

Beyond the HSC/NSC Merger: Integrating States and Localities into Homeland Security Policymaking

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The Obama administration has the opportunity to fix a crippling flaw in the homeland security policymaking process. When President Bush established the Homeland Security Council (HSC) to develop policies and integrate U.S. homeland security institutions, White House officials emphasized the importance of including state and local government representation in the council. Their inclusion is vital. Homeland security fundamentally differs from national security in that states and localities play the leading role in many homeland security missions, as opposed to federal agencies. Yet the Bush administration ended up excluding state and local representatives from the HSC and built only weak mechanisms to include their input in Department of Homeland Security policymaking. That exclusion helped produce a string of failures in policy development and institutional integration. Now, regardless of whether President Obama decides to merge the HSC with the National Security Council (NSC), he has the opportunity to make a vital change: the creation of an effective, institutionalized way for states and localities to help shape the policies and programs they implement.

Merging the NSC and HSC is not without risk. I argue that if the councils are combined, administration officials will need to pay special attention to the span of control issues raised by the merger and the danger that homeland security will take a back seat to traditional national security priorities. I also argue that integrating homeland security across the federal bureaucracy – that is, horizontal integration – poses unique challenges that a merged council would need to address.

These problems will be relatively easy to solve, however, compared to the challenge of building effective *vertical* integration between a merged council and state and local governments. The National Security Council system never created a mechanism to provide for state and local input into security policymaking, because those levels of government played virtually no role in providing for national security. The Bush administration recognized the need to create such mechanisms for homeland security. I will argue, however, that the administration left behind a homeland security system that is fundamentally mismatched with the leading roles that states and localities play in protecting the United States from all hazards. Scholars and policymakers have only begun to examine how to take better advantage of state and local expertise in the policymaking process, and include those levels of government not only in shaping the details of plans and programs, but the overall strategies and priorities that will guide homeland security for years to come. I examine a range of options to institutionalize such a role, regardless of whether the HSC and NSC merge, and propose criteria to help policymakers chose between them.

THE PROBLEMS OF INTEGRATION

President George W. Bush's creation of the HSC in 2002 was part of much broader change in the way the United States is organized for security. Before 9/11, the Department of Defense, the Department of State, and the Central Intelligence Agency (CIA) were largely responsible for U.S. security and were coordinated by the National Security Council. After 9/11, Bush built a parallel security system to protect the United States from terrorist attack. The Department of Homeland Security (DHS) is only part of that system. The Bush administration has also assigned terrorism prevention functions to the Departments of Agriculture (USDA), Health and Human Services, Interior, and over a score of other federal institutions that have never before played such significant roles in securing the United States from attack.¹ Bush established the Homeland Security Council to direct and coordinate this far-flung security system, led by the assistant to the president for homeland security and counterterrorism.²

Numerous recent studies argue that the next president should subsume the Homeland Security Council (HSC) in the National Security Council (NSC), and strengthen the way the White House develops U.S. policy and oversees its execution.³ Merger advocates focus on two problems with the Bush-era council system. The first problem lies in the weakness and understaffing of the HSC compared to the NSC. When President Bush created the HSC, White House officials said it would have a staff comparable in size to the NSC, with the authority and political backing from the president to coordinate the agencies under its purview.⁴ The HSC actually ended up with a staff one-fifth the size of the NSC's and had to labor under much more stringent budget and salary constraints.⁵ Whether or not the councils are merged, the staff responsible for homeland security issues needs to be adequately sized and resourced.

The second problem lies in the integration of the domestic and international components of security policy. Merger advocates contend that by creating two councils and their supporting staffs, the White House has bifurcated its approach to national security issues, even though the issues themselves frequently hinge on interrelated domestic and international factors.⁶ Effective policy integration across domestic and international lines is indeed essential, and merging the staffs would be a good way to facilitate such integration. But if President Obama were to keep the HSC independent, closer policy integration would still be possible. The NSC and National Economic Council (NEC) forged an effective collaborative relationship across their respective jurisdictional lines during the Clinton administration. Nothing precludes the NSC and HSC from building an equally effective relationship, as long as President Obama and his homeland and national security advisers make doing so a priority.

