



Department of Homeland Security Office of Inspector General

FEMA: In or Out?



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Introduction

“Since the end of World War II, Congress and Presidents have debated, formulated, and revised administrative responsibilities for emergency management.”¹ Some of the important questions that have been the subject of debate over the past 60 years, and that are particularly relevant today in the “FEMA In or Out” debate, include:

- What the jurisdictional boundaries of the agency charged with emergency management should be;
- How responsibility for new or emerging threats should be assigned;
- Whether it is necessary (or advisable) to distinguish between natural and manmade threats;
- What is meant by “all-hazards,” and what elements need to be present in an agency with an all-hazards mission;
- What the relationship between crisis management and consequence management should be; and
- What the relationships among the federal, state and local governments should be during a disaster, and whether the relationships should change in the face of a catastrophe.

On December 17, 2008, Congressman James L. Oberstar, Chairman of the House Committee on Transportation and Infrastructure, reopened the debate by submitting a memorandum to President-elect Barack H. Obama, recommending that the Federal Emergency Management Agency (FEMA) “be re-instated as an independent, cabinet-level agency reporting directly to the President.”² Two days later, Congressman Bennie G. Thompson, Chairman of the House Homeland Security Committee, recommended the opposite—that FEMA remain a part of the Department of Homeland Security (DHS), warning that “FEMA removal from DHS would likely result in the hamstringing of

¹ Henry B. Hogue and Keith Bea, *Federal Emergency Management and Homeland Security Organization: Historical Developments and Legislative Options*, Congressional Research Service (RL33369), June 1, 2006, p. 4.

² Memorandum from Congressman James L. Oberstar to President-elect Barack H. Obama, Subject: An Independent FEMA, December 17, 2008.

federal grants, preparedness, and efforts to coordinate with State and local emergency managers. It would also likely undermine our ability to mount an effective response to disasters. Instead, our efforts must be focused on providing FEMA with needed resources and the organizational structure to perform successfully from within the DHS.”³

In the past few months, as the federal government prepared for the transition to a new administration, others also began to weigh in on whether FEMA should be a part of DHS or whether it should be pulled out and made a stand-alone agency. The question is not new. FEMA’s inclusion in DHS has been the subject of intense debate in Congress, including during consideration of both the legislation that created the department, the *Homeland Security Act of 2002* (P.L. 107-296), and the legislation passed in the wake of Hurricane Katrina, the *Post-Katrina Emergency Management Reform Act of 2006*, (P.L. 109-295, Title VI – National Emergency Management, of the Department of Homeland Security Appropriations Act of 2007, hereinafter *Post-Katrina Reform Act*). In both instances, after much consideration and debate, Congress voted to include FEMA in DHS.

In an effort to help focus and inform the current debate, we present in this white paper some of the important elements that should be considered when deciding FEMA’s placement in the federal government.⁴

³ Memorandum from Congressman Bennie G. Thompson to President-elect Barack H. Obama, Re: A Strong, Effective Federal Emergency Management Agency, December 19, 2008.

⁴ We performed nonaudit services to offer a summary of important arguments that should be considered when deciding FEMA’s placement within the federal government.

Background

Emergency Management from 1950–1979

The Federal Emergency Management Agency, created by Executive Order in 1979, is a product of the Carter administration. However, the federal government's participation in emergency management has a long history. Prior to 1950, disaster relief was handled largely on an ad hoc basis, generally by the Office of Emergency Management in the Executive Office of the President. This approach changed in 1950, when federal disaster relief was formalized in the *Disaster Relief Act of 1950* (P.L. 81-875). The *Disaster Relief Act* authorized federal agencies, through the authority of the President, to provide assistance to states and localities when state and local capabilities had been overwhelmed by a major disaster or catastrophe.

In 1951, President Truman delegated emergency management authorities vested in him by the *Disaster Relief Act* to the Housing and Home Finance Administrator. The Housing and Home Finance Administration held these responsibilities only until 1953, when authority was transferred to the Federal Civil Defense Administration, which had as its primary focus responding to “the potential damage of devastating modern weapons.”⁵ This is worth noting because it demonstrates another point in history when the federal government's emergency management function was focused on both natural and manmade disasters. In fact, throughout the 1950s, military and civil defense capabilities received shared focus. Further, responsibility for carrying out federal emergency management functions fluctuated between civilian agencies, defense agencies, and the White House.

