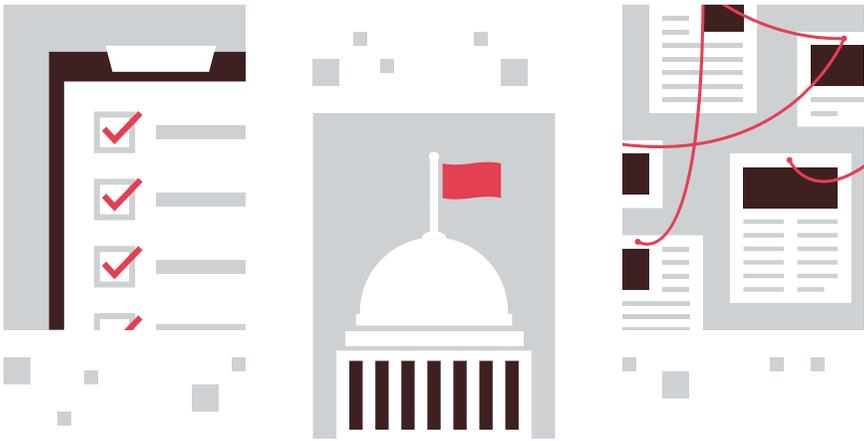


# 20. ENTERING THE EVIDENCE PROMISED LAND

Making the Evidence Act a Law

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The evidence ecosystem related to government activities involves multiple actors and many individuals. The American public—including individuals and organizations—often willingly provide data to government to support analyses. Researchers, statisticians, and evaluators produce evidence that is relevant and useful for policymakers. Policy analysts and knowledge intermediaries configure information to make it useful and timely for decisions at hand. Public administrators, government decision-makers, appointed officials, and elected leaders all serve in capacities to potentially use evidence.

But there are points at which the ecosystem functions less efficiently—leading government decision-makers to not have timely, relevant, credible evidence available when making decisions. This recognition by two members of Congress—Paul Ryan and Patty Murray—led to the creation of the U.S. Commission on Evidence-Based Policymaking. The unanimous recommendations from the commission addressed themes related to the supply of evidence as well as processes to facilitate meaningful use.

The commission's work itself was an example of how the demand for evidence directly relates to the supply of evidence, leading to use. The commission collected data, analyzed the information, made decisions, then presented the information to Congress and the president in *The Promise of Evidence-Based Policymaking*. The result: a monumental law called the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act).<sup>1</sup>

## ISSUE BACKGROUND

Amid a government shutdown in 2012, while Rep. Ryan and Sen. Murray were serving as the lead budget negotiators in the House of Representatives and U.S. Senate, respectively, the duo came to a bipartisan agreement on many issues. One key issue was their interest in knowing

more about how programs operate, what strategies are most effective in implementing government operations, and how to go about assuring the American public that the government is using their taxpayer funds prudently.

Ryan and Murray jointly recognized that government collects a lot of data, largely through the course of implementing activities but also through survey collections and other instruments. However, these data are not always brought to bear in meeting the needs of decision-makers. Ryan and Murray agreed there was a need to develop a strategy to more effectively use government data. Together, over the next several years, they refined the idea to create a bipartisan commission of experts to figure out a better way. The legislation that the two filed in 2014 took several years to work through Congress, but then-President Barack Obama signed it into law in 2016.<sup>2</sup>

The very creation of the Evidence Commission was a clear signal about the growing prominence of the evidence movement in the United States. The law was a declaration from members of Congress about the presence of modern barriers to data access and use that inhibit evidence-building activities. But when the commission was established, the law gave it explicit direction about how to undertake its work as well as a very detailed charge about questions that Congress and the president wanted addressed.

The law established that the 15-member commission would include political appointees from Republicans and Democrats in Congress, as well as the president. It also required that five of these appointees have expertise in privacy issues. The final membership of the commission represented a wide range of backgrounds, including former heads of the Census Bureau and the Bureau of Labor Statistics, the chief statistician of the United States, former program administrators, past members of the White House Council of Economic Advisors, government privacy experts, and former congressional staffers. The commission members came from a range of academic disciplines, including economics, law, statistics, evaluation, psychology, accounting, and computer science.