However, merger advocates have focused far less attention on the integration problems the HSC was created to solve – problems that pose especially urgent challenges today. Those challenges lie in the integration of homeland security efforts across the federal bureaucracy and between federal, state, and local governments.

Horizontal Integration

When President Bush created the HSC on October 29, 2001, he tasked it to “ensure coordination of all homeland security-related activities among executive departments

and agencies,” as well as promote the effective development and implementation of homeland security policies.⁷ The council retained that coordination responsibility even after Congress and the president established the Department of Homeland Security (DHS). Indeed, in creating DHS, Congress codified the existence of the HSC into law and specified its responsibility for “effectively coordinating the policies and interests of the United States government relating to homeland security” and other functions as directed by the president.⁸

Congress and the president had good reason to assign that coordination responsibility to the HSC. The federal homeland security system consists of an astounding number of institutions. Over thirty departments and independent agencies perform homeland security functions, creating an almost limitless array of interagency seams and coordination requirements.⁹ Making the HSC responsible for meeting these coordination challenges, rather than putting dozens of new agencies under the purview of the National Security Council, limited the risk that the national security advisor would be overwhelmed by span-of-control problems. Merging the two councils would bring span-of-control issues to the fore once again.

The novelty of the security functions performed by these thirty institutions creates further problems for interagency planning and coordination. Until 9/11, departments such as USDA had never served significant security functions; now they play critical roles in protecting U.S. populations and infrastructure from attack. Melding the new security responsibilities of these agencies into an integrated system creates innovation challenges quite different from those posed by the departments overseen by NSC, which have been handling security issues for decades. The institutions under the Homeland Security Council’s purview also share a distinctive internal problem the National Security Council’s departments lack. DOD, the CIA and the State Department focus almost exclusively on security-related issues. Departments such as DHS, USDA and DOJ must not only help secure the United States from attack, but also perform their traditional domestic functions unrelated to (and sometimes in funding and programmatic competition with) their post-9/11 responsibilities. The NSC has never had to deal with such difficult intra-agency tradeoffs between security and non-security functions. Yet agency tradeoffs will need special attention as the Obama administration builds its homeland security policies, especially as budget pressures intensify conflicts over agency priorities.

This is not to argue that the HSC has been fully successful in meeting its federal coordination responsibilities. The Obama administration has inherited an array of unresolved conflicts over department roles and responsibilities for homeland security, including disputes between DHS and the Department of Justice over terrorism prevention and response;¹⁰ between DHS and the Department of Energy over preparing cities against nuclear or radiological attack,¹¹ and – more recently – over which agency should have primary responsibility to safeguard U.S. bioterrorism research facilities from rogue employees.¹² The administration has also inherited significant gaps in interagency planning for pandemics and other catastrophic incidents.

Merging the NSC and HSC will not automatically solve any of these coordination problems. On the contrary: unless the administration takes special care to avoid span-of-control problems for the national security advisor, providing sufficient attention and

political leverage to resolve agency turf wars and build a better integrated system will become more difficult. Those problems are eminently solvable. For example, if the merged council includes a deputy advisor for homeland security and counterterrorism, ensuring that the deputy has direct access to and strong support from the president for dealing with such issues will greatly aid in their resolution. It is far less clear, in contrast, how Congress and the Obama administration should fix the most serious failing of the HSC system: the integration of federal, state, and local homeland security efforts.

Vertical Integration and the Paradox of Homeland Security

The need for integration between different levels of government represents a crucial difference between homeland security and national security issues, and between the coordination challenges confronting the HSC and NSC. National security policies rarely depend on state and local implementation; DOD and other federal departments carry them out. In contrast, state and local governments (and police, firefighters, public health workers, and other professionals they employ) are absolutely vital to homeland security, making vertical coordination more important as a consequence.

