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The New Homeland Security Apparatus
Impeding the Fight against Agile Terrorists

by Eric R. Taylor

Executive Summary

The terrorist attacks of September 11, 2001, not only sent seismic shockwaves through American society, they jolted the U.S. government into action. One of the actions taken was to create the White House Office of Homeland Security. But the office lacks the statutory authority and budgetary power to fulfill its mission. To remedy those problems and take action in the wake of embarrassing revelations of glitches in information sharing in the Central Intelligence Agency and Federal Bureau of Investigation prior to September 11, President Bush plans to create a new cabinet department that cobbles together parts of some of the many agencies involved in homeland defense. Strangely, however, none of the president's "reforms" is likely to solve the problems of information sharing between organizations.

The presidential directive that instituted the office also created the Homeland Security Council. Intended to address homeland security issues, the council is a carbon copy of the existing National Security Council, which addresses national security concerns. But the National Security Council has statutory responsibility for coordinating national security issues—which the fight against terrorism seems to be—whereas the new Homeland Security Council is essentially an empty shell. Thus, the government already had the machinery needed to coordinate homeland security prior to the president's initiatives. Creating new bureaucratic organizations does not correct existing problems of inefficiency, bureaucratic inertia, and failure to share information.

Instead, efforts for increased security should focus on timely intelligence sharing, threat recognition, and action. Without dramatic improvements in those areas, coordination and implementation of policy by the new offices and department will likely remain problematic.

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Introduction

The terrorist attack on September 11, 2001, was an epochal event in U.S. history and stimulated a dramatic change in U.S. policy toward terrorism at home and abroad. As Americans united in self-defense and braced for a protracted war, the White House created the Office of Homeland Security and the Homeland Security Council to coordinate and oversee the efforts against terrorism of all federal departments and agencies.[1] The Bush administration proposes to double the budget for homeland security to $38 billion.

The challenge before the OHS director is no small one. The mission of the OHS is to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks. The office coordinates the executive branch's efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States.[2]

The OHS Director Has Insufficient Authority to Effectively Battle Terrorism

The OHS is essentially an adaptation of a proposed cabinet-level national homeland security agency, originally recommended by the congressionally mandated U.S. Commission on National Security/21st Century. To compound the organizational complexity, in parallel with OHS, President Bush recently proposed a department that would have the same legal standing and authority as any other cabinet department. The OHS, however, has no authority to enforce implementation of its plans.[3]

Nonetheless, the creation of the office may serve to spotlight the problems that have hampered past efforts to integrate federal departments and agencies into a unified front for homeland defense. The core problems include legal constraints on what such government entities can do and the multitude of departments and agencies—each claiming a unique, if not premier, role—involved in fighting terrorism. The State Department, the Defense Department, and the Justice Department and its Federal Bureau of Investigation justify their involvement by their prominent role in the security function of the federal government. Some cabinet departments opposed the creation of the OHS altogether.[4] Turf battles have become the institutional practice of all agencies and departments and rest, in part, on internal secrecy policies. The agencies are unwilling to disclose intelligence to outside interests—a process called "stovepiping." Those concerns have been significant impediments to federal preparedness efforts for years.[5]

It remains to be seen just how successful any new cabinet department will be in overcoming those entrenched practices.

The one promise embodied in the OHS is a single head who has titular, if not sole, responsibility for the government's efforts against terrorism. But the OHS has no constitutional or statutory authority over the heads of other cabinet departments and independent agencies. In reality, the OHS director is not part of the critical chain of command; he is more of an aide-de-camp. The other department heads know the limitations of his office.

The new cabinet department will have authority over the parts of agencies subsumed under it but not over the many more that remain outside its fiefdom. Surrogates aside, the president remains the sole executive branch official responsible and accountable to the nation for its security, or lack thereof.

In the lengthy list of responsibilities of the OHS, as set forth in the executive order creating it, a single phrase occurs five times: "The Office shall work with Federal, State, and local agencies. . . ."[8] Historically, interagency cooperation has been stymied by the secrecy maintained by departments and agencies and their vigorous protection of their own constitutional and statutory mandates. To collaborate with another department or agency seemed a

tacit admission that the agency in question was deficient in meeting its responsibilities and needed outside help. Furthermore, in the federal view, valid or not, state and local agencies generally fail to meet the operational standards and abilities of federal agencies. Those intrinsic impediments to cooperation among agencies will not be removed by creating an impotent OHS that is powerless to mandate such coordination. The new cabinet secretary can coordinate activities within the new department, but much of the federal effort remains outside his jurisdiction.

