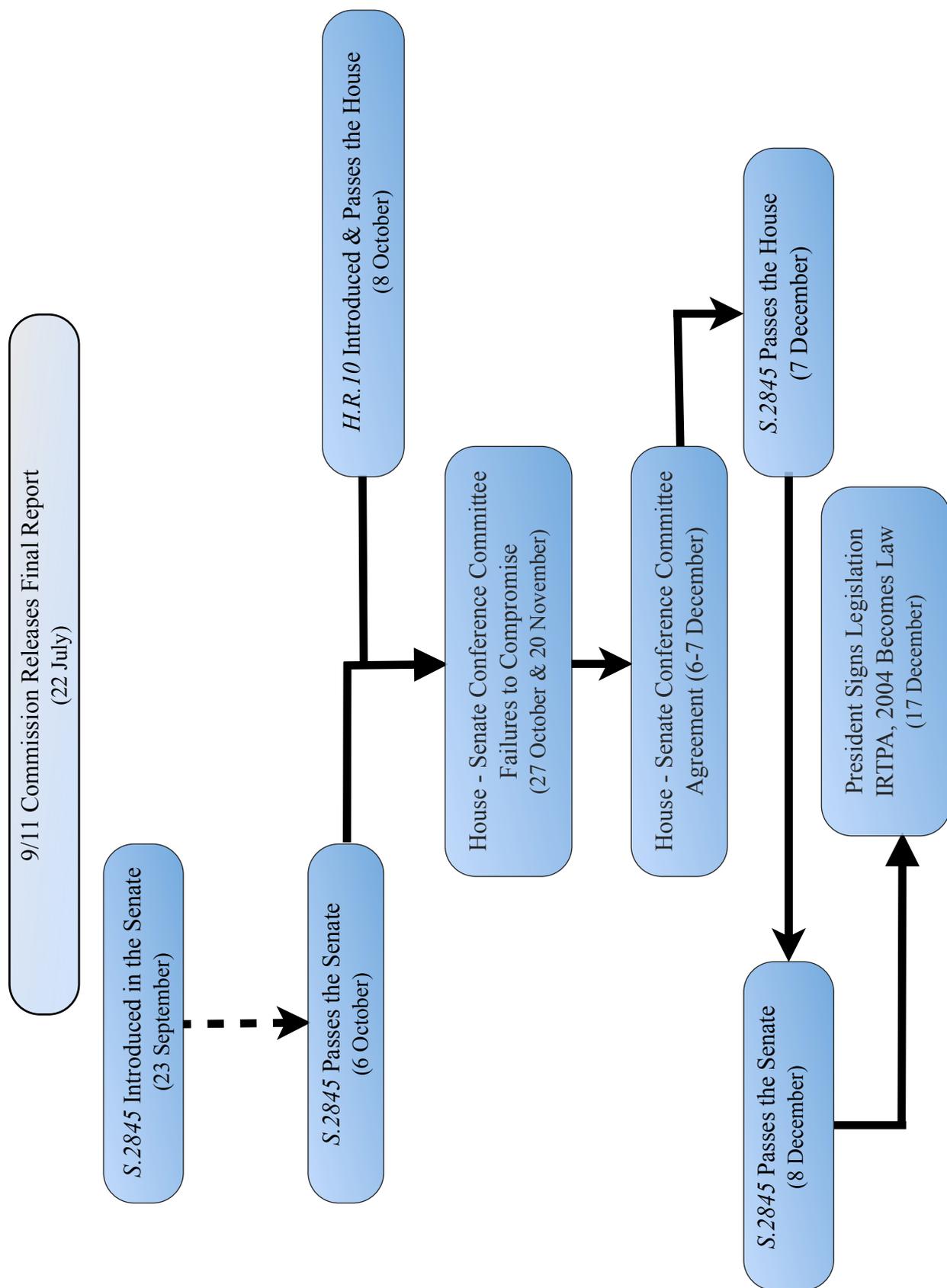


Figure - 4.0: Legislative Timeline for S.2845, H.R.10 and Conference Report S.2845: Post-Reporting Phase of the 9/11 Commission's Public Inquiry Process

4.3.2.1 Legislating the Report

With strong public interest in the Commission's recommendations and the support of both party's presidential candidates, the focus shifted to Congress. When would they begin the legislative process that would allow for the debate of the Commission's recommendations? A midsummer release of a report that required the immediate attention of the House and the Senate would pose significant problems given the typical Congressional calendar, as both houses close down for the month of August while legislators return to their districts. The 2004 congressional calendar was further complicated by the election process. Congress was forced to adjourn for both the Democratic and Republican Conventions and then again in late October for the election. Scheduling time for such significant legislative debates during this particular time-frame was problematic. On August 2nd both Houses of Congress shut for the summer recess, and while there was some discussion that Congressional leaders would reconvene a special session to deal with the 9/11 Commission's recommendations this did not occur. The House of Representatives and the Senate returned from their August recess on the 3rd and the 6th of September respectively. Not long after, both houses introduced legislation and began the deliberative process to enact the recommendations of the 9/11 Commission.

4.3.2.2 The Senate bill

On the 23rd of September 2004 the National Intelligence Reform Act of 2004 (*S.2845*) was introduced by Senator Susan Collins (R-ME) (Chair of the Government Affairs

Committee) and Senator Joseph Lieberman (D-CT). The bill was co-sponsored by an additional nine Senators from both parties. These group of co-sponsors included Senators Carper, Clinton, Coleman, Durbin, Feinstein, McCain, Mikulski, Rockefeller and Voinovich. The legislative debate of *S.2845* was scheduled to take place over the course of eight days during the period of the 27th of September to the 6th of October, with the vote scheduled at the end of the final day.

Senate rules are more flexible and the structure of debate is less formal when compared with the rigidity and formality of the procedural rules in the House of Representatives (Grant 2004: 33-34). These factors required that the Senate allocate significantly more time for debate than than the House of Representatives. The Senate bill *S.2845*, adhered closely to the 9/11 Commission's proposed reforms and included all of its forty-one recommendations. Led by Senators Collins and Lieberman, proponents of the legislation framed the debate. As will be presented in the following chapter, a pro-action narrative was created and proponents employed various rhetorical strategies in creating this narrative and strengthening the legitimacy of their proposed reforms.

However, the more lengthy debate schedule and the close adherence to the Commission's recommendations did not shield the legislation from opposition. A small, but vocal minority employed rhetorical strategies that attacked the process as too rushed thus attempting to de-legitimise the proposed reforms. Ultimately, these opponents were unsuccessful as the initial version of *S.2845* passed the Senate by a vote of 96 to 2. This coincided with the first, and only, day of debate for the House reform legislation *H.R.10*.

4.3.2.3 The House bill

The House of Representatives introduced the 9/11 Recommendations Act 2004 (*H.R.10*) on the 8th of October, 2004, the same day that the Senate passed companion legislation in the form of *S.2845*. The House legislation focused heavily on immigration and border control issues and was skeptical of diverting too much authority from the Secretary of Defense to the proposed Director of National Intelligence, over concerns that this would jeopardise the military's ability to supply their troops with timely and accurate battlefield intelligence. Despite the title of *H.R.10*, the House bill addressed fewer Commission recommendations than the Senate legislation. The House legislation focused on fully implementing eleven of the Commission's forty-one recommendations and partially addressed another fifteen. With a Republican majority in control in the House, the pursuit of contentious issues such as immigration reform was harshly criticised by opponents of the legislation. As presented in the next chapter, this accusation of partisanship was key to the rhetorical strategy of opponents in their attempts to de-legitimise the legislative reform process in the House of Representatives. Additionally, the time allowed for debate in the Senate, the closer adherence to the Commission's recommendations and the nearly unanimous vote meant that the Senate process was elevated as an example of bipartisanship. Irrespective of the objections of the legislation's opponents, it enjoyed a relatively wide margin of success. With a final vote of 282 to 134, *H.R.10* was passed as well and the reconciliation process for these two pieces of legislation could begin.

4.3.2.4 The conference committee process

Before a bill can be sent to the President to be signed into law, it must first be passed by a majority in both Houses of Congress. However, the bills that pass the Senate and the House of Representatives must be identical and this was not the case with *H.R.10* and *S.2845* which were very different pieces of legislation. In these situations, the bills must be sent to a conference committee.

“These are, simply, ad hoc bodies created to reconcile the differences that occur in the House and the Senate versions of the same piece of legislation. Membership is drawn from those members in each House who have been most closely involved with the legislation [...] who then vote en bloc so as to represent the wishes of their chamber” (McKay 2005: 170-171).

A conference committee was struck to work out a compromise on *H.R.10* and *S.2845*.

The committee was comprised of an equal number of Senators and Representatives and Republicans and Democrats.

Reflecting the significant differences in the legislation, the conferees failed to reach an agreement at their first meeting on October 27th. The Conference Committee met again on November 20th, but again failed to reach an agreement. With the elections passed and the end of the 108th Congress approaching, both the Commission and the White House attempted to encourage a compromise that would result in an intelligence reform package that could be passed and signed before the end of the year. On November 30th Chairman Kean and Vice Chairman Hamilton held a press conference at which they publicly urged the Congressional leadership to reach an agreement. On December 3rd, President Bush issued a letter to the Congressional leadership expressing his support for the quick reconciliation and passage of the intelligence reform legislation. On

December 6th the conference committee reached an agreement and sent Conference Report *S.2845* to the House of Representatives and the Senate for approval.

4.3.3 The Intelligence Reform and Terrorism Prevention Act, 2004

With compromises in place, the House of Representatives approved an amended version of the Intelligence Reform and Terrorism Prevention Act, 2004, containing TITLE VII the 9/11 Commission Implementation Act of 2004 on the 6th of December. Once the legislation had passed the House, it was sent to the Senate and on the following day, December 7, the Senate approved the harmonised version of the bill. The IRTPA, 2004 was sent to the President for his signature on the 15th of December and two days later, on the 17th of December, President Bush signed the legislation into law. At the Presidential bill signing ceremony, flanked by members of Congress and Commissioners, President Bush noted the significance of the occasion. “In a few minutes, I will sign into law the most dramatic reform of our nation’s intelligence capabilities since President Harry S. Truman signed the National Security Act of 1947” (Bush 2004b). Upon receiving the President’s signature, Public Law 108-458 was created and many of the 9/11 Commission’s recommendations became law.

4.4 Chapter Summary

The acts of terrorism perpetrated against the United States on September 11th, 2001 were unique in both method and scale. Layers of defences were penetrated resulting in great surprise and loss. This disaster-event laid bare significant institutional failings of multiple government agencies. Failures in intelligence gathering, transportation

security, law enforcement and a myriad of other governmental responsibilities were revealed by this disaster-event. As with many such dramatic and public institutional failures, pressure began to build in support of an investigation into the circumstances surrounding the attacks and the requisite institutional failures. As is clear from the academic literature, a public inquiry process is a common response to sufficiently catastrophic disaster-events. With the strong support of some members of Congress and the advocacy role of the families of the victims, momentum began to build for the creation of an independent inquiry into the attacks of September 11th. Eventually, the momentum was sufficient to persuade both Houses of Congress and the President that an inquiry should be established.

Legislation was brought forth to create a bipartisan commission, appointed jointly by the President and the Congress. The Commission would have a broad mandate to investigate the events leading up to the September 11th attacks, to reconstruct a timeline and create an accurate narrative of what had transpired and to investigate and report on its findings, conclusions and preventative measures that should be taken to avoid similar attacks in the future. After an extensive investigation, the Commission released its findings in the form of a 567 page *Final Report of the National Commission on Terrorist Attacks Upon The United States* (9/11 Commission Report). The report contained both a comprehensive timeline of the events of September 11th, a lengthy history of the circumstances leading up to the attacks and a series of recommendations for specific changes. The 9/11 Commission Report was released in the midst of a politically pressurised election season. The Report gained the very public support of both party's presidential candidates and a high-profile, bi-partisan group of legislators

from both Houses of Congress. The media coverage was largely uncritical and public support for the Commission and its recommendations was high (Kean, et al. 2007).

Within a relatively short period of time, given various recess obstacles of the Congressional calendar, legislation was introduced into both the House of Representatives and the Senate to implement the Commission's recommendations. The legislation was delayed as a result of differences between the House and the Senate bill and the inability of the Conference Committee to reach agreement. This was the result of a small number of differences on specific aspects of the legislation, rather than a fundamental or broad opposition to the adoption of the recommendations of the Commission. Despite these disagreements and the multiple recess interruptions in the Congressional calendar, the timeframe for legislating the Commission's recommendations took less than three months, a portion of which Congress was not even in session, given it recessed for both the election in late October and early November and then again for the Thanksgiving holiday a month later. Once Congress reached agreement and passed the Conference Report, *S.2845*, President Bush signed into law the largest re-organisation of the intelligence community, based on the recommendations of the Commission, since the end of the second world war. From the release of the Commission's recommendations in late July to the signing of the Intelligence Reform and Terrorism Prevention Act, 2004 in mid-December, four and a half months had passed.

This chapter has focused on the key timelines and significant events that led to the creation of the 9/11 Commission, the production of its recommendations and the subsequent legislative process that sought to enact the Commission's recommendations.

With this understanding of the context and timeframe, the next chapter will focus on the Congressional reform debates of this post-inquiry period. Specifically, this thesis seeks to answer the question: what rhetorical strategies were employed in the legislative debates of the post-reporting phase of the 9/11 Commission's public inquiry process? The following chapter answers this question and presents the findings of the grounded theory analysis of the complete transcripts of Congressional debate for *H.R. 10* and *S. 2845*.

Chapter 5 - Findings

5.0 Chapter Introduction

The previous chapter explained the 9/11 Commission's public inquiry process and, more importantly, the post-reporting phase into which the 9/11 Commission's recommendations were published and during which the legislative reform debate occurred. Having established this more detailed contextual understanding, this chapter will present the findings from the analysis of the rhetorical themes of this legislative debate. Before outlining this Findings chapter, it is helpful to provide a brief reminder of how the dataset was analysed, reiterating the grounded theory approach that was employed for this research project.

These findings are the result of the grounded theory process, as detailed in Chapter 3. This was an inductive process that followed the guidance of Corbin and Strauss (1998). In the first stage of open coding, the data was deconstructed and allocated to categories according to theme. These themes emerged from the data and the number of categories grew as the open coding progressed. The process of open coding allowed for the development of insight into the data and, as similar categories began to emerge from the data, the second phase of axial coding was initiated in tandem with the open coding. As themes were identified, the initial categories of the open coding process were consolidated and organised to reflect these emerging themes. As these were organised and, in some cases, merged, categories from the axial coding process were tested through the addition of new data. Once it became clear that the process was focusing on the appropriate dominant themes from the data, moving between the data and the

emerging models, main themes were identified and prioritised. These main themes, and their supporting data, provide the content for this chapter.

Prior to a presentation of the findings, a brief re-statement of the central research question is included in *Section 5.1*. This provides a reminder of the purpose of this research project and helps to provide a context for the findings, as presented below. The findings portion of this chapter is structured as follows: *Section 5.2* examines the rhetorical strategies employed in the legislative narrative. Proponents of the legislation sought to cast the reforms as a once in a generation challenge of tremendous importance and historic proportions. The scale of these proposed reforms was the largest since the end of the Second World War and proponents argued that by passing this landmark reform legislation, the legislators would be avoiding the mistakes of past leaders. They argued that past inaction to implement appropriate legislation and maintain effective institutional capabilities led to an institutional failure that allowed the attacks of September 11th to occur. If historic opportunity failed to motivate action on reform, then the proponents focused on the moral and constitutional duty of Congress to protect the citizenry and secure the nation from attack. Finally, proponents sought to highlight the danger that was faced from terrorism. This was done by providing examples of recent terrorist attacks, focusing on the lethality of terrorist tactics and using language and imagery that focused on the hostile and lethal nature of the threat. These were the dangers against which Congress was duty-bound to protect the nation. The implication of these dominant themes: historic moment for action, the real and present danger of the threat and the obligation of Government to protect the nation, was that action must be

taken and taken immediately. The proponents argued that the only immediate and feasible course of action was to approve the reform bills that were before the Congress.

While the pro-reform narrative was dominant in Congress, there was a minority of legislators who attempted to resist the wholesale adoption of *S.2845* in the Senate and *H.R.10* in the House of Representatives. If the proponent's narrative was that heroism - defined by supporting and passing these bills- was required, those who resisted the legislation attempted to redefine the idea of heroism. Interestingly, opponents of the legislation did not attempt to refute the mission narrative. They agreed that it was their obligation to act to protect the nation. They agreed that the threat of terrorism was very real. They even conceded that this was in fact a once in a generation opportunity to make historic reforms to America's intelligence system. However, they attempted to reframe what was the logical and correct course of action. They argued that the pending legislation was either partisan and incomplete, a significant objection in the House of Representatives, or that Congress was rushing through such vitally important reforms -the most often voiced point of opposition in the Senate. Whereas proponents called for immediate action, opponents called for further deliberation. Whereas proponents sought to cast action as heroic, opponents sought to cast the rush to reform as cowardly. Opponents countered the dominant heroic rhetoric by arguing that the heroic course was to withstand the growing, unthinking momentum of the reform legislation.

Section 5.3 'Rhetorical Strategies for Legitimising the Legislative Content' examines the content-specific rhetoric of proponents of the reform legislation in both Houses of

Congress. Proponents sought to assign complimentary attributes to both the content and the process of the policy and the personal attributes of the supporters of the legislation. These complimentary attributes were bipartisanship and hard work. Through a persistent reference to these attributes, proponents sought to further the case for the legislative reform agenda.

Section 5.4 ‘Rhetorical Strategies for Legitimising the Legislative Process’ examines the oppositional rhetorical strategies for resisting the proponents’ narrative. In contrast to a focus on positive character attributions, opponents focused on issues of process. In the House of Representatives, opponents criticised the legislative process on the basis of partisanship, accusing proponents of *H.R.10* of prioritising personal and party political interests over the national interest. In the Senate, opponents seized on the accelerated legislative timeline to assert that *S.2845* was being rushed to a vote with insufficient study and debate.

Section 5.5 ‘Rhetorical Strategies for Legitimising and Resisting: Appropriating Authority’ examines how both sides in the legislative debate frequently invoked references to both the 9/11 Commission and the families of the victims of 9/11 to support their respective narratives. The authority which both the Commission and the victim’s families possessed within the reform debate of the post-reporting phase of the public inquiry process and the reverence with which both proponents and opponents of the legislation afford to them is evident. Given that the opponents of the legislation are, in practice, opposing legislation to implement reforms recommended by the

Commission and endorsed by the families of the victims, it is interesting to note the unanimity with which these two groups received deferential treatment from legislators.

Finally, *Section 5.6* ‘Chapter Summary’ will provide a brief conclusion which summarises the findings contained in this chapter. In the following chapter, Chapter 6, these findings will be discussed in the broader context of the literature and relevant theory.

5.1 Restatement of the Research Question

This research project focuses on the post-reporting phase of the 9/11 Commission’s public inquiry process. This period begins with the release of the Commission’s final report on the 22nd of July 2004 and ends with the presidential bill signing of the *Intelligence Reform and Terrorism Prevention Act, 2004* on the 17th of December of the same year. Over the course of this time period, a majority of the Commission’s recommendations were adapted into legislative bills that were introduced and debated in the United States’ Senate and House of Representatives. It is these debates on which the research project focuses to answer the central research question of what rhetorical strategies were employed in the legislative debate of the post-reporting phase of the 9/11 Commission’s public inquiry process.

As noted in previous chapters, a central role of the public inquiry process is to rehabilitate the damaged legitimacy of a State, and its institutions, after its failure to prevent, or protect against, a major disaster event (Brown 2003). However, the re-

legitimation process does not end with the production of an inquiry report, rather it extends into a post-reporting phase of a public inquiry process. Central to implementing the reforms of the 9/11 Commission's public inquiry process was Congressional action. This action generated legislative debate and during this debate legislators employed persuasive rhetoric to make authority claims and legitimate their preferred course of action.

Recent Organisation Studies scholarship on legitimacy asserts that discursive and rhetorical actions can act to create and maintain legitimacy (see: Suddaby and Greenwood 2005; Vaara, et al. 2006; Van Leeuwen 2007; Erkama and Vaara 2010). By exploring the rhetorical themes employed during the post-inquiry legislative debates, it is the aim of this study to gain insight into the process of re-legitimation in the context of the 9/11 Commission's public inquiry exercise. As such, the role of this chapter is to identify and organise the key rhetorical themes uncovered during a grounded theory analysis of the data.

5.2 Rhetorical Strategies for Legitimising the Legislative Narrative

This section of the Findings Chapter will examine the central rhetorical themes that contributed to the narrative which defined the reform mission and motivated the legislators to action. This reform mission is the legislation of the recommendations of the 9/11 Commission and, as a result, the institution of a wholesale reorganisation of the intelligence apparatus of the United States. This was a significant legislative venture and proponents of reform focused on this significance in their rhetorical strategies to

define the mission in near-epic terms. While there were no explicit, self-congratulatory claims of heroism by members of Congress during this reform process, the proponents of this legislation employed a rhetorical strategy that drew attention to the extensive scope, importance and historic nature of the reform. The challenge emphasised the need to protect the American people and was framed as an opportunity to right past failures and, in doing so, rise to an historic opportunity. This rhetorical strategy challenged fellow legislators to be decisive, rise to the occasion and take action to support these reform efforts. Passing the legislation was framed as a success. Resisting this legislation, resulting in further delay or failure, was framed as unnecessary, unreasonable and dangerous. This was the basis of a heroic narrative: an epic legislative mission which cast supporters of the reforms in a heroic light, while opponents of the legislation would, it was implied, be caught on the wrong side of history.

