

UNIVERSITY HONORS PROGRAM

SENIOR PROJECT - APPROVAL

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PROJECT TITLE: The Department of Homeland
Security

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Wonderful student and impressive
project.
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THE DEPARTMENT OF HOMELAND SECURITY

A Study
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ABSTRACT

The primary purpose of this project is to assess the newly created Department of Homeland Security. Federal government action began with President Bush's proposal for a new cabinet-level agency and would ultimately end with a congressional act. In the formulation process, congressional leaders should consider all research done on the subject for insight. This body of work includes pre-9/11 research – namely the Commission on the Advancement of Federal Law Enforcement and the Hart-Rudman Commission – and research conducted after September 11th.

This study first addresses the differences between President Bush's proposal and the independent research conducted. Then these differences are reconciled to the congressional homeland security act. Finally, potential shortcomings of the new department are addressed in light of the independent research.

dual goals, limiting the effectiveness of the research as a whole. Anything that was not specifically CBRN related would be given second billing and as the Brookings' report state, there is much valuable homeland security research to be done outside the CBRN realm.

In conclusion, the Brookings Institution suggests a much more focused Department of Homeland Security. Their plan would cut out half of Bush's proposed units, leaving the inclusion of CBRN countermeasures and emergency management to be addressed after the new department is running. Please see the Appendix for Figure 4.1 which depicts the Brookings Institution's alternate organizational chart.

Management

The President's proposal gives large flexibility and freedom in establishing the management of the new department. For example, Bush's proposal would create 28 senior positions in the DHS, but only 14 would require Senate confirmation. Bush's proposal also gives the Secretary of DHS the ability to establish the titles, duties and qualifications for all 16 of his assistant secretaries; the power to reorganize the department after giving Congress 90 days notice; and the authority to bypass the current civil service personnel system.

While the Brookings Institution understands the reasoning behind all of these within the President's proposal and stress this with their finding "Good Management Must Be a Top Priority," they do have some problems with the extreme freedoms that would be given to the new department by President Bush's proposal. First, they call attention to the large number of senior positions that would not require Senate confirmation. Brookings suggests to reduce the number of positions required to about 14,

which they claim would provide enough management and is comparable to what the Departments of Energy and Education began with. Additionally, Brookings feels that it would not be advisable to allow the Department to bypass so much of the civil service requirements. This would place an undue emphasis on the Human Resources process as opposed to the true mission of the department.²⁷ Rather, the flexibility of the hiring and pay within the DHS should be modeled after the freedoms given to the CIA, FAA, and IRS.²⁸

Oversight

The fourth finding of the Brookings report is “Reorganization Should Reach Beyond the Executive Branch.” By this, Brookings implies that Congressional Oversight and Federal Coordination should be established and encouraged. By reorganizing to create a specific committee dealing with Homeland Security, the Congress will be better prepared to address any of the issues that will arise with the DHS – such as how it will handle its non-homeland security functions. According to the organizational plan set forth in the Brookings report, FEMA would remain outside of the DHS. The Institution also suggests that FEMA (if outside the department) take the lead in forming multi-agency task forces to address homeland security issues on a local and state level.²⁹

White House Involvement

The final finding of the Brookings Institution is that the role of the White House will be crucial in the overall Homeland Security effort. Because not every agency that

²⁷ Brookings, 38.

²⁸ Brookings, x.

²⁹ Brookings, x-xi.

performs a homeland security function can be included in the new department. However, the President and heads of all these agencies will need to know of the others' actions and knowledge. The Brookings report suggests the creation of a White House level council modeled after the National Security Council that would include the heads of all relevant departments and agencies.

Conclusion

The response of the Brookings Institution to Bush's Department of Homeland Security proposal urged Congress to heed a couple of recommendations before enacting the President's plan into law. The thrust of the Brookings Institution's report was that a more efficient Department of Homeland Security would need to be more focused than the one proposed by Bush. Focusing only on intelligence as well as border and infrastructure protection, the authors of the report felt that the response and scientific research components would be best served by remaining in their current forms. Additionally the Brookings Institution suggested reducing the management and human resources freedoms given to the DHS Secretary and emphasized the importance of Congressional oversight and White House coordination. Written in direct response to Bush' plan and in light of the revelations from September 11th, Congress should pay close attention to the recommendations of the Brookings Institution.

CHAPTER FIVE: THE CONGRESSIONAL PLAN

Introduction

On November 19, 2002, the Senate passed bill H.R. 5005 entitled “An Act to establish the Department of Homeland Security for other purposes.” Bush signed the Department of Homeland Security Act (HSA) into law on November 25, 2002. The final bill closely resembles President Bush’s June 2002 proposal. However, it does embody additions or modifications found in the research previously addressed in this study.

Organizational Structure

The broad structural organization of the DHS very closely mirrors that laid out in Bush’s proposal. For a full picture of the organization, please see Figure 5.1 in the Appendix. The main functional areas of the DHS will be performed under directorates of: Information Analysis and Infrastructure Protection; Science and Technology; Border and Transportation Security; and Emergency Preparedness and Response.

Information Analysis and Infrastructure Protection

This directorate is headed by one Under Secretary and two Assistant Secretaries; one for each Information Analysis and Infrastructure Protection. With respect to the information analysis component, the HSA follows the suggestions of the Brookings Institution and grants full access to even raw intelligence data from other agencies to the DHS:

Except as otherwise directed by the President, the Secretary [of the DHS] shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.³⁰

In regards to the Infrastructure Protection, the unit is composed by consolidating existing units from other agencies as is suggested by both the Hart-Rudman Commission and the Brookings Institution and recommended in Bush's Proposal. The specific units brought to the DHS by the HSA exclude the private-sector components from the Hart-Rudman recommendation, but include the National Communications System from the Department of Defense; the National Infrastructure Simulation and Analysis Center from the Department of Energy; and the Federal Computer Incident Response Center of the General Services Administration³¹.

Under this title the HSA also formally establishes the Critical Infrastructure Protection Program (CIPP), which addresses non-federal cybersecurity. CIPP establishes a method for members of private industry to submit information in regards to their critical infrastructure as well as provides subsequent protection for the unnecessary disclosure of this information. The HSA provides for the dissemination of pertinent threat analysis and warnings to those that submit information about their infrastructure systems. Additionally, this section of the act establishes "Net Guard." Net Guard would be a multi-team volunteer organization whose members would use their expertise to assist local organizations and communities to recover and respond to any attack on such infrastructure systems.

³⁰ United States, Senate, Homeland Security Act of 2002, H.R. 5005, Sec. 202, 32-33.