Another major reorganization of emergency management functions occurred in 1961, after President Kennedy ordered a review of non-military defense and mobilization programs. Many operational civil defense functions were transferred to the Department of Defense (DOD), while some coordinating functions remained housed in the Executive Office of the President. Other functions were delegated to civilian agencies, including the Department of Health, Education, and Welfare and the Department of Agriculture. This reorganization resulted in a gap between civil defense and response to natural disasters.

⁵ Hogue and Bea, *Federal Emergency Management and Homeland Security Organization*, p. 6.

Emergency management saw more changes in the late 1960s and early 1970s. The *Disaster Relief Act of 1969* (P.L. 91-79) expanded the federal government’s disaster relief responsibilities and delegated a number of responsibilities to the Office of Emergency Preparedness, housed in the Executive Office of the President. However, in 1973, the Office of Emergency Preparedness was abolished and many responsibilities were delegated to the Department of Housing and Urban Development, the General Services Administration, and the Department of the Treasury. Civil defense responsibilities remained in the DOD but were now housed in the Office of the Secretary of Defense.⁶

According to Hogue and Bea, however, “the dispersal of emergency management functions among federal agencies did not resolve administration challenges,”⁷ and a 1977 study by the National Governors Association recommended that federal emergency preparedness and disaster relief responsibilities be consolidated into one office.⁸

FEMA’s Early Years, 1979–1992

In 1979, President Carter established FEMA as an independent agency, consolidating “more than 100 programs responsible for all kinds of disasters with those responsible for long-term preparation and quick response.”⁹ Agencies and functions that had been in the Departments of Defense, Commerce, and Housing and Urban Development, the General Services Administration, and the Executive Office of the President were folded into this new agency, and the modern-day FEMA was born. However, “Carter’s recipe for centralizing disaster policy never achieved his original goals, and emergency management remained fragmented and broken.”¹⁰ Criticism of the federal government’s disaster response efforts did not end; in 1983, 4 years after its creation, FEMA still struggled to become a “cohesive, effective organization.”¹¹ At the end of the 1980s, in the wake of Hurricane Hugo and the Loma Prieta Earthquake, assessments indicated that while FEMA had improved, there were still shortcomings. After Hurricane Hugo, Senator Ernest “Fritz” Hollings called FEMA “the sorriest bunch

⁶ Ibid.

⁷ Ibid, p. 13.

⁸ Ibid.

⁹ Patrick Roberts, “FEMA After Katrina: Redefining Responsiveness,” *Policy Review*, June/July 2006, available at <http://www.hoover.org/publications/policyreview/3402076.html>.

¹⁰ Ibid.

¹¹ Hogue and Bea, *Federal Emergency Management and Homeland Security Organization*, p. 14.

of bureaucratic jackasses I've ever known.”¹² The following year, after disasters in California, Representative Norman Y. Mineta claimed that FEMA “could screw up a two-car parade.”¹³ Criticism of FEMA was again severe after 1992's Hurricane Andrew caused approximately \$30 billion in damage in south Florida and left 160,000 people homeless.¹⁴

The Witt Era, 1993–2001

After taking office in 1993, President Clinton ushered in a new era at FEMA, one closely identified with James Lee Witt, the FEMA Director appointed by Clinton. Witt inherited an agency that was struggling and demoralized, and had “a reputation as a haven for White House cronies and incompetents.”¹⁵ In choosing a director for FEMA, then an independent agency, President Clinton looked to someone who was not just a political supporter, but who actually had experience in the field of emergency management. Witt had served under then-Arkansas Governor Clinton as the director of the state's Office of Emergency Services for 4 years.