President Obama tapped Katharine Abraham as chair. She joined with incredible experience as a former commissioner of the Bureau of Labor Statistics and a member of the Council of Economic Advisors. Ryan, then the House Speaker, selected Ron Haskins as co-chair. He had just completed a book on evidence-based policymaking and was a long-time champion of better evaluating government programs. Together Abraham and Haskins hired a support staff that offered additional expertise about government operations, including the disciplines of program evaluation, economics, statistics, survey methodology, privacy, library science, and public administration. The commission's co-chairs laid out a masterful strategy for rapidly addressing their charge, while developing a new body of evidence and applying that evidence to the commission's decision process. The 15-month process from the commission's first meeting to final report culminated in a set of unanimous findings and recommendations, which Congress then had to determine how to act upon.

## EVIDENCE AVAILABILITY

When the commission initiated its work, it had limited resources and limited accessible compilations of useful evidence on which to frame decisions. The co-chairs and staff quickly laid out a fact-finding and research strategy to address the 16 overarching questions that Congress and the president had requested answers to.

As a starting point, the staff of the White House's Office of Management and Budget (OMB) coordinated with federal agencies to produce a series of five framing memoranda to set the stage for issues the White House hoped the commission would address. The memos broadly explained OMB's views about the state of evidence issues in government, examples of using administrative records for building evidence, a list of barriers to accessing and using government data, perspectives about privacy and confidentiality issues, and a partial inventory of government datasets.<sup>3</sup>

Even with the 80 pages of detailed memoranda from OMB, the commission members had much to learn. The commissioners and staff embarked on a fact-finding process to ensure evidence was available to inform key decisions. The fact-finding process involved (1) a survey of federal agencies; (2) qualitative information gathered from public hearings, meetings with expert testimony, and solicitation of written public comments; and (3) additional agency, commissioner, and staff research.<sup>4</sup>

### Commission survey of federal offices

With the support of a staff survey methodologist and experts from among the commission members, the commission developed, tested, and launched a survey of 209 federal agency units involved in evidence-building activities. They designed the organizational-level survey to gather a range of information about activities underway in government, perceived barriers and limitations to engaging in the work more fully, resource allocations, and capabilities for using evidence in decision-making processes.<sup>5</sup> The survey identified that more than half of responding units noted that legal limits pose substantial barriers to using data for their activities, including nearly all principal statistical agencies and evaluation units that responded. Nearly one-quarter of respondents noted that income and earnings data were especially challenging to access because of limits on data sharing.

The survey also provided insights about whether and how government agencies and offices provide data access to researchers. The survey identified that all principal statistical agencies allow external researchers to access data, though a relatively low share of the rest of responding units do the same. This suggested that agencies with administrative records often did not have formal processes for managing or providing access. The survey also presented a host of other issues, including constraints around resources and capacity to manage data-sharing activities, limits about documentation for existing data, funding allocations for evidence-building activities, challenges hiring a skilled workforce, and negative implications of existing processes for procurement and certain data-collection approvals.

## Evidence from expert witnesses and public input

In addition to the survey, the commission hosted seven public meetings with nearly 50 invited expert witnesses on topics including privacy, international approaches to data management, legal standards for data security, and evaluation. The commission also hosted three public hearings with nearly 40 other witnesses and received more than 350 public responses to a request published in the *Federal Register*.

The commission transformed 2,000 pages of information gathered throughout the fact-finding and learning processes into evidence, as commission staff coded and analyzed the qualitative information to determine central themes. This body of evidence led to identifying issues for the commission related to government's capacity to generate and use evidence, including for formal program evaluation, as well as about lessons and models that could generalize broadly to the federal government.

## Other research evidence

The commission members also had access to a range of information compiled as it proceeded in fact-finding. For example, Speaker Ryan's office asked the Congressional Research Service to prepare a study of recommendations from prior relevant commissions and to study various statistical laws. Commission staff also studied findings from related committees in the past. Commission staff explored additional data access and privacy issues on the commissioners' behalf, including strategies for encouraging collaboration and co-production of research that might facilitate use. They identified relevant research and considered studies suggested by expert witnesses.

As the fact-gathering phase concluded, the commission members and staff needed to make sense of the vast amount of information collected. The process of sense-making involved hours of dialogues between commissioners and staff. Notably, commissioners also had access to information and evidence from their various disciplines, careers, and experiences to inform, frame, and add context to understanding and using the compiled body of evidence. The process was iterative and fluid, sometimes leading to requests for new research from staff or federal agencies.

