

# Partners in Protection



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Defining the proper relations between federal, state, local and tribal governments is one of the keys to effective homeland security—and one of the trickiest balancing acts in the nation. With the benefit of experience and a perspective from the heart of homeland security, a veteran official looks at the challenges DHS has faced and makes some suggestions for the future.

By JOSHUA D. FILLER

ON SEPT. 11, 2001, I WAS LITERALLY AT THE SIDE OF MAYOR RUDY GIULIANI AS WE WATCHED THE TWIN TOWERS COLLAPSE. THEN, IN MARCH 2003, I WAS PRIVILEGED TO BE PRESENT AT THE CREATION OF THE DEPARTMENT OF HOMELAND SECURITY (DHS). THESE EXPERIENCES, AND MY EXPERIENCE HEADING THE DHS OFFICE COORDINATING STATE, LOCAL AND TRIBAL AFFAIRS, GAVE ME A KEEN APPRECIATION OF THE NATURE OF FEDERALISM AND ITS RELATIONSHIP TO OUR HOMELAND SECURITY.

Homeland security is all about managing risk. I know—as does everyone in the homeland security community—that we can never reduce our risk to zero. But if we leverage all our resources, we can substantially reduce it. We've come very far since 9/11. But for all that enormous progress, tremendous and deep-rooted challenges still lie ahead.

The challenge of integrating our capabilities to enhance security is daunting. Governors do not work for the president. Mayors do not work for governors. Sheriffs do not work for mayors and so on. Each represents an autonomous source of power and authority, the integration of which is key to effective homeland security. As a result, there will never be a unitary chain of command within the United States, and when integration does occur, it will rarely be seamless.

As a former governor, Secretary Tom Ridge intuitively understood this and worked hard to lay an integrated foundation. Secretary Michael Chertoff has worked to do likewise.

During my three-and-a-half years at DHS, including its founding, I came to the conclusion that there are four key areas, each connected to the other, in building an integrated security network under our federal system: Policy development; preparedness; intelligence and information sharing; and operations.

In many ways, DHS was set up to lead the unified national effort to pull it all together. As DHS continues this effort, it will have to recruit mid- and senior-level managers from all levels of government to ensure that it gets experienced people in all four areas. No other federal department relies more on the state, local and tribal community for its success than DHS.

## POLICY DEVELOPMENT

Building *national* policy—as opposed to just *federal* policy—is essentially designing the “what” that we seek to achieve in

homeland security. It's the foundation on which the other three elements are built.

In this area, the federal government in general and DHS in particular have made dramatic and positive strides. Three examples are the Homeland Security Advisory System (the color alert system), the National Incident Management System and the National Response Plan (NRP), all of which had significant input from state, local and tribal communities.

However, this kind of input is often ad hoc and not all federal officials have fully embraced or even truly understand its importance. Collaboration can be slow and difficult but the alternative—imposing policies from above—only results in grassroots rejection of policies by the community that most needs them. There needs to be a system that allows state, local and tribal governments to participate early on and throughout the policymaking process, whether that applies to transportation, infrastructure, information, preparedness or any other element of homeland security.

Fortunately, the DHS leadership understands and accepts this and creation of the new DHS Policy Directorate presents a significant opportunity to create a system and culture of collaboration.

## PREPAREDNESS

Preparedness has undergone a major transformation since Sept. 11. Once a backwater function, it is now at the heart of much of homeland security with billions of dollars appropriated each year just to enhance state, local and tribal preparedness through multiple grant programs, including the Urban Area Security Initiative (UASI) and the Law Enforcement Terrorism Prevention Program (LETPP) and more. With these and other changes, our nation's preparedness level has increased substantially, but significant challenges lie ahead.

Well over a year ago, several of us in DHS began calling for and drafting a plan, with the support of then-Secretary Ridge support, to create a Preparedness Directorate. Secretary Chertoff endorsed the concept and is moving forward.

While some critics argue that preparedness should be part of the Federal Emergency Management Agency (FEMA), a separate Preparedness Directorate, if established properly, will be far more effective.