³¹ Homeland Security Act, 31

Science and Technology

This section of the new DHS is broadened from what President Bush initially proposed. Bush's CBRN Countermeasures unit was a much more focused research unit that would have only been focused upon those specific threats. The Brookings Institution recommended against including scientific research within the DHS for numerous reasons discussed within that section of this study. Although the HSA's Science and Technology directorate is charged with all Homeland Security related research – a much wider range than CBRN countermeasures – and is more of a compromise between Bush and Brookings. Although this solution separates the fundamentally joined Human Health and Homeland Security research, specifically stating not to perform the former as feared by Brookings, the unit will not be solely focusing on CBRN responses.³² The HSA also assigns any Law Enforcement related research to the Department of Justice under the direction of the Office of Science and Technology – established in Sec. 231.

Additionally the HSA establishes Homeland Security Advanced Research Projects Agency (HSARPA). HSARPA assigns grants to either public or private groups conducting research related to Homeland Security. Also, the Science and Technology unit of the DHS is allowed to help create University-based centers for Homeland Security to assist in relevant research.

Border and Transportation Security

This section of the DHS is very close to Bush's Proposal. The HSA transfers to this directorate the Customs Service (with the Customs revenue functions remaining

³² Homeland Security Act, 69.

under the direction of the Treasury), the Transportation Security Administration (TSA), the Federal Protective Service, the Office for Domestic Preparedness, as well as the functions responsible for inspecting agricultural imports. The TSA is to be transferred as a distinct unit within this directorate. The Office for Domestic Preparedness will also be relocated to this division. This Office is responsible for all Federal and State/Local coordination efforts in regards to terrorism. Immigration Enforcement Functions will be directed from this unit. These are to include the border patrol program – for which a distinct Bureau will be established.

Emergency Preparedness and Response

Congress essentially granted Bush's wishes with regards to this section. It is built around FEMA and will include smaller organizations whose functions are complimentary to FEMA's. Although Brookings recommended against immediately bringing FEMA into the DHS, all of the outside research as well as Bush's proposal suggested folding in the smaller organizations and the synergies from this move should be reflected once the DHS begins operations.

Other Components

The Bureau of Citizenship and Immigration Services reports directly to the DHS Secretary and is establish to oversee any adjudications that were previously conducted by the INS such as the adjudications of visa and naturalization petitions. Because these functions – and those of the Border Patrol – are now under the direction of the DHS, the

HSA abolishes the Immigration and Naturalization Service entirely as is recommended in the Brookings report.³³

As suggested by all sources, the HSA transfers the Coast Guard as a semi-autonomous organization into the DHS preserving all of its current functions. Additionally, the HSA provides a section that pushes for accelerated procurement of new assets for the Coast Guard in order to prepare them in their mission of preserving Homeland Security.

The HSA does move the Secret Service into the DHS as requested in Bush's Proposal. This move is a little odd in that it is not considered by any of the research committees with the exception of Webster's Commission. Although the Secret Service does have a protection branch, it is for the President and other Governmental members as opposed to the American Public in general. The remainder of the Secret Service's functions have dealt with the investigation of crimes somehow related to the Treasury, the Secret Service's former home. Although the move maintains the Secret Service as a separate unit, it is hard to see what its contribution to Homeland Security actually is. The Brookings response to Bush's proposal states this in a note: "In this study we do not address the administration's proposal for moving the Secret Service from Treasury to DHS, which we do not believe to be a first-order concern. We therefore exclude it from our proposed alternative department."³⁴

Interestingly enough, the HSA additionally transfers responsibility for the Federal Law Enforcement Training Center from the Department of the Treasury. This does make logical sense because many various agents such as Secret Service agents undergo training

³³ Homeland Security Act. Sec. 471(a), 178.

³⁴ Brookings, 59.

at this facility. Finally an Office for State and Local government coordination is established for its stated purpose.

Management

Congress' HSA did not stream the management of the DHS as suggested by the Brookings Institution, leaving at least 27 positions at the level of Assistant Secretary or higher. However, the Secretary of the DHS has essentially full authority to reorganize his department and may be able to trim some of these positions. Additionally, Congress granted Bush's request for a "flexible and contemporary" human resource management system.³⁵ This effectively bypasses a large portion of the civil service requirements – also recommended against by Brookings.

Congressional Reform and White House Involvement

Both the Hart-Rudman Commission and the Brookings Institution stress the importance of involvement and reorganization outside of the DHS itself. This is accomplished in the HSA for both Congress and the White House. Although not very detailed the HSA states that each House of Congress should "review its committee structure in light of the reorganization."³⁶ Congress formally established a National Homeland Security Council for both coordination purposes between agencies as well as creating White House involvement in the Homeland Security purpose. Its members are: the President, the Vice-President, the Secretary of Homeland Security, the Attorney General, the Secretary of Defense and any other members designated by the President.³⁷

³⁵ Homeland Security Act, 240.

³⁶ Homeland Security Act, Sec. 1503, 442.

³⁷ Homeland Security Act, Sec. 903, 313.

Conclusion

The Congressional HSA is largely based on President Bush's initial proposal, although it does draw components from some of the independent research that has been done over the years on homeland security. Notably, it expanded from Bush's request in that it gave the intelligence unit of the new DHS full access to raw intelligence data. It is of moderate concern that Congress incorporated FEMA and the scientific research into the new department. However, all in all the Congressional plan gives adequate attention to the independent studies.

CHAPTER SIX: CONCLUSIONS

Introduction

September 11th left the U.S. with the challenge of reorganizing in order to prevent any subsequent attacks to the American Homeland. President Bush presented the initial government plan although the task fell to Congress to draft the reorganization plans. In doing so, Congress wisely considered the research and thoughts of prior Commissions on the subject of effective reorganization. In this chapter the implications of this study will be addressed and possibilities for the future of Homeland Security will be mentioned.

Study Implications

The Department of Homeland Security largely follows President Bush's initial proposal in its focus on border control, infrastructure protection and information consolidation. These are vast improvements from the existing structure as they consolidate agencies that perform similar functions and provide a focus to the important work they will do. Congress stressed the importance of effective information sharing by granting the Homeland Security Department access to raw data from the nation's intelligence agencies. This will allow the analysis to consider the full view of all intelligence concerning terrorist threats to the homeland.

Congress chose to include FEMA into the DHS as was suggested by the Hart-Rudman commission, but recommended against by the Brookings Institution. This should not be a significant concern, as this will allow FEMA to bring its specialization in response plans to the realm of Homeland Security.