In 1996, 3 years into Witt's tenure, President Clinton elevated FEMA's status to a Cabinet-level agency. FEMA was then what some are calling for now—an independent, Cabinet-level agency, with a director who had a direct line to the President. As evidence of Witt's status and ability to communicate directly with the President, one article states that “while previous FEMA directors might have struggled for time with the President, Witt was invited to the White House for movie nights.”¹⁶

By most accounts, Witt was successful at turning around this troubled agency, and FEMA generally performed well during the Witt years. Witt is also credited with bringing an all-hazards, all-phases approach to FEMA.¹⁷ The agency did not escape all criticism, however. Some critics suggest that the “all-hazards approach” actually focused more on natural disasters, and the areas of civil defense and terrorism were neglected. One FEMA employee is quoted as saying, “some will say he introduced all hazards. I say he reduced the importance of some hazards at the

¹² Roberts, “FEMA After Katrina.”

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Justin Rood, “FEMA's Decline,” *Government Executive*, October 1, 2005, available at http://www.govexec.com/story_page.cfm?filepath=/features/1005-01/1005-01s2.htm.

¹⁶ Roberts, “FEMA After Katrina.”

¹⁷ Ibid.

expense of others.”¹⁸ One analyst suggests that Witt “had refused to take on more responsibility for terrorism preparedness because he thought the threat was too unpredictable for the agency to be able to address effectively.”¹⁹ Unpredictable as it is, terrorism was a threat, and this became all too apparent on September 11, 2001 (hereinafter 9/11).

Creation of the Department of Homeland Security, 2001–2005

Although most Americans were not thinking about the threat of terrorism prior to 9/11, officials in Washington were. The U.S. Commission on National Security/21st Century, commonly referred to as the Hart-Rudman Commission (after its co-chairs, former Senators Gary Hart and Warren Rudman), was established in 1998 “out of a conviction that the entire range of U.S. national security policies and processes required reexamination in light of new circumstances. Those circumstances encompass not only the changed geopolitical reality after the Cold War, but also the significant technological, social, and intellectual changes that are occurring.”²⁰ In short, the purpose of the Commission was to engage in a comprehensive review of U.S. national security requirements for the 21st century and develop a strategy and implementation “roadmap” for the future.

After several years of study, the Commission suggested that the terrorist threat was real and that national security needed a major overhaul. One of their primary recommendations was to create a National Homeland Security Agency (NHSA) responsible for planning, coordinating, and integrating federal homeland security functions. Their vision was to make FEMA the centerpiece of the NHSA and transfer three federal agencies “on the front line of border security” – the Coast Guard, the Customs Service, and the Border Patrol – into the new agency. They envisioned NHSA having three directorates – Prevention, Critical Infrastructure, and Emergency Preparedness and Response.²¹

It is important to note here that during the time of the Hart-Rudman Commission’s activities, the nation inaugurated a new President, George W. Bush. While FEMA remained an independent agency under Bush, the President did not include

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ The United States Commission on National Security/21st Century, *Road Map for National Security: Imperative for Change: The Phase III Report of the U.S. Commission on National Security/21st Century*, February 15, 2001, p. v.

²¹ Ibid.

FEMA's new director, Joe Albaugh, as a member of his Cabinet. Unlike James Lee Witt, Albaugh did not come to the position with emergency management experience; he came as the former campaign manager for the President.

On March 21, 2001, Congressman Mac Thornberry introduced H.R.1158, a bill to establish the National Homeland Security Agency. The bill was referred to the Government Reform Committee, and subcommittee hearings were held, but there was no further legislative action. In a sense, the legislation was overcome by events when the terrorist attacks of 9/11 occurred, and on October 11, 2001, Senator Joseph Lieberman introduced S.1534, a bill to establish the Department of National Homeland Security. Eventually, it was H.R. 5005 that was signed into law, creating the Department of Homeland Security and transferring FEMA to the new department.