The two policy realms also differ in the president's authority to solve coordination problems. Scholars are fond of noting how little de facto control the president exercises over the federal bureaucracy.¹³ Nevertheless, in the national security system, where the primary coordination challenge lies in integrating the work of DOD, the State Department and the CIA, the chief executive – i.e., the president – exercises at least formal authority over that system and can fire department heads who resist coordination. The political context of homeland security is very different. Governors do not work for the president. They are independently elected and are the sovereign chief executives of their states. Homeland security thus entails a paradox. The integration between federal, state, and local governments is vastly more important in the homeland security system than in its national security counterpart. Yet the president has remarkably little authority to impose such vertical integration, especially in comparison with his command over national security institutions.

The Bush administration sought to deal with this paradox when it created the Homeland Security Council. In late September 2001, then-White House Chief of Staff Andrew Card promised that state and local governments would be represented on the council.¹⁴ That representation would help the HSC bring state and local perspectives to bear on building an integrated homeland security system, and would give states and localities a say over the plans and programs they would need to implement. Including state and local representatives also offered a politically astute way to compensate for the president's lack of command authority over them. By making states and localities party to the decisions the HSC hammered out, the White House could also increase the likelihood that they would support those policies.

The Bush administration's fulfillment of this pledge on state and local representation fared even worse than its promise of robust HSC staffing. Bush did establish a President's Homeland Security Advisory Council (HSAC) to make recommendations to the HSC and included state and local officials in that panel, along with private sector leaders, academics, and myriad other participants.¹⁵ The HSAC has issued a number of

insightful policy recommendations, including ones that highlight the need for stronger integration in the homeland security system.¹⁶ But those recommendations are purely advisory and the HSAC lacks any authority over HSC decisions that would affect its state and local members.

In the absence of effective mechanisms for vertical integration within the HSC, the Department of Homeland Security took on increased responsibility to integrate state and local efforts with federal policymaking. The Office of State and Local Government Coordination and Preparedness gave the first secretary of DHS, Governor Tom Ridge, an organization thoroughly dedicated to building effective vertical collaboration. Ridge's successor, Michael Chertoff, abolished that office and assigned its functions to a DHS Grants and Training organization with many other responsibilities.¹⁷ Yet, the Obama administration has inherited problems for state and local integration that go beyond organizational wiring diagrams. The most important problem is that DHS never built a sustained, institutionalized approach to giving states and localities a voice in the policies they would implement. The development of the National Response Framework (NRF) is a case in point. The NRF is the key plan for melding federal, state, and local agencies into a disaster response system more effective than the one that catastrophically failed in Hurricane Katrina. DHS officials invited state and local representatives to help shape the initial NRF draft, then totally cut them out of the revision process (during which DHS officials made drastic changes), only to reverse course and invite them back into the process when faced with congressional hearings on their exclusion.¹⁸ The Bush administration then failed to meet statutory requirements to provide for state and local coordination as further revisions go forward.¹⁹

Similarly ad hoc practices have hobbled other DHS policy development efforts, with predictable consequences for programmatic effectiveness. Across an array of initiatives, the Bush administration permitted only limited and sporadic state and local input, producing federal policies and programs that conflict with the requirements of the non-federal agencies crucial to the success of those policies and programs. The Homeland Security Information Network (HSIN) typifies the results of this flawed process. The network is DHS' key system for sharing homeland security data with states and localities and was supposed to be relied on by state and local officials nationwide. Yet DHS did not coordinate with those officials to develop effective joint policies and procedures, integrate HSIN with existing information sharing systems, and ensure the network would meet state and local requirements.²⁰ DHS is now replicating the same coordination mistakes in its effort to replace the failed network with the HSIN Next Generation program.²¹ Similar coordination failures have produced gaps in U.S. plans for preparedness against pandemic flu;²² for integrating federal, state and local response efforts against nuclear attack;²³ and for an array of other plans and programs.²⁴ The overall assessment provided by the National Sheriffs' Association, the National Emergency Management Association, and a dozen other nationwide associations representing state and local homeland security concerns: the federal government follows "top down" approaches to policymaking that are "uncoordinated and create unintended negative cascading effects."²⁵

SOLVING THE PROBLEMS OF VERTICAL INTEGRATION: NOVEL APPROACHES TO AN UNPRECEDENTED CHALLENGE

The Obama administration can only provide for better-integrated policies, plans, and programs by institutionalizing a role for states and localities in shaping them. A variety of means exist for representatives of state and local governments to play this role either in the HSC or in a merged council, including the use of mechanisms authorized by the Intergovernmental Personnel Act.²⁶ Three problems, however, must be overcome to make such a system work.