Section 5 of the executive order also establishes the Homeland Security Council, which is the domestic counterpart of the National Security Council. According to the order, the HSC "shall serve as the mechanism for ensuring coordination of homeland security–related activities of executive departments and agencies and effective development and implementation of homeland security policies." Not surprisingly, the composition of the HSC reads like a carbon copy of the NSC.

Why Was the NSC Not Assigned Responsibility for Homeland Security?

The similar compositions and responsibilities of the HSC and the NSC raise the question, What is the real difference between national security and homeland security? It seems to be a matter of semantics—and perhaps of the natural political propensity of governmental institutions to grow in size. To the bureaucratic mind, each problem seems to require a dedicated office. Why the NSC could not have shouldered the responsibility to lead the government's efforts against terrorism from the outset is a mystery. If terrorism is a homeland security threat, it is also a national security threat.

Unlike the HSC, the NSC is a statutorily empowered agency.[9] Virtually all of the tools and authority not vested in the HSC and the OHS are already formally installed in the NSC and the national security adviser. The national security adviser has access to intelligence from overseas that the OHS does not have. The OHS has access only to information that is collected by law enforcement agencies domestically. The new cabinet agency will have an intelligence analysis office that seems to duplicate that of the intelligence community and some agencies within it, perhaps exacerbating the problem of information sharing among the already too numerous agencies of that community.

The NSC would have been the logical central coordinator of anti-terrorism efforts, which would dovetail with its other national security concerns and responsibilities. According to the White House's description of the functions of the NSC, "The National Security Council is the President's principal forum for considering national security and foreign policy matters with his senior national security advisors and cabinet officials. . . . The Council also serves as the President's principal arm for coordinating these policies among various government agencies."[10] Coordination of national security–related policy matters is already one of the responsibilities of the NSC.

The regular members of the NSC are the president; the vice president; the secretaries of State, Treasury, and Defense; and the assistant to the president for national security affairs. Also serving as advisers to the council are the chairman of the Joint Chiefs of Staff and the director of central intelligence. The president may invite any other senior members of the executive branch to attend meetings if matters before the council involve their areas of responsibility. Essentially, an expanded organizational chart of the NSC could include the heads of all cabinet and independent agencies that have a role in combating terrorism. That group of agencies is the same as the group represented on the HSC.

The asserted purpose of the HSC is to be a domestic counterpart to the NSC.[11] But in terrorism, as shown by the attacks of September 11, the demarcation between domestic and foreign can be a lethal con-

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trivance. The HSC is to assume exclusive charge of terrorism matters, but what part of the HSC's role in terrorism and homeland security could not have been better fulfilled by the NSC? The HSC to be seems essentially a bureaucratic clone of the NSC, but the HSC is responsible for only the government's efforts against terrorism. The NSC fundamentally is and always has been the nucleus of what is currently the function of the duplicative HSC.

In addition to the HSC, there is the new Transportation Security Administration, which has jurisdiction over all transportation security matters, including air travel security.[12] The government has metastasized again, this time in the name of fighting terrorism. The proliferation of government entities does not streamline response coordination, much less response implementation, in the event of a serious terrorist attack.

Although increased sharing of intelligence across agencies may be necessary in some, if not all, cases, "stovepiping" is not the only problem. Removing departmental and subordinate agency obstacles to interagency cooperation is not a panacea. Inventing, repackaging, merging, or cloning agencies in a modern-day version of circling the nation's wagons will not solve the fundamental operational problem. The president must direct priorities, demand cooperation, and command implementation. His leadership and orders can further the needed coordination and integration of government efforts far more than can the OHS director, who has no authority over the department secretaries and agency heads. After all, Tom Ridge brings no technical expertise or experience in homeland security to the table.