Congress' integration of a Homeland Security scientific research unit should raise a degree of concern for the reasons it was specifically recommended against by the Brookings Institution. So much of the scientific research conducted for the protection against terrorist attacks has a dual application to human health research. However, the HSA explicitly prohibits the DHS' scientific unit from working on such research. Consequentially, instead of creating synergies through the consolidation of like activities, the inclusion of this unit accomplishes the exact opposite.

Future of Homeland Security

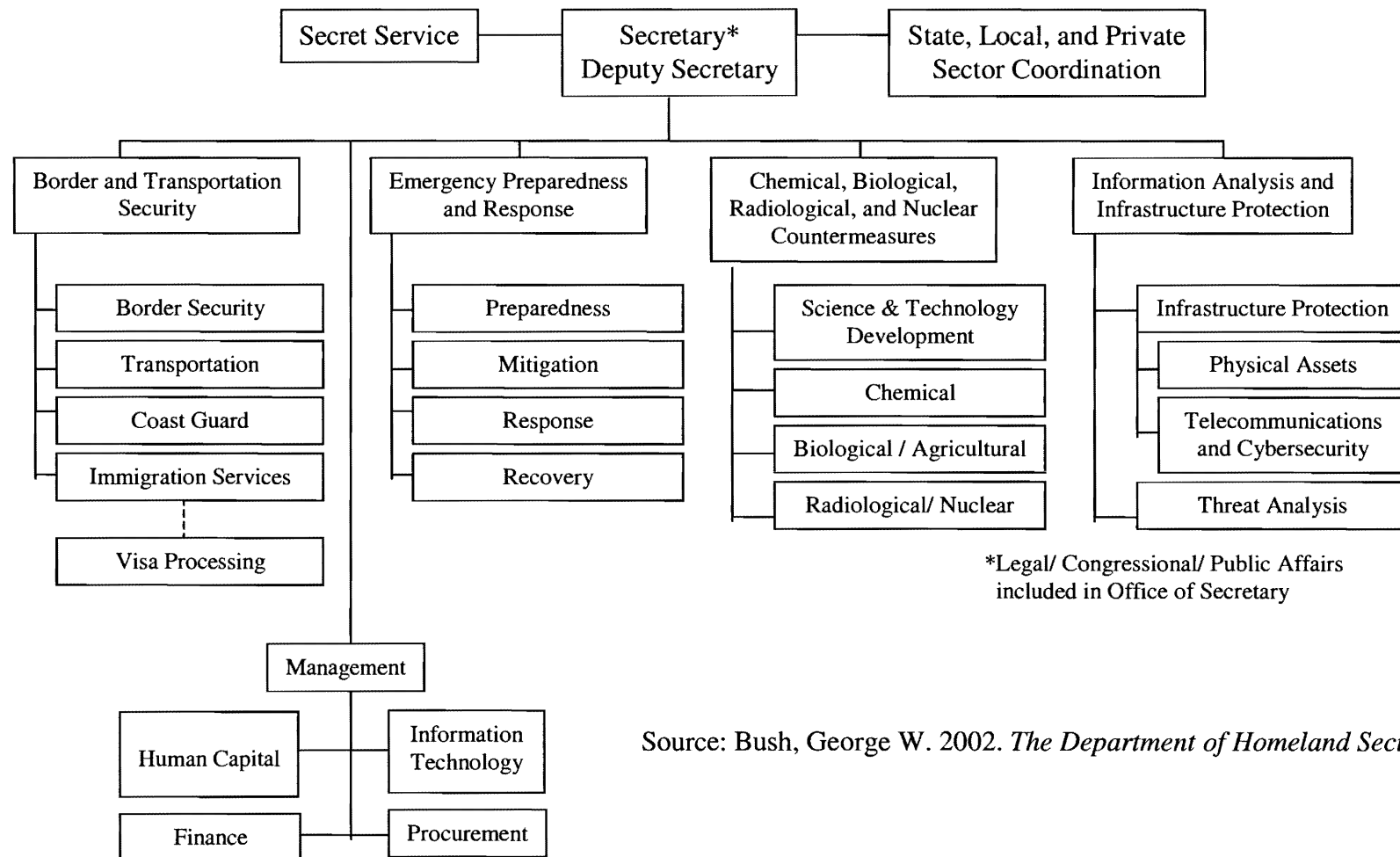
It is hard to tell what the future of Homeland Security will be because the Department is still in its infant stage. It is likely that no significant changes will occur in the near future while the DHS is given a chance to work. However, during the formulation process Senator Bob Graham proposed a plan to model the new department after the English system.³⁸ This would provide the ultimate in information sharing by creating only two intelligence agencies – one for domestic and one for foreign. This would leave a separate organization (Scotland Yard in the English system) to handle law enforcement; and in the case of homeland security one for border protection. Although such a change is not likely to occur in the near future, the English plan is very effective and could be where the American DHS will lead.

³⁸ "The Homeland Security Debate," CBS News Online, 11 June 2002, 29 Apr 2003, <<http://www.cbsnews.com/stories/2002/06/11/politics/main511815.shtml>>.

Perhaps one of the most important aspects of the approved DHS is its freedom to reorganize. The realignment created by the HSA is revolutionary and completely changes the face of the federal government. Unfortunately there are no guarantees for its success. However, because Congress granted the Secretary of the DHS large degrees of freedom to reorganize his department, any shortcomings of the new department can be addressed on the fly. Hopefully this characteristic of the new department will enable it to stay up to date and continuously protect the American Homeland.