Although dominant, the rhetorical narrative of the proponents did not go unchallenged. Despite the relatively small size of the minority opposition in this legislative debate, a counter-narrative emerged in which opponents attempted to co-opt the heroism narrative as their own. For those lawmakers who opposed the legislation, or at least provided initial resistance to it, they sought to re-frame the heroic narrative, ironically casting the proponents as easily swept-up in the momentum of the process and unwilling to show the courage to slow down, allow for more debate and take the time to ensure that the ‘correct’ course of action was taken. In this counter-narrative, heroism was framed as having the bravery to stem what was determined to be an unnecessary and reckless rush

to action. On both sides of the debate, legislators appeared eager to, albeit implicitly and with outward humility, claim the mantle of heroism.

5.2.1 An opportunity for change

Proponents of the reform legislation had a natural advantage in that the terrorist attacks of September 11th created an atmosphere that was receptive to change. Changes in public policy are either incremental in nature, or they are preceded by a catalytic event that forces significant revisions to the *status quo* (Jones and Baumgartner 1991; Baumgartner and Jones 1993; Dodd 1994). Such events, as the 9/11 attacks, alter the public's perception of reality so that current approaches become untenable and significant reform is demanded. The September 11th attacks caused intelligence and counter-terrorism related issues to rise on the public agenda and provoked a deep questioning of existing policy therefore maximising the public's openness for change and setting the stage for dramatic reform efforts which culminated in these Congressional legislative reform activities. This receptiveness for change was sweeping in its scope, encompassing diverse areas of government remit, including intelligence, transportation, foreign policy and law enforcement. The scale of the public demand for action and the scope of the proposed reforms, created a potential opportunity of heroic proportions.

It was this exceptional opportunity for reform that set the basis for the heroism narrative during congressional debate and was framed by proponents of the legislation as a monumental task to which legislators needed urgently to respond. As articulated by Senator Collins, sponsor of the Senate's reform bill *S.2845*, "This legislation will

implement the most sweeping significant reforms of our intelligence community in more than 50 years. The reforms are long overdue, and they will help to make our Nation more secure” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11941). While Senator Collins notes the significance of the reforms by placing them in an historic context of the last half century, she speaks also of the purpose of the reforms which is to ‘make our Nation more secure’.

5.2.2 To protect and secure

Prioritising the security of the nation and the protection of the American people was the first element of the heroic narrative. Repeatedly, legislators noted that the primary reason for reform was to prevent future attacks and that this responsibility was fundamental to their role as leaders. As noted in Chapter 3, the requirement of government to protect the populous from enemies both foreign and domestic has its roots in the United States’ Constitution. Central to the role of governing is the role of protection. As noted by Senator Collins:

“[This legislation] recognizes that the fundamental obligation of government is to protect its citizens and that those protections must evolve along with the threats. It reorders the priorities of an intelligence structure that was devised for a different time and a different enemy” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 118, p. S9700).

This observation was not given in isolation. In fact, many of the proponents of the legislation, in both Houses of Congress, acknowledged that the protection from future attacks was central to the need for legislative action. During the Senate debate Senator Lieberman, sponsor of the reform legislation, used phrases such as “the security of our

Nation depends upon [action]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11942), and “In this Congress, this President [*Pro Tempore* of the Senate] fulfills our constitutional duty to provide for the common defense of our Nation” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11944). Senator John McCain, a co-sponsor of S. 2845, noted that:

“We have come a long way since 2001 in enhancing this country's ability to prevent and respond to terrorist attacks, but, as the 9/11 Commission said in its final report, we are not yet safe. Increasing our safety against terrorist attack requires new strategies, new ways of thinking, and new ways of organizing our Government. That is what this legislative debate will be all about” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 118, p. S9709).

Senator Coleman expressed Congress’ obligation in a slightly different way, highlighting the importance of national security and suggesting that legislative action was necessary to achieve this priority:

“There are a lot of important achievements--Medicare reform, tax cuts-- but in the end you can’t have economic security without national security. Americans cannot live if they live in fear. The threat of terrorist attack is the greatest threat that faces America, and we have now taken substantial steps in making America safer” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11952).

Securing the nation against attack marked a shift in contemporary congressional priorities from domestic, social issues (e.g Medicare and tax reform) to protection and security (Grant 2004), and this shift was echoed in the rhetoric of the proponents of legislative reform in the House of Representatives. Representative John Conyers was explicit in his rationale for reform when voicing his support for the House bill:

“The choice today is clear. We can either choose the status quo--a broken system of competing intelligence bottlenecks or a positive and promising reform. I urge my colleagues to vote for this bill. Our number one priority is to protect the American people and this bill is a step in the right direction” (U.S. Congress.

Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11028).

Emphasising the protection of the American people as Congress' primary responsibility, Representative Conyers justifies the need for the legislation to fix a broken system that allowed the attacks of September 11th to take place.

In affirming his support for the compromise legislation before the House,

Representative Cunningham employed the justification of protection when he stated:

“ [...] I rise in support of the conference report on S.2845, the National Intelligence Reform Act. Included in this legislation are important reforms that will ensure better coordination among national intelligence agencies, and protect our Nation against future threats [...]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11020).

Likewise, Representative Jackson-Lee explained the rationale for the creation of the Office of the Director of National Intelligence, a central aim of the legislation:

“The real reason for this bill is to get a Director of National Intelligence to be able to give to the American people and all of those who provide for homeland security the human intelligence to have us thwart terrorists and protect ourselves against attacks . . .” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11000).

Protecting the nation and ensuring an acceptable level of safety and security was the focus of Representative John Linder when he, speaking in support of the legislation, echoed the rhetorical theme of protection stating:

“As the 9/11 Commission concluded, we are safer today than we were 3 years ago, but we are not safe enough. As such, great changes and reform are needed. The Intelligence Reform and Terrorism Prevention Act of 2004 before us today will do much to keep America safe, and it is important that we act to enact this legislation now. Protecting the American people is the number one priority of this President and the United States Congress” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H10995).

Focused both on the country as a whole, and his district in particular, Representative Kind of Wisconsin expressed his support for the final legislation specifically because he determined that it would improve safety and security, causes which he argues must supersede partisan interest and party loyalty.

“The security of the people of western Wisconsin is of an utmost priority, and I am supporting this measure to make changes necessary to protect our homeland. [...] because when the safety of our country is at hand we need to be able to cross the aisle and work with our colleagues to protect our country” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11022).

Finally, the necessity of securing the homeland and protecting the citizenry was employed as a rhetorical device to minimise opponents’ criticism of the legislation. For example, Senator Lieberman admonished: “The 9/11 Commission report is an indictment of the status quo. Those who pick and try to look for loopholes in this reform have to remember that the status quo failed to protect the American people on 9/11 [...]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11942). Senator Coleman, challenging the assertion of opponents, that the Congress should defer action until the January 2005 opening of the newly elected 109th Congress argues:

“There are some who may say we could walk away from this bill and hope for something better next year. That would be irresponsible. This bill makes America safer. Passage of intelligence reform will only become more difficult as time passes--unless, God forbid, there is another terrorist attack. In that case, of course, there will be another call for reform. But I submit that Congress will have failed in its duty to the American people if it waits until then to do anything” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 139, p. S11953).

Senator Collins, in a similar manner, suggested that delaying the passage of reform legislation would carry unnecessary and unacceptable risks for the American people.

“Yes, we can wait. We can wait until the day when we know everything we possibly can know, when there are no more threats, when the American people do not expect their leaders to lead. We can wait until the day another attack leaves us all wondering once again why we did not see it coming. [...] That first day will never come. If we do not act, the second surely will” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9703).

By maintaining a persistent emphasis on the moral and constitutional duties of Members of Congress to keep the country safe and to protect Americans from future terrorist attacks, proponents of the legislation strengthened the rationale for Congressional action on intelligence reform.

The rhetorical theme of the security of America and the responsibility of government to protect the American people, adds an initial and important layer to the heroic narrative. Not only is this reform legislation a response on a very large scale, the central purpose of the reform is to make America safe. In addition to the obvious appeal of protecting the vulnerable, it is argued that this is at the very centre of government responsibility. The implication? Not supporting legislation that is intended to protect the American people is an abdication of a legislator’s fundamental, constitutional responsibilities. Establishing the role of protector, proponents defined the threat against which America required protection. By establishing the existence of a real and present danger to the country, reform advocates reinforced the need for action to ensure security and established a degree of urgency for these legislative actions. The following section presents this next element of the call to action narrative.

5.2.3 A real and present danger

The objective of securing the populous from attack was not expressed in a contextual vacuum. Alongside the rhetorical focus on security and protection was supporting rhetoric which focused on the nature of the threat and the enemies who jeopardised national security and from which the citizens required the protection of the Government. The use of this menace rhetoric manifested in the narrative in three particular ways. First, legislators sought to define and illustrate the threat. Second, threats were linked to the need to reform. Third, the lethality and immediacy of the threat was employed to stress the requirement for urgent action. With often graphic descriptions of the terrorist threat, the assertion that reform was required to minimise these dangers and with no other immediate reform remedies available, aside from the proposed legislation under debate in Congress, proponents constructed a forceful and effective narrative.

5.2.3.1 Defining the threat

This section will present data to illustrate the manner in which proponents of the legislation defined the threats to the nation. The threats provide a context for the duty to secure and protect, as discussed above. The following excerpts from the data, use different methods of illustration. In some the threat is descriptive, in others, the statements are declarative and, at times, proponents of the legislation use examples of prominent terrorist attacks on other nations to illustrate that the threat remains active, towards the United States. Regardless, most statements employ evocative, perhaps provocative, language to further the threat narrative. Words such as ‘murder’, ‘mass-murder’, ‘slaughter’, ‘cruelty’, ‘depravity’ and ‘evil’ are deployed. One proponent of

the legislation speaks of a terrorist's wish to 'kill American children' and employs analogies that equate terrorists to 'rapists', 'pedophiles' and 'rattlesnakes'.

Supporters of the legislation were keen to use examples of recent terrorist attacks as proof that the enemy remained active. Senator Collins listed the sites of several recent terrorist attacks, including the hostage taking of 1,300 at a school in Beslan, North Ossetia, to accomplish this goal.

“Our committee work neared its conclusion as terrorists murdered once again, this time at a schoolhouse in Russia.

These terrible events, combined with the slaughter we have seen in Bali, Istanbul, Madrid, Jerusalem, Jakarta, and so many other places, leaves no doubt that the enemy we face has both a global reach and an unlimited capacity for cruelty” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9702).

The attack in Russia had occurred recently, in September of 2004, and gained significant attention in the American media, due in part to the targeting of children.

While Senator Collins did not take the time to describe each attack, the use of the term slaughter and the citation of multiple locations of terrorist attacks allowed her to present the threat as ongoing and the enemy active and determined.

One descriptive and provocative statement in the legislative debates of the reform proposals was delivered by Representative Roy Blunt, as he focused on a bomber who sought children as targets:

“There is a great example of a Jordanian who was convicted in Jordan of conspiracy to bomb a Jordanian school for American children. He is convicted of a conspiracy where his goal, his target, was to kill American children. He somehow got to this country [and] under the current interpretation of the courts, we cannot send him back to Jordan because he might be tortured, but we also cannot detain him. [...]

If one catches a rattlesnake on one's farm, they do not look at it and say, this is definitely a rattlesnake, let us go up and release it in the front yard. [...] We are not going to let this criminal who was, in this case, targeting American children, in other cases might be a murderer, in other cases might be a rapist, in other cases might be a pedophile, we are not going to let this person go and release him in our community simply because we have no place to send him back to [...]" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 127, p. H8888).

While this is one of the most provocative speeches of the legislative debates, it is also one of the few to utilise analogy to characterise the enemy. More commonly, descriptions of actual attacks were employed to illustrate the nature of the threats against which the Government needed to protect America. For example, Representative Capito used the case of the March 2004, Madrid train bombings to highlight the vulnerability of American infrastructure:

"Mr. Chairman, in the wake of the September 11th attacks, as well as the recent bombing of four commuter trains in Madrid, Spain, the need for stronger criminal laws to deal with terrorists and other violence has never been stronger. Intelligence reports last spring indicate that some terrorists might try to bomb U.S. rail lines or buses in major U.S. cities. We have also heard reports of so-called "dirty bombs" that can be easily transported over our extensive mass transportation system.

Mr. Chairman, I do not have to remind anyone in this body of the potential loss of life and disruption to our economy and way of life from this modern new threat" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol. 150, No.127, p. H8872).

In this section of his floor speech, Representative Capito raises the threat of a mass-casualty attack using a radiological device. Other characterisations of the threat were less descriptive in nature, but nevertheless, still used specific language to emphasise the dangers that were faced. Such as "Hardly a day passes in which we do not see new evidence of terrorism's depravity" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9703); or "9/11 was a horrible tragedy. We saw the face of evil. We learned the desperate measures people will take to

stamp out our way of life” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11952).

While other descriptive accounts of the threat from the nation’s enemies were perhaps less dramatic; they, nevertheless, contained similar persuasive elements. Senator Lieberman identified the enemy as brutal and inhumane, but continued to describe their targeting and adaptability before suggesting that current intelligence structures are insufficient in countering the threat, thus linking the threat to the need for reform:

“Terrorists working across national boundaries are brutal. They are inhumane. They strike, most of all, undefended targets, and they adapt to meet new circumstances. They are not going to be defeated solely, or perhaps even largely, in the end by military power or with the help of an intelligence system and community that were organized to fight the Cold War and helped win the Cold War” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9703).

Representative Sessions, spoke for the need to reform the intelligence structures using fact-based examples of the capabilities of a large number of terrorist groups.

“Given the terrorist threats that we currently face in the United States, weak punishments for the possession or use of these weapons is simply unacceptable in light of the fact that we know that 26 terror groups already have shoulder-fired missiles in their possession” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 127, p. H8866).

While not relying on emotive language, in this instance, the factual assessment of enemy capability has alarming implications for American security. Proponents used factual material to describe the nature of the threat.

As with previous examples, descriptions of the threats facing the United States were implicitly linked with the need to protect and subsequently the need to reform in order to have the capacity to protect. This was implicit in the many references to the threat

which America faced and occasionally made explicit as in the two examples from Senator Lieberman and Representative Sessions, immediately above. These were not the only attempts to link the threat with the need for reform, however. This link, between the threat and the need to implement reforms to protect, played a key role in the development of the call to action narrative.

5.2.3.2 Linking the threat to the need for reform

As illustrated above, legislators provided purely descriptive accounts of the nature of threats which faced the United States. One could conclude that the rationale for these descriptive accounts was to establish the case for reform. This conclusion draws further support when one considers the numerous statements during the congressional debates that make an explicit link between terrorist threats and the need to reform to protect against these threats.

This link is articulated clearly by both sponsors of the bill in the Senate. Senator Lieberman addresses the American response to its enemies: “I call this transformational reform because transformational reform is exactly what is necessary to face the enemy of today” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9703). Senator Collins links the need for the reform legislation under debate in order to respond to terrorism: “Our response must be far reaching, and it must unleash America's capacity to meet any challenge. This legislation is an essential part of that response” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9702).

Senator Dorgan, notes that the reform process must ‘work’ in order to protect innocent Americans and that this legislation is the way to stop the enemy:

“My only point is, all of us want exactly the same thing. We want this [legislative process] to work. If there is anybody in here who does not want this to work, they do not belong in this Chamber. We want this to work. Why do we want it to work? Because we know people want to murder innocent Americans. They want to commit acts of terror in this country and we need to stop them” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.123, p. S10313).

The task of modernisation, which Senator Carper suggest the legislation will achieve, is necessary to confront what he refers to as a ‘clear and present danger’:

“Accordingly, we approached this task with a real sense of urgency, a grave and growing sense of urgency because we know we face a clear and present danger from terrorists.

The bill before us today is a landmark achievement because, as others have said and will say throughout the day, for the first time in over half a century we are going to modernize our national intelligence structure to meet the new challenges we face in today's world” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11942).

Representative Sessions sees the legislative reforms as an opportunity to provide tools for defending against terrorism:

“Mr. Chairman, to make sure that we provide the tools necessary to the Attorney General and other U.S. attorneys who may be prosecuting these cases, to give to the frontline agents and investigators those abilities to find and stop those people who are perpetrators of crime, mass murder against the United States of America. Most of all, I would remind this body how important it is to make sure that we keep terrorism away from our doorsteps” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, p. H8869).

While providing one of the more realistic assessments of what the reform legislation can and cannot accomplish, Representative Watson, nevertheless, highlights the need for updated policy to address a new and dangerous threat.

“Whether at Pearl Harbor or the World Trade Center, surprise is everything involved in a government's failure to anticipate effectively. The events of 9/11 defined a generation and laid bare our nation's lack of preparation and a national strategy to deal with the new threat of terrorism.

Passage of the 9/11 bill cannot by itself defeat the terrorist threat. A vote in Congress will not capture Osama bin Laden or stop the spread of weapons of mass destruction. But today we have given the U.S. Government new tools to deal with a new enemy who, as enemies of old, threatens our liberty and way of life” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 138, p. H11002).

In addition to the description of immediate and deadly threats and utilising the threat narrative to push the need for reform, proponents also sought to stress the urgent need for reforms. The nature of the threat was so pressing, proponents argue, that the only way to protect from these threats is by making changes to the intelligence system by supporting the reform legislation that was currently before Congress. Delaying even two months, until the start of the new Congress in January of 2005, was unacceptable and would leave the American people vulnerable to attack it was argued. As Senator Coleman asserted:

“There are some who may say we could walk away from this bill and hope for something better next year. That would be irresponsible. This bill makes America safer. Passage of intelligence reform will only become more difficult as time passes--unless, God forbid, there is another terrorist attack. In that case, of course, there will be another call for reform. But I submit that Congress will have failed in its duty to the American people if it waits until then to do anything” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 139, p. S11953).

With the end of the legislative session approaching, proponents of the reform bills in both Houses of Congress constructed a narrative that allowed for only one correct option: accept the reform legislation as debated and vote to pass these reforms into law. To do so, proponents argued, was the only effective way to confront the threats that faced the country. This theme of urgency was woven throughout the proponents’

narrative. Those legislators who were skeptical of the proposed reforms did not accept the urgency for action and repeatedly criticised proponents of the legislation as rushing the process. (The opponents' counter-narrative will be examined in *Section 5.4* of this chapter and later in *Section 5.5.2* of this chapter which explores the opponents' critique of the legislative process.)

Raising the spectre of a new terrorist attack, Representative Weldon encouraged immediate action in the House of Representatives as well:

“The 9-11 terrorists exploited our immigration system in order to carry out the murder of over three thousand Americans. [...] Does anyone think that our enemies will cease to look for and exploit weaknesses in our defenses? Does anyone think they will not look to continue exploiting the loopholes in our immigration laws? Does anyone think it makes us safer to keep the status quo?

Today, is the day we should be passing these reforms, not next year, and not after the next terror attack” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11019).

By defining the nature of the threat and arguing that reform was essential protection against these threats, proponents of the legislation sought to justify the need for reform in general, and the need to support *S.2845* and *H.R.10* in particular. This rhetorical strategy also sought to stress the need for immediate action and this expeditious need for reform was a helpful defence against criticism that the reform process was too rushed.

5.2.3.3 Threats require urgent action

Urgency was a consistent message from proponents of the legislation in both the Senate

and the House of Representatives. Senator Lieberman explains, as he seeks to rationalise the pace of the legislative process:

“But what was the cause for our haste? Our enemies, our terrorist enemies, al-Qaida and their ilk, are not waiting, as we know. They are here. They are planning. We are at peril. Accordingly, we approached this task with a real sense of urgency, a grave and growing sense of urgency because we know we face a clear and present danger from terrorists” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11942).

Representative Larson finds fault with what he views as delays in the legislative reform process, noting that terrorist attacks are ongoing and the implementation of reforms is necessary to protect against such attacks:

“While we waited for Republicans to be able to say they passed the intelligence reform bill themselves without needing any Democratic support, another U.S. Consulate office, this time in Jiddah, Saudi Arabia was attacked by terrorists, killing five people and wounding thirteen others. I fear how many more such attacks our enemies have been able to organize while we have delayed enacting intelligence reform needed to combat their activities” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11019).

Representative Menendez, raises the possibility of an imminent threat when he quotes Chairman Kean and then highlights the need to pass the reform legislation so that America can protect against an impending attack:

“As Governor Kean, the chairman of the 9/11 Commission, said recently, “The question is whether it will pass now or after a second attack.” Because we know the enemy seeks to attack again. We just do not know when and where it will occur. [...]

This conference report that we have before us today secures America [...] [and]addresses the key intelligence failures that allowed the 9/11 attacks to succeed” U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11007).

Repeatedly, legislators spoke of the pending nature of the next terrorist attack and the urgent need for action. In presenting the case that there was a real and present danger facing America, legislators sought to define the nature of the threat, link the threat to the

need for reform and to assert the immediacy of the danger and therefore the urgent need to enact intelligence reform through legislation. This, the real and present danger facing America, was the second element of the call to action narrative. The first element, discussed in the previous section was the obligation for Congress to protect the American people and secure the nation. The third element to the call to action narrative, an historic opportunity, will be discussed in the next section of this chapter.

5.2.4 An historic opportunity

In establishing the legislative narrative, not only are rhetorical strategies based on the need for Congress to act in order to protect the people from a real and present danger, as discussed above, but the necessity to act is re-enforced through the framing of circumstances in an historic context. This historic motivation manifests in a number of ways, but the common theme is the repeated emphasis on the historic opportunity for reform and is an attempt to strengthen the ‘Call to Action’ legislative narrative and encourage ‘heroic’ legislators to rise to the landmark challenge of their generation.

This rhetorical strategy was employed by the proponents of the legislation in both the House of Representatives and the Senate. Senator Snowe, emphasises the importance of the reform legislation by highlighting the significance of the attack and the proposed reforms: “Mr. President, I rise today to speak to the monumental issue before us, the most profound, sweeping reform of our entire intelligence community in nearly 60 years, 3 years after the worst attack ever on American soil” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9756).

Representative Menendez, highlights the importance of stopping future attacks and places the scope of the proposed reforms in context:

“That is why we as a Congress pledge to do everything possible to make sure the tragic events of 9/11 were never repeated. That is why the Commission was created to investigate what went wrong. Nothing is more important than that mission. In fact, the work on this bill and conference report is the most important of the entire 108th Congress. [...] This will be the first comprehensive overhaul of our intelligence apparatus since 1947, updating it from the Cold War to the war on terror” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11007).