Preparedness in a post-Sept. 11 environment is bigger than

any single operational component of DHS. Preparedness now doctrinally cuts across the full spectrum of homeland security activities: prevention, protection, response and recovery. Therefore, a full directorate that has the ability to work across the spectrum with all the necessary parties on planning, equipment purchases, training and exercises to enhance our nation's overall capabilities is needed.

Making the national preparedness mission a division within a DHS component will subject preparedness efforts to the operational demands of that component. For example, whether it's a hurricane, flood, tornado, oil spill or terrorist threat or attack, the demands of that hazard will always trump the demands of preparing for the future for the very reason that operational demands are real and immediate, and preparedness is about preparing for a possible future contingency.

To be effective, the new directorate will need to prioritize and establish a set of core capabilities.

First, it needs a clear and robust concept of operations for how the new directorate will interface among its own components, the other DHS components, particularly FEMA and the

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Coast Guard, along with the other federal agencies, and state, local and tribal governments. This should include a system for rotating subject matter experts from within the DHS components into the directorate in order to utilize their operational expertise. A strong intergovernmental recruiting and fellowship program will do the same.

Second, the directorate must get its arms around the training and exercise programs DHS offers to state, local and tribal governments. Training and exercises have greatly improved, but challenges remain. Today, there is a lack of coordination, integration and systemization within the department, not to mention the other federal departments and agencies. The directorate should have the authority to oversee and coordinate a comprehensive training and exercise program throughout the government. This will reduce duplication and conflict and systematize training doctrine, content and scheduling.

Third, the directorate must have some level of field capability, beyond what it inherits from its pre-existing compo-

nents, to deliver its services and work with all of its partners to enhance preparedness. We cannot prepare the nation from Washington, DC alone. Without such a representative in the field, DHS Headquarters will never get a clear and real time picture of what is happening on the ground. DHS needs a cadre of senior executives with the credibility to work with senior state, local and tribal leaders, and to cover a certain area of the country to lead, track and monitor progress on the preparedness front.

Fourth, the new directorate needs to work closely with the private sector, the DHS Science and Technology Directorate, the Department of Defense (DoD) and the national laboratories to develop new technologies and systems for use by state, local and tribal agencies. The technologies include everything from enhanced personal protection to advanced detection systems and more. It should work aggressively to declassify existing technologies exclusively used by the federal government and make them available to first responders and others on the domestic front line.

Finally, one of the most important elements in preparedness is preparing our elected leaders to lead. If there is one thing I've learned since being in New York on Sept. 11 and at DHS during Hurricane Katrina, it's that if all politics are local so are all incidents.

The mayor of a major city, or governor of a state will play an enormous role in determining the outcome of an incident. In so many cases, those elected local chief executives, and not federal officials, will command the forces of law enforcement, fire, National Guard, emergency medical, public health and more that will be expected to protect the threatened infrastructure or save lives in a disaster.

Understanding roles and responsibilities at the elected official level through training and exercises is absolutely essential and must be embraced by the elected chief executives themselves. If they take it seriously and endorse a comprehensive program and show up and participate in the training for the entire day, then the agency heads that work for them will do the same.

Many elected leaders have done this and DHS has fostered such training through the Top Officials Exercise program, and through Mobile Education Teams, which provide seminars for governors and other elected chief executives and their cabinets. All of this training should continue and be expanded, and should be done jointly with federal leaders as often as possible.

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## INTELLIGENCE AND INFORMATION SHARING

The 9/11 attacks were the result of a failure to collect, analyze and share information necessary to commence operations to prevent the attacks. Since that time, numerous changes at the FBI, CIA, DHS, DoD and the new Director of National Intelligence (DNI) have occurred in order to address those long-standing shortcomings. While many of these changes have

certainly increased the amount of information sharing that goes on and have resulted in more information shared at an unclassified level—both of which are very good things—there remain profound structural problems in terms of how federal agencies engage state, tribal and local agencies on intelligence matters.

