

Fixing the Department of Homeland Security

by Elaine Kamarck

In November 2002, Congress passed legislation creating the first new Cabinet department in more than a decade—the Department of Homeland Security (DHS). Now in its fourth year, the department is plagued with problems and chronic mismanagement. If DHS is to fulfill its mission, the next president will have to take a hard look at the agency and make some major structural changes.

The department's biggest and most spectacular failure was its abysmal response to Hurricane Katrina. The list of DHS shortcomings, however, does not begin or end with that historic debacle. To cite but a few examples, the color-coded terrorism alert system has succeeded primarily in sowing confusion, and the department has yet to come up with a plan to deal with an outbreak of Avian flu.

A deeper indication of the department's plight is its failure to attract and retain staff. This is not merely an administrative problem for DHS; it is potentially a life-threatening circumstance. After all, this is the department charged with protecting the public from terrorist threats. If it cannot hire and keep individuals who are willing and able to carry out that difficult mission, our nation's ability

to detect and prevent attacks could be compromised.

On this score, the data is bleak. In the summer of 2006, the Office of Personnel Management conducted a job-satisfaction survey of federal workers in all 36 major federal agencies. The DHS ranked last in job satisfaction; second-to-last in leadership and knowledge management; last in results-oriented performance culture; and 33rd in talent management.¹

With results like these, it is no wonder that both political and career professionals have avoided the department. As of May 2007, fully 138 of 575 executive positions in the department—24 percent of the total—were vacant. Nearly one-half of the executive positions in the policy department were vacant, along with 36 percent of the slots in

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“One person with a belief is a social power equal to ninety-nine who have only interests.”

—John Stuart Mill

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the critical office of intelligence, 34 percent in the immigration division and 31 percent at the Federal Emergency Management Agency (FEMA).² In addition, the department has suffered from its reputation as a den of cronyism. From Michael Brown, whose preparation for running FEMA had been a stint as director of the Arabian Horse Association, to Julie Myers, a 36-year-old lawyer with fine political connections but little management experience who somehow became head of the Immigration and Customs Enforcement Agency, the department has not attracted people with experience.

The next president, Democrat or Republican, will have to confront this legacy of failure. He or she would be well-advised to complete a restructuring plan immediately—before a new secretary of DHS is nominated and confirmed—to ensure that reforms will have the necessary institutional support within the highest levels of the department. Cabinet officers and other political appointees have long been known to “go native” once they assume office, developing a vested interest in the status quo. This explains the importance of

having a restructuring plan in place that the newly appointed DHS secretary can call his or her own.

This paper proposes a redirection and redefinition of DHS, with an aim toward helping it more effectively pursue its core mission: protecting the American people. Toward this end, the paper makes four main recommendations:

- 1) Focus the department on border protection, and remove functions that do not relate directly to that vital task; this would include spinning off such entities as FEMA;**
- 2) Make DHS the primary conduit for integrating and sharing homeland-security intelligence with state, local, and private-sector sources;**
- 3) In order to attract highly skilled technology personnel to help protect the United States from attacks on the nation’s computer networks, raise the pay for cyber-security personnel; and**

4) Following one of the recommendations of the 9/11 Commission, consolidate congressional oversight of DHS into one committee in the House of Representatives and one in the Senate.

All of these recommendations entail some degree of risk—or some amount of new thinking—on the part of powerful political entities. We can be under no illusions that the reforms that need to occur will be easy or immediate; if they were, they would have taken place already. The remainder of this paper will go into slightly greater depth in discussing each of the recommendations, laying out the rationale for each in an effort to stimulate the constructive action that will be required if DHS is to carry out its mandate effectively.

Focus the Department on Border Protection, Removing Functions That Do Not Relate Directly to That Vital Task; This Would Include Spinning Off Such Entities as FEMA

The DHS, as currently constituted, is simply too big and composed of too many disparate entities. According to an article in *Congressional Quarterly*, “... [M]embers of Congress are increasingly asking themselves whether they and the Bush administration made a mistake in agglomerating 22 government agencies, bureaus and offices into one department to handle domestic security.”³

It is important to understand that the mistake was not in creating a Department of Homeland Security in the first place, but in saddling the new department with too many constituent parts, and too many disparate missions. The department is not fatally flawed.