There were a number of legislators in both Houses of Congress who linked the historic nature of the September 11th attacks with the 1941 Japanese attacks on Pearl Harbour.

Representative Larson noted the historic anniversary on which the final House floor debate occurred, as he draws parallels between the two attacks:

“[...] we are here debating this legislation today, December 7, on the anniversary of another day of infamy, which like 9/11 forever changed the future course of this country and generations of Americans. As we honor and discuss those who were lost on 9/11 today, I would like to take a moment to also remember those lost today at Pearl Harbor in 1941 and the sacrifices made by so many families and Americans since then to defend this Nation” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11019).

Drawing parallels between the loss of life and the inability of Government to prevent both the Pearl Harbor attacks and those of September 11th, Representative Smith states:

“It is fitting and appropriate that we consider this legislation on December 7th because prior to 9/11, Pearl Harbor represented the largest single day loss of human life to an attack on American soil. [...] Today's historic bill addresses and responds to the Commission's major recommendations, and will bring much needed reforms to our intelligence funding, gathering, sharing, and analytical processes. Anyone who questions whether or not these reforms are needed should read the Commission's report. [...] Mr. Speaker, on December 7th, 1941 Americans said 'never again' will we be caught so unprepared for a sneak attack. But it did happen again. It happened on September 11th, 2001, and nearly 3,000 men, women, and children lost their lives because of it” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11011).

Without mentioning Pearl Harbor by name, Senator Lieberman, nevertheless, invokes its memory by making reference to both the date of those attacks and the ‘day that will live in infamy’ phrasing, borrowed from President Roosevelt’s 1941 Pearl Harbor Address to the Nation, when discussing the historic nature of September 11th and the proposed reforms before Congress:

“[The 9/11 Commission's] 587-page report did not close the book on September 11. It will never be closed. The legislation does not close the book on September 11. It will live alongside December 7 as a day that will live in infamy throughout American history and America's future” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, pp. S11944-S11944).

Senator Durbin notes the significance of the reforms and the rare opportunity to enact such reforms. He equates the scope of this legislation to the US Government’s mobilisation of resources to develop the atomic bomb:

“This is an historic moment. It is rare, if ever, that the Congress rises to the occasion as it has with this legislation. It is rare, if ever, that we can find a bipartisan consensus on an item of such controversy. [...] For well over two years, I have urged that we do something profound and historic. I thought about the Manhattan Project. [...] On that date, the President said we were shifting into a new approach. We want to know if we can use this new research in science to create atomic bombs, weapons that we may need in this war” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11948).

In the dramatic statement contained in the last line of this excerpt, Senator Durbin emphasises the historic nature of the struggle in which he sees America engaged: A struggle of such historic significance that America could be required to deploy nuclear weapons.

Representative Skelton notes that Congress would be making history if it were to pass such a large-scale restructuring of the nation’s intelligence community:

“Mr. Speaker, we are making history today. This conference report represents the most profound government reform to date for meeting the unique and daunting security challenges existing in this era of terror. This bill fundamentally overhauls the structure of our Nation's intelligence community [...] Mr. Speaker, opportunities in this body to effect fundamental and indeed historical changes are rare. We have such an opportunity today. [...] [This legislation] is significant, necessary, and unprecedented . . .” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, pp. H1105-H11006).

Finally, Senator Feinstein focuses on new and future threats and enemies that will confront America.

“What is the bottom line? It is that, with the passage of this bill, we will have taken a critical concrete step towards equipping our Nation to defend against the enemy of the 21st century--terrorists, rogue states and others who would do us harm. [...] We recognize that what worked in 1947 does not necessarily work today.

I thank my colleagues in this and the other [legislative] body who worked so hard to bring us to where we are today, prepared to pass a truly historic law which will make everyone safer in an unsafe world” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11986).

Throughout the Congressional reform debates of *H.R.10* and *S.2845*, proponents of the reform legislation employed a rhetorical strategy that stressed the historic nature of the September 11th attacks, the threats that faced the nation. The need and opportunity for reform and the chance for legislators to take a role in making history, together, were used to strengthen the legislative ‘Call to Action’ narrative, encouraging legislators to take heroic and decisive action by implementing the proposed reforms.

5.3 Rhetorical Strategies for Legitimising the Legislative Content

As discussed in the previous section, a pro-reform narrative dominated the debate in both the Senate and the House of Representatives. This is not to suggest absolute unanimity or that this dominant account went completely unchallenged. As explored in

the previous section, some legislators did seek to dispute elements of the pro-reform narrative. Additional attention will be given to the opponents' focus on the legislative process in *Section 5.4* of this chapter. First, however, this section will examine the character-based rhetorical themes employed by proponents of the legislation to strengthen their pro-reform justification. Frequent application of the venerable characteristics of bipartisanship and hard work to describe the proponents, their actions, the legislation and the legislative process sought to reinforce the pro-reform legislative narrative and to defend it against criticism.

5.3.1 Bipartisanship

Proponents of the reform legislation repeatedly referenced the bipartisan nature of both the legislation and the behaviour of the pro-reform legislators. In a similar way to which the 9/11 Commission highlighted that their report and its recommendations were the unanimous product of a bipartisan exercise with no dissenting opinions, legislators were keen to underline the fact that not only was the Commission's inquiry process bipartisan, but that *S.2845* and *H.R.10* were the product of bipartisanship at the Committee levels where they were written, that they were introduced with the support of both Republicans and Democrats, and the subsequent negotiation process between conferees of both parties from both the House and the Senate produced a bipartisan Conference Report, which after passing both Houses, became the Intelligence Reform and Terrorism Prevention Act, 2004.

The opening lines of the 9/11 Commission Report reinforce that the inquiry process and its results were intended to be the product of bi-partisanship. “Ten Commissioners -- five Republicans and five Democrats chosen by elected leaders from our nation’s capital at a time of great partisan division -- have come together to present this report without dissent” (National Commission on Terrorist Attacks Upon The United States 2004b: xv). The importance of emphasising bipartisanship is presumably to assert that the process is, not tainted by political considerations and therefore better able to produce credible results and fulfil the Commission’s designated mandate, a central feature of which was to investigate “[...] the facts and circumstances relating to the terrorist attacks of September 11, 2001” (Public Law 107-306. 107th Congress 2002). The Commissioners, later in the Preface of the report, stress that they “[...] have sought to be independent, impartial, thorough, and nonpartisan. [...] Our aim has not been to assign individual blame. Our aim has been to provide the fullest possible account of the events surrounding 9/11 and to identify lessons learned” (National Commission on Terrorist Attacks Upon The United States 2004b: xv-xvi).

Proponents of the legislation returned to the theme of bipartisanship repeatedly, perhaps to strengthen the credibility of the reforms contained in the legislation, even going so far as to point to the bipartisan work of the Commission as a model for the legislative process in Congress. Senator Durbin, praising the work of the Commission, said:

“It is rare, if ever, that we can find a bipartisan consensus on an item of such controversy. Yet we have achieved it. The bipartisan 9/11 Commission gave us an excellent blueprint, a sense of urgency, and a constant reminder that we had to rise above our partisan differences. [...] Governor Kean of New Jersey [and] Congressman Lee Hamilton of Indiana put together an extraordinary panel of Democrats and Republicans who brought us this report. And this report was our blueprint, as we sat down to write this historic legislation” (U.S. Congress.

Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11948).

In the House of Representatives too, the bipartisan bone fides of the 9/11 Commission were singled out as a desirable model for emulation. Complimenting the Commission, Representative Meehan noted that its work was “[...] a landmark achievement. [The Commission] is a model for bipartisan cooperation that Congress must continue to follow” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol. 150, No.138, p. H11023). Representative McCarthy presented the Commission and the Senate as acting in a bipartisan manner and urged that both be seen as examples of how the House of Representatives should act:

“The five Republicans and five Democrats on the panel put aside their partisan differences and made 41 recommendations, which if made law, would make this country safer. The Senate on Wednesday embraced these recommendations with the 96-2 passage of the Collins/Lieberman National Intelligence Reform Act. I encourage the House to act in the same bipartisan manner as the Senate” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 127, p. H8909).

These repeated references to the Commission as a bipartisan example suggest either that the Commission achieved its aim of bipartisanship, or at least its aim of presenting itself and its work as bipartisan, or that the view of a bipartisan effort was a useful rhetorical device in the Congressional debate. A commitment to bipartisanship was not linked solely to the 9/11 Commission, however. The sponsors of the Senate legislation ensured that a theme of bipartisanship helped to frame their presentation of the legislation. In his opening speech, upon the introduction of *S.2845* for debate, Senator Lieberman spoke of the Committee work involved in the writing of the legislation:

“So Senator Collins and I understood from the beginning that we had to work together to do what was best for the country as we saw it. There would be differences of opinion, but we would do everything we could to make sure they were not partisan. That is exactly the tenor of the markup our committee

conducted for 2 days last week. It was one of the best 2 days of my 16 years as a Senator. When it was over, we had more than 40 amendments filed with the committee. Not a single amendment was decided on a partisan vote. One particular Democratic colleague said to me: For 2 days it was actually like we were legislating, the reason we came here in the first place” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9703).

In emphasising the co-operative work of the Senate, Government Affairs Committee, under the leadership of Chairwoman Collins (Republican) and the Committee’s most senior member of the minority party, himself a Democrat, Senator Lieberman stressed that this was not a partisan exercise.

Later in the Senate debate, Senator Collins explained the role that bipartisanship played in the writing of the legislation at her Senate Committee (Governmental Affairs).

“[...] [W]e pledged to work together and to recognize that when it comes to matters of national security, there is no place for partisanship. We worked from the very beginning to forge a bipartisan bill, and I am very pleased that the conference agreement we bring before the Senate today is a bipartisan agreement. I am confident that later today it will receive a strong bipartisan vote” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 139, p. S11940).

Throughout debate on *S.2845*, proponents of the legislation sought to frame their rhetoric with reassurances of bi-partisanship. Senator Levin noted that:

“The managers deserve great credit as the conference agreement represents a significant achievement in regard to those issues. Their work, the work of Senators Collins and Lieberman, is a model of bipartisanship, and I heartily commend them for it” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11955).

Bipartisanship appears to have intrinsically worthwhile qualities that reflect positively on the legislative reform process. This can be seen in the repeated complimentary statements in which bipartisanship is listed alongside other positive terms such as:

‘strength’, ‘wisdom’, ‘making America safer’, ‘important legislation’, ‘good answers’,

‘best resolution’. Without knowing the precise reasons that legislators viewed bipartisanship as desirable in every situation, it is clear that regardless of their rationale that they viewed bipartisanship in a positive way and intended its use to bolster their pro-reform rhetoric. For example, Senator Durbin employs bipartisanship to urge support of *S.2845*:

“The path that led us to this point has not been without obstacles. We had to make major compromises in order to move the legislation forward. But this conference report proves that Congress could work in a bipartisan manner to bring together strength and wisdom and produce this significant bill. [...] As we have done on the Senate side, we have demonstrated that this kind of bipartisan cooperation makes America a safer place” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11950).

Senate Minority Leader, Tom Daschle was complimentary of the legislative effort, including its bipartisan nature, when he states: “I am especially grateful to Senators Collins and Lieberman, the managers of this important legislation. [...] They have managed to grasp the details of this complicated bill and produce strong bipartisan support for their bill” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.125, pp. S10529-S10530).

Gratitude, which focused on bipartisanship, was repeatedly expressed in the House of Representatives as well. Speaker of the House and the sponsor of *H.R.10*, Representative Hastert, expressed his appreciation for the work of the senior committee members from both parties involved in crafting the House bill:

“I want to thank the chairmen and [the senior members of the minority party] of the committees of jurisdiction in this House of Representatives. They have done an incredible job. They have come together. They have worked hard and, by and large, on a bipartisan basis to find good answers to tough problems. They have worked hard to provide us with their best ideas on how to implement these recommendations” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, p. H8906).

Finally, bipartisanship appears to be used as a theme which suggests that partisan pursuits are undesirable and in opposition to a greater good. Therefore, individuals, processes and policy which are seen to be bipartisan are seen as rising above selfish and petty motives to promote the greater good and to serve the nation. This use of bipartisan rhetoric links closely with the rhetorical themes explored in *Section 5.2* of this chapter. Themes of protection against dangerous threats and rising, above party politics, for a larger historic purpose.

Senator McCain references the ‘good of the Nation’ and the ‘national interest’ while applauding Senators Collins and Lieberman:

“[...] I again express my profound and deep appreciation to Senator Collins and Senator Lieberman who have displayed adequately for all Americans as well as Members of this body that if there is a cause great enough and people good enough that we will act in a bipartisan fashion for the good of this Nation.

I have been in this body for only 18 years, but this is one of my prouder moments because of the way this entire body has acted in the national interest” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 125, p. S10537).

During the House debate on the legislation Representative Watson acclaimed the bipartisan process, that resulted in the production of the Conference Committee report, which overcame the ‘narrow interests of a few’:

“Mr. Speaker, the success of the 9/11 bill (S.2845) is a great victory for America. The bill's success also demonstrates that our democratic process works and that Americans can come together in a bipartisan way to overcome the narrow interests of a few and meet the greatest challenge of our age head-on. [...] There were fights about almost every issue. We worked it out as best we could. We worked it out on a bipartisan basis [...]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11014).

Recalling the bipartisanship in the wake of the September 11th attacks, Representative Maloney invokes the bipartisan refrain of ‘united we stand’ to emphasise the focus on national rather than partisan interests.

“Right after 9/11, the Congress had never been more united and determined to work together in a bipartisan way to keep America safe from further attacks. We got a great deal done in a short period of time. It was a proud moment in this body's history. Unfortunately, it did not last long enough. But today, the last act of this session of Congress, passing this intelligence reform and anti-terrorism bill, will be a heartening reminder to the American people that the two parties can work together and live up to the ideal that was so often repeated after 9/11: united we stand” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H10998).

Proponents of the reform legislation utilised the rhetoric of bipartisanship to support the idea that the legislative reforms were an opportunity for legislators, through their support of the bills, to express a high-minded, patriotic and sacred duty to work in the interests of the American people.

This section has explored the use of bipartisanship as a rhetorical theme within the legislative debate to implement the recommendations of the 9/11 Commission during the post-reporting phase of that public inquiry process. Universally, proponents of the legislation understood bipartisanship to be a positive phenomenon and sought to use its claim to their advantage. First, legislators championed the 9/11 Commission as a model of bipartisanship to which Congress should aspire. Asserting a shared bipartisan approach, proponents of the legislation used this rhetoric as a way of linking the reform bills to the work of the 9/11 Commission, thereby strengthening the credibility of the legislation. Second, bipartisanship was used more generally, in conjunction with other laudatory terms, as a way to compliment the process. The implication was that because the legislative process and the resulting policy was bipartisan it was intrinsically good.

Finally, working in a bipartisan fashion was used as a proxy for high-minded, selfless work. If legislators would set aside petty, partisan self-interest, they could work together to serve the Nation. Having focused on the rhetorical theme of bipartisanship, the following section will deal with the rhetorical theme of hard work and its use in furthering the pro-reform narrative.

5.3.2 Hard work

One manner by which proponents conveyed the extent to which legislation was the product of a significant amount of hard work was to link the current legislation with its origins. Senator Collins linked the bill before the Senate with the work of the 9/11 Commission:

“This legislation is not, however, merely the product of 2 months’ work by our committee. It is based upon the work of the 9/11 Commission and the inquiry that spanned 20 months, with 19 days of hearings and 160 witnesses, the review of 2.5 million documents, and interviews of more than 1,200 individuals in 10 countries. The new intelligence structure we propose in our legislation is built upon a rock-solid foundation of inquiry and information” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, pp. S9700-S9701).

This reinforces not only the considerable work of the Commission, but also helped to deflect the criticism that the legislative process for *S.2845* had been rushed. Later in the debate, Senator Collins makes her point more explicit and traces the origins of reforms in *S.2845* even further back:

“As I have indicated, this legislation is the product of a concerted effort by the Governmental Affairs Committee, It reflects the recommendations of other committees and it builds upon the work of the 9/11 Commission. But it is important to know that the 9/11 Commission did not start from scratch, either. Its work takes into account nearly a half century of studies on intelligence reform dating back to the Eisenhower administration” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9702).

A fellow sponsor of the legislation, Senator Lieberman sought to make a similar point by emphasising the significant effort of the 9/11 Commission, before going on to link their work with the proposed Senate bill.

“The Commission spent a year and a half studying the weaknesses in our national defenses that left us vulnerable on September 11, 2001. They interviewed more than 1,200 witnesses, reviewed literally millions of documents, held 12 public hearings, and produced a compelling narrative, chilling in its details and implications.” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9703).

Proponents of the legislation sought to emphasise that the proposed reforms had not originated during the relatively brief legislative process. Senator Graham, focused on what was described as the lengthy development period extending into the past and well beyond the current process:

“This is an accomplishment which did not happen beginning this summer but rather has been underway for at least the 15 years since the fall of the Berlin Wall. I am extremely pleased we have now arrived at the point we may be in a position to enact serious intelligence reform for the first time in over 50 years” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 139, p. S11954).

Senators repeatedly referenced the amount of work that was involved in developing the legislation even during the legislative period. Senator Rockefeller stated that he was “ [...] pleased to be here at long last to speak in support of the National Security Intelligence Reform Act. After 5 months of endless work [...] we are poised to achieve what people thought was impossible (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11958). Likewise, Senator Roberts referenced the work that was involved in bringing this legislation forward, acknowledging:

“ [...] Senator Collins and Lieberman and their staff for their efforts to get a bill which will have a positive impact on our intelligence community. They have put

in a tremendous amount of hard slugging, sometimes very contentious and very difficult work, and overtime, since they began [...]" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11953).

Senator McCain was effusive with his praise of the amount of work that was necessary for the legislative reform:

"Mr. President, I came here to applaud the enormous efforts of my two colleagues, Senator Collins and Senator Lieberman. This has been a task that has been, in the view of many, insurmountable. This piece of legislation was declared dead on numerous occasions. It was through their tenacity, hard work, and willingness to compromise that we now have perhaps one of the most significant and important reorganizations of the Federal Government certainly since 1947 when we created the Department of Defense [...]" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S12007).

Senator Lieberman sought to convey the amount of pre-debate work that had been conducted at the Governmental Affairs Committee:

"During August and early September, in fact beginning at the end of July, the Senate Governmental Affairs Committee held, as Senator Collins said, eight hearings on the Commission's recommendations and drafted a bill on their work. Last week we held a 2-day markup, considered more than 40 amendments, and voted the measure out of committee unanimously, with amendments adopted, good give and take, thoughtful discussion, negotiation on wording that in the end strengthened the authority and the position of national intelligence director" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, pp. S9703-S9704).

Repeatedly, Senators sought to emphasise the work that was required in the creation of the pending legislation. This theme of hard work was also frequently present amongst proponents of the legislation in the House of Representatives. Representative Linder linked the theme of hard work with the quality of the legislation in his statement before the House:

"I would also like to commend the Members of the House on both sides of the aisle who worked so hard to put forth a really good bill and then fought to keep most of it in the final draft" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11002).

Likewise, Representative Hoekstra, acknowledges the work that the creation and management of the reform legislation required, predicating the production of quality legislation on the amount and quality of effort expended:

“The staff has worked incredibly hard to make this possible over the last 7 weeks. They have worked long hours every day to get this bill to where we are today. Without them, this simply could not have been possible.

Mr. Speaker, the conference report on S.2845 is a good piece of legislation. It is necessary. We need to support it, and we need our colleagues to vote yes” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 138, p. H11003).

Representative Conyers highlights his colleagues’ determination and hard work, he compliments individuals from both parties for coming together, emphasising that they have ‘worked so hard’ as if to reassure skeptics that hard work is a proxy for quality:

“The product we have before us is the product of extensive negotiations, that included all parties Democrats and Republicans. My Democratic colleagues on the conference deserve credit for their determination and hard work. [...] I want to offer particular praise across the aisle to my Republican colleagues who have worked so hard on this bill [...]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11028).

Finally, sponsor of *H.R. 10* and Speaker of the House, Representative Hastert uses the term ‘craft’, which implies substance and quality, and acknowledges the significant effort undertaken by his fellow legislators. He equates effort to the production of quality policy and ‘best ideas’:

“I want to thank the 9/11 Commission for their recommendations and the stellar work of both the chairman and the vice chairman of that committee over a long period of time to take the interest of this Nation at heart, to try to craft recommendations that make this country safer against terrorists.

I want to thank the chairmen and ranking members of the committees of jurisdiction in this House of Representatives. They have done an incredible job. They have come together. They have worked hard and, by and large, on a bipartisan basis to find good answers to tough problems. They have worked hard to provide us with their best ideas on how to implement these

recommendations” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, pp. H8905-H8906).

These examples are indicative of the rhetorical employment of the theme of hard work during the *H.R. 10* and *S.2845* debates in the House of Representatives. Hard work is often associated with quality and highlighting the hard work that has been invested in the legislation implies that the resultant legislation is too of high quality. Additionally, hard work is widely viewed as a positive characteristic and frequently associated with trustworthiness and honesty. These are important personal attributes and it can be inferred that policy produced by such hard working individuals is to be taken seriously. Finally, the assertion that this legislation was the result of hard work helps to negate concerns about the compressed nature of the legislative timelines. One could argue that progress was swift, but that quality has not suffered because many talented individuals have worked very hard to craft this legislation.

5.4 Rhetorical Strategies for Resisting the Legislative Process

A central rhetorical theme, among both opponents and initial skeptics of the reform legislation, was a concern with the process. While these individuals questioned the substance of some of the reforms, more so in the House than in the Senate, a common point of argumentation was that a flawed process undermined the credibility of the proposed reforms. A critical focus on process, consistent in both the House and the Senate debates, was adapted to fit the differences in the legislative process in each House of Congress.