APPENDIX

Figure 2.1 – Department of Homeland Security Proposed Organizational Chart



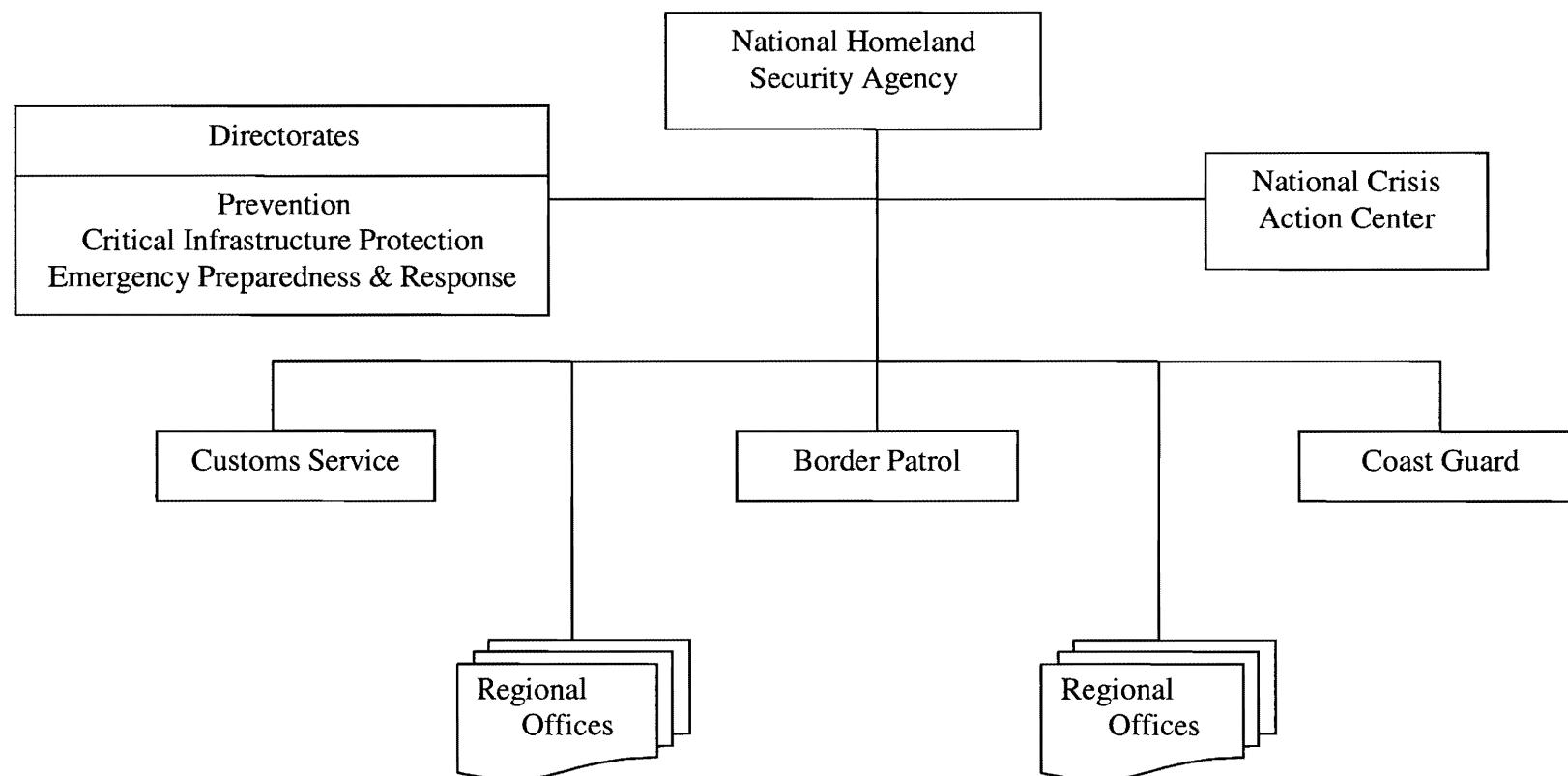
Source: Bush, George W. 2002. *The Department of Homeland Security*.

Table 2.1 – Proposed Agencies within the Department of Homeland Security

Chemical, Biological, Radiological, and Nuclear Countermeasures
Civilian Biodefense Research Programs Lawrence Livermore National Laboratory National BW Defense Analysis Center Plum Island Animal Disease Center
Information Analysis and Infrastructure Protection
Critical Infrastructure Assurance Office Federal Computer Incident Response Center National Communications System National Infrastructure Protection Center National Infrastructure Simulation and Analysis Center
Border and Transportation Security
Immigration and Naturalization Service Customs Service Animal and Plant Health Inspection Service Coast Guard Federal Protective Services Transportation Security Agency
Emergency Preparedness and Response
Federal Emergency Management Agency Chemical, Biological, Radiological, and Nuclear Response Assets Domestic Emergency Support Team Nuclear Incident Response Office of Domestic Preparedness National Domestic Preparedness Office
Secret Service

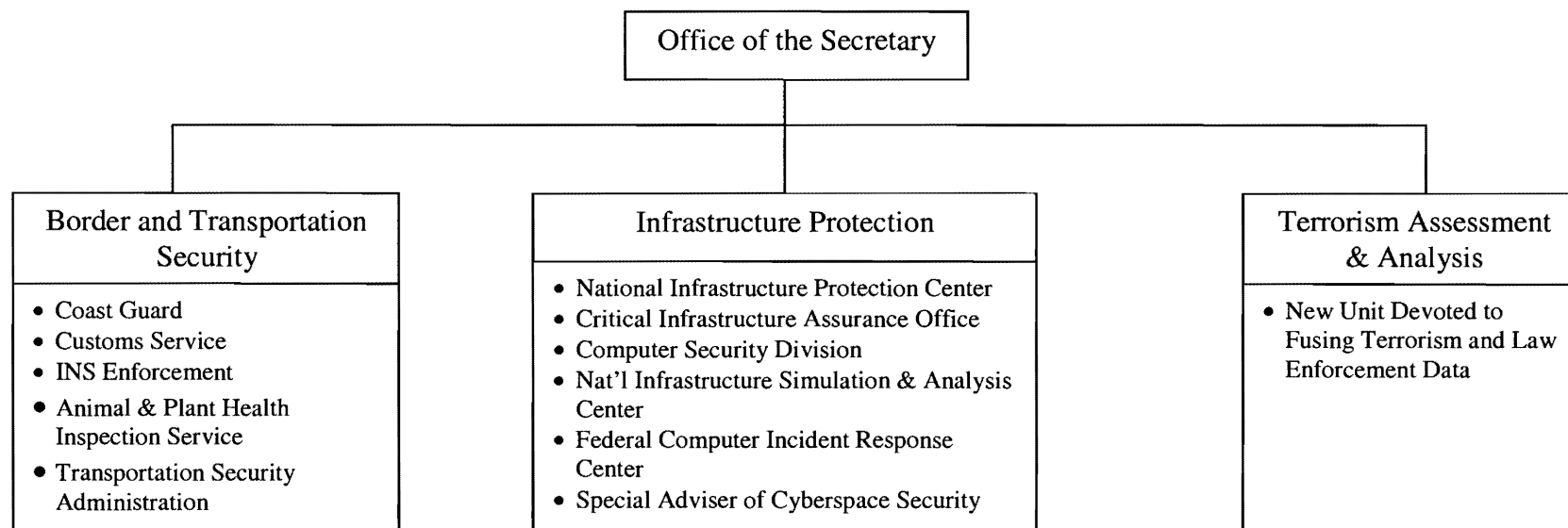
Source: Bush, George W. *The Department of Homeland Security*.