DHS officially began its operations in March 2003, when 22 federal agencies were merged. Its multiple missions included "preventing terrorist attacks from occurring within the United States, reducing U.S. vulnerability to terrorism, minimizing the damages from attacks that occur, and helping the nation recover from any attacks."²²

FEMA underwent several transformations between 2001 and 2005, but the most significant by far was the transfer of its functions, personnel, resources, and authorities to the Emergency Preparedness and Response Directorate of the newly-created Department of Homeland Security. Shortly after the transfer, members of the emergency management community began complaining that DHS was stripping FEMA of its authorities and resources, and that the department's overwhelming focus on terrorism, to the detriment of attention to natural disasters, was hurting morale. Critics argued that FEMA was beginning to suffer a "brain drain," losing experienced professionals in all aspects of emergency management. In late summer of 2005, when Hurricane Katrina hit the Gulf Coast, FEMA's division directors for preparedness, response, and recovery had left; FEMA had 500 vacancies; and 8 of its 10 regional offices were headed by "acting" directors.²³

²² David M. Walker, Department of Homeland Security: Progress Report on Implementation of Mission and Management Functions, Statement before the U.S. House of Representatives Committee on Homeland Security (GAO-07-1240T), September 18, 2007, p. 2.

²³ U.S. House of Representatives Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative*, Final Report of the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, February 15, 2006.

FEMA Post-Katrina, 2005–Present

There is no need here to recap FEMA’s shortcomings in responding to Hurricane Katrina. Extensive studies have been done and numerous experts have written about what went wrong. It is important, however, to outline some critical changes that occurred post-Katrina.

In October 2006, the *Post-Katrina Emergency Management Reform Act* was signed into law. The Act contained provisions that directly addressed what were perceived as the major shortcomings of FEMA and its response to Hurricane Katrina. The Act made FEMA a distinct entity within DHS and placed restrictions on actions that the Secretary of DHS can take affecting FEMA, directed that the FEMA Administrator [sometimes referred to as FEMA Director] report directly to the Secretary, created a direct line of communication between the FEMA Administrator and the President during times of emergency, and restored to FEMA many of the functions that had been transferred to other parts of the department.²⁴

While FEMA has not again faced a catastrophe on the scale of Hurricane Katrina, it has generally been perceived as performing relatively well in responding to disasters in the past few years.

Arguments for Keeping FEMA in DHS

Despite generally positive reviews of FEMA’s performance in the most recent disasters, calls to return FEMA to its independent-agency status have been renewed. The arguments for this proposal are discussed below, but before addressing them, we will outline the arguments for leaving FEMA in DHS. These include, especially, the nation’s current vulnerability to terrorism, the synergy and resources FEMA enjoys as part of DHS, and the importance of avoiding the stovepiping of preparedness and response functions.

Vulnerability to Terrorism

Our last two presidents, Bill Clinton and George W. Bush, and the current U.K. Prime Minister, Gordon Brown, all had to deal with a

²⁴ Government Accountability Office, Letter to Congressional Requesters, Actions Taken to Implement the Post-Katrina Emergency Management Reform Act of 2006 (GAO-09-59R), November 21, 2008.

major terrorist attack in their respective countries during their first year in office. While there have been no recent reports of a specific imminent threat, some argue that the United States faces an increased risk of a terrorist event during the first year of the new presidency.²⁵ In November 2008, shortly before the Presidential election, Director of National Intelligence Mike McConnell told intelligence officials that the new administration might be tested by a terrorist attack during its first year, citing, “the World Trade Center was attacked in the first year of President Clinton, and the second attack was in the first year of President Bush.”²⁶ President-elect Barack Obama made a statement to this effect during a recent interview, saying that it was “important to get a national security team in place, because transition periods are potentially times of vulnerability to a terrorist attack,”²⁷ and Vice President-elect Joe Biden warned that “it will not be six months before the world tests Barack Obama like they did John Kennedy.”²⁸

We simply cannot predict whether there will be a terrorist attack in this country in the next year. Given that there is an elevated risk of this happening, however, we must consider whether it makes sense to make major changes to our homeland security apparatus during this period. It is critical to note here that the talk of removing FEMA from DHS generally focuses on the perceived benefits to FEMA—on which not all sides agree. What is not always included in the debate is consideration of the effect that FEMA’s removal would have on the department.