In the House of Representatives, as detailed in Chapter 4, a number of Republican Representatives focused on issues of immigration reform, a highly contentious issue in American politics. Given the polarising nature of this issue and the fact that, with a majority position in the legislature, Republicans were able to include elements of immigration reform in their Intelligence Reform Bill, *H.R. 10*, the legislative process in the House had a more contentious complexion than the legislative process in the Senate. This created party-line divisions in the House that were not present in the Senate. Therefore, those resisting *H.R. 10* were inclined to criticise the process as lacking sufficient bipartisanship. For example, Representative Levin declared that:

“There have been two distinctly different approaches followed in the House and Senate on the critical issue of implementing the recommendations of the 9/11 Commission. In the Senate, there has been an open and bipartisan process used to develop a bill that truly reflects the recommendations of the Commission. The Collins-Lieberman legislation in the Senate [...] was the product of extensive deliberation and bipartisan cooperation” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, pp. H8913-H8914).

It is evident from the data that rhetorically, opponents of *H.R. 10* repeatedly employed the lack of bipartisanship as a part of a flawed-process narrative to challenge the proponents of the legislation.

The Senate debated a bill which reflected more closely the recommendations of the 9/11 Commission and omitted potentially partisan issues such as immigration reform. As such, those resisting the reform legislation in the Senate did so on largely processual grounds. While there were points of policy disagreement in the Senate, they were smaller and more limited in scope and were concentrated primarily around the introduction of the Byrd and Spector amendments. This less contentious debate allowed for a more bipartisan process. As such, the criticism of opponents was not centred on a

lack of bipartisanship, rather opponents in the Senate defined the rhetoric of ‘flawed process’ in two ways. First they argued that the entire reform process was rushed and that key changes to the legislation were negotiated ‘behind closed doors’ during the protracted Conference Committee process that produced the harmonised legislation which was returned to the House and the Senate in the form of *Conference Committee Report S.2845*.

5.4.1 Partisanship in the House

An analysis of the rhetorical themes employed during the legislative debate of the 9/11 Commission’s reforms, reveals that the principle of bipartisanship was employed by both sides. As discussed in *Section 5.3.1* of this chapter, proponents of the reforms sought to reenforce that the legislative process had been bipartisan, that the reform legislation was written with contributions from both political parties and that the reform bills enjoyed broad-based bipartisan support amongst legislators. Additionally, bipartisanship was invoked repeatedly as a complement to fellow proponents of the legislation, suggesting that those supporting the legislation were setting aside petty political interests and embracing a greater good. The implication was that opposition to the legislation was an act of partisanship with all its negative associations.

This was one manner in which bipartisanship was employed as a rhetorical device.

However, critics of *H.R.10* and its respective legislative process employed the bipartisanship theme as well, specifically in the form of explicit accusations of partisanship. Opponents of *H.R.10* criticised the legislative process in the House as

partisan and these critics admonished the House leadership to adopt a more bipartisan approach. Some critics highlighted the practices of the 9/11 Commission and the Senate's work on *S.2845* as examples of bipartisan processes which the House could emulate. The theme of bipartisanship, and by extension partisanship, was employed rhetorically by both sides. However, proponents employed bipartisanship primarily as an attribute of character, whereas, opponents in the House employed partisanship as a critique of process.

Representative Green, a proponent of *H.R. 10*, challenges such critiques of process when he states "Mr. Chairman, I think what is interesting to listen to today are the arguments on the other side. Where they cannot win on the merits, they choose to throw up a smoke screen of process, no matter how far off point it may be" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, p. H8886). It is clear that the central focus of the rhetorical strategies employed to oppose *H.R. 10* and *S.2845* was to criticise the process. This was done in the House of Representatives by arguing that the process was overly partisan.

Opponents of the reform bill, *H.R. 10*, sought to contrast the legislative process in the House with previous (9/11 Commission) and concurrent processes (*S.2845*) on intelligence reform. Representative Schakowsky attempts to contrast the work of the House with the work of the Commission when she states:

"Mr. Chairman, I rise today in opposition to H.R.10, the so-called 9/11 Recommendations Implementation Act. At a time when our national security is at risk and our brave troops are fighting overseas, it is shameful that the Republican leadership has chosen to present a partisan bill that does not effectively implement the recommendations of the bipartisan 9/11 Commission" (U.S. Congress.

Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, p. H8914).

Likewise, Representative McCarthy sought to contrast the process in the House with what she views as a superior bipartisan process in the Senate:

“I encourage the House to act in the same bipartisan manner as the Senate. H.R. 10, the 9/11 Recommendations Implementation Act, was written behind closed doors and fails to fully implement 30 of the 41 Commission recommendations. [...] It is disappointing that the House failed to do its job today” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, pp. H8909-H8910).

Representative Udall, highlights bipartisanship in the Senate by pointing out that not only was the Senate able to reach an agreement between both Republicans and Democrats, but the legislation that was produced also enjoyed the support of the 9/11 Commission and the families of the victims of 9/11:

“Mr. Speaker, nearly two months ago this House passed a bill that failed to address many of the 9/11 Commission's recommendations, while including objectional provisions regarding immigration, civil liberties, and other issues. While the Senate was able to reach agreement on a bill that reflected the views of both parties, the Commission, and the 9/11 families, House leaders did not work in a similarly bipartisan way to reach agreement on the best way to implement the recommendations” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11022).

Representative Markey underlines the bipartisanship and success of the Senate process, while providing specific examples of the partisan issues that damaged the House's efforts and injected partisanship into its reform debate, including immigration reform and the ability of the Department of Defense to retain control over key, real-time intelligence assets:

“Although the Senate put together a bipartisan bill that was true to the spirit of the 9/11 Commission recommendations, the House version catered to anti-immigration groups' agendas and to Donald Rumsfeld's struggle to keep all of his Department's intelligence turf intact” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11018).

Finally, Representative Millender-McDonald speaks of the Menendez substitute which would have replaced the wording of the House bill, *H.R.10* with the wording of the Senate bill, *S.2845*. Clearly preferring what she sees as the bipartisan legislative process in the Senate over the partisan approach in the House she states:

“We had a clear choice before us to have passed the Menendez substitute, a bipartisan approach that followed the recommendations of the 9/11 Commission [...] [or] pass a partisan House Republican bill that was slapped together in a matter of months to address immediate political measures. Unfortunately, this Republican led Congress chose the quick fix. It is important to note that the Senate took these same nonpartisan recommendations to heart and passed a bipartisan bill overwhelmingly 96-2” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, p. H8913).

As illustrated above, the opponents of *H.R.10* in the House, employed a rhetorical strategy that focused on the legislative process. These criticisms concentrated on the perceived lack of bipartisanship in the House and elevated the Senate process and the public inquiry process of the 9/11 Commission as exemplars of bipartisanship.

5.4.2 Rushed in the Senate

While the central focus of the critique in the House of Representatives was the charge that the process was overly partisan, the Senate critique, more concentrated but not less vocal, was focused on the assertion that the process had been rushed not allowing for adequate study and debate.

The most vocal opponent of the reform legislation considered by the Senate was Senator Byrd of West Virginia. Elected in 1959, Senator Robert Byrd (D-WV), at the age of 87, was the longest serving member of the Senate at the time of the *S.2845* debate and the

longest serving member in the history of Congress. As the most senior member of the legislative body, Senator Byrd held the position of *President Pro Tempore* of the Senate and by virtue of that role was third in line of Presidential succession. In his opposition to *S.2845*, he prioritises a focus on process over a focus on content. He goes as far as to defer to the sponsors of the bill regarding its substance when he says:

“I do not claim to know as much about this legislation as the managers of the bill. But I do know about process. And it galls me that the Senate has allowed itself to be jammed against a time deadline time and time and time again--and in this instance, jammed against a time deadline in considering this conference report” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11960).

Byrd expresses concern over his inability to scrutinise the legislation more thoroughly, blaming the rush to legislate:

“This is the perfect example of how we are rushing through this intelligence bill without fully understanding what we are doing. I do not understand what we are doing, and I need to understand what we are doing. To properly represent the people from West Virginia, I need to understand what we are doing. [...] How can we be certain as to what we are doing when we are rushed and pressured into passing legislation as major as this legislation in such a limited time, which is hours? We are being pressured to pass this legislation before we adjourn sine die. This is massive legislation. It is far-reaching legislation. The Congress should not have to operate under a hammer, as we are being driven here” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.122, p. S10205).

Senator Byrd draws upon a significant and recent example in which he claims that the Congress was rushed to make a decision and he links the intelligence reform process to the process in which Congress’ authorised President Bush’s use of force against Iraq:

“Iraq was a rushed mistake: We saw, Madam President, the unwisdom of being in a hurry when it came to the invasion of Iraq. Our Government invaded. [...] And now look at what is happening. Look at the terrible cost, the terrible price this Government is paying--paying with the blood of the sons and daughters of our country. Think of it. Let's don't be in such a big hurry. Let's take more time” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 122, p. S10207).

Repeatedly, Senator Byrd led the opposition to the legislation with a single rhetorical theme. The rushed and reckless nature of the legislative process:

“Why not take more time? What is all the rush? Why not take time? That is all I am asking for is take time. [...] Why do we not take time and try to work this out? There are many other questions. That is what I am asking. Let us have more time. We are being forced to operate under the gun here and that does not lend itself to very wise legislation. That is what I am asking: How about more time” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 123, p. S10313)?

Responding directly to proponents of the legislation by questioning the veracity of their claim: that to delay the legislation would jeopardise the safety and security of the

American people, Senator Byrd states:

“Now, a terrorist attack may happen, but it won't happen because this conference report would have been put over until next year. If it is going to happen, it will happen and nothing in this conference report would stop it if it happened next week or the next month or the next several weeks or months. That is nonsense. Don't believe it.

I have heard even some comments from people who ought to know better on the TV saying, What I am concerned about, if we don't pass this report, I just hope we don't have another terrorist attack--as though passage of this conference report will make any difference to any terrorist who may be planning an attack next week or 10 days or the next month or the next 2 or 3 months. No legislation alone can forestall a terrorist attack on our country” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11962).

While Senator Byrd was the most prominent and verbally prolific opponent to the reform legislation in the Senate, he was not the only one concerned with a rush to action. Senator Inouye a Democrat representing the State of Hawaii, encouraged Senators to proceed with caution. Conveying the advice of expert witnesses who testified before his Committee he explained:

“Last week, the Appropriations Committee received testimony from seven witnesses, all of whom are experts in the field of national security and counterterrorism. [...] I do not believe I would be overstating their views to say they were quite concerned with the legislation being proposed by the Governmental Affairs Committee. Their counsel was to be cautious.

Dr. [Henry] Kissinger recommended that Congress study this issue more carefully. He urged us to take another 6 months before we moved forward on what is the most significant Government overhaul since the National Security Act of 1947. [...] I know some of my colleagues worry that if we do not act now we will lose the opportunity for significant change. I recognize this concern. But enacting bad legislation in haste because there is a popular demand to act is not the proper way for this body to respond” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.120, p. S9907).

Senator Hollings, who joined Senator Byrd in voting against the first iteration of *S.*

2845, notes what he views as political pressure moving the legislative process forward at an accelerated rate.

“As we consider this bill under great political pressure and with the election looming, we have considerable analogous precedent to reference. Recent hasty Congressional enactments of Homeland Security legislation and the Patriot Act show the need for more measured action. Collins-Lieberman is thrown together in a matter of weeks. Surely most of us agree that at least some of its provisions are problematic. [...] A hastily thrown together conference resolving differences in the House and Senate versions will not be conducive to finding and fixing these inevitable problems.

My friend Senator Stevens says, ‘Do no harm’. Whatever comes back from conference will have a tremendous head of steam behind it. By acting too fast on Collins-Lieberman, the Senate may get stuck with House provisions in a conference report that are unpalatable. Once reform is enacted, fixing missteps is extremely difficult. Experiences of homeland security legislation, passed right before an election, and the Patriot Act, prove that hasty restructuring results in confusion, mistakes and paralysis” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.121, pp. S10034-S10035).

Concerned with avoiding policy mistakes, which can be difficult to undo or amend,

Senator Hollings also references the contemporary examples, as Senator Byrd did with Iraq, of the Homeland security legislation and the US Patriot Act.

Senator Inhofe, who joined Senator Byrd in voting against the Conference Report,

S.2845 (This was the final legislation that, once passed, became the *Intelligence Reform and Terrorism Prevention Act, 2004*.) echoed the concerns that political considerations

were unnecessarily accelerating legislative process. Senator Inhofe questioned why when the 9/11 Commission requested an extension to complete their work Congress was willing to accede, yet when fellow legislators made requests for more time they were ignored.

“This process has been hurried and rushed from the beginning. It has been tainted ever since the decision was made to tie its consideration to a political schedule.

When the 9/11 Commission needed more time to conduct its investigation into the September 11 attacks, the Congress acted magnanimously in granting a 2-month extension. Senators said at the time:

It would be counterproductive to deny the commission the extra 2 months it now says it needs to complete its investigations. . . .

Mr. President, the Founding Fathers would be ashamed of the notion that time is a luxury reserved for the unelected members of independent commissions. What about the Senate? What about the elected representatives of the people who serve in this body? The Framers of the Constitution conceived a Senate that would resist the forces that urge us to bend with each change in the political breeze. To the contrary, the Constitution binds Senators to serve the greater causes of the Republic and reserves the power of each Member to demand more time for debate, more time for thoughtful consideration” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11964).

Finally, even supporters of the legislation showed their annoyance with the compressed timelines of the process. Senator Stevens, a keen supporter of *S.2845*, who cast his vote with the majority in favour of the legislation in both instances, when faced with restrictions on his speaking time expressed dissatisfaction with the pace of the Senate timetable:

“Mr. President, I am constrained to say that I am disturbed at the process that has just been used. [...] I think in view of the haste with which this bill is moving forward, it is very sad. It is going to change this Senator's vote on cloture tomorrow because I am tired of having this bill being pushed so hard. [...]

I think we should take some time and consider what we are doing. If we are not careful, we will destroy the intelligence system we are trying to reorganize. I am in favor of reorganizing it. I said that in the beginning. [...] I think we should slow down” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.123, p. S10331).

Despite these concerns, *S.2845*, the *Intelligence Reform and Terrorism Prevention Act of 2004*, was passed in the Senate by near unanimous consent as noted in Chapter 4. Despite this there was a core of Senate opposition, led by Senator Robert Byrd of West Virginia. These opponents to the Senate legislation focused on what they viewed as flaws in the legislative process, namely a rushed effort to pass intelligence reform legislation. This small core of opponents was joined by others who, although they would eventually support the legislation, nevertheless, expressed similar concerns about the pace of the legislative process. While opponents in both Houses of Congress chose to focus on flaws in the process as a central rhetorical strategy to oppose the legislation, opponents in the House of Representatives focused on the theme of partisanship; whereas, opponents in the Senate focused on the rush to action.

5.5 Rhetorical Strategies for Legitimising and Resisting: Appropriating Authority

One rhetorical strategy was employed consistently by both proponents and opponents of the legislative reforms in Congress. References to the 9/11 Commission were uniformly positive and employed by both sides to strengthen their respective positions. It is of little surprise that supporters of the *9/11 Recommendations Implementation Act*, (*H.R. 10*) and the *National Intelligence Reform Act of 2004*, (*S.2845*) made frequent and favourable mention of the Commission whose recommendations were the genesis for the reform legislation. However, the degree to which opponents of the legislation used rhetorical strategies that were deferential in nature when invoking the Commission was considerable as well. In their attempt to de-legitimise the legislative processes during Congressional debates, opponents of the legislation argued that the proposed reforms

did not go far enough in embracing the Commissions reforms. Both sides of the debate attempted to adopt the role as the Commission's strongest supporters. Proponents asserted that they were implementing the Commission's recommendations while the opponents were being obstructive and opponents countered that they were simply concerned that the proposed legislation was being commandeered for political purposes and would not be effective in realising appropriate and beneficial change.

5.5.1 Legislative proponents

Mentions of the Commission, its work and its recommendations amongst proponents of the legislation in Congress was prolific. The rhetorical method in which the Commission, or its cause, was invoked was twofold: proponents praised the Commission and its work and they sought to link the Commission with the proposed reforms. Praise for the Commission took many forms with some legislators focusing on the hard work or bipartisanship of the Commission while others praised the relevance of its recommendations.

5.5.1.1 Praising the Commission

Proponents of the reform legislation in both Houses of Congress consistently praised the Commission and its efforts. Senator Carper joined many legislators who sought to recognise the work of the Commission and those associated with the process and to thank them for their efforts:

“To the members of the 9/11 Commission who have worked hard for about 18 months, their staff, a lot of folks who lost loved ones who provided the impetus,

really the wind beneath the wings for the Commission and really for this effort, I say just a heartfelt thank-you for their efforts, and I hope they are pleased with where we are today” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11951).

In rising to speak in favour of the legislation, Representative Wynn extends his gratitude to the Commissioners as well, noting their work and their bipartisan efforts:

“Mr. Speaker, I rise in support of the rule for the 9/11 Commission bill. Let me begin by thanking the leadership on both sides of the aisle for their hard work. I want to thank the members of the 9/11 Commission for their work on a bipartisan basis, and of course I want to thank the families from the 9/11 incident for their work as the driving force behind this bill” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11000).

Senator Lieberman, sponsor of both the pending reform legislation before the Senate (S. 2845) and the legislation that created the 9/11 Commission, expresses his appreciation for the Commission’s efforts, praising their extensive work, bipartisanship and pertinent reform recommendations:

“We owe a great debt to the seminal work of the 9/11 Commission and to their staff whose recommendations we relied on in drafting this bill. . . .

Under the strong leadership of Governor Kean and Congressman Hamilton, this bipartisan Commission made 41 recommendations to strengthen our country against terrorists. The two that they have called the most urgent--that is, the most time sensitive to act on--a strong national intelligence director, and a national counterterrorism center, form the centerpiece of the legislation we put before the Senate today” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9703).

Finally, Representative Slaughter first acknowledges the intention of the legislation to implement the Commission’s recommendations and continues to praise the Chairman and Vice-Chairman’s hard work, ending with an endorsement of the Commission’s reforms:

“Today the House at long last is poised to consider the conference report to S. 2845, the National Intelligence Reform Act. This measure seeks to implement the core intelligence reforms recommended by the 9/11 Commission and makes

significant improvements to emergency preparedness and aviation and border security.

Since July, Governor Kean and Representative Hamilton have tirelessly worked to ensure their recommendations are not relegated to the circular file of history. [...] After reading their fine report and participating in a hearing with them in the Select Committee on Homeland Security, I, like most, if not all, of my Democratic colleagues in the House, endorsed all 41 recommendations” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H10995).

Repeatedly, proponents would rise to speak to the legislation and include endorsements and praise of the Commission and its work. They also sought, through their rhetoric, to link the Commission to the proposed legislation. With such universal admiration for the Commission’s work, asserting a connection between the two made an implicit argument that because the Commission was good, so too was the proposed reform legislation. In this way, proponents sought to confer legitimacy both on the legislation and on their decision to support the legislation.

5.5.1.2 Linking the legislation with the Commission

Legislators were clear, without the work of the Commission the pending reform legislation would not have been possible. Regardless of how accurate this assertion was, linking the legislation back to the Commission and its work was a powerful rhetorical strategy for strengthening the legitimacy of the legislation through a close association to what was viewed widely as a successful and effective process that produced a series of sound recommendations. The House of Representatives went as far as to name their reform legislation the *9/11 Recommendation Implementation Act, 2004*. Clearly, proponents of the legislation saw benefit in maintaining a close and positive association with the 9/11 Commission and attempts to establish and reiterate

this association was prevalent throughout the remarks of the legislators during Congressional debate.

Senator Collins, sponsor of the reform legislation in the Senate, explains the foundational nature of the Commissions work to this legislation:

“This legislation uses the Commission's recommendations as our guide and these principles as our compass. Valuable preliminary objectives have been accomplished in this legislation, consistent with the recommendations of the 9/11 Commission. This bill implements both of the 9/11 Commission's most important recommendations” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9701).

Although criticised as not being enough like the Senate legislation, or containing all of the Commission’s recommendations, proponents in the House, nevertheless, sought to link their legislative efforts with the work of the Commission. Representative Langevin is unequivocal when emphasising the foundations of the House legislation:

“The 9/11 Commission gave us a blueprint for that mission, and this legislation will help us to implement their vision. [...] Mr. Speaker, I thank all of my colleagues for working in a bipartisan fashion to craft a landmark measure that will truly make America safer” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11002).

Echoing the ‘blueprint’ rhetoric in the Senate, Senator Durbin establishes the link between the legislation and the Commissions work, emphasising the influence of the Report in the creation process of the reform legislation:

“The bipartisan 9/11 Commission gave us an excellent blueprint, a sense of urgency, and a constant reminder that we had to rise above our partisan differences. We all know about this report. It is so well known and so well read. It was even nominated as one of the great literary works. That is rare for a Government publication, but it deserved that nomination because it is well written, well thought out, well prepared. Governor Kean of New Jersey, Congressman Lee Hamilton of Indiana put together an extraordinary panel of Democrats and Republicans who brought us this report. And this report was our blueprint, as we sat down to write this historic legislation” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11948).

Crediting the hard work of the Commission with the legislation before the House,

Representative Reyes states:

“Mr. Speaker, I rise today in support of this conference report, though not without some reservations. I am encouraged by the bill's reforms to our Nation's Intelligence Community, reforms that would not be before us today without the hard work of the 9/11 Commission [...]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11008).

Senator Levin thanks the Commission for the course of action chosen in Congress and suggests that such significant reforms were the result of their work and influence:

“Madam President, first, I want to state how indebted we all are to the 9/11 Commission and to the families for their work in putting us on the road to reform. That road will reach a culmination today. It is appropriate that we spent the time we did to try to put together a bill which is comprehensive and the most dramatic reform in the intelligence community that we have had in many decades” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 139, p. S11955).