Many federal agencies continue to operate independently of each other when it comes to information sharing with state, local and tribal governments, which sometimes causes confusion. To help fix these and other problems, the recently passed Intelligence Reform Act created the Program Manager for the establishment of the Information Sharing Environment (ISE), which is supposed to represent the overarching architecture for information sharing. While there is a real opportunity with the ISE to finally create a model for information sharing, its development could result in the mother of all turf battles. However, where the ISE meets the evolving information fusion process may rest an answer to this problem.

Over the last several years, state and regional information fusion centers have evolved in an effort to better integrate intelligence and share information among different homeland security agencies. Examples include the Joint Regional Intelligence Center in Los Angeles, Calif., or the Upstate New York Regional Intelligence Center in Albany, NY.

Wherever they're located, the centers seek to fuse raw data into intelligence to prevent terrorist acts. While counterterrorism is their primary impetus, they generally take an all-crimes approach and include non-law enforcement agencies

like fire and health, which also do their own information gathering. Staffed with analysts and investigators from agencies at all levels of government, the fusion centers represent real collaboration. They're a truly unique, bottom-up phenomena built on federal principles and they synthesize valuable domestic intelligence based on grassroots, on-the-ground information collected by local agencies.

Federal agencies participate in these centers, but don't own or run them. Rather, their rules are usually established jointly by local, state and local-federal agencies such as special agents in charge. The facilities are usually state or locally owned and certified secure by a federal agency so they can store classified data.

Right now, the fusion centers and the process of creating them are at crossroads. Each is independent and no agency is taking the lead to integrate them into a cohesive network. Templates have been developed at DHS and the Justice Department that provide detailed guidance on how the fusion process should work and the centers should operate.

The next critical step will be for the federal government to ratify these standards into official policy and issue guidance to the homeland security community.

## OPERATIONS AND THE BORDERS

Integrated operations—those involving federal, state, local and tribal authorities working together—are a real challenge in the federal system, given the lack of a central chain of command.

## Katrina's Lessons

In the wake of Hurricane Katrina, a number of changes are obviously necessary. However, we must be careful not to overreact and apply lessons exclusive to the Katrina experience to the country as a whole.

### EXPAND ESF-13

Katrina was the first test of the National Response Plan (NRP) during a catastrophic incident. While there were failures at all levels of government, there is no evidence to date that the NRP was the root cause of those failures.

To improve the NRP, we must be clear about what it is and what it is not. The NRP represents the first post-Sept. 11 attempt to build a national tool under our federal system to manage major domestic incidents. The NRP neither gives nor takes away any authority of any agency at any level of government. As a plan, the NRP cannot impact federal authorities that are rooted in statute or executive order. Rather, the NRP simply creates a framework by which the federal government will provide assistance and interface with state, local and tribal governments during an incident of national significance or other contingencies. The NRP does not give the DHS secretary command and control over *any* non-DHS assets. Like any plan, the NRP is only as good as those who follow and execute it, and regardless, such plans never survive a battle fully intact.

The kind of looting and breakdown of law and order that we saw in and around New Orleans is something we must be better pre-

pared for in the future, wherever it may occur. A key portion of the NRP and incident management is the Emergency Support Function (ESF) system and the Emergency Management Assistance Compact (EMAC). One of the new ESFs added with the creation of the NRP (over the Federal Response Plan), is ESF-13 – Public Safety and Security. At present, ESF-13 only deals with federal law enforcement providing such support.

ESF-13 should be expanded upon by establishing law enforcement security teams within each of the FEMA regions, consisting of local, state and federal officers, deputies and agents. By adding state and local law enforcement to the ESF, we will get the benefit of those who have expertise in policing both major urban areas and rural America. The teams would be organized to provide security and general law enforcement support to jurisdictions within their region. To ensure unit cohesion the teams would train and exercise together and be provided interoperable equipment. The teams could be federalized for purposes of funding and liability, bypassing certain EMAC procedures, which are often too slow in a crisis, but deputized at the local or state level to provide the local security and enforcement support.

Whatever we do, we must build contingency capabilities by leveraging the expertise and willingness of state and local law enforcement across the country to ensure we don't have another breakdown in law and order of the magnitude we did after Katrina.

There are some examples of integrated operations. In the investigative/law enforcement community, there are about 100 JTFs, which have 3,728 members that include 838 state and local law-enforcement officers. Though their effectiveness varies widely, there's no question that they're a key element in preventing terrorism.