Figure 3.1 – National Homeland Security Agency Organizational Chart



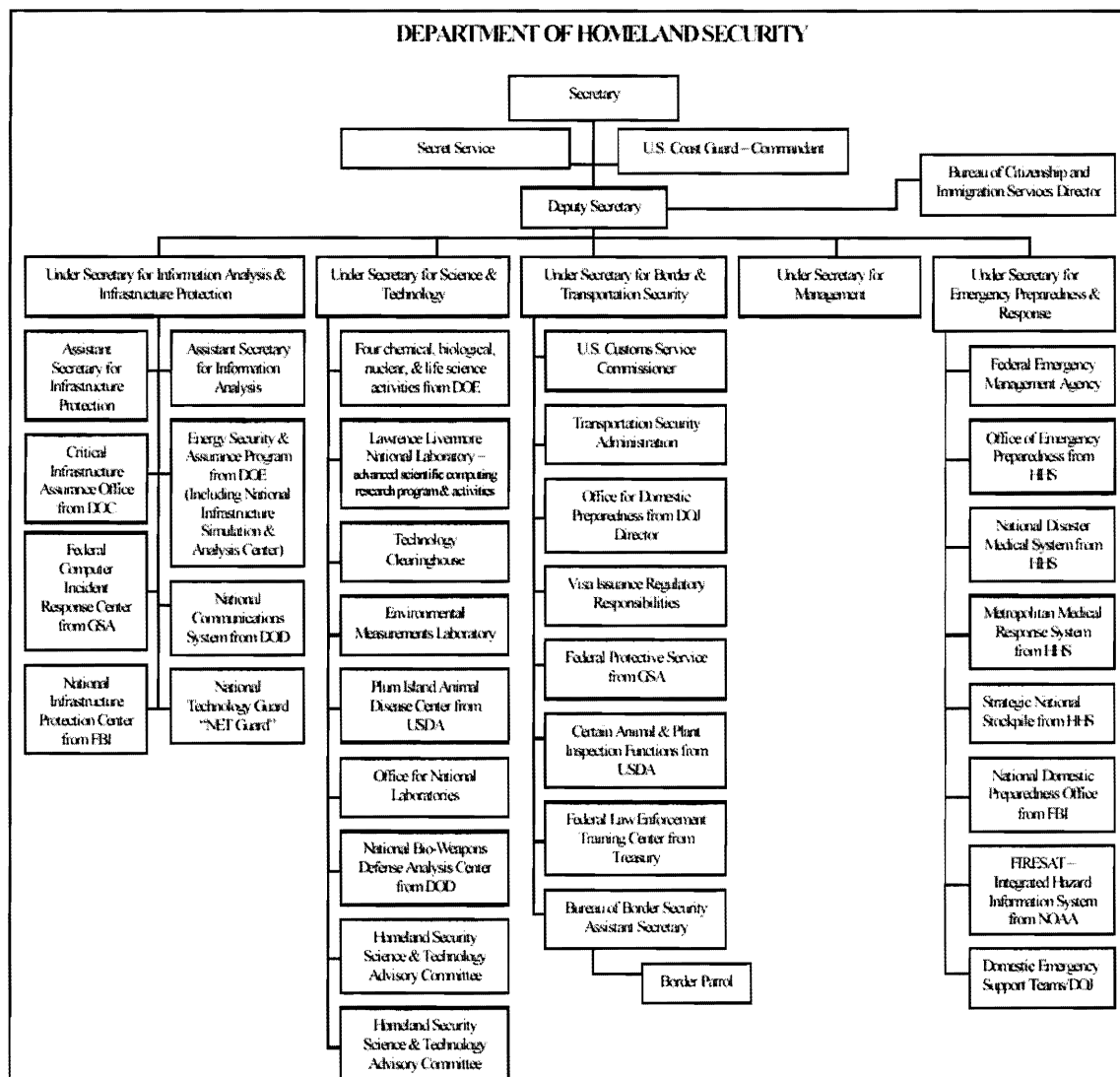
Source: Report of the Hart-Rudman Commission, Phase III (2001). 18

Figure 4.1 – Brookings Institution’s Alternate Department of Homeland Security



Source: Assessing the Department of Homeland Security. Brookings Institution. viii

Figure 5.1 – Department of Homeland Security



Source: Protecting the American Homeland: One Year On. The Brookings Institution. 13.

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CHAPTER ONE: INTRODUCTION TO THE STUDY

September 11, 2001

The events of September 11th forever changed the American conscience. While the American Homeland had endured a direct foreign attack earlier at Pearl Harbor, that tragedy was perpetrated by a sovereign nation. Now existed the harsh realization that extreme devastation could be caused by a small faction of individuals using unconventional means. This new perspective shed a whole new light the inadequacies of the Federal system. Three of the hijackers were in the U.S. on expired visas bringing attention to the border control systems of the government¹. Additionally a large emphasis was placed on hindrances to information sharing between our country's intelligence agencies.

Call for Change

These shortcomings induced a call for change from all of America; after September 11th it was painfully apparent that the current system had failed. Beginning with a White House Office for Homeland Security, Bush pressed for a large-scale reorganization of the Federal machine in order to realign its components to better deal with the current threats. President Bush urged Congress to adopt his proposal, but ultimately the task was theirs to formulate a solution.

Interestingly enough, many of the same issues had been raised before in the reports of various Commissions, even prior to September 11th. These Commissions even

¹ "Borders." Terrorism Q&A. 28 Apr 2003.
<<http://www.terrorismanswers.com/security/borders.html>>.

made recommendations for the reorganization of the Federal system. Additionally, significant research was conducted after the fact and was directly focused on the realignment of the Federal government. Although Congress was requested to approve the President's proposal, it would be very ill advised to do so without investigating the findings of these reports. Congress has an immeasurably important task before them and should consider the knowledge and wisdom represented in all reports on Homeland Security.

Study Overview

This study consists of six chapters written to examine the evolution of the Department of Homeland Security and to assess its likely effectiveness using guidance from non-governmental committees. Chapter One serves as an introduction to the study and is followed by an overview of President Bush's Proposal in Chapter Two. Chapter Three begins the discussion of research by exploring the reports of the Commission for the Advancement of Federal Law Enforcement and the Hart-Rudman Commission – both issued prior to September 11th. A report from the Brookings Institution in direct response to the White House proposal is the focus of Chapter Four. Chapter Five presents the Department as created by Congress and addresses its similarities and differences with the covered research. Chapter Six serves as the conclusion to the study and provides the study implications and insights to the possible future of Homeland Security.

CHAPTER TWO: WHITE HOUSE PROPOSAL

Introduction

Immediately following the attacks of September 11th, there was not an identified need for an entire Department of Security. But the President and his staff took several actions to fortify and protect the American Homeland. The following is an account of the actions taken that have the most relevance to this study.