Although the OHS and the HSC are surprisingly open to public view, the NSC would seem to be the logical place to vest the coordination and implementation of homeland security—particularly the integration of those efforts with other national security concerns under the seamless command that only the president can provide. The OHS and the HSC seem to be an ad hoc and unnecessary duplication, and the director appears to be a powerless surrogate. Absent statutory authority, the OHS has no fangs. The office must address many problems, not the least of which is its own operational impotence. The heads of powerful cabinet departments will be more likely to ignore what the OHS says if it does not have statutory authority. Creating a cabinet-level Department of Homeland Security will probably require the creation of a new central bureaucracy to control the disparate agencies brought together to form the new department.

After World War II, the merging of the War and Navy Departments resulted in the creation of an Office of the Secretary of Defense to manage the new Department of Defense. More important, creating new bureaucracies is questionable when the existing NSC and national security adviser should naturally have terrorism within their purview.

So why do we need a dedicated OHS and HSC, a new cabinet-level Department of Homeland Security, and numerous other lesser new agencies? What is different now? More laws and more agencies with competing interests exist now than did before September 11. More money is being poured into homeland security, which is nothing more than national defense by a new name. Whatever institutional deficiencies existed before September 11 remain. Is the creation of the department, the OHS, and the HSC an admission that the NSC and others have failed? Is the U.S. government facing a serious public relations problem in the wake of massive deaths at the hands of terrorists? The government's apparent solution: change the name and repackage the product. But the same people are at the helm with the same mindset—that bigger government and more money will solve the problem. Added bureaucracies will only cause agile terrorist groups glee as they outmaneuver sluggish government attempts to counter them. A more streamlined government and an educated public could more efficiently and less chaotically respond to the terrorist threat.

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Public Education: Bedrock of Our Democracy and Homeland Defense

In January 2002 Ridge said, "Homeland security begins in your hometown." Logically, that must mean security also begins with the public. For the public to respond to an alert, it needs to know what to watch for. In light of the anthrax attacks and concern about future strikes using weapons of mass destruction, some education of the public about terrorism is required.

A cardinal principle of emergency management is education of the public about natural and technological disasters. Educating the public also garners its support for government action in a crisis. Moreover, citizens educated about weapons of mass destruction can assist government during alerts—the public would know what it was looking for, what to do, and how to respond. If, as CIA director George Tenet has publicly told Congress, the United States is still very much at risk of harm from al-Qaeda for the foreseeable future, then government has a legal and moral obligation to inform the public. It needs to provide specific information on what the threats are, how to recognize them, what to do, and how people can individually protect and minimize harm to themselves, as well as meaningfully help the government.

Nebulous alerts from OHS provided cover for federal officials still reeling from criticism that they did not provide advance warning of the September 11 attacks, but they did nothing for the public except cause alarm. In fact, when repeated, they take on the air of crying wolf.

The OHS came up with a coding system with five colors to differentiate various alert levels. The alert levels range from green—low risk of terrorist threats—to red—severe risk of terrorist attacks—but still provide only vague guidance about what measures state and local communities should take. Security would be enhanced by more specific guidance.

The American people are not drones who cannot, should not, or need not know what the potential dangers are. The public shares the risks of terrorism and should be privy to knowledge about the threats.

The Federal Emergency Management Agency (which will be folded into the new cabinet department), the agency with jurisdiction over such public training, is doing an insufficient job. FEMA's Introductory Management Course emphasizes that the education of the public is a key element in any emergency preparedness plan: "Remember, citizens should be given all the information they need to know in order to plan their response to disasters and to instill confidence in the plan" and "don't wait until a disaster strikes before you tell the people what to do. Your motto should be the same as the scouts. You want the people to BE PREPARED."[13] But, in practice, the agency has no single, comprehensive, nontechnical source of official information to prepare the public to respond to a nuclear, biological, or chemical attack by terrorists. FEMA does offer a misnamed self-study course titled "Emergency Response to Terrorism."[14] The course curriculum provides good information about the threats, but not about protective measures that the public could take if an attack occurs.

FEMA should enhance its training of the public, but that in no way requires homeland security to fall under the jurisdiction of an entirely new department. Also, FEMA could provide the training under the overall direction of the NSC and the national security adviser just as well as it could under the HSC and the OHS.