The rhetorical strategy for legitimising the reform legislation through linking the Commission, its work and its recommendations to *H.R.10* and *S.2845* was clear, but it was done in a way which was able only to imply an endorsement from the Commission. Senator Lieberman, however, was able to make this endorsement explicit upon receiving the public support of the leaders of the Commission:

“The 9/11 Commission supports our compromise. Chairman Kean and Vice Chairman Hamilton said in a statement:

‘We believe this is a good bill and a strong bill. We believe it will make our country safer and more secure.’

They support this compromise because it implements the Commission's key recommendations to establish [a] DNI and a National Counterterrorism Center that will improve coordination and collaboration, as the Commission puts it, “to forge unity of effort” between the 15 intelligence agencies scattered throughout the Government, and to ensure that, unlike up until now, someone is genuinely in charge” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11942).

Thus the proponents' rhetorical strategy for leveraging their association with the Commission took the form of endorsing the Commission through praise as well as linking the Commission to the pending reform legislation before Congress.

5.5.2 Legislative opponents

While it may be obvious that proponents of the legislation that purported to enact many of the recommendations of the 9/11 Commission would speak of the Commission in positive terms, interestingly the converse was not true of the opponents of the legislation who were attempting to de-legitimise the reform legislation. As noted in the previous section of this chapter, opponents of the legislation in Congress chose to focus on what they perceived to be flaws in the legislative process. They argued that either a rushed or overly partisan process would produce inferior reforms. By focusing their objections on the process, they avoided sustained criticism of the content of the legislation or the narrative presented by its proponents. Surprisingly, even less criticised by opponents of the legislation was the professed influence of the reform legislation, the 9/11 Commission.

Senator Byrd, the most ardent and vocal opponent of the Senate bill, who led the votes against both the original *S.2845* and the subsequent *S.2845* Conference Report, had these words for the 9/11 Commission:

“The mistake of how the Senate is choosing to consider this bill is not the fault of the 9/11 Commission. That panel is a group of experienced and dedicated public servants. Their research went straight to the heart of the question that has burned in the minds of millions of Americans for 3 years: Namely, how did such a powerful Nation fail to defend itself from those attacks” (U.S. Congress.

Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.125, p. S10513)?

Senator Specter, an initial sceptic, who sought unsuccessfully to amend S.2845 by strengthening the power of the proposed Director of National Intelligence, at the expense of the Secretary of State, took the opportunity during the Senate debate to express his opinion that the Senate legislation did not meet the intentions of the Commission. While Senator Specter credits the Commission for its efforts, he seeks to separate the Commission from the reforms before the Senate as a way of weakening the legitimacy of the legislation:

“[...] [G]reat credit is due to the 9/11 Commission itself in structuring a report, which was filed in July, and then putting considerable pressure to have their report enacted.

I think, to repeat, the realities are that the final legislation is short of where the 9/11 Commission would like to have gone either with respect to budget control or with respect to day-to-day operations, but in the tortuous process of making changes in the intelligence community, the 9/11 Commission has been a catalyst here in a very important way” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11946).

In the House of Representatives, opponents were equally generous in their praise of the Commission. In fact, opponents sought to cast themselves as defenders of the Commission’s original intentions, as they criticised the *H.R.10* for going beyond the policy scope of the Commission's recommendations while failing to implement all 41 of those recommendations. Representative Royce, speaking in strong opposition to the House legislation, questions why the House bill appears to omit the more politically contentious recommendations:

“Mr. Speaker, I urge my colleagues to oppose this conference report because I strongly believe that all of the 9/11 Commission recommendations should be in it. The commission itself has said that all of its recommendations should be adopted in their entirety to ensure success in deterring terrorism. [...]

Why are we not adopting all of the commission's recommendations to strengthen America's ability to intercept individuals who pose catastrophic threats? [...] So why does this bill not address the 9/11 Commission's recommendation for a secure identification system? [...]

I urge my colleagues to do the right thing and vote this bill down so we can include all of the 9/11 Commission recommendations in it and not just the politically convenient ones” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11002).

Echoing concerns that the House legislation misses important Commission recommendations, Representative Turner states:

“We understand that 85 percent of all critical infrastructure in our country is owned and operated by the private sector. It is, therefore, clear that a national standard is necessary to guarantee the safety of the American people. Yet, despite this very apparent and critical need, H.R.10 fails to adopt [the] 9/11 Commission's recommendations and, therefore, leaves a glaring gap in our Nation's security” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, p. H8905).

Representative Kilpatrick separates her opposition of the House legislation from her view that intelligence reform is needed and credits the Commission for making a strong case for this need:

“Mr. Chairman, I rise in opposition to H.R. 10, the 9/11 Recommendations Implementation Act. I do so not because I disagree on the urgent need to reform our intelligence infrastructure. On the contrary, the 9/11 Commission clearly, articulately and convincingly makes a compelling case that the U.S. intelligence network is in great need of overhauling.

My reasons for voting against the measure deal less with the concept of intelligence reform and more with the substance of the bill we are considering today” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, p. H8910).

Contrary to the bills' proponents, who sought to link the proposed legislation and their support for that legislation to the Commission, opponents attempted to sever the link between the two so they could criticise the House and Senate reforms without criticising the Commission or its recommendations.

The 9/11 Commission received consistent deference from members of Congress during the intelligence reform debates of *H.R. 10* and *S. 2845*. Proponents of the legislation chose a rhetorical approach that praised the Commission and linked the proposed legislation to the efforts of the 9/11 Commission. Opponents of the legislation attempted to insulate the Commission from criticism by articulating a clear separation between the reform bills and the Commission. The rhetorical strategies of both sides would suggest that the Commission enjoyed a high degree of authoritative legitimacy and that its influence extended well beyond the publication of its final report and into the post-reporting phase of the public inquiry process.

5.6 Chapter Summary

The US Congressional intelligence reform debates during the post-reporting phase of the 9/11 Commission's public inquiry process were dominated by a pro-reform narrative. As illustrated by the voting rolls of the Intelligence Reform and Terrorism Prevention Act, 2004 in both the House of Representatives and the Senate (see Appendix E), this reform legislation received overwhelming approval. Proponents of the legislation enjoyed numerical and ex-officio advantages in the debate. Greater numbers can provide the advantage of more speaking time for one side and as sponsors and co-sponsors of the bills, proponents were able to speak first while introducing the legislation, thereby gaining an additional advantage by being able to frame the debate. These advantages allowed the proponents' narrative to establish a dominant position and forced opponents of the legislation into a reactive role.

The proponents of the reform legislation created a 'Call to Action' narrative. In this narrative, proponents defined a challenge that was so important and significant that it could not be ignored by legislators. First, proponents argued that the central moral and constitutional responsibility of Congress was to protect the American people from attack and to secure the Nation. To fail to act in this capacity would be a complete abdication of one's responsibility as a leader. Second, proponents tried to establish that the United States faced a determined and lethal enemy. This existential danger was emphasised by defining the nature of the threat through examples of recent terrorist attacks, by describing terrorist tactics and motives and, finally, through repeated assertions that further attacks were looming. At this point, the first two rhetorical strategies come together. With a certain attack approaching, Congress was duty-bound to protect the country. Proponents argued that the best way to protect the American people was by the expeditious approval of the proposed intelligence reforms. Finally, pro-reform legislators cast this mission to protect from immediate threats in an historic context. This was accomplished in a number of ways. The proponents emphasised the historic scale of the September 11th attacks. Comparisons were drawn with the Japanese Attack on Pearl Harbour, which launched the United States into the second world war. They asserted that such a significant attack required extraordinary legislative reform. Proponents argued that this was a once in a generation opportunity to act. This was to be the largest re-organisation of the US intelligence community since the beginning of the Cold War. Legislators were encouraged to rise to the challenge. This was an epic mission and a once in a generation call to action. Legislators, it was implied, could endorse the reform legislation and be a part of history and protect the American people

against a vicious and deadly threat, or they could stand on the side-lines of history, oppose the reform legislation and do nothing as the United States' enemies plotted to kill innocent Americans. This was a provocative and polarising, yet effectively dominant, pro-reform narrative frame.

Proponents of the reform legislation employed additional rhetorical strategies within their established narrative. These strategies were used to positively reinforce the intrinsic merits of the reform legislation. In addition to the heroic associations for supporters of the legislation, who were cast as responding to an epic and noble 'Call to Action' narrative, proponents of the legislation used rhetoric which focused on praiseworthy characteristics such as bipartisanship and hard work. Proponents applied these complimentary terms, in a persistent manner, to the legislation and supporters of the legislation. As such, the legislation was described as the result of a bipartisan approach and enjoyed bipartisan support. Fellow proponents of the legislation were commended for their willingness to engage in a bipartisan manner, to overcome petty personal or party-based political motivations to support a reform agenda in line with the national interests. The rhetoric of hard work was employed in a similar manner. The legislation was the product of incredibly hard work; therefore, despite any perceptions of a condensed legislative timeline, the reform legislation was well-research, well-thought-out and sound. In this, proponents sought to conflate hard work with a high quality result. Hard work was used also, to compliment the supporters of the legislation. It was their hard work that had made a difference. They had engaged a vital assignment and worked diligently to produce comprehensive and appropriate reform legislation.

Unable to establish a counter-narrative in direct opposition to the pro-reform ‘Call to Action’ narrative, opponents of the legislation placed process at the centre of their critique of *S.2845* and *H.R.10*. In the House of Representatives, opponents criticised the process for being excessively partisan. They contrasted what they asserted was the partisan process of the House with the bipartisan nature of both the 9/11 Commission and the legislative process in the Senate to develop *S.2845*. Whereas in the Senate, opponents of the legislation claimed that the process was rushed and that legislators did not have the time needed to determine if the proposed reforms were appropriate or would be beneficial. They cited the need for more time and suggested that rather than taking decisive action, proponents of the legislation were being swept-up by a momentum motivated by political considerations.

Finally, this chapter explores how both sides of the reform debate incorporated references to the 9/11 Commission and the families of the victims of the September 11th attacks into their rhetoric to support their respective positions. As might be expected, supporters of the reform legislation in Congress invoke the work of the 9/11 Commission to bolster their reform agenda, which they portray as an implementation of the conclusions and recommendations of the 9/11 Commission’s final report. Opponents of the legislation, likewise, claim the mantle of 9/11 Commission supporters. In the House of Representatives, opponents argue that support of the legislation have been side-tracked by partisan issues, as discussed above, and that the legislation that was produced does not go far enough in implementing the recommendations of the 9/11 Commission. In the Senate, linking references to the 9/11 Commission with their concerns over process, opponents assert that the rushed nature of the process does not

provide sufficient time to ensure that the Commission's recommendations are implemented properly. Both proponents and opponents of the reform legislation attempt to adopt a custodial role over the recommendations of the 9/11 Commission with the aim of strengthening their respective positions.

The considerable loss of life as a result of the September 11th attacks, required a sensitive and deferential approach to the families of the victims. Both sides of the legislative debate sought to employ rhetoric that leveraged the tragedy of the circumstances and the moral authority of the families, while being extremely cautious to do so in only reverential and acceptable ways. As such, proponents of the legislation suggested that Congress owed it to the families of the victims to enact the reforms before the House and the Senate; whereas, opponents of the legislation asserted that in order to honour the families of the victims, Congress must slow down the process and ensure bipartisanship so that the resulting reforms were of the best possible quality. This, the opponents argued, was the best way to honour the memory of the victims and their families.

Having presented the findings of the grounded theory approach to the legislative reform debate of the post-reporting phase of the 9/11 Commission's public inquiry process, it is necessary to place these findings in a broader context. With special attention paid to the areas of public inquiry research, the study of legitimacy and rhetoric, the following chapter initiates a discussion of the above findings vis à vis the relevant theory and academic literature.

Chapter 6 - Discussion

6.0 Chapter Introduction

The previous chapter presents the findings of a grounded theory analysis of the Congressional reform debates of the post-reporting phase of the 9/11 Commission's public inquiry process. The findings uncovered a series of rhetorical strategies that were employed to: legitimise the legislative narrative, legitimise the legislative content, legitimise opposition to the legislative process and appropriate the authority of the 9/11 Commission to legitimise actions of both proponents and opponents of the reform legislation. These findings will be discussed in the context of the rhetorical legitimisation literature which has been detailed in *Section 2.3* of the Literature Review (Chapter 2).

This chapter is organised in the following manner: *Section 6.1* restates the research question and provides a brief overview of the research findings contained in Chapter 5. This review of the research question and of the findings will help keep the focus of this research project in mind before commencing our discussion of the findings. *Section 6.2* provides an opportunity to discuss the research findings outlined in *Sections 5.2, Legitimising the Legislative Narrative* and *Section 5.3 Legitimising the Legislative Content* of the previous chapter. It will then link these findings with the rhetorical legitimisation literature examined in *Section 2.3* of the Literature Review to help broaden the theoretical debates. *Section 6.3, Rhetorical Strategies for Resisting Change*, considers the rhetorical strategies for opposing the legislative process, from *Section 5.4, Rhetorical Strategies for Legitimising and Resisting the Legislative Process*. *Section*

6.4, entitled '*The Rhetorical Construction of an Opposition*', examines the findings of *Section 5.4* which focuses on the rhetorical strategies of the opponents of the reform legislation. It assesses critically the true strength of the opposition and discusses the possibility that proponents of the legislation maintained an interest in exaggerating the scope and effectiveness of an ineffectual opposition. This possibility is explored through a further examination of the proponents' rhetorical strategies which focused on opponents and the broader opposition. This exploration is conducted in the context of the public inquiry, re-legitimation literature, as outlined previously in Chapter 2 and possible contributions to the public inquiry literature are explored. *Section 6.5*, entitled '*The Influence of a Successful Public Inquiry Narrative*', uses the findings of *Section 5.5* to explore the themes of re-legitimation and hegemonic narrative contained in the Public Inquiry scholarship outlined in *Section 2.1* of the Literature Review. The final part of this chapter, *Section 6.6*, will summarise these discussions and provide a preview of the final chapter of this thesis, Chapter 7 - Summary and Conclusions.

6.1 Research Question and Findings

The research question of this thesis is: '*What rhetorical strategies were employed in the Congressional reform debates of the post-reporting phase of the 9/11 Commission's public inquiry process?*' In order to answer this central question, a grounded theory methodological approach was adopted to analyse the *Congressional Record* transcripts of the legislative reform debate in the US House of Representatives and Senate. The aim of this analysis was to uncover the rhetorical strategies of legitimation employed by legislators engaged in the legislative debates of *H.R. 10* and *S.2845*. This research

revealed that rhetorical strategies were used primarily for four distinct purposes. First, proponents of the legislation sought to frame the debate to their advantage by creating a dominant legislative, ‘Call to Action’, narrative. The rhetorical strategies used to construct and legitimise this narrative were: protection and security, real and present danger and historic opportunity. Legislators argued that it was their fundamental duty, as lawmakers, to protect the American people and secure the nation from assault. Legislators employed descriptive rhetoric to explain the terrorist threat and emphasised the catastrophic potential of looming attacks. These two rhetorical strategies combined to encourage Congress to take immediate action to prevent a lethal onslaught. The third rhetorical strategy, used to secure the ‘Call to Action’ narrative was a focus on the historic nature of this reform opportunity. Not only would supporters of the legislation fulfil their highest responsibility of protecting America from a determined enemy, but they could be a part of a once in a generation chance to implement change on a colossal scale. These were the central rhetorical strategies employed to legitimise and strengthen the legislative narrative of the dominant, pro-reform faction within Congress.

In addition to employing specific rhetorical strategies to frame the legislative debate and legitimise the pro-reform, action-oriented narrative, proponents of the legislation employed identifiable rhetorical strategies to legitimise the substance of the proposed intelligence reforms. The quality and suitability of *H.R.10* and *S.2845* were assured through a sustained use of rhetorical strategies that focused on bipartisanship, hard work and expertise. The proposed reforms, and those who had assisted with the development of the bills and those legislators who embraced the reform legislation, were repeatedly associated with these three commendable attributes thus strengthening the warrant of

the pro-reform agenda and defending it from criticism. Both narrative and content legitimisation strategies are contained in Table 6.0 below.

TABLE 6.0 - Proponents’ Rhetorical Strategies of Legitimation

PROPOSERS	Legitimising the Narrative	Legitimising the Content
Rhetorical Strategies	1) Protection and Security 2) Real and Present Danger 3) Historic Opportunity	1) Bipartisanship 2) Hard work 3) Expertise 4) Linking to the Commission

Opponents sought to legitimise their opposition on the basis of a ‘flawed process’ argument, in both the House and the Senate. They employed rhetorical strategies to legitimise and strengthen their processual concerns regarding the reform legislation. Shaped by different experiences in the House and the Senate, the rhetorical strategies of the opponents in both legislative bodies differed in their focus. Opponents in the House employed a rhetorical strategy of partisanship to resist *H.R.10*; whereas, opponents in the Senate used a rhetorical strategy that criticised the legislative process for being rushed and that this insufficient time for study and debate would produce flawed legislation. The rhetorical strategies of the opponents of the legislation can be seen below in TABLE 6.1.

TABLE 6.1 - Opponents' Rhetorical Strategies of De-legitimation

OPONENTS	De-legitimising the Process
Rhetorical Strategies	1) Rushed process 2) Bipartisanship 3) Linking to the Commission

Finally, both proponents and opponents of the legislation employed a rhetorical strategy that sought, through association, to appropriate the authority of the 9/11 Commission, thereby attempting to further legitimise their respective positions. Proponents positioned their legislative solutions as an extension of the recommendations of the 9/11 Commission and portrayed legislative action as a tribute to the families of the victims. With the same end-point, but presented in a different rhetorical manner, opponents of the legislation argued that the proposed reforms did not go far enough in enacting the recommendations of the 9/11 Commission. Opponents argued that Congress owed it to the families and the memory of the victims to 'get it right'. In the House, opponents argued that this could be accomplished only through a different, less partisan, process and in the Senate, opponents asserted, that this could be done by slowing the process and taking more time to consider the legislation.

6.2 Rhetorical Strategies of Legitimacy

6.2.1 Models from the literature

This section will begin with an examination of the models of rhetorical strategies for legitimation contained in the literature. Four models from the recent scholarship on

discursive and rhetorical sources of legitimacy will be explored. It should be noted that there are six authors represented in Table 6.2 below. The first two authors are included because their work has been foundational to the rhetorical categories developed by Suddaby and Greenwood (2005), Vaara et al. (2006), Van Leeuwen (2007) and Erkama and Vaara (2010). Aristotle (1991) is important for his contribution of the classical rhetorical appeals of logos (appeal to logic), pathos (appeal to emotion) and ethos (appeal to authority). Suchman (1995) focuses on reconciling the split between the strategic approach to legitimacy and the institutional approach to legitimacy. He does this through the development of a legitimacy model that identifies three primary forms: pragmatic, moral and cognitive. The rhetorical models below the bold line in Table 6.2 are evolutions of conceptions of the rhetoric and legitimacy based on empirical studies from a number of distinct societal settings.

TABLE - 6.2 From the Literature: Models of Rhetorical Legitimation

Authors	Purpose	Rhetorical Strategies
Aristotle (1991)	‘Establishes the classical persuasive appeals of rhetoric.’	1) logos 2) pathos 3) ethos
Suchman (1995)	‘Seeks to reconcile the strategic and institutional approaches to legitimacy and identifies primary forms of legitimacy.’	1) pragmatic legitimacy (logos, pathos) 2) moral legitimacy (ethos) 3) cognitive legitimacy (any or all over time)
Suddaby & Greenwood (2005)	‘How rhetoric legitimates profound institutional change.’	1) historical 2) value-based 3) teleological 4) ontological 5) cosmological

Authors	Purpose	Rhetorical Strategies
Vaara et al. (2006)	‘How discursive legitimisation strategies are used to understand global industrial restructuring.’	1) normalisation 2) authorisation 3) rationalisation 4) moralisation 5) narrativisation
Van Leeuwen (2007)	‘How discourses construct legitimisation for social practices in public communications and everyday life.’	1) authorisation 2) moral evaluation 3) rationalisation 4) mythopoesis
Erkama & Vaara (2010)	‘How rhetorical strategies are used to legitimate or resist plant closures in organisational negotiations.’	1) logos 2) pathos 3) ethos 4) autopoiesis 5) cosmos

No single model, considered retrospectively, provides a suitable framework for understanding the 9/11 post-reporting phase. However, aspects of each model were apparent throughout (for example, the appeal to logic and the emotionally driven ‘call to action’). The nuances of the 9/11 post-reporting process were important in classifying the rhetorical devices and, consequently, understanding their broader rhetorical function. The method of deriving an appropriate model from the findings is discussed below.

6.2.2 A Model from the findings

How then can the findings of this research project be categorised and understood relative to the above models? These categories are not mutually exclusive and often rhetorical strategies will seek to appeal to more than just one aspect of the audiences’ psyche. For example, the rhetorical theme of ‘To protect and secure’ may be classified

in a number of ways. This theme could elicit an emotional response (pathos), by appealing to one's sense of patriotism. Closer to home, it might appeal to the emotion of a parent who is motivated to protect his or her children. This rhetoric could also appeal to logic, as one wishes to protect one's property because of the initial costs incurred with the acquisition of this property. A final classification, following the example of 'To protect & secure' in Table 6.3 below, is an appeal to narrative. If this rhetorical theme serves a particular overarching narrative then complimentary rhetorical themes can be seen as an appeal to narrative, while being logically and emotionally motivating at the same time.

As Vaara, et al. (2006) explains:

“[...] discursive legitimation strategies are often intertwined. For example, normalization seems to be strongly supported by other practices, especially by narrativization. Authorization appears to be linked with rationalization and moralization, not least because the authorities themselves usually (symbolically) represent specific institutions and viewpoints. Rationalization is always based on some moral and ideological basis, although this is not usually stated explicitly. Moralization is often an attempt to put authorizations and rationalizations into particular legitimating and delegitimizing perspectives” (pp. 24-25).

This observation applies to the classification model put forth in Vaara, et al. (2006), but the observation can be extended to the classification of rhetorical strategies and themes in general. Employing the various classifications offered by the models of the rhetorical legitimation literature, a categorisation of the rhetorical strategies of the Congressional debates is contained in TABLE 6.3 below.