On September 20th, 2001, President Bush first announced his plans to create an Office of Homeland Security, directed by then Governor Tom Ridge. Bush put this into action by issuing Executive Order (EO) 13228 on October 8th 2001. EO 13228 established the Office of Homeland Security and set forth the Office's responsibilities. Under the EO, the Office of Homeland Security would formulate a national strategy to "detect, prepare for, prevent, protect against, respond to, and recover from terrorist threats or attacks within the United States"². In addition to this, the Office would serve as a coordinator between other involved Federal Agencies.

EO 13228 also established the Homeland Security Council. This council is composed of the heads of various Executive Branch agencies and organizations to include the FBI, CIA, and FEMA as well as various Department Secretaries as appropriate. Because of the composition of this Council, coordination and sharing of Homeland Security related information and intelligence is ensured. The President's Homeland Security Council was further defined through EO 13260 of March 19, 2002,

² United States, "Executive Order 13228 of October 8, 2001: Establishing the Office of Homeland Security and the Homeland Security Council," Federal Register Vol 66, No. 196, 51812.

which established and defined the President's Homeland Security Advisory Council and its functions.

Once the Office was established, President Bush appointed Tom Ridge as Homeland Security Advisor and the head of the Office of Homeland Security. The President also requested Ridge to examine the Federal Government's structure and evaluate its current ability to protect the nation from a future attack. Using the results of Ridge's inspection, President Bush decided the Federal Government needed to be restructured to include a Department of Homeland Security in order to best defend our Homeland.³ In June of 2002, President Bush issued his proposal.

Proposed Structure

The stated purpose of creating a Department of Homeland Security is to better organize the federal government to better prepare it and the nation for the realized threat of terrorism. In general, the Department will bring together many existing entities and place them under one roof with the goal of creating a better-focused effort. The Department will also serve to coordinate cooperation from and among other federal agencies as well as the states and private sectors. Ultimately President Bush's view of the mission of the Department is tri-fold:

- Prevent Terrorist attacks within the United States;
- Reduce America's vulnerability to terrorism; and
- Minimize the damage and recover from attacks that do occur⁴.

In order to accomplish these objectives, Bush has proposed a functional organization for the department of Homeland Security. The new Department would

³ George W. Bush, President, The Department of Homeland Security, June 2002, 1.

⁴ Bush 8.

consist of the following four units: Border and Transportation Security; Emergency Preparedness and Response; Chemical, Biological, Radiological, and Nuclear Countermeasures; and Information Analysis and Infrastructure Protection. A full organizational chart is located in the Appendix, Figure 2.1.

Border and Transportation Security

This unit of the Department of Homeland Security (DHS) is responsible for the security of United States air, land, and water borders as well as the transportation systems themselves. The DHS would take charge of all ports of entry with responsibilities including their security and inspection as well as the supervision of any other federal agencies' port activities.

In order to accomplish these goals, many current organizations must be brought under the DHS: the United States Customs Service, the Immigration and Naturalization Service (INS) and Border Patrol, the Animal and Plant Health Inspection Service, the Transportation Security Administration, and the Federal Protective Service (protects government buildings). All but the INS would be brought into the new department in their entirety. Prior to its integration, the INS would be separated into its law enforcement and immigration services branches. The former would be incorporated into the DHS while the immigration services remain within the State Department.

The United States Coast Guard would also be included in this component of the DHS, but would retain its current status as a military organization. This means that in the event of a war, the Coast Guard would fall under the jurisdiction of the Department of Defense. During all other times, the Coast Guard would be used to patrol the United State's waters.

One goal Bush has for the Border and Transportation Security group is the creation of a new visa system. This new system would incorporate biometric technology and result in much more efficient monitoring of visitors.⁵

Emergency Preparedness and Response

This functional component of the DHS would comprise mainly of the Federal Emergency Management Agency (FEMA). FEMA would operate identically under the DHS as it does now, although its response plans will be expanded to take the place of other national emergency response plans and merge all of these into one all purpose plan. The new FEMA would lead and coordinate the actions of other incident-specific response teams. In addition to this, this section of the DHS would administer all federal grant programs supporting state and local responders in order to better manage the growth and training of these services.

In this section of his proposal, Bush also addresses the issue of inter-agency communication at a disaster site. As evident in the response to September 11th, not all agencies use compatible communication devices. While not suggesting a plan or method to achieve this ability, Bush states that remedying this situation would be a top priority of the new DHS.

Chemical, Biological, Radiological, and Nuclear (CBRN) Countermeasures

Recognizing both the possibility of an unexpected attack and the growing pervasiveness of knowledge about weapons of mass destruction, CBRN unit of the DHS is designed to serve as a research and development division to protect against such attacks. This unit is to serve mainly to consolidate federal level efforts to develop

⁵ Bush 9.

countermeasures to the CBRN threat. Directing the work of the CBRN unit would be the “constant evaluation of the threat and [current security’s] weaknesses.”⁶ A national system capable of detecting biological attacks and a system to detect the importation of nuclear materials are examples of the level of projects that Bush wants this unit to tackle.

Information Analysis and Infrastructure Protection

This unit of the DHS has two distinct functions. The first of these is Information Analysis. In his proposal, Bush clearly establishes the role of the Information Analysis section in stating that the DHS “will not become a domestic intelligence agency.”⁷ Rather, the DHS will obtain intelligence information pertaining to terrorism from the current domestic intelligence agency: the FBI. Then this information will be compared and considered with intelligence from other agencies including the CIA and NSA. This provides a more thorough analysis of the terrorist threat, and also allows for one agency to take the point on warning the President and U.S. public about possible threats.

The infrastructure protection piece of the DHS is again generally a consolidation of existing agencies and departments. This component would investigate and stay informed of the status of the various components of our infrastructure and work to protect it. In addition this unit will include protection against cyber-terrorism, as much of our infrastructure is dependant upon or even exists in the internet.

Additional Components

In addition to the four main units, Bush’s proposal also brings the Secret Service under the direction of the department. However, no aspect of the functioning or structure

⁶ Bush 13

⁷ Bush 15

of the Secret Service would be altered; as seen in the organizational chart (Figure 2.1), the Secret Service would simply report to the Secretary of the DHS.

Another autonomous unit of Bush's proposed DHS is the State, Local and Private Sector Coordination. This group would be able to provide one federal contact point for state, local and private organizations. Also, this unit will be in charge of disseminating pertinent information to the non-federal organizations.