The first is cultural. Placing state and local representatives in the merged National Security Council would, at least initially, produce a bizarre clash of political cultures and professional competencies. NSC staffers are vastly more likely to know the name of the president of Georgia (abroad) than the governor of Georgia (at home). That is a good thing. The NSC staff has enormous expertise in dealing with international security issues, and Russia's military incursion into Georgia is a reminder of how dangerous a place the world remains.

But the state of Georgia also involves policy challenges of great importance. Georgia's cities face threats of catastrophic hurricanes and other natural hazards. Mohammed Atta took flying lessons in Georgia before applying those skills to kill thousands of Americans.²⁷ To protect against both types of threats, it will be essential for the Obama administration to build more effectively integrated local, state, and federal capabilities for homeland security. A merged council would need to be staffed with professionals who speak fluent "state and local," and for whom a governor's sovereignty is second nature rather than an oddity to maneuver around.

A second and more serious problem is that of state and local capacity to provide representatives. Unlike the Department of Defense, state and local homeland security organizations lack a "float" of personnel who are not currently engaged in operations and can be assigned to other duties. Governors, mayors, and county executives need their homeland security staff available on a sustained basis; there is very little excess capacity to spare for other purposes. The solution – more easily said than done in current budgetary times – is to build that capacity so that state and local representatives could serve in the White House on a rotating basis. Given the importance of providing for state and local input into homeland security policy, that ought to become a federal priority, just as DHS has supported state capacity building for intelligence.

That brings us to the third and thorniest question: how state and local personnel would be selected to help shape policy in the White House. A broad range of associations that represent state and local governments and agencies – from the National League of Cities, to the National Association of County Executives, to the Governors' Homeland Security Advisors Council – have called for a stronger, more institutionalized role for those levels of government in shaping homeland security policy.²⁸ But none of these associations has yet specified how that role ought to be structured, or how state and local representatives ought to be chosen. That question is crucial. With over 80,000 state and local jurisdictions in the United States, representing all such jurisdictions in the White House is a non-starter. Moreover, on many issues – most notably that of

federal grant distribution – states, localities, and the associations that represent different first responder agencies frequently clash over homeland security issues.

The November 2008 report by the Project on National Security Reform has offered the most fully-developed proposal to date for the selection process. That report suggests that under a merged “President’s Security Council,” a homeland security collaboration committee would be established to provide for vertical integration. The president would appoint six of the fourteen members of this committee; four each would be provided by the Senate Committee on Homeland Security and Governmental Affairs, and four by the House Committee on Homeland Security.²⁹ That proposal has the virtue (and vices) of “kicking the can down the road.” The question of which representatives of state and local governments to select would be left to legislators and the president, rather than specifying up front the criteria that would be used in that selection process.

I propose a different approach, which offers a different mix of advantages and disadvantages. The Homeland Security Advisory Council that President Bush established in 2002 was limited in its impact not only by its lack of authority, but also by Bush’s insistence that he select the council’s members. It seems reasonable that the president would have final say over who serves on his White House staff. However, it would also be desirable to have him select from a pool of candidates selected by states and localities. Following that path would bring a more fully-representative perspective to bear on policymaking, and would be more likely to ensure state and local buy-in of the policies their representatives helped develop.