TABLE - 6.3 - Categorising the Findings

Legitimising ...	Rhetorical Strategies	Rhetorical Classifications	Grand Rhetorical Purpose
Narrative (Section 5.2)	1) To protect & secure	logos, pathos, narrative	NARRATIVE
	2) A real and present danger	logos, pathos, narrative	
	3) An historic opportunity	teleological, pathos, narrative	
Content (Section 5.3)	1) Bipartisanship	ethos, pathos	ETHOS
	2) Hard work	logos, pathos	
	3) Expertise	authorisation	
Resistance (Section 5.4)	1) Partisanship	pathos	NORMALISATION
	2) Rushed	logos	

In Table 6.3, the most appropriate rhetorical classification options are contained in column three. In column four the overarching rhetorical purpose of the appeal is illustrated. While not surprising, in the construction of a ‘Call to action’ legislative narrative, the main purposed for employing the repeated rhetoric of ‘protect and secure’, ‘real and present danger’ and ‘an historic opportunity’ was an appeal to narrative.

While these may also appeal to logos, pathos or even vanity, their primary purpose is the construction of an over-arching narrative, within which proponents of the legislation would gain advantage through the construction of a context that encourage change and favoured an immediate course of action.

Rhetorical strategies employed to strengthen and confer legitimacy on the content of the legislation are categorised in a different manner. Bipartisanship can appeal to ethos (an

appeal to authority) because the more individuals agree on a course of action or a matter of policy, the more its claims to authority can grow. The ‘spirit’ of bipartisanship may have emotional appeal as co-operation and consensus are typically viewed in a positive light by the general public - the constituents, at whose pleasure, the members of Congress serve. The rhetorical strategies of resistance from *Section 5.4* of the findings will be addressed in the following section of this chapter.

6.3 Rhetorical Strategies for Resisting Change

6.3.1 The findings in context

This section provides a discussion of the findings relating to the rhetorical strategies for resisting the legislative process, as detailed in *Section 5.4* of the previous chapter.

Opponents of the legislation, focused their rhetorical strategies on de-legitimising the legislative process in both Houses of Congress. In the House of Representatives, opponents highlighted what they saw as an overly partisan process. They argued that this partisan process had produced inferior legislation that was not in keeping with either the recommendations of the 9/11 Commission or the companion legislation in the Senate. In the Senate, opponents of the reform legislation raised serious concerns about a highly-compressed process in which the legislation was not receiving sufficient study or debate. This rushed, politically motivated timeline, they argued, risked the ability of Congress to produce reform that would effectively protect the American people.

In their rhetorical attempts to de-legitimise the legislative process, opponents employed the use of both positive and negative retrospective examples of policy process to show what the reform debates in Congress should emulate and avoid respectively. This rhetorical practice of supplying examples of what others do, or how others act, in order to legitimate similar behavior has been identified as the practice of ‘normalisation’ (Van Leeuwen 1999, 2007; Vaara et al. 2006). These definitions of normalisation involve the use of positive examples of behaviour to show and persuade that this behaviour is proper or normal. However, opponents of the legislation in the Senate employ both positive and negative exemplars. This use of negative exemplars to show what is abnormal, and thus what to avoid, thereby encouraging and legitimating ‘normality’ as a cautionary device is an interesting extension to the current literature.

6.3.1.1 Resistance in the House

Upon initial inspection of the findings of the rhetorical strategies for resisting the legislative process, it appeared that the opponents to the legislation were employing rhetoric that should be classified as pathos and logos. Opponents in the House of Representatives, using the rhetorical strategy of partisanship to discredit the legislative process, repeatedly referenced the activities of other groups as exemplars of process. They argued that these other groups had produced superior policy because they had followed a more bipartisan approach. By contrast, the legislation in the House, *H.R.10* suffered in quality as a result of the partisan nature of the process. As highlighted in the previous chapter, opponents of the reforms in the House, invoked the Senate’s legislative process and the work of the 9/11 Commission as models of bipartisanship

producing high quality results. The following is a brief example, excerpted from the findings, of this strategy for de-legitimising the House process. In the following excerpt, Representative Levin contrasts the differing approaches taken in the two houses of Congress.

“There have been two distinctly different approaches followed in the House and Senate on the critical issue of implementing the recommendations of the 9/11 Commission. In the Senate, there has been an open and bipartisan process used to develop a bill that truly reflects the recommendations of the Commission. [...]

The Republican Leadership in the House took a different road. They introduced a bill that was developed in secret with no meaningful input from Democrats. This partisan process has produced a weak bill that does not reflect the recommendations of the 9/11 Commission” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, pp. H8913-H8914).

The Senate was not the only example of bipartisanship invoked by the opponents of the legislation in the House. Although not a legislative process, opponents focused on the bipartisan nature of the 9/11 Commission inquiry. Contained in his critique of partisanship, Representative McCarthy included references to the co-operative approach of the Commission saying: “Mr. Chairman, the 9/11 Commission in July presented its report to the Congress and to the American people. The five Republicans and five Democrats on the panel put aside their partisan differences and made 41 recommendations [...]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, p. H8909). Representative Millender-McDonald increases the contrast between the House process and the Commission when she refers to its recommendations as not merely bipartisan, but as ‘nonpartisan’.

“Mr. Chairman, I rise to express my concern on the course our Congress has taken. We had a clear choice before us to have passed the Menendez substitute, a bipartisan approach that followed the recommendations of the 9/11 Commission -- a Commission that for three years studied the vulnerabilities of our national intelligence community and homeland security and then provided thoughtful,

nonpartisan recommendations” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.127, p. H8913).

Repeatedly, members of the House who opposed the legislation employed the critical rhetoric of partisanship. This alone might suggest a rhetorical ‘appeal to logic’ (*logos*) in that partisan legislation implies a pursuit of narrow self-interests that does not reflect the national interest and risks the creation of policy with both suspect motives and inferior results. Additionally, the charge of partisanship contains a number of negative associations: pettiness, self-interest, incivility, etc. ... From this perspective, this rhetorical strategy could be viewed as an ‘appeal to emotion’ (*pathos*). However “ [...] legitimating strategies are often intertwined. [...] In fact [...] drawing simultaneously on several legitimating strategies -- seems to be particularly powerful” (Vaara, et al. 2006: 24-25). The co-mingling of legitimating strategies in this particular case, however, is more accurately described as ‘normalisation’. While Van Leeuwen (2007) considers normalisation to be a sub-category of ‘Authorization’, Vaara, et al (2006) argue that it should be viewed as a primary category of legitimation.

“[N]ormalization can be actually seen as the primary type of legitimation, as it seeks to render something legitimate by exemplarity. This exemplarity can involve ‘retrospective’ (similar cases/events/practices in the past) or ‘prospective’ (new cases/events/practices to be expected) references, both of which are important in rendering the case at hand as something ‘normal’” (pp. 13-14).

In using the Senate and the 9/11 Commission as examples of more bipartisan processes, opponents in the House of Representatives implied that if only a normal (i.e.: bipartisan) process was adopted in the House the task of reform would be improved greatly.

Opponents in the Senate used this rhetorical strategy of normalisation as well.

However, there were examples of a modified version of this strategy, intended to delegitimise, which have yet to be explored fully in the literature. The following section

will examine the practice of normalisation as a rhetorical strategy in the Senate, paying close attention to the examples of this modified use.

6.3.1.2 Resistance in the Senate

The resistance and opposition to the legislation in the Senate, while focused on process as in the House, employed the rhetorical strategy that accused the proponents of the legislation of rushing the process. This rushed process, it was argued, compromised the quality of the reforms because it left insufficient time for consideration and debate.

Opponents provided examples that could be considered ‘appeals to logic’ (*logos*) primarily. If there was insufficient time, then there was a possibility that the Senate could pass reforms that were ineffective, or worse, damaging. Logically, this would endanger all the work of the Commission and Congress, break faith with the families of the victims and leave the American people vulnerable to attack.

Speaking of the need for more time, Senator Inhofe asked why it was that the Commission was permitted an extra 18 months to complete their work, but the Senate could not take the Christmas break to consider the reforms before re-convening in January at the start of the 109th Congress.

“When the 9/11 Commission needed more time to conduct its investigation into the September 11 attacks, the Congress acted magnanimously in granting a 2-month extension. Senators said at the time:

It would be counterproductive to deny the commission the extra 2 months it now says it needs to complete its investigations. [...]

Mr. President, the Founding Fathers would be ashamed of the notion that time is a luxury reserved for the unelected members of independent commissions. What about the Senate” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11964)?

In his example, Senator Inhofe points to what was widely seen as a successful process that produced high-quality recommendations for reform. His implication is that they required more time and that this time was needed to achieve success. If previous practice had been to allow time to ensure the production of effective intelligence reforms, why would the Senate take an aberrant course of action that would disallow the time needed for study and debate. Thus, Senator Inhofe asserted that the Senate's decision to take immediate action was not what was 'normally' done. This can be viewed, much like the examples cited above from the House debate, as a traditional implementation of a rhetorical strategy of 'normalisation'.

However, Senator Byrd, expressing his opposition to the legislative timelines, adopted a slightly different version of the rhetorical strategy of 'normalization'. He provided a retrospective exemplar with what he considered a negative illustration to re-enforce what the Senate should NOT do: rush the process. His cautionary example focused on the October, 2002 decision by Congress to authorise the use of force against Iraq.

“Iraq was a rushed mistake: We saw, Madam President, the unwisdom of being in a hurry when it came to the invasion of Iraq. Our Government invaded. It won a short war, but it had not given proper thought to what would come after, had not given proper thought, it had not planned properly and carefully for a postwar Iraq. And now look at what is happening. Look at the terrible cost, the terrible price this Government is paying--paying with the blood of the sons and daughters of our country. Think of it. Let's don't be in such a big hurry. Let's take more time” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.122, p. S10207).

Senator Byrd uses this as an example of non-normal behaviour that should be avoided at all costs. In both cases, Senators Inhofe and Byrd use 'normalization' as a rhetorical strategy to de-legitimise the legislative process in the Senate. However, it is Senator

Byrd's repeated employment of this reverse-normalisation strategy that is of particular interest. His second negative exemplar was Congress' October, 2001 approval of the Patriot Act.

“Again, few, if any, Senate hearings have been held on these provisions by the full Senate Judiciary Committee. The inclusion of these provisions in title VI, with so little examination of their real meaning, reminds one of how the PATRIOT Act itself was enacted in haste without sufficient review, and with no real understanding of its true consequences.

These are unsettling provisions, and the Senate ought to insist on its rights to consider them more carefully. The Senate has not had enough time to understand this legislation or its implications” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11962).

Reiterating the negative example of the Patriot Act, Senator Byrd also cites the passage of the Homeland Security Act of 2002, and the subsequent establishment of the Department of Homeland Security as a third example of the negative outcomes of a rushed Congressional process.

“We are so threatened by the politics surrounding the 9/11 Commission's report and the release of its recommendations prior to the Presidential election that we stand ready--stand, salute--to abdicate our constitutional responsibilities rather than to question or probe deeper [...] I say again it is the same kind of thinking that occurred prior to the vote on the war resolution with Iraq, the same mentality that led to the much regretted passage of the PATRIOT Act with only a single dissenting vote in this Chamber, and that led to the creation of a Homeland Security Department that now struggles with its mission to make Americans safer from terrorism” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.123, p. S10302).

In both Houses of Congress, the opponents of the legislation employ rhetorical strategies of normalisation to de-legitimise their respective processes; thereby, indirectly attacking both the substance of the legislation and the narrative of the legislative debate.

6.3.2 Contribution to the rhetorical legitimization literature

Van Leeuwen (1999) provides the basis for Vaara, et al.'s use of 'normalisation' as a category of rhetorical strategy. In general terms, Vaara, et al. acknowledge the influence of Van Leeuwen's work on their rhetorical classifications as they note, "[...] Van Leeuwen's model serves as an important reference point [for our model] [...]" (p. 9). In particular Vaara, et al. (2006) trace their 'normalization' category to 'Authority to conformity', as a sub-category of 'Authorization' in Van Leeuwen's model. As the authors explain:

"[...] 'conformity legitimation', dealing with custom and tradition, is a sub-type of authorization, and 'fact-of-life rationalization' or 'naturalization is a sub-type of rationalization. However, in our view, rendering something normal or natural requires special recognition as a specific category of 'normalization'" (Vaara, et al. 2006: 13).

Tracing the use of 'normalization' back to its origins, Van Leeuwen (1999) states that "Conformity authorization' rests on the principle that something is legitimate when 'everybody does it', or 'everybody says so'" (p. 105). Van Leeuwen (2007) explains further: "The implicit message is, 'Everybody else is doing it, and so should you'. [...] No further argument [is necessary] [...]" (p. 97). Van Leeuwen (1999; 2007) and Vaara, et al. (2006) associate the use of positive examples as a method of normalization with the intent on bolstering legitimacy for a particular course of action. One should act the way others act. But what if the intention of the rhetoric is to de-legitimise the dominant course of action, thereby legitimating resistance? As illustrated by the examples from the Senate debate, this can be achieved by using negative examples of undesirable behavior or action. Van Leeuwen's model does not appear to account for the contrary formulation of 'Look at what others have done. It was inappropriate (or not normal) therefore we should *not* follow their example.' The implication is that we *should* act 'normal' by *not* doing what others have done. So as Senator Byrd argues, if the Senate

does not want to repeat past mistakes, it should not rush the legislative process as it had in those previous and undesirable situations.

By reversing the following formulation by Vaara, et al. (2006) that normalisation is a strategy that "[...] render[s] something legitimate by exemplarity [...] [that its use is] important in rendering the case at hand as something 'normal'" (p. 14). Reformulated, the findings suggest that normalisation can be a strategy that renders something illegitimate by exemplarity [...] that its use is important in rendering the case at hand as something 'abnormal'. While the literature makes a general acknowledgement that rhetorical strategies for legitimation can be used also for the purpose of de-legitimation, this example of a reverse-normalisation strategy, uncovered in the findings, is a unique addition to the established conception of the rhetorical tactic of normalisation.

This section has focused on a discussion of the findings relating to the rhetorical strategies for resisting the legislative process. As outlined above and, more extensively in the previous chapter, opponents of the legislation in Congress focussed their opposition on a critique of the process. In the House there were accusations of partisanship and in the Senate opponents to the legislation claimed that the legislative process was too rushed. In both legislatures, opponents employed rhetorical strategies that are classified as normalisation. They provided exemplars of policy development processes which were both positive and negative. The positive examples were presented as 'normal' processes that should be emulated and the negative examples were presented as 'abnormal' processes that should be avoided. It is this reverse-

normalisation rhetoric, intended to de-legitimise the legislative process, that has not previously been discussed in the rhetorical legitimation scholarship.

6.4 The Rhetorical Construction of an Opposition

As outlined in *Section 5.4 Rhetorical Strategies for Resisting the Legislative Process*, opponents in both the House of Representatives and the Senate chose to focus their critique on their respective legislative processes, as such, the substance of their critiques were distinct. Opponents in the House focused on what they described as an overly partisan political process driving reform; whereas, opponents in the Senate protested what they viewed as a rushed process that provided insufficient time for study and debate. These were not the strongest oppositional strategies and it is clear from examining the data, that opponents of the legislation were hemmed-in by the dominant, pro-reform legitimation strategy. In both Houses of Congress, these critiques were countered by proponents of the legislation through a reliance on the rhetorical themes which were used to develop the pro-reform narrative. Proponents revisited themes such as hard work and reminded opponents of the need to reform in order to protect the nation from the looming threat of terrorism.

Despite the apparent rhetorical weakness of the opponents attempts to resist the reform legislation, proponents of the reforms treated opposition in two ways: first, they sought to downplay and dismiss the concerns of opponents; however, later in the debate they sought to cast their legislative achievements as significant while battered by opposition.

While it was clear that the congressional debate of the legislation contained opposing views, it is important to note that these ‘sides’ were not equally matched in terms of numbers, influence or rhetorical opportunities. The debate contained proponents and opponents and their rhetorical strategies have been examined in the previous chapter, but while there were ‘opponents’ to the legislation, it is fair to question whether or not there was an ‘opposition’. It is also fair to ask what role, if any, did the opponents of the legislation play in the eventual legitimation of the overall process and the resultant strengthening of the pro-reform agenda.

The characterisation of the opponents’ view by proponents appears from the data to be divided into two phases. In the first phase of the debate, as opponents were introducing their critique of the process, proponents sought to downplay and diminish oppositional concerns. As the debate began to wind down, proponents of the legislation co-opted the presence of the opponents and their work in resisting the reform, to strengthen the narrative that there had been rigorous debate and that the reforms had withstood scrutiny. In the first instance, the existence of an opposition, regardless of its size or effectiveness, was used as evidence that the Congress had fulfilled its mandate and that the fact that the legislation had stood up to a full and fair debate was evidence that one could be confident in its quality. A more critical view is that this first assertion, can be seen as the fulfilment of Congress’ role in the broader ceremony of the public inquiry re-legitimation process. Secondly, the notion that the legislation was forged and tested in legislative debate serves to strengthen a previously observed rhetorical tactic of the proponents, that of associating the reforms with hard work and expertise. The narrative was: Congress worked hard to debate these reforms and they withstood the scrutiny of

both the US House of Representative and the US Senate . Thus implying that the legislation had withstood scrutiny but then came through the other side, battle tested and even more legitimate. These two distinct phases of dealing with the opposition to the reform played a central role in legitimating the actions and the legislation of the reformers. These strategies are illustrated in this section of this chapter and their implications with regards to the existing literature on the public inquiry re-legitimation process is explored.

6.4.1 Public inquiry literature: The re-legitimation process

As examined in *Section 2.1.4* and *Section 2.2.6.1* of the Literature Review, public inquiries have a re-legitimation role in which they attempt to restore the public trust and repair damaged legitimacy of state institutions within a post-disaster event context. The public inquiry process can rebuild damaged legitimacy in a number of ways. As noted in the Literature Review, Brown (2000) suggests that public inquiries are primarily focused on establishing, or re-establishing, the legitimacy of institutions. Strengthening this view, Brown adopts a definition of legitimacy put forth by Suchman (1995). Suchman (1995) asserts that legitimacy is the: “perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (p. 574). So in order to strengthen legitimacy the actions of a body, whether a Commission or a Legislature, needs to conform with society’s understanding of what is ‘desirable, proper, or appropriate’. Brown’s view of the role of public inquiries, and their mode of producing legitimacy, can be extended into our observations within the post-reporting phase of a

public inquiry process. If post-reporting legitimation is an extension of pre-reporting and reporting legitimation, then presumably subsequent bodies would need to adhere to the practices with which the public inquiry body found success. So the United States Congress, both the House of Representatives and the Senate, would need to act in ways that were deemed proper and appropriate given what is generally expected of them. While the actions of an appointed Commission and an elected Congress will not be identical, both bodies would need to act in a proper manner, as judged by their role within society.

Congress, therefore would be expected to follow its own rules and traditions, it would allow sufficient opportunity for legislators to have their views heard, as a body it might be expected to carefully scrutinise the recommendations provided by the Commission and craft efficient and effective reforms. Usually, legislation is forged in the midst of a rigorous debate; two opposing sides making their arguments, questioning, challenging, examining and vetting. Congress is expected to provide a forum for all of these actions and is expected, after sufficient debate to work out agreements which allow for compromise which in turn improves the quality of the final legislation. However, what would happen if there were not two sides to the debate? What would happen if the opponents of a proposed piece of legislation were limited in both numbers and rhetorical strategic options to such a degree that the debate wasn't sufficiently robust as to allow the hammering out of quality compromises that balanced the concerns of both sides of the debate. Finally, what would happen if all of this transpired at a time of unprecedented attention to the process by the media and the public?

In the case of the legislative debates of the *9/11 Recommendations Implementation Act, H.R.10*, in the House of Representatives, and the *National Intelligence Reform Act, S. 2845*, in the Senate, to ensure the perception that Congress was acting as expected, in a ‘desirable, proper, or appropriate’ manner, it might be helpful, once the threat of any true opposition dissipated, to inflate retrospectively the true resistance of the opposition and the effort required to pass these reform bills. Evidence for this is present in the findings of this research project. Proponents of the legislation emphasised the effort and work that was required to pass the legislation and elevated the opposition in effectiveness and magnitude. Empirically, the findings show that opponents to the intelligence reforms were ineffective in resisting the legislation and appeared overwhelmed by the rhetorical strategies of the proponents who established a formidable call to action narrative and created the perception that the content of the legislation was robust and would be effective. These rhetorical strategies of the proponents limited the rhetorical strategies that opponents could adopt and they were particularly efficacious in facing down opposition to the legislation. However, in order for Congress to appear credible in their role as effective legislators and to fulfil their ceremonial role in the broader public-inquiry re-legitimation process, it is understandable that proponents of the reforms would employ rhetoric that sought to construct a narrative of a strong, but misguided, opposition and significant legislative effort. The following sections will examine the rhetorical strategies employed by proponents of the reforms to first counter the rhetoric of their legislative opponents and to later construct a narrative of opposition which they could leverage to further strengthen their dominant position and give the impression that Congress’ actions were appropriate.

6.4.2 Dismissing direct criticism

The criticism of the reform legislation by opponents in the House of Representatives and the Senate did not go unanswered. Proponents of the legislation, despite in an overwhelmingly dominant position, sought to address these criticisms of process. They did so by reiterating the rhetorical themes addressed in *Sections 5.2* and *5.3* of the previous chapter. Namely, they reenforced their call to action narrative by focusing on Congress' responsibility to protect and secure, by emphasising the urgency of the threats and by using rhetorical themes such as bipartisanship and hard work to strengthen their pro-reform narrative and dismiss the concerns of opponents.

Representative Hastert, Speaker of the House and the sponsor of its legislation, declared that he was mystified by the opponents' complaints regarding the legislative process.

Relying on the rhetoric of 'to protect and secure', as discussed in *Section 5.2.2* of the previous chapter, he treats such complaints as unserious and he reiterates that the proposed legislation will make America safer and protect its citizens from attack.