At its heart is a coherent mission—the protection of America’s borders, whether those borders are the national boundaries separating our nation from Mexico and Canada; the natural borders of our seacoasts; or the important virtual borders that guard the computer networks upon which our economy and society increasingly depend.

The new president should remake DHS so that it focuses more directly on the crucial task of border security. This mission already occupies most of the people (and dollars) now at the department’s disposal. Six of the 22 agencies that went into DHS focused on protecting America’s physical borders and seacoasts.⁴ Another four agencies were designed to protect America’s “cyber-borders.” Two other agencies, the Federal Protective Service and the Secret Service, protect federal buildings and important officials such as the president. While these are not border-security missions, they are sufficiently central to homeland security to warrant their continuing membership in DHS.

Combining these functions in one agency was long overdue. For much of American history, border protection was a low-priority item. This is understandable, since we have been blessed with generally friendly neighbors to our north and south. Partly because of this lassitude, the government allowed border-protection functions to become widely dispersed.

For example, Customs and the Secret Service had been housed in the Treasury Department; the Immigration and Naturalization Service (INS) in the Justice Department; the Animal Plant Inspection Service in the Agriculture Department; and the Coast Guard in the Department of Transportation (except during wartime, when it became part of the Department of Defense). The much newer cyber-protection function had also been spread among various departments. Long before 9/11, the lack of

coordination, the competition and sometimes the downright hostility between Customs agents and INS agents at the borders was legendary.

The formation of DHS finally empowered the government to address this disorganized approach to border security. That moment of creation, however, also contained the seeds of future trouble. The founders of DHS at both ends of Pennsylvania Avenue erred by following the model set out in the celebrated Hart-Rudman report. Published in early 2001, that report, justifiably revered for its prescience, defined the homeland-security challenge that was to become so obvious in September 2001. In proposing the creation of a National Homeland Security Agency, however, the report suggested that the department include emergency preparedness and response in what would essentially be a border-patrol agency. Congress followed its advice with little debate, although there were some (the author included) who warned that border patrol was a sufficiently vast and important function for one department and that emergency response should be kept separate.

In the end, however, 10 of the 22 agencies incorporated into DHS dealt with the emergency-response function.⁵ Most of these agencies were small—especially compared to enormous agencies like Customs and INS that were part of the border protection function—and, not surprisingly, they got little attention from the leadership of the department.

The merging of the border-protection function and the emergency-response function severely weakened both of these vital operations. To further illustrate the perils of this overstretch, it is worth taking a moment to look at specific ways in which DHS has failed in both protecting our borders and responding to emergencies.

While it is true that there have not been any new terrorist attacks since 9/11 and

the still-unsolved anthrax mailings that followed soon thereafter, there are plenty of signs that problems exist in the protective system. The original inspector general of DHS, Clark Kent Ervin, uncovered major deficiencies at airports as time and again “red teams” were able to smuggle dangerous objects past Transportation Security Administration screeners. Instead of being rewarded for finding holes in the protective system, he was repeatedly chastised by his bosses and by the White House for not being a team player. He ended up being forced out of office.⁶

Other airline problems persist as well. The “no-fly” list, designed to alert airlines to dangerous people who should not be boarding planes, still has no mechanism for effectively removing innocent people from the list—in one case, the roster of suspect passengers included the wife of Sen. Ted Stevens (R-Alaska). Programs designed to expedite travel for non-suspect frequent flyers (and, presumably, make it easier to focus the nation’s aviation-security efforts on identifying potential terrorists) were authorized after September 11, 2001, but are still only in early stages of implementation.

The new department has fared no better when it comes to dealing with illegal immigrants. The US-VISIT program, designed to track foreigners in the United States, has been plagued with management problems from the beginning. Six years after 9/11, DHS still doesn’t know when foreigners leave the country. In 2003, for example, 4.6 million people were supposed to depart under the terms of their visas. It is estimated that as many as 45 percent may have stayed on and that the situation has not improved. Another immigration fiasco involved the practice of “catch and release”—a program whereby officials regularly release illegal immigrants back into American society and then tell them to come to a hearing. Not surprisingly, most never show up for their

hearing dates. After six years, DHS mercifully ended the program.