Similarly, National Special Security Events—big, highly secure events such as major sporting or political gatherings—are also good examples of how all levels of government can work together. While this system is in its early stages, it represents progress in integrating homeland security operational capabilities.

But a major area where operational integration is critical but has been less successful is on America's borders. While border security is clearly the responsibility of the federal government, achieving border security and enforcing immigration laws should not be viewed as an exclusively federal responsibility.

This problem is so massive that we can no longer afford conventional thinking. The borders are too vast and we have too much at stake not to bring all our assets—federal, state, local, tribal, public, private—to the fight. This has to include interior enforcement of immigration laws.

I think the states, locals, tribals and the public, particularly along the border, are ready to play a far more aggressive role in border security and immigration enforcement than at any time in decades. Additionally, the military can play a more robust supporting role. DoD shouldn't be in charge, but it can provide enormous technical, logistical, intelligence and other

## Acronyms in this article:

DHS	Department of Homeland Security
DoD	Department of Defense
EMAC	Emergency Management Assistance Compact
ESF	Emergency Support Function
FEMA	Federal Emergency Management Agency
IA	Intelligence Analysis
ICE	Immigration and Customs Enforcement
ISE	Information Sharing Environment
JTF	Joint Task Force
JTFs	Joint Terrorism Task Forces
LETPP	Law Enforcement Terrorism Prevention Program
NRP	National Response Plan
SBI	Secure Border Initiative
UASI	Urban Area Security Initiative

support to civilian agencies at all levels, particularly DHS.

While much of the current focus has been on the US border with Mexico, the more threatening border—from a terrorism perspective—is the US border with Canada. That border is far larger and has far fewer agents guarding it. Canada has liberal asylum laws and a growing Muslim population with a known radical element. There has already been an incident:

### KEEP FEMA IN DHS

In the wake of Katrina, there has been much talk about making FEMA an independent cabinet-level agency again. Make no mistake: removing FEMA from DHS is a dangerous idea.

By simply reorganizing the federal government yet again we would waste valuable time and energy in simply going through the reorganization. We don't have the time or energy to waste. Moreover, we would create yet another federal bureaucracy that would stand alone and compete with DHS for resources and compete for focus and attention within the state, tribal and local community. We would fracture the homeland security mission and community by driving the emergency management element in a separate direction. This would create confusion and turf battles across the nation that would unnecessarily hobble our important work in preparedness and security.

There is no evidence to support the notion that FEMA's problems during Katrina were based on its placement in DHS. In fact, it wasn't until FEMA was placed in DHS in 2003 that the agency even did an exercise to test Louisiana and New Orleans' ability to handle a major hurricane.

Finally, we must get past the idea that every time there is a problem the solution is a reorganization of the federal government. In the case of FEMA, refocusing and retooling the agency, truly integrating the agency within DHS, and effective management of the agency will be the key to FEMA's success.

### THE MILITARY'S ROLE

DoD has a pivotal role to play in catastrophic domestic incident management, but it is generally one of support to civil authorities. Placing DoD in charge of domestic catastrophic incidents is really unnecessary. It encroaches on our tradition of civilian leadership within the domestic arena. The appropriate agency to lead this effort is still DHS.

DoD can and absolutely should play a major supporting role given its unrivaled capabilities and resources. This civil support model has worked for some time. With its Joint Task Force (JTF) commands, DoD can provide appropriate-level interface for civilian leaders at all levels of government (both Katrina and Rita had three-star JTF commanders respectively), especially for mayors, governors, homeland security directors and the DHS-designated principal federal official.

Both DHS, through the Homeland Security Operations Center, and DoD through its new Northern Command, have already dramatically improved their level of coordination, most recently evidenced by the vastly improved federal response to Hurricane Rita. And the president always reserves the right to federalize the National Guard if he deems it necessary under the appropriate circumstances.