## EVIDENCE USE

As the process of sense-making unfolded over the summer of 2017, the commission staff developed a series of 12 decision memoranda for commissioners. While staff conducted the initial drafting and compilation of materials, the individual voting members of the commission also provided input on all the memos.

## Developing the commission's recommendations

Subgroups of commissioners formed to contribute to the synthesis of materials in the complex, multifaceted process. Each group focused on a different set of issues related to privacy, data access, or government's capacity to use data. These subgroups played an important role in the

commission's ultimate use of the compiled information, as each decision memoranda included suggested recommendations the commission could offer in its final report. The sub-groups of commissioners, applying their perspectives and expertise in conjunction with the collected information and evidence, framed and modified recommendations accordingly to address the questions Congress posed to the commission.

After the sub-group reached an agreement or provided input, it presented and discussed each decision memorandum with all commission members during formal meetings. During these meetings, staff and commissioners both presented information. In several critical instances, the commissioners who had served on sub-groups also served in the role of presenting to other members, relying on their expertise and credibility in offering the recommendations to the group. Each of these presentations and dialogues allowed commissioners to probe, reflect, and even redirect when necessary about interpreting the available evidence as well as translating that information into recommendations.

The decision memoranda process and formal meetings of commissioners produced more than 100 potential recommendations for consideration in a final report. The commissioners collectively decided during one meeting that this would simply be too much material to provide publicly if the goal was to elicit meaningful change. The commission grouped, consolidated, and modified the recommendations to reduce the list to 20 recommendations, which served as the foundation for writing the commission's final report and summarizing key findings.

Through the process of deliberating on the text of the findings, recommendations, and final report chapters, commissioners added additional recommendations. And as the commission members achieved more clarity in message and goals, they further modified other recommendations. A collaborative decision-making process was underway. The co-chairs set an objective to reach unanimity on the report, even though the commission was not required to do so. This goal necessitated last-minute edits and agreement among commissioners to reach complete unanimity. Clearly it was a step in which commissioners negotiated, conceded, and agreed on various points down to every single word in the recommendations—including two new recommendations added in the late stages of the deliberations.

At the end of the process, the commissioners were unanimous in their findings and recommendations. The evidence developed throughout the commission's fact-finding process was front and center in the final report, presented to Congress and President Donald Trump in September 2017. The recommendations from the Evidence Commission were, in fact, based on evidence. They focused on strategies to improve access to data, to strengthen privacy protections, and to enhance government's capacity for evidence-based policymaking.

The commission recommendations leaned in on enabling the production of valid and reliable evidence, promoting a new statistical agency to securely and temporarily link data, changing laws to enable certain types of data uses, and building mechanisms to ensure confidentiality of data subjects when data files or results are made public. It also offered strategies for encouraging the use of evidence by decision-makers. One recommendation included developing a chief evaluation officer position to provide a senior leader to promote production

and use of evaluations, as well as creation of learning agendas in agencies to provide signals to senior leaders and researchers about what knowledge gaps are most critical to address in future decisions. The commission also recommended the establishment of senior leadership positions to focus on data policy, a role that would later be called chief data officers.

But the commission only had the legal authority to make recommendations. It could not change laws or policies, just make suggestions to Congress and the president. Thus, any resulting change to laws or regulations would require action from Congress or the executive branch agencies. This reality led to the creation of the Bipartisan Policy Center's (BPC) Evidence-Based Policymaking Initiative, an effort to continue the discourse about the commission's recommendations even after the commission no longer existed.<sup>7,8</sup>

## Creating the Evidence Act

The Evidence Commission's whole focus had been on enabling the supply of useful evidence for decision-makers to use. While most of the recommendations focused on production, there were also recommendations that encouraged the use of evidence.

House Speaker Ryan and Senator Murray participated in an event announcing the commission's unanimous recommendations. They personally applauded the unanimity of the report as well as the reasonable solutions presented to the identified challenges. Practically speaking, the unanimity offered credibility for the recommendations and a means for guarding against political backlash when advancing the recommendations.