The department has also had great difficulty monitoring the massive flow of goods into the country. From the beginning, it was clear that the United States was ill-equipped to screen incoming cargo for bombs, hazardous substances, narcotics, hidden terrorists, or other threats. As the department grappled with the problem, it simultaneously approved a deal for Dubai Ports World to take over management of some of the nation's largest ports. The idea that a company owned by a foreign government that had provided assistance to Al Qaeda was about to control portions of major American ports resulted in a furor that dominated the news for weeks. Later reports that DHS had ignored warnings from one of its own member agencies—the Coast Guard—before approving the Dubai deal further tarnished the department's reputation.

If anything, DHS's problems with border control pale beside its disastrous handling of its other assigned function, emergency response. FEMA, a division of DHS, performed abysmally in the aftermath of Hurricane Katrina, laying bare the nation's inability to protect its own people from the readily foreseeable consequences of a natural disaster.

While it is easy to blame the inexplicably tardy and inadequate response on overmatched FEMA Administrator Michael Brown, there were larger institutional forces that contributed to the catastrophe. By the time Katrina struck in late summer 2005, FEMA had been demoralized and degraded by its absorption into DHS. The consequences of this are summed up by Christopher Cooper and Robert Block in their book on the disaster:

“All of the problems that Homeland Security's creation was supposed to have resolved – the interagency jealousies, the tangles of red tape, the inherent inability

to ‘connect the dots’ – seemed to be even worse. Instead of streamlining Washington's ability to perform, the department clogged it up with new layers of bureaucracy and stovepipes of information.”⁷

It did not have to be this way. Prior to 2003, FEMA had been a free-standing agency whose top executive reported to the president. During the Clinton administration it was a model bureau, performing well after the Northridge earthquake in California and held up by Vice President Al Gore's National Performance Review as a “turnaround” agency whose example other government entities should follow. FEMA ran the federal recovery mission in New York City and Washington after the 9/11 attacks, as well as the response to the powerful hurricanes that struck Florida in 2004—and handled these complex, high-profile undertakings well.

The inclusion of FEMA and related smaller agencies in DHS has seriously weakened what was once a high-performing agency and has also distracted from the urgent mission at the border. FEMA can be a star again—if we separate it from DHS and let it stand once again as an independent agency.

In the immediate aftermath of Katrina, Sen. Hillary Rodham Clinton (D-N.Y.) introduced legislation to restore FEMA's independence. By the spring of 2006, two House committees had approved legislation that would pull FEMA out of DHS. Two more presidential candidates, former Gov. Mike Huckabee (R-Ark.) and Gov. Bill Richardson (D-N.M.), have advocated making FEMA a free-standing agency once again.

Such a policy would have a number of benefits. First, it would be easier to recruit top talent to the head post at FEMA if it reported directly to the president. While much has been made of Michael Brown's inexperience in emergency management,

drawing the conclusion that political appointees should be excluded from the job is wrong. Political appointees *with* emergency-preparedness experience—such as James Lee Witt—are needed. The necessity of having strong, adaptable, credible individuals in the top slot at America’s lead disaster-response agency should be too obvious to belabor: In emergency response, time is of the essence. The director of FEMA should not have to wander through layers of bureaucratic approvals. He or she should be someone with whom the president has a degree of comfort and familiarity. During a crisis, the director needs the authority of the president himself or herself in order to act expeditiously. If FEMA continues to be buried in the DHS bureaucracy, it will not attract high-caliber leaders who can handle this level of responsibility.

A free-standing FEMA would be more likely to have the broad authority it needs for action across the federal government. Both the increasing ferocity of weather disasters due to climate change and the increasing destructive capacity of terrorists make it likely that more and more incidents will overwhelm first responders and require a broad federal response. FEMA is the logical agency to coordinate such a response. FEMA’s director should have Cabinet rank, and the agency must have the formal authority to act as the on-site commanding entity (the CINC) in the preparation and coordination of federal, state, and local governments.⁸ An independent and re-invigorated FEMA would be well-positioned to coordinate the nine other emergency-response organizations inappropriately included in DHS (these agencies are listed in footnote 5) into a new, more effective response network that works directly with other federal entities such as the Centers for Disease Control, as well as with their counterparts in state and local government.

Finally, FEMA is not a logical part of the protective mission of homeland security. For

purposes of mitigation, it really does not matter whether a flood is caused by a hurricane-induced storm surge or by a terrorist who blew up a dam. Recovery is a function separate from prevention (though at least one DHS agency, the Coast Guard, could have a hand in both). Placing both functions in the same department has overloaded management and severely degraded the recovery capacities of FEMA.