Conclusion

The attack on September 11 revealed deficiencies in our intelligence gathering and analysis mechanisms and laid bare the entrenched inter- as well as intradepartmental coordination problems endemic to the federal bureaucracy. Removing those systemic impediments will require more than

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the usual incremental reforms. The OHS, lacking statutory authority and budgetary power, is not equipped to accomplish that mission. The only power the office possesses to implement change is the power of persuasion—convincing the multitude of department and agency heads, who have neither the statutory obligation nor incentives to comply with OHS desires, to cooperate. Creating a new cabinet-level agency does nothing to solve the original problem of information sharing among agencies outside its purview—for example, the FBI and CIA.

The establishment of the OHS, the HSC, and the planned cabinet department are well intentioned and perhaps reassuring to the public. However, their very existence would seem to hinder, rather than expedite, coordination and implementation of homeland security efforts by creating yet other layers of bureaucracy. Also, the HSC is merely a carbon copy of the NSC. The NSC's statutory responsibilities and authority would appear to logically and automatically include homeland security—a component of national security. The real core issue in homeland security is complete, accurate, and timely intelligence, to which the NSC already has full access. Access to and analysis and dissemination of intelligence, as well as policy implementation based on that information, are central to NSC functions. The OHS, on the other hand, has only limited access to intelligence and is powerless to compel implementation of its plans. The cabinet department will have an office for analyzing intelligence that appears to be redundant with that of the intelligence community and some of its agencies (for example, the CIA and FBI) and may exacerbate the original problem—that of lack of intelligence sharing.

To achieve real improvements in homeland security, not politically symbolic ones, accountability and reform are vital. They can be realized only in an organization and an individual who have access to all intelligence and the president and have the constitutional or statutory authority to command action. Those criteria point to the NSC. If any agency should have seen the attacks of September 11 coming, the NSC certainly should have. Reform of its mission, role, and authority is paramount to efforts to improve coordination and implementation of plans to combat terrorism. For seamless supervision of coordination and implementation of policy, homeland security can be integrated within the NSC's overall national security responsibilities. New bureaucracies created during a national crisis and grafted artificially onto existing bureaucratic structures cannot resolve the problems that the September 11 attacks have dramatically highlighted.

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Notes

1. Office of the President, Executive Order Establishing the Office of Homeland Security and the Homeland Security Council, October 8, 2001, www.ciao.gov/NEWS/EOonOfficeofHomelandSecurity.html.

2. Taken from a White House news release issued October 2001, www.whitehouse.gov/news/releases/2001/10/20011008.html.

3. Ibid.; Jules Witcover, "Have You Seen Tom Ridge?" *Baltimore Sun,* January 21, 2002, p. 9A; and Eric Pianin and Bill Miller, "For Ridge, Ambition and Realities Clash: Homeland Security Chief May Lack Means to Implement Major Initiatives," *Washington Post,* January 23, 2002.

4. Joel Brinkley and Philip Shenon, "A Nation Challenged: Domestic Defenses: Ridge Meeting Opposition from Agencies," *New York Times,* February 7, 2002, p. A16.

5. For an elaboration of those impediments, see Eric R. Taylor, "Are We Prepared for Terrorism Using Weapons of Mass Destruction? Government's Half Measures," Cato Institute Policy Analysis no. 387, November 27, 2000; and Pianin and Miller.

6. Ibid.

7. Brinkley and Shenon.

8. Executive Order Establishing Office of Homeland Security, www.whitehouse.gov/news/releases/2001/10/2001108-2.html.

9. National Security Act of 1947, Pub. L. 235-61, Stat. 496; U.S.C. 402, National Security Act Amendments of 1949 (63 Stat. 579; 50 U.S.C. 401 et seq.).

10. National Security Council, White House, www.whitehouse.gov/nsc.

11. Pianin and Miller.

12. The Aviation and Transportation Security Act (S. 1447) was signed into law on November 19, 2001.

13. Federal Emergency Management Agency and Emergency Management Institute, "The Emergency Plan Manager," Course IS-1, June 1998.

14. Federal Emergency Management Agency, U.S. Department of Justice, U.S. National Fire Administration, and National Fire Academy, "Emergency Response to Terrorism: Self-Study," Course ERT:SS, August 1997.

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