The House Committee on Oversight and Government Reform invited four commissioners, including the co-chairs, to testify about the recommendations. Nearly all of the committee members attended the hours-long dialogue about what the commission found and what the findings meant. The hearing had the effect of building trust in the commissioners and the collective product they developed, as well as raising public awareness of the issues addressed by the commission. Members of Congress asked questions and had a dialogue directly about the substance of the report and gauged the expertise and credibility of those who had prepared it. Bringing the evidence from the commission and the commissioners' expertise to the public limelight also offered members of Congress the ability to gauge reactions from constituents, assessing the political viability of the recommendations offered but in a nonthreatening way and ahead of any formal legislation or votes. Both before and after the hearing, commission staff, and later BPC staff, briefed numerous congressional committees and member offices on a bipartisan basis.

Behind the scenes, congressional staff were in frequent contact with commissioners, the commission's staff, and BPC staff to develop a legislative proposal that incorporated some of the recommendations. Ryan and Murray wanted to file legislation quickly, which meant the recommendations included in the legislation needed to be carefully selected based on political goals and consensus-based processes. Through discussions with commission staff, Ryan and Murray staff, and committee staff, a set of recommendations was selected and prioritized for inclusion—recommendations that offered immediate progress on the commission's vision while

also avoiding difficult political choices. Thus, even while the recommendations were unanimous across party lines in the commission, political feasibility was still a factor in determining which recommendations to incorporate in legislation. The timeline also necessitated choosing recommendations perceived as less controversial and easier to do, recognizing the commission had provided a menu of potential recommendations to choose from.

The commission also worked closely with congressional staff to confidentially develop a legislative proposal, including translating the commission recommendations into statutory language. In some cases, this required creativity and in other cases legal consultation because the commission optimized the recommendations for lay accessibility but not legalese.

As a result of this process and collaboration between the congressional staff and the commission staff, and then BPC's evidence team, in October 2017 Ryan and Murray jointly filed the Foundations for Evidence-Based Policymaking in the House and Senate.<sup>9</sup> Their announcement of the proposed legislation directly referenced the evidence compiled by the commission.

## **Enactment of the Evidence Act**

Within weeks of filing the legislation in the House and Senate, the congressional committee voted unanimously to advance the legislation to the full House. A committee report explaining the nuances of the proposed bill and its substance leaned almost exclusively on the evidence from the commission, as well as supporting references from the Government Accountability Office.<sup>10</sup> Shortly after the committee approved the bill, the full House of Representatives approved the legislation without a single opposition vote.

After rapidly passing the House, the legislation moved on a slower track through the Senate. In many ways, the plan to continue the commission's activities at BPC was most critical for this stage as it offered continued expertise on the legislation and ensured key commissioners remained involved in weighing potential changes to the law. One goal for the work at BPC was to ensure the legislation retained fidelity to the commission's recommendations; ensuring ongoing participation of the former commission co-chairs and a former commissioner was an essential aspect of this stage. This was particularly the case because policymakers premised the legislation itself on using the Evidence Commission's report as its key rationale. Thus, alignment was essential for political viability as well as garnering support from the data, science, evaluation, and privacy communities.

Maintaining involvement of the commission perspective was a key part of BPC's evidence team throughout 2018. Expertise and advice on the legislation emerged in various forms. Publicly, a series of editorials in newspapers aimed to keep attention on the importance and bipartisan nature of the proposed legislation.<sup>11,12,13,14</sup> BPC's staff coordinated a statement from former heads of federal statistical agencies to also lend additional credibility to the commission's recommendations and report, particularly with regard to confidentiality protections.<sup>15</sup> BPC staff also offered informal assistance to countless other stakeholders in educating constituencies about the commission's report and the legislation through briefings, statements, and events.<sup>16</sup>

BPC staff and former commissioners also frequently participated in dialogues about the legislation with congressional members and staff. The effects of some of these discussions could also be seen publicly, as some lines of inquiry resulted in the production of public technical papers to explain core concepts and how they applied in certain circumstances. For example, related to executive performance management activities, the relationship between evaluation officers and data officers, modern confidentiality protections related to data sharing, and a detailed understanding of data-sharing barriers.<sup>17,18,19,20</sup> Behind the scenes, BPC's evidence team offered extensive technical assistance related to the sponsors' goal of fidelity to the commission recommendations.

Countless other organizations also played a role in either advocating for the commission recommendations or advancing the legislation. The American Evaluation Association and Results for America encouraged attention on program evaluation (Title 1), the Data Coalition championed the OPEN Government Data Act (Title 2), the American Statistical Association encouraged passage of the Confidential Information Protection and Statistical Efficiency Act (Title 3), just to name a few.