The next president will have to sort through the problems of this department. He or she should begin by creating a department with one—not two—important missions.

Make DHS the Primary Conduit for Integrating and Sharing Homeland-Security Intelligence with State, Local, and Private-Sector Sources

In the initial rush to re-organize the government for a post-9/11 world, DHS lost a key intragovernmental battle. While many of the original supporters of the new department thought it should include all the intelligence assets of the U.S. government, including the CIA and FBI, these intelligence-collection agencies emerged untouched by the formation of DHS. Nonetheless, the department’s advocates still thought DHS would at least have the capacity to integrate various streams of intelligence into useful data for the purpose of protecting the homeland.

This did not happen. In January 2003, the Bush administration created the Terrorist Threat Integration Center (TTIC) and gave it the crucial mandate to “connect the dots”—that is, to put together all the various pieces of raw intelligence into one piece of analysis. This function, which Congress had envisioned for DHS, was located at the CIA under the authority of the Director of Central Intelligence (DCI)—not at DHS.⁹ The message was clear: When it came to gathering the

intelligence necessary to secure the homeland, DHS would be a poor cousin to the CIA and FBI. DHS would collect no raw intelligence, and would be at the whim of two powerful, turf-sensitive agencies in its efforts to garner necessary intelligence.

DHS should not have a major role in intelligence gathering. There is enough new bureaucracy being created with the establishment of the Office of the Director of National Intelligence. There is still an intelligence role that DHS can—and should—play, however. The integration of homeland-security intelligence gathered by state, local, and private-sector sources is an important and under-utilized aspect of the preventive mission. Such work would be wholly consistent with the border-patrol function of DHS.

That work, furthermore, would address a vital weakness in our domestic security apparatus. In an attempt to try and build better federal, state, and local intelligence, DHS created a network of Intelligence Fusion Centers around the country—places designed to share information about criminal and terrorist threats among levels of government. But three years later there is still unhappiness about the level of actionable intelligence that local officials receive. A National Governor's Conference survey of state homeland-security officials found that more than one-half were somewhat or completely dissatisfied with the "specificity and actionable quality" of the intelligence they were receiving.¹⁰

The new president should assign the assistant secretary of DHS for intelligence and analysis to foster intelligence-sharing relationships between the federal government and state, local and (where appropriate) private entities. Not only should this office be the conduit by which actionable federal intelligence goes down to the proper local authorities, but it should also be the place where state and local raw intelligence moves up to the national level—thus furthering the

goal of "connecting the dots." The division should be renamed "Intergovernmental Intelligence and Analysis" to reflect the new focus of the division.

In Order to Attract Highly Skilled Technology Personnel to Help Protect the United States From Attacks on the Nation's Computer Networks, Raise the Pay for Cybersecurity Personnel

Though DHS has the responsibility for contending with the growing risk of attacks on our nation's computer and communications networks, it has had a very difficult time finding and retaining the talent it needs to do the job. The agency has lost personnel not only to the more remunerative private sector, but also to government agencies with better reputations, such as the FBI or CIA.¹¹

One of the most difficult but crucial jobs at DHS is cybersecurity. Relocating the four young cyber-security agencies that had sprung up across the federal government into one place at DHS is a major improvement. But cybersecurity poses unique challenges. For example, the vast majority of networks to be protected are in the private sector. In addition, as criminals and terrorists become more sophisticated, the vulnerability of everything from our electricity grid to our financial systems increases.

So far, DHS has run into serious difficulties in meeting these challenges. The department has come under repeated attack for its inability to manage the kind of large technology programs that are essential to securing the borders.

The department announced amid great fanfare that it would appoint a new assistant secretary for cybersecurity, and then took a full year to actually fill the position. This troubling delay was

emblematic of a larger problem: People with expertise in the field of network security can make much more money outside the government. This is an issue not just at the level of DHS upper management, but at lower levels as well. There is simply no way around it; the next president needs to seek congressional authority to offer higher salaries for this work than the federal pay scale currently allows. There are precedents for such exceptions. A few years ago, the Securities and Exchange Commission got itself out from the uniform civil service pay scale so that it could attract top financial talent into its ranks. Top computer talent is needed to protect the nation's vital electronic and computer networks, and the government will not get that talent by sticking to the current pay schedules.