Bush's proposal also acknowledges that some components of the new DHS will have non-Homeland Security functions that must continued to be preformed:

- FEMA's responsibility for natural disasters
- The Coast Guard's general maritime responsibilities
- INS' general functions
- The Secret Service's investigation of counterfeiting
- The Custom Service's drug smuggling enforcement function

Conclusion

Through the creation of the four functional units that would embody the majority of the proposed DHS, President Bush believes redundancy in the federal government's structure will be eliminated and a more efficient means of protecting the American Homeland will be achieved. Bush plans to bring together many existing federal organizations in order to complete this task. To view a full list of these agencies, please see Table 2.1 in the Appendix. In the conclusion of his proposal, Bush states that the only remaining requirement for the establishment of the new department is the creation and passage of a Congressional Bill. The President expects this condition to be met rather quickly as he sees the DHS established and beginning to function by January 1, 2003.

CHAPTER THREE: PRE 9/11 RESEARCH

The Commission on the Advancement of Federal Law Enforcement

Introduction

The Commission on the Advancement of Federal Law Enforcement was created through the passage of the Antiterrorism and Effective Death Penalty Act of 1996. Chaired by the well-known William Webster, the Commission was asked to act as an advisory board and to report to Congress on the status of Federal law enforcement. In January of 2000, the Commission submitted its report. Although all activities of the Commission occurred prior to September 11th, their report addresses some of the Federal system's shortcomings brought to light after the tragedy. In addition the Commission's report makes suggestions for consolidation and information sharing very similar to those in President Bush's proposal.

Recommendations

The first conclusion of the Commission was that the President should improve the Federal system by "minimizing overlap and duplication of agency functions."⁸ Specifically the members of the commission suggest a long-term solution that would reorganize the federal government into functional areas. One of the proposed branches covers the area of "Protective and Border Security." The commission placed the Secret Service, Coast Guard, and INS within this unit. Although it leaves the criminal and

⁸ United States, Commission on the Advancement of Federal Law Enforcement, Improving the Administration of Federal Law Enforcement, (Washington: GPO, 2000) 108.

terrorism functions with in an area for “Criminal Activity and National Security,” this grouping of the protective and border security functions is mirrored in Bush’s proposal.⁹

Even prior to September 11th, this Commission recognized problems with the sharing of critical information. The Commission’s second recommendation was to “Provide the intelligence and information needed to combat terrorism.”¹⁰ According to the report, the key to implementing this recommendation is effective coordination between the intelligence agencies and law enforcement agencies at the federal, state, and local levels. Acknowledging efforts by the FBI to share unclassified threat warnings with the public and local law enforcement, the report further states that this sharing would be ideal only if the information contained intelligence from other agencies such as the CIA and NSA.¹¹

Another concern addressed by the commission in this recommendation is that of cyberterrorism. The commission urges the implementation of policies consistent with the technologies of the times. The main area stressed by the recommendation was the protection and security of critical services and infrastructure.¹² Information Sharing and Infrastructure Protection are also combined in Bush’s DHS proposal.

Hart-Rudman Commission

Introduction

The commission commonly referred to as the Hart-Rudman Commission was officially called the U.S. Commission on National Security/21st Century and issued three

⁹ Improving the Administration of Federal Law Enforcement, 110.

¹⁰ Improving the Administration of Federal Law Enforcement, 116.

¹¹ Improving the Administration of Federal Law Enforcement, 119.

¹² Improving the Administration of Federal Law Enforcement, 117.

reports. These were subtitled *New World Coming: American Security in the 21st Century* (September 1999); *Seeking a National Strategy: A Concert for Preserving Security and Promoting Freedom* (April 2000); and *Road Map for National Security: Imperative for Change* (February 2001). For this study we will focus on the third installment as it deals with changing the structure of the federal machine to defend the American Homeland.

The document is often surreal to read because of its prophetic statements relating to September 11th. At least three times throughout the entire text some variation of the following can be found:

The combination of unconventional weapons proliferation with the persistence of international terrorism will end the relative invulnerability of the U.S. homeland to catastrophic attack.¹³

While it is unlikely that even immediate reaction to this report would have prevented September 11th, the insight it provides to an effective reorganization of the United States government is still valuable and should be strongly considered.

Organizational Realignment

The Hart-Rudman Commission directly suggests the creation of a new cabinet-level agency, which they call the National Homeland Security Agency (NHSA). The Commission suggested that this new agency be built around FEMA because FEMA's experience with disaster response would provide an excellent base off of which to build more extensive response plans. Additionally, FEMA is an effective agency that has been performing well, providing a good start for the new NHSA. The Commission also recommended folding the National Domestic Preparedness Office into the NHSA and

¹³ United States, Commission on National Security/21st Century, Road Map for National Security: Imperative for Change, (Washington: 2001) 5.

under FEMA's direction.¹⁴ Leading this effort for the NHSA would be a Director of Emergency Preparedness and Response. However, the Commission also recognized that basing the NHSA around FEMA would not be sufficient.¹⁵

The Hart-Rudman Commission suggested the combination of three border-controlling agencies into the NHSA under the direction of a Director of Prevention. These would be the Coast Guard from the Department of Transportation, the Customs Service from the Treasury, and the INS's Border Patrol from the Department of Justice. Consolidating these three organizations into the NHSA would facilitate synergies gained from their complimentary tasks. Also, the Commission stressed the importance of increasing the funding specifically to these members of the NHSA so that they can upgrade their equipment so that they can more effectively do their job.¹⁶

Although this would be the main operating core of the proposed NHSA, one final group would comprise the Directorate of Critical Infrastructure Protection. This unit of the NHSA will help to protect the utility, financial and other critical infrastructure systems from both physical and cyber attacks. In order to accomplish this task, the Hart-Rudman Commission recommends that the following organizations be brought into the NHSA:

- Information Sharing and Analysis Centers (ISACs), which are government-sponsored committees of private-sector participants who work to share information, plans, and procedures for information security in their fields.
- The Critical Infrastructure Assurance Office (CIAO), currently housed in the Commerce Department, which develops outreach and awareness programs with the private sector.
- The National Infrastructure Protection Center (NIPC) from the FBI, which gathers information and provides warnings of cyber attacks

¹⁴ Commission on National Security, 21.

¹⁵ Commission on National Security, 15.

¹⁶ Commission on National Security, 15-16.

- The Institute for Information Infrastructure Protection (I3P), which is designed to coordinate and support research and development projects on cyber security.¹⁷

These three broad areas will comprise the whole of the proposed NHSA.