“Some of my colleagues on the other side of the aisle complained about the process, and I must admit that I am baffled by those complaints. [...] Some have complained that we are going too fast. Some said our bill was too strong. Others said this bill is too weak. Some have complained because it is simply their nature to complain. Despite the complaints, I am proud of this work product.

This legislation will make this country safer. It will make our families safer. It will ensure the safety of our children and our parents. It is comprehensive. It reforms the government to make it more effective in battling terrorists that want to do harm to this country. [...] It improves terrorism prevention and prosecution so that we can get the terrorists and those who help them before they get us” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No. 127, p. H8906).

In the above passage, Representative Hastert marginalises opponents' concerns by presenting them as trite when contrasted with the very serious matter of protecting lives. He suggests that some opponents have complained 'because it is simply their nature to complain' and not because their complaints are valid or worth consideration. He then employs the rhetorical theme of protection and security in dramatic terms suggesting that the proposed legislation will allow authorities to 'get the terrorists [...] before they get [the American people]', thus presenting legislative opponents as frivolous when set side by side with the urgent and noble causes of protection and security.

In addition to suggesting that opposition to the reform legislation was frivolous, proponents relied on the urgency of a 'real and present danger', as originally identified in *Section 5.2.3* in the previous chapter. Senator Collins, sponsor of the Senate legislation, poses a series of rhetorical questions, directed to the opponents of Senate bill *S.2845*, which emphasises a vital urgency for action in order to protect from danger: "I ask, If the time is not right now, when will the right time come? When will there be no threats? I ask, What could be more cynical than our failure to act on something of such critical importance to the citizens of our country" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.118, p. S9703)? In her statement, Senator Collins raises the possibility that Congress might fail to act 'on something of such critical importance' namely the need to protect the American people from the terrorist threat. This focus on a need to act was employed repeatedly as a direct response to the criticism of opponents. An implication of this is that opponents concerns were not persuasive or important enough to warrant further consideration, or sufficient justification to delay the passage of the reform legislation -which was cast as

taking action. Therefore the rhetorical dichotomy, as structured by the proponents of the legislation was action versus inaction, in which action was heroic and inaction was irresponsible.

Proponents defended against criticism of the process by reiterating the same rhetorical strategies that were used to legitimise the content and quality of the legislation.

Rhetorical claims of hard work and expertise, explored in *Section 5.3.2* of the previous chapter, were emphasised by focusing on the long history of discussion and study that had contributed to the work of the 9/11 Commission and subsequently into the recommendations contained in the reform legislation under debate.

Senator Rockefeller, employs this rhetorical device of a long history of work on intelligence reform, placing the current legislative debate in a broader historical context and rhetorically extending the perceived time given for debate significantly in an attempt to undercut criticism that the process had been rushed. Senator Rockefeller argues that:

“Some have criticized this legislation for being too hastily conceived or rushed to completion. To the contrary, this reform has been 50 years in the making and the issues have been the subject of 46 different commission reports. Most of them have suggested the same kinds of things we are doing here” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11958).

In this response, Senator Rockefeller highlights previous research and recommendations dating back a half a century. In doing this he is both refuting concerns about a rushed process by presenting the legislation before the Congress as an extension of a large body of work with considerable history. Presumably many of the 46 commission reports to which he refers had the benefit of expert input. In this way he is adding the

heft of extensive specialised knowledge and in effect bolstering the claim that *S.2845* will produce appropriate and effective reform.

Finally, proponents sought to defend against the criticism of the reform process, by reversing a charge that was levelled by opponents in the House of Representatives and accusing opponents of the legislation of partisanship. Senator Sununu dismisses the criticisms of the legislation based on process grounds and suggests that these arguments are weak and reflect the partisanship of those who ‘did not quite get everything they wanted’:

“A lot of concerns have been raised about the legislation. [...] But a lot of those criticisms as well are on a weak foundation; concerns, for example, about the process, the speed and the timing with which this legislation was written.

The suggestion was made earlier last month that the Senate had rushed through this piece of legislation, that we moved it through too quickly, that there was not enough time taken for deliberations and hearings. I think of all the criticisms, that is probably the weakest I have heard.

[...] Obviously, not everyone got everything they wanted in the final bill. When the process is criticized for being exclusive or it was rushed, that criticism is most often made by someone who just did not quite get everything they wanted in the bill.” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, pp. S12006-S12007).

The Senator asserts that those who are unhappy with the outcome are focusing on complaints about process because they lack substantive concerns with the content of the bill. As explored in *Section 5.3.1* of the previous chapter, partisanship is commonly associated with negative personal characteristics including self-interest and pettiness. By using the opposition’s charge against them, Senator Sununu is able to portray opponents of the legislation in a negative light dismissing their concerns as motivated by an immature reaction to not getting their way.

Despite the limited threat posed by opponents of the legislation, proponents of the legislative reforms were quite rhetorically aggressive in their response to criticism. They sought to dismiss concerns as trite, petty and inconsequential and delays as irresponsible and outright dangerous to the wellbeing of the American people. In doing this they relied on their previously employed rhetorical legitimation strategies including the need ‘to protect and secure’, the threat of a ‘real and present danger’ against which urgent action was necessary, the reassurance that years of ‘hard work’ had contributed to the quality of the reforms and, finally, by reversing a rhetorical strategy of the opponents in the House of Representatives and accusing the opponents of ‘partisan’ motivations.

6.4.3 Creating the narrative of opposition

While it is understandable that proponents of the legislation would seek to address opponents’ criticisms of the reform legislation, a question arises as to the true magnitude of the threat posed by the opponents of the legislation. As discussed above, the opposition to the legislative reforms was limited in two main ways: numerically and rhetorically. First opponents were limited in numbers. While more legislators raised specific concerns with the legislation in both Houses of Congress, only a very small minority of Senators and Congressmen went as far as opposing the legislation when casting their votes (see Appendix E). Second, as explored in *Section 5.4, Rhetorical Strategies for Resisting the Legislative Process*, the rhetoric of opposition focused on processual issues: the perceived lack of time in the Senate and the perceived lack of bipartisanship in the House of Representatives. These rhetorical strategies were limited

in both scope and effectiveness and, as can be seen above in *Section 6.4.2*, did not present a difficult challenge for the proponents of the legislation to overcome.

Nevertheless, the purpose of a legislative body is to generate effective laws through the process of rigorous legislative debate. So, it would seem, that despite disagreements between proponents and opponents of the legislation, and in the absence of a true threat of defeat at the hands of the opponents of the reform bills, proponents of the legislation, in fact, needed a debate, and sought to create a narrative of opposition, so that the Congressional process could be seen to function, their reform agenda could be codified in law and their contribution to an extended public inquiry re-legitimation process could be secured.

While it is clear that there were ‘opponents’ to *S.2845*, in the Senate, and *H.R.10*, in the House of Representatives, one could ask: But was there an Opposition? As long as the threat of opponents’ arguments was mitigated sufficiently, proponents of the legislation could use the existence of opponents to create a dialectical narrative of rhetorical and ultimately ceremonial value. Emphasising opposition once it has been overcome, or in instances when its threat was at best minimal, acts to strengthen the dominant, pro-reform side of the debate. The implication is similar to the implications explored in *Section 5.3* of the Findings Chapter. That the content of the proposed legislation, and the arguments in favour of its implementation, are strengthened by virtue of having undergone the scrutiny and testing of a rigorous debate. The stronger the opposition, the stronger the winning side appears, having won the debate. In addition to strengthening further the perceived warrant of the reforms, in a broader institutional sense, it raises the perception of Congress as a body of thorough and august debate.

Thus Congress' function within the broader re-legitimation process, or as the next step in the re-legitimation process, taking the Commission's recommendations, testing them in the forum of democratic debate and taking action which is perceived as appropriate and right, strengthens the legitimation of public institutions and the public inquiry process and contributes to the re-building of the public's trust. Irrespective of the legislation that the Congress produced, appearing to act in an appropriate and expected manner contributed to the broader re-legitimation process. Rhetorically then, how did proponents of the legislation seek to construct and strengthen the narrative of the dialectic? This was accomplished mainly through a self-congratulatory effort which returned to the rhetorical themes of bipartisanship and hard work.

6.4.3.1 Rhetorical strategies for the construction of an opposition

Taking an opportunity to revisit excerpts from a sample of the quotations contained in *Section 5.3.1 'Bipartisanship'* and *Section 5.3.2 'Hard work'* of the previous chapter, it is evident that proponents of the legislation sought to emphasise both the co-operation achieved and effort required to pass these reforms. Bipartisanship implies compromise and compromise implies that at some point in the debate there were two opposing sides engaged in the back and forth of a dialectic. In a system in which contentious issues often divide the legislatures down political party lines, casual observers of the debate would be forgiven for confusing bipartisanship (or agreement between parties) with the agreement between sides (or agreement between proponents and opponents of the intelligence reform legislation). Nevertheless, proponents of the legislation exclusively refer to bipartisanship, implying compromise between two opposing sides, when in fact

the bipartisanship of the Congressional process was the agreement amongst the proponents of the legislation -a group of proponents who were made up of members of both parties.

Senator Durbin emphasises the unique nature of the proponents' accomplishments when he states that, "[i]t is rare, if ever, that we can find a bipartisan consensus on an item of such controversy. Yet we have achieved it" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11948). The Senator suggests that Congress created a significant achievement by working in a bipartisan manner to overcome significant 'controversy'. At its best, this is the role of Congress, yet there is little evidence to suggest that the legislation was controversial. However, the more controversial, the more effort needed and the greater the achievement. This is a particularly powerful rhetorical device.

Senator Collins seeks to promote the bipartisanship of the process and the legislation. Commenting on the work of the Senate and of the joint-chamber Conference Committee she says:

"We worked from the very beginning to forge a bipartisan bill, and I am very pleased that the conference agreement we bring before the Senate today is a bipartisan agreement. I am confident that later today it will receive a strong bipartisan vote" (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11940).

Senator Collins, links the term 'agreement' with the theme of bipartisanship. This implies that both sides were able to sit down and work out their disagreements. However, two political parties should not be confused with two sides of a debate. The Senator does not say 'both opponents and proponents of the legislation' worked out an

agreement. She says that they worked ‘from the very beginning to forge a bipartisan bill’. Bipartisan in this context, and in its use throughout the debate, means only the two political parties: Democrats and Republicans.

It is not difficult to see why the term bipartisan could be confused with oppositional sides in a Congressional debate. Political divisions in Congress are common on a number of ideological and policy issues (e.g.: tax policy, spending levels, gun rights, and a myriad of social issues). However, it is clear that opposition or support of these proposed reforms does not equate, to a legislator’s particular political party. Both Democrats and Republicans supported the legislation, despite the give-and-take over specific minor amendments which were resolved, in large numbers. However, throughout the Congressional debates, proponents used bipartisanship to create the impression of significant compromise from opposing sides when in fact the sides they refer to with the term bipartisanship were not in a significant state of opposition.

The theme of bipartisanship was revisited repeatedly and often paired with the rhetoric of overcoming. As Senator Durbin notes: “The path that led us to this point has not been without obstacles. We had to make major compromises [...] work in a bipartisan manner [...] we have demonstrated that this kind of bipartisan cooperation makes America a safer place” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. S11948) While Senator Durbin refers to unnamed obstacles and compromises, Representative Watson elevates the impression of contention and debate with his rhetoric of ‘fights’, suggesting that they were widespread when he states that “There were fights about almost every issue. We worked it out as

best we could. We worked it out on a bipartisan basis [...]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, p. H11014)

Clearly, there were not fights about every issue. As discussed in *Section 5.4* neither opponents in the House of Representatives or opponents in the Senate ‘fought’ or even contested much other than the legislative process followed in their respective chambers. There were no direct ‘fights’ about the legislative narrative set very early on in the debate by the proponents of the legislation. Opponents of the legislation engaged in very few ‘fights’ with respect to the specific content of the legislation. In fact, most ‘fights’ that erupted during the debates were amongst legislators who would end up on the same side and vote in favour of the legislation. Generally, their concerns were not fought-out, but incorporated in the form of non-hostile amendments to the legislation. Finally, with both sides complimenting and deferring to the authority of the 9/11 Commission and the families of the victims, ‘fights’ were not possible in an atmosphere of such complete unanimity.

Clearly then, this language was employed for the rhetorical purpose of suggesting that a great dialectical struggle had taken place within Congress and these rhetorical devices were employed repeatedly by proponents of the legislation. Senator Roberts, echoes the rhetoric of battle by referring to ‘hard slugging’, saying: “They have put in a tremendous amount of hard slugging, sometimes very contentious and very difficult work [...]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11953). Senator Roberts comment furthers the narrative of opposition in a fairly undramatic fashion, but many legislators chose more hyperbolic language. Senator Rockefeller refers to ‘endless work’ and ‘impossible’ achievement:

“After 5 months of endless work [...] we are poised to achieve what people thought was impossible” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S11958) Senator McCain suggests that some have characterised the obstacles to passing reform legislation as ‘insurmountable’:

“This has been a task that has been, in the view of many, insurmountable. [...] It was through [the co-sponsors] tenacity, hard work and willingness to compromise that we now have perhaps one of the most significant and important reorganizations of the Federal Government certainly since 1947 [...]” (U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S12007)

It seems clear that proponents of the legislation sought to emphasise their accomplishments by inflating the significance of obstacles and employing the theme of bipartisanship to imply that there were two equally matched sides in the Congressional debates. In addition to the inflation of their achievements, these rhetorical strategies give the impression that: a) there were two relatively evenly matched sides, b) that these sides engaged in a thorough and rigorous debate, c) the legislation was forged out of hard work and bipartisan compromise. Therefore proponents of the reform legislation constructed a narrative in which Congress had done what was expected of it, they had fulfilled their functional institutional role of taking the recommendations of the 9/11 Commission, testing them, improving upon them, they had carried out their institutional role in that they had engaged in a hard-fought, rigorous debate that resulted in effective, bi-partisan compromise, producing effective reforms that adhered closely to the recommendations of the 9/11 Commission. Thus Congress acted in a manner that was viewed as ‘desirable’, ‘proper’ and ‘appropriate’ which allowed it to contribute to the re-legitimation of damaged state institutions through a continuation of the process initiated by the creation of the 9/11 Commission’s public inquiry process.

6.5 The ‘Successful’ Public Inquiry

6.5.1 Measuring success

Brown (2003) asserts that public inquiry processes attempt to re-legitimate failed institutions through the production of an authoritative narrative. An authoritative narrative was a key aim of the 9/11 Commission. Referring to the failure of previous high-profile investigatory commissions, including the Roberts Commission (1941-1942), which was established to investigate the Japanese attacks on Pearl Harbor, Hawaii, Chairman Kean writes: “Neither the Roberts Commission nor a subsequent congressional inquiry into Pearl Harbor in 1946 provided an authoritative account of the Japanese attack on Hawaii [...] [therefore] [...] we had to create a new model for how to conduct a high-profile commission.” (Kean, et al. 2007: 29). Was the 9/11 Commission successful in creating an authoritative narrative?

There is no standard metric which adequately measures the authority of a public inquiry report. However, there are a number of factors which might suggest that, on this account, the 9/11 Commission was quite successful. An element of the findings, presented in the previous chapter, illustrates the degree to which both proponents and opponents associated themselves with the Commission in order to strengthen their arguments. Without exception, legislators on both sides of the debate were complimentary of the Commission and its work. Proponents attempted to link their reform proposals to the Commission’s recommendations and opponents sought to link their motives for resisting the reform legislation to the interests of the Commission.

Opponents of the reforms were concerned about partisanship because they claimed that it didn't allow for a more complete adoption of the Commission's recommendations. They also criticised the process as too rushed and, as a result, risked producing inferior reforms which would be a disservice to the Commission and the families of the victims. Congress, they argued, needed to slow down the process, allow for more study and debate so that they could 'get it right'.

The reverential behaviour of the legislators is one indicator that the 9/11 Commission produced an authoritative narrative. Another measure of authoritative success is the degree to which their recommendations were passed into law. A third measure of the authoritative nature of the Commission Report is the degree to which the Commission's rhetoric was adopted or appropriated by members of Congress or members of the media. As findings of this research project show, the rhetorical strategies employed in Congress to legitimise the legislative narrative were the themes of 'protect and serve', 'real and present danger' and 'historic opportunity'. A cursory search of public statements made by the Commission prior to the legislative reform process, shows similarities to the dominant rhetorical themes which emerged in the congressional debates.

'To protect and secure':

"I am confident this bipartisan team will distinguish itself by fulfilling its historic mission to provide the American public with valuable insight into the circumstances leading up to the tragic events of September 11, 2001, and, just as importantly, provide recommendations regarding how we can better protect the American people" (National Commission on Terrorist Attacks Upon the United States 2003a).

'Real and present danger':

“The terrorist threat to the United States has not disappeared since September 11. Future attacks are expected. We hope that the President and the Congress study our recommendations with care and act on them quickly” (National Commission on Terrorist Attacks Upon the United States 2004a).

‘Historic opportunity’:

In the last six months the commission has launched the most wide-ranging outside investigation of American national security in the history of the United States. We make this point so the public will understand that the issues we are addressing have few, if any, precedents” (National Commission on Terrorist Attacks Upon the United States 2003b: 1).

While it is possible that these are isolated statements and that any similarities in content is a coincidence, it is possible as well that they might represent a significant number of public statements that contributed to a national, rhetorical conversation during the investigatory phase of the Public inquiry process. This could be an interesting line of inquiry for future research in which one would analyse the rhetorical strategies of the 9/11 Commission’s public statements and writings to explore any similarities between the rhetorical strategies employed by the Commission, Congress or even the media. Similarities between the rhetoric employed by the Commission and the rhetoric employed in Congress would not prove a direct causal link, but it could help to build the case that the authority and legitimacy the Commission had established during the inquiry phase of its work, had extended beyond the production of its final report to the activities of the post-reporting phase. In any event, this research project has uncovered the rhetorical legitimization strategies used in the intelligence reform debates. An important reference point has been established which can act as an appropriate starting point for future research aimed at assessing the authoritative success of public inquiry processes and confirming the extension of a commission’s influence and authority into the post-reporting phase of a public inquiry process.

6.5.2 A measure of opposition

There is a consideration of the 9/11 Commission's authority that is not measured by the offensive success of the report, such as having its recommendations implemented, or having others adopt the Commission's rhetoric. This measure of a successful public inquiry is determined entirely by the rhetorical de-legitimation strategies of one's opponents. A surprising aspect of the findings was how narrow the choices of rhetorical strategies were to the opponents of the legislation. They were forced to adopt what appeared to be quite weak oppositional tactics. They attacked the process, but rarely the substance of the reforms, less so the legislative narrative and almost never the Commission or its recommendations. In the Senate the small group of opponents argued that the process was rushed, but they were unable to provide evidence that the reforms had suffered because of the pace of the legislative process.

In the House of Representatives, the opposition to the reform legislation was only slightly more substantial. Critics in the House complained that the process was overly partisan. As discussed in the previous section, partisanship can be a negative phenomenon, but that does not need to be the case. Opponents in the house failed to make the case that partisanship damaged the quality of the legislation. While it is true that opponents did not agree with many of the immigration and border control provisions included in *H.R. 10*, that disagreement with its inclusion is also a partisan action. The legislation may have been partisan and they may have not agreed politically with its orientation, but that is not quite opposition based on a critical evaluation of the substance of the legislation.

The question is why was the opposition to the reform legislation so small in numbers and so limited in options for resistance. The answer would appear to lie in the strength of the Commission, which was protected by both its authority and the authority of its inquiry narrative (including its recommendations for reform). As noted at the opening of this section, Brown (2003) suggests that a successful public inquiry is one that produces an authoritative narrative, one that cannot be challenged in a substantial manner, thereby progressing towards its goal of the re-legitimation of failed institutions.

6.6 Chapter Summary

This chapter begins with an introduction and a restatement of the research question, as it is helpful to keep the research question in mind when discussing the findings of the thesis. The first discussion section of this chapter focuses on the findings that detailed the rhetorical strategies employed in the Congressional reform debates to create and legitimise the narrative and those used to strengthen and legitimise the content of the legislative reforms. It was these rhetorical strategies derived from a grounded theory analysis of the data that were the subject of discussion in this section of the chapter. These rhetorical strategies were discussed in the context of various rhetorical classification models from the rhetorical legitimation literature. They were classified according to multiple, relevant categories and their grand rhetorical purpose was identified and considered.

The next section of this chapter focused on the rhetorical strategies for de-legitimising and resisting the legislative reform process. The rhetorical strategies uncovered by the analysis were matched according to their relevant rhetorical type, as provided by the models from the literature. Opponents' primary rhetorical strategies were classified as the practice of 'normalization'. A unique and interesting finding was the use of positive and negative exemplars. While the use of positive exemplarity is common, and the basis for this classification, a strategy of 'reverse-normalization' was employed on multiple occasions. This was new and does not appear in the existing rhetorical legitimisation literature. In the next section of this chapter, the strength of the opponents, both numerically and rhetorically was critically examined and the rhetorical strategies for dealing with opponents and opposition, by pro-reform legislators was examined in greater detail. From this examination it was clear that proponents of the legislation first sought to dismiss the concerns of opponents, but later in the debate they employed rhetorical devices which created a narrative of triumph over a significant and determined opposition. The rationale for this apparent narrative construction of an opposition was considered in terms of the public inquiry re-legitimation literature and it was determined that the construction of an opposition served a number of legitimating purposes all of which strengthened the position of the pro-reform agenda. Next, a discussion of the metrics for measuring the success of a public inquiry was discussed within the context of the re-legitimation themes of the public inquiry literature. It was suggested that links could be identified between the rhetorical strategies employed in Congressional debates, as uncovered by this research project, and other groups of influencers in society. Anecdotal evidence was presented that speculated as to possible rhetorical commonalities in the discursive practices of the pre-legislative debate

statements of the 9/11 Commissioners and those statements employed by legislators in Congress. Research intended to determine if any such links existed was suggested as an interesting future research project. Finally, this chapter concluded with a brief summary of the discussions of the research findings, before providing a transition to the final chapter of this thesis.