To create the pool of candidates, the Obama administration might capitalize on the fact that states and localities have already organized into associations to build consensus amongst their members and represent their views. These associations are uniquely well-positioned to judge the professional excellence of potential candidates. Of course, the associations can be counted on to bring conflicting preferences to bear on White House policymaking, just as they do in seeking to influence congressional decision making on grant assistance and other homeland security issues. But since 9/11, those associations have also engaged in far more collaborative work than ever before, starting with the creation of the National Homeland Security Consortium. That Consortium has united to call for a stronger state and local role in homeland security policymaking. Now is the time to embrace that recommendation and restructure the U.S. policymaking system to meet the unique integrative challenges of homeland security.

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¹ The U.S. Office of Management and Budget (OMB) reports that a total of thirty-one federal agencies conduct homeland security programs, with homeland security defined as “activities that focus on combating and protecting against terrorism” in the United States. The actual number of federal organizations responsible for terrorism prevention is almost certainly larger. For example, OMB does not include the U.S. Postal Service, even though the Service is responsible for preventing terrorists from using the mail to deliver anthrax or other pathogens. U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2008: Analytic Perspectives - Homeland Security Funding Analysis* (Washington, DC: The White House, 2007), 19, <http://www.whitehouse.gov/omb/budget/fy2008/apers.html>; U.S. Postal Service: *Guidance on Suspicious Mail Needs Further Refinement* (Washington, DC: U.S. Government Accountability Office, July 2005).

² George W. Bush, *Homeland Security Presidential Directive-1/HSPD-1, Organization and Operation of the Homeland Security Council*, October 29, 2001, 1, <http://www.whitehouse.gov/news/releases/2001/10/20011030-1.html>

³ 9/11 Commission Report: *Final Report of the National Commission on Terrorist Attacks upon the United States* (New York: Norton, 2004), 406; Richard C. Clarke and Rand Beers, *The Forgotten Homeland* (New York: Century Foundation, 2006), 129–33; P.J. Crowley, *Safe at Home: A National Security Strategy to Protect the American Homeland, the Real Central Front* (Washington, DC: Center for American Progress, 2008), 60-1; Jonah Czerwinski, “A Future for the Homeland Security Council?” *Homeland Security Watch* 21 (November 2007), <http://www.hlswatch.com/index.php?s=A+Future+for+the+Homeland+Security+Council>; Clark A. Murdock and Michèle A. Flournoy, *Beyond Goldwater-Nichols: U.S. Government & Defense Reform for a New Strategic Era, Phase 2 Report* (Washington, DC: Center for Strategic and International Studies, 2005), 68; Cindy Williams, *Strengthening Homeland Security: Reforming Planning and Resource Allocation* (Washington, DC: IOBM Center for the Business of Government, 2008), 36; Christine Wormuth and Anne Witkowsky, *Managing the Next Catastrophe: Ready (Or Not)?* (Washington, DC: Center for Strategic and International Studies), 16-18.

⁴ Elizabeth Becker and Tim Weiner, “A Nation Challenged: Homeland Security; New Office to Become a White House Agency,” *New York Times*, September 28, 2001.

⁵ Wormuth and Witkowsky, *Managing the Next Catastrophe*, 16; Williams, *Strengthening Homeland Security*, 29.

⁶ Williams, *Strengthening Homeland Security*, 30; Wormuth and Witkowsky, *Managing the Next Catastrophe*, 16.

⁷ Bush, *HSPD-1*, October 29, 2001, <http://www.whitehouse.gov/news/releases/2001/10/20011030-1.html>.

⁸ Title IX of the Homeland Security Act of 2002 (Pub. L. 107-296; 116 Stat. 2135; 6 U.S.C 491 et seq.).

⁹ OMB, op cit.

¹⁰ Wormuth and Witkowsky, *Managing the Next Catastrophe*, 4-5, 29.

¹¹ *Combating Nuclear Terrorism: Federal Efforts to Respond to Nuclear and Radiological Threats and to Protect Key Emergency Response Facilities Could be Strengthened* (Washington, DC: U.S. Government Accountability Office, November 2009).

¹² Nelson Hernandez and Philip Rucker, “Anthrax Case Raises Doubt on Security,” *Washington Post*, August 8, 2008, A1.