Since 2003, a number of support functions for the different components of DHS have been interwoven. A reorganization would impact not only FEMA, which would have to reconstitute itself as a stand-alone agency, but also DHS as a whole, which would have to adjust to losing an important component. Don Kettl warns that “FEMA has gone through a long and wrenching series of reorganizations.... Change for the sake of change could simply induce organizational whiplash and further destabilize an already unstable organization.”²⁹ John Harrald warns that pulling FEMA

²⁵ Homeland Security Presidential Transition Initiative, *Protecting the Homeland from Day One: A Transition Plan*, Prepared by Third Way and the Center for American Progress and Action Fund, November 2008.

²⁶ Peter Bergen, “Safe at Home,” *The New York Times*, December 14, 2008.

²⁷ Don Gonyea, “Obama: Seamless Security Transition A Priority,” *Morning Edition*, November 17, 2008, available at <http://www.npr.org/templates/story/story.php?storyId=97078485>.

²⁸ Michael Abramowitz, “Biden Warns World Will ‘Test’ Obama, Prompting McCain Response,” *The Washington Post*, October 20, 2008, available at http://voices.washingtonpost.com/the-trail/2008/10/20/biden_warns_world_will_test_ob.html.

²⁹ Donald F. Kettl, Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, *National Emergency Management: Where Does FEMA Belong?* June 8, 2006, p. 2.

out of DHS would mean a difficult transition period and the rewriting of doctrine and the redesign of systems, “but natural hazards and terrorists are not going to wait for us to reorganize yet again.”³⁰

Ongoing Reviews

It is clear that removing FEMA from DHS at this point would cause considerable upheaval, to both FEMA and the department. Such action should not be taken without very careful consideration.

At this time, the Quadrennial Homeland Security Review (QHSR) is underway at DHS, and the first QHSR report is due in December 2009. This comprehensive review of the department was mandated by Congress in the *Implementing the Recommendations of the 9/11 Commission Act of 2007* (P.L. 110-53).

The National Academy of Public Administration has just begun an independent assessment of preparedness and response integration with a focus on FEMA’s 10 regional offices, and will provide recommendations on the integration, synchronization, and strengthening of preparedness programs between FEMA and its regional offices.

Experts have cautioned that “major structural changes, such as bureaucratic adjustments involving the Department of Homeland Security, should follow a detailed strategic review and be addressed later in the first term.”³¹ The formal recommendation of the Homeland Security Presidential Transition Initiative is that “A decision to remove FEMA should be deferred until the completion of the Quadrennial Homeland Security Review in late 2009. Maintaining the status quo in the first year avoids unnecessary instability and confusion at a time of elevated risk. It also provides time for the new administration to consult with congressional leadership and build support for any major changes that may be contemplated within the QHSR process.”³²

³⁰ John R. Harrald, Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, National Emergency Management: Where Does FEMA Belong? June 8, 2006.

³¹ Homeland Security Presidential Transition Initiative, *Protecting the Homeland from Day One*, Introduction.

³² *Ibid*, p. 15.

Synergy and Resources

A primary benefit to FEMA of being part of the 200,000-plus person Department of Homeland Security is the wealth of resources available to FEMA through other DHS components. These connections create synergies that were never available to FEMA as a stand-alone agency. In DHS, FEMA is coupled with components that have far-reaching responsibilities and capabilities, including search and rescue, communications, law enforcement, intelligence, and infrastructure protection.

The Government Accountability Office (GAO) has cited areas of interconnectedness, including grants, through which Urban Area Security Initiative and State Homeland Security Program funding can be used for mass evacuation planning; interoperable communications; DHS Science & Technology expertise for the Equipment Standards Program; and a huge surge capacity of personnel that can be tapped in case of a disaster.³³

Former DHS Secretary Michael Chertoff recently said that “until this Department was formed, interagency planning on the civilian side was not a well-executed responsibility.”³⁴ In contrast, Admiral Thad Allen testified in 2006 that since DHS’ creation, the relationship between the Coast Guard and FEMA has been greatly strengthened. Prior to the establishment of DHS, Coast Guard and FEMA interaction was infrequent. In 2006, the number of joint exercises had increased 354%, from 13 in the years 1999-2002 to 59 in the years 2003-2006.³⁵

Chertoff has also stated “the fact that FEMA and other components of DHS have had an opportunity during times of rest to plan, train and exercise together and to build capabilities that are capable of crossing jurisdictional lines has allowed us to have the kind of capabilities to support an emergency that would not be the case if we were in different departments.”³⁶ Those joint capabilities were evidenced in recent disasters.