In parallel with Senate consideration of the Evidence Act, the Trump administration announced various activities to advance some of the commission recommendations without waiting for congressional action. The president's reorganization proposal from 2018 announced an intent to have agencies create evaluation officers and develop learning agendas.<sup>21</sup> The President's Management Agenda also announced the creation of a new Federal Data Strategy to incorporate yet still other Evidence Commission recommendations.<sup>22</sup> Both proposals referenced the commission's work and report.

One political issue that arose during the deliberations on the Evidence Act in the Senate was a question of whether the administration would support the legislation as drafted. Recognizing that the administration had already announced some policies consistent with the bill, BPC staff coordinated educational briefings on evaluation and the Federal Data Strategy with congressional staff to maintain alignment to the concepts—including to highlight common uses of evidence related to a reliance on the findings from the Evidence Commission.

In late 2018, as the session of Congress quickly neared a conclusion and with Speaker Ryan preparing to retire from the House, renewed political urgency emerged to prod dialogues about enactment of the Evidence Act. A series of rapid, nonpublic deliberations and negotiations occurred among a handful of key members of Congress and their staffs, resulting in modest revisions to the proposed legislation. But, in December 2018, following dozens of briefings, numerous versions of the legislative text, and lively discussions about scope, framing, and intent, the legislation unanimously passed the Senate and received final passage in the House with overwhelming bipartisan support. In the weeks that followed, President Trump signed the Evidence Act, enacting the bill into law.

In addition to establishing new leadership positions to encourage evaluation activities and the use of data, the law directs agencies to make their data open by default. This means that the expectation is now that to the extent possible agencies create publicly accessible datasets.

Agencies also must document what data they collect and manage, improve privacy protections by better managing risks, and take steps to protect public trust in data and statistics. One particularly valuable provision of the law enables improved access to administrative, operational data for generating statistics in privacy-protective ways. The law also directs agencies to establish many of the core features of basic program evaluation capacity, including written policies and a supporting workforce for conducting evaluations of programs and policies.

As the work proceeds to implement the Evidence Act, it will persist as not only a set of changes to federal law that promote evidence-based policymaking but also as a model process for how evidence can be formulated and used in decision-making. In the months following enactment, the Trump administration continued to promote effective implementation of the new law in its budget proposal to Congress.<sup>23</sup> While the law exists, and the administration actions suggest support, the real test of its effectiveness will come in the years ahead—and that too should be subject to evaluation.

## LESSONS

- ***Decision-making processes were nonlinear.*** While public policy and political science training often teaches students about a linear model for public policy and decision-making, the commission's decision framework to develop its findings and recommendations followed a different trajectory. The commission's decision-making process was iterative, multifaceted, dynamic, and nonlinear. But commission members were nonetheless committed to the process and motivated by a recognized need to have reliable evidence on which to base their decisions. Similarly, the decision-making process for advancing the legislation did not follow the classic model.
- ***Unanimous recommendations set the stage for improved credibility.*** The process undertaken by the commission in fact-finding and developing its recommendations maximized political credibility for future action by striving for unanimity, even though the commission was not required to do so. Those recommendations, paired with the technical credentials of the members of the commission, provided policymakers firm ground to stand on when looking for a defensible basis for proposing and supporting subsequent legislation, the Evidence Act. Without unanimity, while unclear what would have happened, it is likely political support for the law would have been more challenging to achieve on both sides of the aisle.

- **Evidence only provided part of the answer for policymakers.** In developing the legislation, framed by the Evidence Commission's report, lawmakers and their staffs still had to determine how to transfer the recommendations into statutory language. This required insights into how the recommendations could translate and typically required the support of intermediaries to assess the fidelity to the commission's intent. Commissioners, commission staff, and BPC staff served as intermediaries to help convey intent, meaning, and purpose to congressional staff.
- **Motivated leadership was key.** The presence of motivated and engaged leaders allowed the commission to come to fruition, led to the unanimous recommendations, and culminated in how the final legislation emerged as enacted law. Paul Ryan and Patty Murray provided senior political leadership throughout the process and stayed engaged as the commission undertook its work, as did their staffs. The commission co-chairs, Katharine Abraham and Ron Haskins, offered technical leadership to produce a report useful to policymakers, but they also ensured the commission's process was itself a model for evidence-based policymaking activities. ■

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