Of course, no president can federalize state or local police or fire departments and so once again the federal system throws up another roadblock to the elusive silver bullet of unitary command in the United States. Putting DoD "in charge" won't change that fact at all. **HST**

In December 1999, Algerian Ahmed Ressay, who planned on blowing up Los Angeles International Airport, was caught at the US/Canada border at Port Angeles, Wash., by an alert Customs inspector. So, while the US-Mexico border poses a real and growing crisis in quantity of illegal crossings, the more qualitative threat may be to the north and also requires significant national attention.

There have been some encouraging precedents for integrated border security. Prior to the 2004 elections, Operation Stone Garden was launched to increase border security. It was a model of coordinated integration, funded with DHS grants that allowed states, locals and tribals to increase their border patrols and assist the federal Border Patrol. To get access to their grant money, the local authorities had to have their operations approved by the Border Patrol sector chief in order to ensure coordination. After the election, DHS hosted two northern border security conferences to address issues there. These conferences were truly groundbreaking and worthwhile.

While Maine itself isn't likely to be the target of a terrorist attack or other catastrophic event, it could be used as an infiltration point or launching pad by terrorists to strike other parts of the US—in fact, that's essentially what happened on 9/11.

In November 2005, DHS announced the Secure Border Initiative (SBI), a serious and positive step in trying to gain control over the borders and immigration policy. It provided more agents, secured ports of entry and immigration enforcement and ended "catch and release" of illegal immigrants. It also upgraded border technology, invested in infrastructure and increased interior law enforcement by Immigration and Customs Enforcement (ICE) by forging partnerships with states, locals and tribals.

SBI enhances state and local partnerships by expanding state, local and tribal training under section 287(g) of the Immigration and Nationality Act. Working through ICE, states and locals can train for immigration enforcement and detain illegal immigrants when they're encountered during normal law enforcement activities. This has already been done in Florida, Alabama, Arizona and Los Angeles County, Calif.

I found the program to be useful and one that really tries to build on national law enforcement capabilities to better enforce our immigration laws. However, as the program is expanded, ensuring that ICE has all the necessary resources to adminis-

ter the program will be important. By expanding the program, particularly in the state and local prisons and jails where the immigration violators are already detained, we can multiply our forces and at the same time make use of existing bed space, the current lack of which is a problem the administration and Congress are trying to fix.

We also need a second and longer-lasting phase of Operation Stone Garden to round out the federal, state, local, tribal immigration enforcement partnership. DHS deserves credit for starting down this path by allowing up to 25 percent of the total FY 2006 LETPP grants to pay for the cost of enhancing state, local and tribal border protection activities. Other grant programs should also be accessed if necessary to help states pay for participation. Congress and the administration should then carve out a portion of the FY 07 grants specifically for this kind of program—perhaps, \$50 million to \$100 million—depending on how much is actually needed in FY 06. By accessing existing FY 06 funds and simply earmarking already proposed FY 07 funds, the program could be close to budget neutral.

Reviving and expanding Operation Stone Garden is a very worthwhile use of existing and proposed funding. For example, under current law, authorities in Maine will receive DHS grants. While Maine itself isn't likely to be the target of a terrorist attack or other catastrophic event, it could be used as an infiltration point or launching pad by terrorists to strike other parts of the US—in fact, that's essentially what happened on 9/11. If Maine and small northern border states are to receive federal funds, which they should, this is one of the best uses of those funds since it will have the biggest antiterrorist impact with a limited budgetary impact.

## ANALYSIS

Homeland security in the 21st century is the latest challenge to America and our federal system. It requires us to manage risk by making tough decisions about where to apply our resources and how best to integrate them. The standup of DHS made America safer and everyone who helped make it a reality, and those who continue to serve, deserve the gratitude of their fellow citizens.

During my three years at DHS, I had the privilege of working with some of the most dedicated people from across this country, men and women who were determined to help better prepare and secure America from any threat. In order to continue to harness all of their goodwill, energy and expertise we must continue to refine and build the network that leverages all of the power, resources and capabilities of our federal system.

Building this integrated network in the four core areas of policy, preparedness, intelligence and information sharing and operations will help ensure that homeland security remains a national imperative and not merely a federal one. In the 21st century, as in the past, only through a truly national effort will our federal republic remain secure. **HST**

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