The final chapter of this thesis will begin with an introduction that outlines its subject matter and reiterates the purpose of this thesis i.e. the research question. The next section will outline the complete thesis, before providing an opportunity for the discussion of the main contributions of this study, suggestions for future research and a discussions of the limitations of the thesis. The final section will provide the author an opportunity to reflect on the research project, in particular, and the doctoral process in general.

Chapter 7 - Summary and Conclusions

7.0 Chapter Introduction

The previous chapter provided an opportunity to discuss the findings of this research project in the context of the broader literature. The first discussion section focused on the rhetorical strategies employed to create and legitimise the legislative narrative and those used to strengthen and legitimise the content of the reform legislation. These rhetorical strategies were assigned to rhetorical categories from models within the rhetorical legitimation literature. Next, the rhetorical strategies employed by opponents of the legislation were identified and it was determined that they engaged in the rhetorical practice of ‘normalization’ in an attempt to de-legitimise the legislative process. The next section critically evaluated the scope and effectiveness of the legislation's opponents. It was clear that the rhetorical strategies of the opponents presented a minimal threat to the pro-reform agenda. It was recognised that proponents attempted to exaggerate the threat posed by the opposition and developed a narrative that framed the legislative debates as a significant struggle to overcome the opposition. This served a rhetorical purpose, in that it suggested that the legislation was strong enough to be tested and survive rigorous debate. It served a re-legitimation purpose, as well, because the narrative in which Congress diligently fulfilled its mandate to conduct serious and sober debates that test proposed legislation. As such, Congress would be seen to be acting in an ‘appropriate’ manner. Thus contributing to the re-legitimation process initiated by the public inquiry process. In the final section of the previous chapter, a number of possible metrics for measuring the success of a public inquiry were discussed.

This final chapter of the thesis serves a number of functions. First it restates the central research question as: *What rhetorical strategies were employed in the legislative reform debates of the post-reporting phase of the 9/11 Commission's public inquiry process?* This chapter will then provide a chapter-by-chapter review of the entire thesis, before discussing the key contributions of this study, suggestions for future research as well as a discussion of the possible limitations of this research project. Finally, this chapter, and the thesis will conclude with the author's final reflections on the thesis and the doctoral process.

7.1 Overview of the Thesis

Chapter 1 introduced the thesis and provided a justification for the research project. It then positioned the study within its practical context by outlining the timeframe of the 9/11 Commission's public inquiry process. A chapter by chapter outline of the entire thesis was then provided.

Chapter 2 reviewed the relevant literature to familiarise the reader with the scholarly and theoretical context of this study. The literature review provided direction for the research, identified areas in need of focus and helped to scope the research project while informing the research design. The literature examined in this chapter was divided into three parts. The first section explored the public inquiry literature. The second section reviewed different perspectives on legitimacy and reintroduced aspects of the public inquiry literature that related directly to issues of legitimacy and the re-legitimation function of the inquiry process. The third section of this chapter examined the relatively

recent literature pertaining to the rhetorical strategies for legitimation. The chapter concluded with an identification of the research gaps and proposed further research that would strengthen these literatures. The chapter stated a potential research question and explained how this would fit within the existing scholarship.

Chapter 3 outlined the considerations and decisions necessary in the selection of an appropriate research design. A brief historical context was provided to review the research vehicle paying close attention to possible empirical requirements. Next, an examination of the available ontological and epistemological options were reviewed. After evaluating the philosophical, empirical and methodological requirements of this study, a grounded theory approach was chosen. This methodological approach was explored and deemed to be epistemologically consistent with the researcher's beliefs and well suited for demands of this project, appropriate for engaging with the data and for answering the central research question. The source and characteristics of the data were described and an explanation of how the data was organised and managed was provided, including an explanation of the use of the qualitative research software, NVIVO. Finally, the three-stage, abductive coding process of grounded theory was detailed.

Chapter 4 provided a descriptive account of the key events and processes within the scope of this thesis. This timeframe, including the relevant contextual details, was presented in three parts. Phase one recounted briefly the September 11th attacks and their immediate aftermath. Phase two was focused on the creation of the 9/11 Commission and brought to the fore the relevant details and important landmarks of this period of time. The third phase described the post-reporting phase of the 9/11

Commission's public inquiry process. Within this phase a detailed accounting of the intelligence reform legislative process in Congress was provided, as this is the empirical focus of the research project.

Chapter 5 presented the findings of the grounded theory analysis. The research question was restated to establish a context for this discussion. The results of the grounded theory analysis were organised into four sections. The first presented the rhetorical strategies employed to construct and legitimise the legislative narrative. The second presented the rhetorical strategies employed to strengthen and legitimise the legislative content. The third section presented the data showing that opponents of the legislation focused primarily on de-legitimising the legislative process by employing rhetorical strategies that stressed the partisan nature of the process in the House of Representatives and the rushed nature of the process in the Senate. The final section discussed how both sides in the debate employed a deferential rhetorical strategy towards the 9/11 Commission and their recommendations and attempted to strengthen their respective positions by associating closely with the Commission.

Chapter 6 contained a discussion of the findings of this research project. The research question was restated and then the rhetorical strategies employed to create and legitimise the legislative narrative and to strengthen and legitimise the legislative content were discussed and categorised using the models of classification found in the rhetorical legitimation literature. The following section discussed the rhetorical strategies used by opponents of the reform legislation in an attempt to de-legitimise the legislative process. One such rhetorical strategy was identified as 'normalisation' or the use of a positive 'roll model' to show and encourage others to act in a 'normal' manner.

Also identified, was the use of negative examples to show others what is not ‘normal’ and therefore discouraging aberrant behaviour. The identification of the use of a type of ‘reverse-normalisation’ does not yet exist within the rhetorical legitimation literature. A critical evaluation of the legislative opposition revealed that once it was apparent that opponents posed no significant threat to the reform legislation, proponents engaged in a narrative that sought to inflate the seriousness and effectiveness of the opposition. It was hypothesised that this was done for both rhetorical advantage and to allow Congress to serve a larger purpose within the re-legitimation process. Finally, this chapter closes with a discussion of how success can be measured within the context of the public inquiry.

Chapter 7 restated the research question and then provided a chapter by chapter review of the contents of this thesis. It then presented the research projects key contributions and suggested avenues for future research. The next section provided a discussion of the limitations of this research project before providing an opportunity for the researcher to reflect on the research project, in particular, and the doctoral process, in general.

7.2 Key Contributions

This thesis has made a number of contributions to knowledge. Four are listed below. The first three focus on theoretical contributions made in the realm of the public inquiry literature. The third is a hybrid contribution that involves both theoretical and methodological/practical implications.

7.2.1 Theoretical contributions

The public inquiry scholarship has not been prolific and the relatively modest literature tends to focus on either the investigatory phase of the public inquiry process (see: Turner 1976; Douglas 1986; Gephart 1992), or the final reports of inquiry processes (Brown 2000a, 2000b, 2003; 2008; Topal 2009). Surprisingly, there has not been a focus on the post-reporting phase of a public inquiry. Nearly 35 years ago Turner (1976) developed an early model of the sequence of events associated with a failure of foresight, e.g.: a disaster-event. His model was comprised of six stages, with what he called the ‘notionally normal starting point’. The focus of his research was stage two, the ‘incubation period’. However, this is how stage six, ‘full cultural adjustment’ is described. “an inquiry or assessment is carried out, and beliefs and precautionary norms are adjusted to fit the newly gained understanding of the world” (p. 381). This final stage of Turner’s model only begins to describe the post-inquiry phase of a public inquiry process and while some more recent scholarship has shifted to focus on the later stages of this model, significant empirical work has yet to be conducted on the important, post-reporting phase of the public inquiry process. This thesis moves beyond the formal public inquiry phase and examines the legislation of the 9/11 Commission’s recommendations by focusing on the rhetoric-legitimacy nexus at the heart of the legislative process.

The focus on rhetorical legitimation in the context of the legislative reform debates provided an unintended and welcome contribution to the public inquiry literature. This contribution is centred on the finding that both proponents and opponents of the

proposed reform legislation employed rhetorical strategies that sought to appropriate authoritative legitimacy through an association with the 9/11 Commission and the families of the victims. It is expected that proponents, attempting to pass legislation which is based on the Commission's recommendations, would associate themselves with the Commission; however, it was surprising that opponents of the legislation would adopt the same tactic in their opposition of the legislative reforms. This seems to provide support for the assertion that the influence and authority of the Commission extended well into the post-reporting phase of the inquiry process.

A related observation was the relatively small number of legislators who were opposed to the legislation and the overall weakness and ineffectiveness of their rhetorical strategies in resisting the reform legislation. More surprising was the treatment of the opposition by proponents of the legislation. Early in the debates, proponents of the legislation sought to defend the legislation and the legislative process by adopting a rhetorically aggressive approach to the opponents' critique. This is not surprising, as one would assume that both sides in any important debate would defend vigorously their point of view. However, once it is clear that opposition to the legislation will be limited, proponents of the reforms employed rhetorical strategies to construct the narrative of a robust, yet ultimately defeated, opposition. Rhetorical themes employed to achieve this construction included: emphasising bipartisanship to imply that there were two evenly-matched sides in the debate that came together eventually in compromise and a focus on the very hard work involved in navigating such a difficult process. At first, this strategy of building-up one's opponents seems odd. However, viewed through a rhetorical and legitimating lenses, this strategy is understandable.

As a rhetorical strategy it strengthens the proponents' pro-reform warrant in a number of ways. First, it implies that despite meeting significant opposition, or perhaps because of it, the content of the legislation had been properly vetted and was of sufficient quality that it survived the process. Employing a legitimating strategy, focusing on a narrative of robust debate and significant work and compromise, Congress is able to claim that it acted as it was expected and fulfilled its institutional obligations. As both the public inquiry and legitimacy literature confirm, trust and legitimacy are strengthened when organisations act in ways that 'fit' with societal expectations. By rhetorically constructing an opposition, proponents of the legislation strengthened their arguments for passing their preferred reforms and allowed Congress to participate in a re-legitimation process that was launched with the creation of the 9/11 Commission. These observations suggest that, as asserted elsewhere in this thesis, public inquiry re-legitimation processes do not stop with the publication of a public inquiry's final report. Rather this is an ongoing process that can continue long after the public inquiry apparatus has been dismantled. Given these findings and this contribution to the public inquiry literature, the value of looking beyond the public inquiry or the public inquiry report and situating research projects in the post-reporting phase of a public inquiry process is evident.

7.2.2 Hybrid contribution

A fourth contribution of this thesis is the focus on the grounded theory approach to rhetorical legitimation in the legislative context. This process was able to identify specific rhetorical legitimation strategies from the transcripts of the intelligence reform

debates. Once identified the methodological process, through the iterative use of open and axial coding was able to uncover the ways in which these strategies came together to create a legislative narrative. Legislatures are a rich and continual sources of data and their activities are frequently significant. Other research agendas would benefit from the combination of legislative debate source-data, a rhetorical approach to legitimacy and a grounded theory approach to method. In considerations for future research a number of possibilities would be discussed, but one possibility, as an example of this positive mixture of data theory and method could be the regulatory, or legislative debates surrounding other significant Government action. One possibility would be an analysis of the rhetorical strategies for legitimating, or delegitimizing the reform debates of the *Sarbanes-Oxley Act, 2002*. Discovering the legislative narratives employed and the rhetorical strategies on both sides could reveal potentially fascinating results. This section has detailed four unique research contributions of this thesis. Three make a theoretical contribution, while the fourth provides a hybrid contribution that could be employed to focus on a wide-variety of potentially interesting and consequential research topics.

7.3 Suggestions for Future Research

There are a number of avenues open to researchers looking to expand there research agenda beyond the scope of the current research project. While this thesis was successful in identifying the key rhetorical strategies employed by those engaged in the legislative reform debates, as directed by the central research question, it would be interesting to examine the findings of this project within a larger societal context. For example, what rhetorical strategies were employed by the media, by prominent

Americans, and by the 9/11 Commission leading up to and during these legislative reform debates. What, for example, were the rhetorical strategies employed in their public statements, speeches, public correspondence and media interviews? Were there connections between the rhetorical legitimation strategies between Congress and other public institutions such as the 9/11 Commissioners, what rhetorical legitimation strategies did they employ and are there links to be drawn amongst those outside of Congress with those inside the House and the Senate? This search for a larger public rhetoric would be a worthwhile pursuit for a future research agenda.

A second possibility would be to take the grounded theory approach which was effective in uncovering the rhetorical legitimation strategies employed in the Congressional debates of *H.R. 10* and *S. 2845*. This provided a framework of legitimating rhetoric and revealed a legislative narrative and discursive tactics of those individuals legislating major change. Given the suitability of both the methods and the theory to carry out this type of investigation, it would be sensible to attempt to employ both again, but in a different empirical context. Repeated application of these tools to multiple legislative circumstances would build-up a series of cases for compelling comparative analysis. Do proponents of legislation have key rhetorical legitimation strategies? Do opponents? Are there a common invocations or particular rhetorical foci? Are rhetorical themes used repeatedly or are there any discernible patterns? This research would inform the theory situated at the rhetoric-legitimacy nexus, but it could also provide practical advice to lawmakers and others regarding common tactics and effective defences for legislative debate.

7.4 Limitations

A methodological limitation

While the findings of this thesis are important, it is necessary to acknowledge certain limitations. First, there is a balance to be struck between the demands of a grounded theory approach and the need to limit the risk of type II errors. Proponents of grounded theory warn against an early introduction of the literature to a research project.

Grounded theorists are concerned that too much interaction with the academic literature and theory would jeopardise the process because of the possibility that researchers would substitute emergent themes or emergent theory from the data for an *a priori* application of theory from the existing scholarship. Grounded theory purists argue that researchers must come to the data completely free of prior theoretical knowledge, which they worry, would contaminate the analysis. More recently grounded theorist recognise the unlikely possibility that a researcher would approach a dataset *tabula rosa*; however, such strict data-before-literature dogma has been substituted for a call to ‘theoretical agnosticism’. They recognise that it is unreasonable to expect that a researcher would have no prior knowledge. Instead, grounded theory researchers are asked to be aware of their prior knowledge and to guard actively against its intrusion into the coding process. This is a helpful concession. As mentioned, at the beginning of this section, there is a risk that a researcher working in isolation would simply miss what is there and find what is not there. This type II error problem can be militated against through an awareness of the relevant literature.

An empirical limitation

The legislative debates, while interesting and an appropriate focus of this research project, are nevertheless political theatre. Politicians have speeches written for them by political staffers, key messaging is created in party caucuses and handed out to politicians to ensure that they are ‘on message’ for the day. This is not to suggest that legislators have no agency. However legislative debate is a particular form of speech. Legislative debates are only the top-level discursive acts. Within Congress there are meetings, lunchtime conversations, in-camera committee discussions, private words in the halls of power all of which are difficult to capture and unavailable for analysis. And there is no guarantee that these, more private, conversations parallel what is being said on the floor of the Senate. The critique then is that these discursive acts are artificial. However, this is less problematic than it might initially appear. An acknowledgement from a researcher of what they are studying and what they are not studying is sufficient. When applying a theoretical framework involving rhetoric, the subject of the study is rhetoric and not necessarily truth. During legislative debates rhetoric will always be present, that is not necessarily the case for truth.

7.5 Final Reflection

Writing this thesis has not been an easy task. Feeling relief at the ‘discovery’ of the rhetorical legitimation literature would be a strange admission for someone outside of Academia. But I was relieved. I have found the subject of my study to be fascinating and I have enjoyed learning new methods and exploring new literatures. I am happy to

be submitting. I am happy to be done -for now. But, as I write this last paragraph, despite all the time and all the work, more than anything, I am grateful to have had this experience.

Appendix A - Sections of TITLE VI: 9/11 Commission legislation

Section	Title
601	Establishment of Commission
602	Purposes
603	Composition of Commission
604	Functions of Commission
605	Powers of Commission
606	Non-applicability of Federal Advisory Committee Act
607	Staff of Commission
608	Compensation and Travel Expenses
609	Security Clearances for Commission Members and Staff
610	Reports of Commission; Termination
611	Funding

Public Law 107-306, November 27, 2002. Title VI, Section 602

Appendix B - Appointment authority: 9/11 commissionerships

Number of Members	Appointing Authority	Role
One	President of the United States (R)	Chairman
One	Senior member of the Senate leadership (D) in consultation with the House (D) Leadership	Vice Chairman
Two	Senior member of the Senate leadership (D)	Commissioners
Two	Senior member of the leadership of the House (R)	Commissioners
Two	Senior member of the (R) leadership in the Senate	Commissioners
Two	Senior member of the leadership of the House (D)	Commissioners

Summary of Public Law 107-306, November 27, 2002. Title VI, Section 603

Appendix C - 9/11 Commission's Final Report table of contents

1. "We Have Some Planes"
2. The Foundation of the New Terrorism
3. Counterterrorism Evolves
4. Responses to Al Qaeda's Initial Assaults
5. Al Qaeda Aims at the American Homeland
6. From Threat to Threat
7. The Attack Looms
8. "The System Was Blinking Red"
9. Heroism and Horror
10. Wartime
11. Foresight -and Hindsight
12. What to do? A Global Strategy
13. How to do it? A Different Way of Organizing the Government

Appendix D - Source of transcripts for Congressional Debates: *H.R.10* & *S.2845*

Congressional Chamber	Legislation	Date (2004)	<i>Congressional Record</i> Source
U.S. House of Representatives	Intelligence Reform and Terrorism Prevention Act (S.2845)	December 7	Vol.150, No.138, pages H10994-H11029.
	9/11 Recommendations Implementation Act (H.R.10)	October 8	Vol.150, No.127, pages H8863-H8873.
U.S. Senate	Intelligence Reform and Terrorism Prevention Act (S.2845)	December 8	Vol.150, No.139, pages S11939-S12010
	National Intelligence Reform Act (S.2845)	October 6	Vol.150, No.125, pages S10476-S10488
	National Intelligence Reform Act (S.2845)	October 5	Vol.150, No.124, pages S10384-S10388
	National Intelligence Reform Act (S.2845)	October 4	Vol.150, No.123, pages S10296-S10358
	National Intelligence Reform Act (S.2845)	October 1	Vol.150, No.122, pages S10197-S10252
	National Intelligence Reform Act (S.2845)	September 30	Vol.150, No.121, pages S10000-S10050
	National Intelligence Reform Act (S.2845)	September 29	Vol.150, No.120, pages S9873-S9916.
	National Intelligence Reform Act (S.2845)	September 28	Vo.150, No.119, pages S9778-S9784
	National Intelligence Reform Act (S.2845)	September 27	Vol.150, No.118, pages S9700-S9720

Accessed through: http://www.fas.org/irp/congress/2004_cr/index.html

Appendix E - Final Vote: *Intelligence Reform and Terrorism Prevention Act, 2004*

Congressional Chamber	Ayes	Noes	Not voting
Senate ¹	89	2	9
House of Representatives ²	336	75	22

¹U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.139, p. S12010

²U.S. Congress. Congressional Record. 108th Congress, 2d session, 2004. Vol.150, No.138, pp. H11028 - H11029

Appendix F - Open coding examples of the Congressional debate transcripts

Emerging Themes	Example
Anti-bureaucratic	<p>“Some of the saddest aspects of the 9/11 story are the outstanding efforts of so many individual officials straining, often without success, against the boundaries of the possible. Good people can overcome bad structures. They should not have to.</p> <p>This summarizes one of the major reasons we need reform. We have a system now that does not allow us to respond with agility to the threats we face today. As this next chart shows, in our legislation we are not adding a layer of bureaucracy [...]”</p>
Need to Protect	<p>“It recognizes that the fundamental obligation of government is to protect its citizens and that those protections must evolve along with the threats. It reorders the priorities of an intelligence structure that was devised for a different time and a different enemy.”</p>
Endorsement based on hard work/expertise	<p>“Our committee performed that task with dedication and diligence, and with the active participation of its talented members. From late July until mid-September, we held eight indepth hearings to assess the recommendations of the 9/11 Commission.</p> <p>We heard testimony from more than two dozen witnesses, including Secretary of State Powell, Secretary of Homeland Security Ridge, FBI Director Mueller, CIA Director McLaughlin, the 9/11 Commission Cochairmen, Kean and Hamilton, Commissioners Fielding and Gorelick, intelligence experts, field operatives, professors, and representatives of the 9/11 families. [...] This legislation is not, however, merely the product of 2 months' work by our committee. It is based upon the work of the 9/11 Commission and the inquiry that spanned 20 months, with 19 days of hearings and 160 witnesses, the review of 2.5 million documents [...]”</p>
Need to Modernise	<p>This legislation, which I have introduced with my good friend and colleague, Senator Joe Lieberman, represents the most sweeping reform of our intelligence structures in more than 50 years. It reorganizes an intelligence community designed for the Cold War into one designed for the war against global terrorism and future national security threats.</p>

Emerging Themes	Example
Need for Accountability	As the head of the new National Intelligence Authority, this Presidentially appointed, Senate-confirmed official will truly be in charge of our intelligence community. No longer will there be confusion and doubt about who is in charge and accountable. The answer will clearly be the national intelligence director.
Unprecedented/ Historic	As a result of this unprecedented effort and wide-ranging input, the committee has produced the legislation now before the Senate. It is legislation that is comprehensive, bipartisan--indeed, unanimous--and historic.
Patriotism/ Principles	We set as our goal an intelligence structure with the agility that the times and the threats demand, not simply another layer of bureaucracy. We were determined that this new structure not infringe upon the freedoms that Americans cherish.
Actions to right past failures.	<p>Our past failure to act on these many studies, which spans decades, which is repeated over and over again, is why we are here today.</p> <p>For example, the Boren-McCurdy legislation of 1992 realized the emerging threat of the post-Cold War era, terrorism, and weapons proliferation.</p> <p>Using the successful restructuring of the military since World War II as models, the National Security Act of 1947 and the Goldwater-Nichols Act of 1986, this legislation called for the creation--yes, you guessed it, Mr. President--the creation of a national director of intelligence with strong authority similar to what we propose today.</p>

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