¹³ Richard Neustadt, *Presidential Power* (New York: Free Press, 1990).

¹⁴ Becker and Weiner, “A Nation Challenged.”

¹⁵ Homeland Security Council Executive Order, *Order Establishing the President's Homeland Security Advisory Council and Senior Advisory Committees for Homeland Security* (Washington, DC: The White House, March 21, 2002).

¹⁶ Homeland Security Advisory Council, "Top Ten Challenges Facing the Next Secretary of Homeland Security," September 11, 2008, 6-7, http://www.dhs.gov/xlibrary/assets/hsac_dhs_top_10_challenges_report.pdf.

¹⁷ For an analysis of the problems created by the dissolution of the State and Local office, see Paul Stockton and Patrick Roberts, "Findings from the Forum on Homeland Security After the Bush Administration: Next Steps for Building Unity of Effort," *Homeland Security Affairs* 4, No. 2 (June 2008), 6.

¹⁸ For a participant's view of this coordination process, see Tim Manning, *Testimony before the Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, and Emergency Management, on Readiness in the Post 9.11 World: An Evaluation of the New National Response Framework*, September 11, 2007, <http://republicans.transportation.house.gov/Media/File/Testimony/EDPB/9-11-07-Manning.pdf>

¹⁹ *National Response Framework: FEMA Needs Policies and Procedures to Better Integrate Non-Federal Stakeholders in the Revision Process* (Washington, DC: Government Accountability Office, June 2008).

²⁰ *Information Technology: Homeland Security Information Network Needs to Be Better Coordinated with Key State and Local Initiatives* (Washington, DC: Government Accountability Office, May 10, 2007).

²¹ Rep. Bennie Thompson (R-Miss.), Chair, House Committee on Homeland Security, *Letter to Michael Chertoff, Secretary of DHS*, July 23, 2008. Thompson's letter summarizes the findings of a GAO study of the Next Generation initiative that GAO has not yet released.

²² Although the Department of Health and Human Services (HHS) is tasked to lead the public health and medical response to a pandemic, the DHS Secretary is responsible for critical non-medical pandemic support and response efforts, and has designated a Principal Federal Official to perform other coordination functions. Current pandemic plans fail to adequately explain how these overlapping functions will be de-conflicted, and the Government Accountability Office has found that it is "unclear how they will work." *Influenza Pandemic: Further Efforts Are Needed to Ensure Clearer Leadership Roles and an Effective National Strategy* (Washington, DC: U.S. government Accountability Office, August 14, 2007), pp 1 and *passim*

²³ James Schwarz, Chief, Arlington Fire Department, and Paul McHale, Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs, *Testimony to U.S. Senate Committee on Homeland Security, Nuclear Terrorism: Providing Medical Care and Meeting Basic Needs in the Aftermath – the Federal Response*, June 6, 2008, <http://hsgac.senate.gov/public/index.cfm?Fuseaction=Hearings.Detail&HearingID=4beb5b2f-726f-4541-98cf-763b0656d777>.

²⁴ For a survey of homeland security plans that have gaps caused by inadequate coordination, see William Jenkins, *Emergency Management: Observations on DHS's Preparedness for Catastrophic Disasters* (Washington, DC: U.S. Government Accountability Office, June 11, 2008), 8-9 and *passim*.

²⁵ The National Homeland Security Consortium, "Protecting Americans in the 21st Century: Imperatives for the Homeland," April 2008, 1-2, <http://www.nemaweb.org/?2253>.

²⁶ <http://www.opm.gov/programs/ipa/mobility.asp>

²⁷ *9/11 Commission Report*, 229.

²⁸ All of those associations are represented on the National Homeland Security Consortium and supported its call for much greater state and local input into homeland security policymaking. Consortium, "Protecting Americans," 2-3. See also IACP and MCCA studies.

²⁹ Project on National Security Reform, *Forging a New Shield* (November 2008), 516,
<http://www.pnsr.org/data/files/pnsr%20forging%20a%20new%20shield.pdf>.