According to the Commission's report, a relatively small central group will staff the three directorates, but the bulk of the NHSA's staff would be located across the country and perform the prevention, border-protection functions. For the organizational chart of the NHSA, please see the Appendix, Figure 3.1.¹⁸

Congressional Reform

Noting that the Executive Branch is not the only part of the Federal Government in need of reform in light of homeland security concerns, the Hart-Rudman commission calls for changes and a review of Congress. The first part of their recommended plan is to increase the knowledge of Congressmen in the realm of foreign policy and national security in addition to their traditional expertise in domestic issues. The Commission's second recommendation deals with the structure of Congressional committees. Specifically it suggests joining appropriations subcommittees with their authorizing committees. This action would allow authorization and appropriations to be given within the same bill, streamlining the creating and budgeting process.¹⁹

Finally, as opposed to creating additional committees to deal with homeland security issues, the Hart-Rudman Commission recommends forming a "permanent consultative group composed of the Congressional leadership and the Chairpersons and

¹⁷ Commission on National Security, 19.

¹⁸ As a note, the Commission concluded that the intelligence community did not require any organizational change. Rather their attention to the intelligence community was directed at refocusing the nature of its mission to the human sources related to terrorism.

¹⁹ Commission on National Security, 111-13.

Ranking Members of the main committees involved in national security.²⁰ The committee believes that such a group will enable adequate coordination between all the involved committees. Additionally the group would be established as a point of contact and first response in light of a crisis.

Civil Service

As a final section of their report related to organizing to protect the homeland, the Hart-Rudman Commission suggested streamlining the appointment process for senior government officials. The first of these is to simply shorten the process in general. This could be accomplished by standardizing all paperwork required, confirming the national security team first, and limiting full access to FBI files – this would reduce the number of applicants who would have to undergo a full FBI background investigation that can take four or more months. Additionally, the commission suggested reducing the number of positions that required Senate confirmation.²¹

Also, as a way to attract more eligible and qualified candidates to these senior positions, the Hart-Rudman commission recommended revising the ethics requirements in regards to conflict of interest and financial disclosure issues. Often these are so strict as to detract qualified candidates from an industry because of their vested interests in their industry. Furthermore, the Commission suggested reduce the post-employment restrictions that would prevent the appointee from returning to his previous job or industry after government service.

²⁰ Commission on National Security, xvii-xviii.

²¹ Commission on National Security, 92-93.

Conclusion

While both were written prior to September 11th, the recommendations of the Commission on the Advancement of Federal Law Enforcement and the Hart-Rudman Commission pointed to shortfalls in the federal structure that were exposed after September 11th. They suggested consolidating where appropriate – specifically with those multiple agencies engaged in protecting our borders. The Commission on the Advancement of Federal Law Enforcement drew attention to the need for information sharing between the intelligence agencies and the cyber threats. The Hart-Rudman Commission addressed the cyber threat in light of protecting the nation’s critical infrastructure. Additionally the Hart-Rudman Commission based a new cabinet-level agency off FEMA in order to plan for a response to any attack. In planning their Department of Homeland Security Congress would do well to pay attention to the concerns brought to light by these reports and incorporate their recommendations.

CHAPTER FOUR: BROOKINGS INSTITUTION

Introduction

According to their website, the Brookings Institution is “an independent, nonpartisan organization devoted to research, analysis, education, and publication focused on public policy issues in the areas of economics, foreign policy, and governance.”²² In July 2002, the Brookings Institution released a report entitled “Assessing the Department of Homeland Security.” This document analyzed President Bush’s proposal directly and issued five principal findings for Congress to consider before approving the President’s plan.

Strategy

The Brookings Institution’s first finding is “Strategy Must Guide Organizational Change.”²³ According to Brookings, Bush’s Homeland Security proposal was issued prior to the completion of a national homeland security strategy being formulated by the Office of Homeland Security. Logically, it would make sense to wait on the structuring decision until the department’s overall strategy is set. This way, the department’s structure can be tailored to fit its strategy instead of trying to force a strategy onto an inefficient structure.

Tom Ridge – the head of the Office of Homeland Security – defends the actual sequence of events by claiming that the strategy can be inferred from the new department’s proposed budget and the organizational structure laid out in Bush’s

²² <http://www.brookings.org>

²³ The Brookings Institution, Assessing the Department of Homeland Security, (Washington 2002)

proposal. While the Brookings Institution does not necessarily disagree with this fact, they are afraid that the administration has, at best, a skeleton plan as opposed to the “coherent, integrated strategy” that would be ideal.²⁴

Because of the lack of a complete strategy proposal for the Department of Homeland Security, the Brookings Institution suggests that the Office of Homeland Security work on the completion of their national strategy. Also, Brookings urges Congress to not issue a blanket acceptance of Bush’s proposal. Rather, Congress should focus on areas that obviously are in need of reorganization, which leads into their second recommendation.

Focus

The second recommendation of the Brookings Institution deals with the idea that the Homeland Security Department should not be created by lumping all organizations having a homeland security function into the new department. Also, whenever new organizations are created – and especially when they are created from the consolidation of existing agencies – learning how to manage the new organization takes an incredible amount of time. Using both of these reasons as support, the Brookings Institution found that it would best fit the mission of Homeland Security to limit the organization so that “The Department [Could] Initially Focus on Border and Transportation Security, Infrastructure Protection, and Intelligence Analysis.”²⁵

In large parts, the Brookings’ report agrees with the President’s proposal in the areas of border and transportation security, infrastructure protection, and intelligence

²⁴ Brookings, iii.

²⁵ Brookings, ii.

analysis. With border and transportation security, Brookings also suggests the inclusion of the Visa administration process into the Department Homeland Security; Bush's proposal leaves this function within the Department of State. The Brookings Institution wholeheartedly pushes for the incorporation of infrastructure protection. In fact, they feel that because the area is relatively new and has no real home, the new Department will be able to address the function appropriately. Finally, the Brookings Institution does not feel that the President's proposal went far enough with the consolidation of the information analysis capabilities. They suggest that the intelligence unit of the Department of Homeland security have access to all raw intelligence data pertaining to terrorism.

The Brookings Institution disagrees with folding FEMA into the Department of Homeland Security. However they do support broadening FEMA's responsibilities to include other federal units and programs related to emergency preparedness and response. The main reasoning behind this is that FEMA is just now functioning as a very effective federal organization and trying to cement its practices to maintain its effectiveness. Moving the unit into a new department would place the managerial reins with someone else, potentially to the detriment of FEMA's effectiveness.

Finally, the Brookings Institution is against the inclusion of CBRN countermeasures into the new department, specifically because of the scientific research that would be the bulk of the unit's mission. The scientific research that would be done within this unit is often dual-purposed for "combating natural disease and combating terrorism."²⁶ Relocating the research efforts would serve to create a divide between these

²⁶ Brookings, 29.