Following One of the Recommendations of the 9/11 Commission, Consolidate Congressional Oversight of DHS Into One Committee in the House of Representatives and One in the Senate

Congressional oversight is a crucial means of ensuring that DHS performs its mission competently and in full compliance with the interests and liberties of the American people. The department, however, will never function properly if it has to report to 88 congressional committees—yet this is the astonishing situation the department currently faces. Even though Congress combined 22 agencies into one department, it failed to rationalize the way it conducted oversight, preferring to leave each agency to its original, pre-DHS committee rather than take on powerful committee chairmen. As a result, those chairmen kept their jurisdiction over all of the constituent bits of the new agency,

and oversight of the department deteriorated into a disorganized tangle of conflicting committees and opaque lines of accountability.

The hazards of this situation were evident to the Commission on Terrorist Attacks Upon the United States, commonly known as the 9/11 Commission. In its official report, the commission wrote as one of its recommendations the following:

“Congress should create a single, principal point of oversight and review for homeland security. ... [W]e believe that Congress does have the obligation to choose one [committee] in the House and one in the Senate, and that this committee should be a permanent standing committee with a nonpartisan staff.”¹²

While this is technically not the president's business, the fact is that the best-laid plans for DHS will fail if the department is undermined by an incoherent oversight structure. Thus, the president should use some of his or her political capital to make sure that DHS responds to only one committee in each house of Congress.

Conclusion

The Department of Homeland Security has had a tough start. True, there have been no more attacks on the U.S. homeland, but that fact probably has more to do with the vigilance of individual front-line workers like policemen, FBI agents, border agents and immigration agents than it does with any acts or policies of DHS.

And yet, if the new department can create a more-or-less seamless web of protection at our borders; if it can link the different levels of American government responsible for this protection into a

coherent whole; and if it can protect the vast and vital new realms of cyberspace, then it will serve America well. The next president needs to take on the problems of

this immense agency as soon as possible and appoint a secretary who will be accountable for making the necessary changes.

Endnotes

¹ “OPM Survey Finds Employees enjoy work but dislike their bosses,” by Wade-Hahn Chan, <http://www.fcw.com/article97635-02-12-07-Print>.

² “Critical Leadership Vacancies Impede U.S. Department of Homeland Security,” U.S. House of Representatives, Committee on Homeland Security, <http://homeland.house.gov/SiteDocuments/20070709112923-81091.pdf>.

³ Tim Starks, “Homeland Security Under Attack by Lawmakers,” *Congressional Quarterly Weekly*, June 26, 2006, p. 1772.

⁴ U.S. Customs Service; U.S. Immigration and Naturalization Service; Transportation Security Administration; Federal Law Enforcement Training Center; Animal and Plant Health Inspection Service; U.S. Coast Guard.

⁵ Office for Domestic Preparedness; Federal Emergency Management Agency; Strategic National Stockpile and the National Disaster Medical System; Nuclear Incident Response Team; Domestic Emergency Support Team; National Domestic Preparedness Office; Chemical, Biological, Radiological, and Nuclear Countermeasures Program; Environmental Measures Laboratory; National BW Defense Analysis Center; Plum Island Animal Disease Center. (The remaining two original agencies, as noted, are the Federal Protection Service and the Secret Service.)

⁶ Ervin, Clark Kent, *Open Target: Where America is Vulnerable to Attack*, New York, Palgrave, 2006.

⁷ *Disaster: Hurricane Katrina and the Failure of Homeland Security*, New York, Times Books, p. xv, 2006.

⁸ The CINC (commander-in-chief) concept is taken from the experience in the U.S. military, where, in the post-Goldwater-Nichols world, command was made unitary over the separate branches of the military.

⁹ Best, Jr., Richard A., RS21283, “Homeland Security: Intelligence Support,” Congressional Research Service, February 23, 2004.

¹⁰ Issue Brief, NGA Center for Best Practices, 2006 State Homeland Security Directors Survey, <http://www.nga.org/Files/pdf/0604HLSDIRSURVEY.pdf>.

¹¹ Datz, Todd, “The Interactive Nightmare,” *CSO Magazine*, April 2004.

¹² *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, p. 421.

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