³³ Government Accountability Office, Letter to Congressional Requesters, Actions Taken to Implement the Post-Katrina Emergency Management Reform Act of 2006.

³⁴ Remarks by Homeland Security Secretary Michael Chertoff at Johns Hopkins University, December 3, 2008, available at http://www.dhs.gov/xnews/releases/pr_1228482474306.shtm.

³⁵ Admiral Thad W. Allen, FEMA’s Placement in the Federal Government, Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, June 8, 2006.

³⁶ Remarks by Homeland Security Secretary Michael Chertoff at Johns Hopkins University, December 3, 2008.

In the wake of Hurricane Katrina, the Coast Guard, the Transportation Security Administration (TSA), U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), and the Secret Service were all vital.³⁷ More recently, in responding to Hurricanes Gustav and Ike, “FEMA was supported by all of the elements and all the powers of the Department of Homeland Security.”³⁸ CBP provided security for the transit of life-sustaining goods and provided aerial assets that allowed surveying of damage. In the past, FEMA relied on DOD for aerial surveillance, which cost considerably more than using CBP. TSA supported 20 FEMA commodity distribution locations, augmenting FEMA staff with 366 additional employees in the field. The Coast Guard performed land, maritime, and air search-and-rescue missions. Chertoff argued that when “it’s necessary to quickly call upon other agencies, the quickest way to do that is not by reaching to another department of government, . . . but it’s to have the ability of the Secretary to immediately order assistance to be rendered in all of the elements and capabilities of the entire Department of Homeland Security.”³⁹

Finally, it is important to discuss DHS grants and their importance to the emergency management community. When FEMA initially joined DHS, many of its grants functions were transferred to other parts of DHS. Since Hurricane Katrina, FEMA administers almost all DHS grants, both those focused on natural hazards and those focused on terrorism. Pulling FEMA out of DHS would almost certainly disrupt the grants function in the short term, and it could result in once again separating out “emergency management” grants from “terrorism” grants, which we know from experience leads to inefficiency, duplication, and waste. The synergies that have been realized in homeland security grants should be an important consideration when debating the merits of removing FEMA from DHS.

Preparedness and Response

The well-recognized cycle of emergency management includes preparedness, response, recovery, and mitigation. This is true of all emergency management, whether for natural or manmade

³⁷ Homeland Security Secretary Michael Chertoff, Building an Integrated Preparedness and Emergency Management System: The Case for Keeping FEMA Within the Department of Homeland Security, Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, June 8, 2006.

³⁸ Remarks by Homeland Security Secretary Michael Chertoff at Johns Hopkins University, December 3, 2008.

³⁹ Ibid.

hazards. It is helpful to think of these elements as a four-legged stool. Remove one of the elements, and the stool becomes unstable. Some would suggest that we need two stools— one labeled crisis management and one labeled consequence management. The problem is that we know from the past that this structure simply does not work well. It is evident in the “stovepipes” that existed prior to the creation of DHS.

Chertoff sums up the argument, stating that

“the core of the argument made about FEMA is that somehow FEMA’s involved with consequence management, dealing with the response, and DHS, in other respects, is dealing with preventing or protecting against a response, and that if these are different functions, that therefore they ought to be under different roofs, and I really beg to differ with that. I think that is a profound misunderstanding of how one plans and prepares and executes in the face of a possible emergency and an actual emergency because the truth is emergencies don’t come neatly packaged in stovepipes and if there’s any lesson we’ve learned in dealing with terrorism or dealing with any other crisis, it is that stove-piping is the enemy of efficient and effective response.”⁴⁰

The Hart-Rudman Commission report states, “the current distinction between crisis management and consequence management is neither sustainable nor wise. The duplicative command arrangements that have been fostered by this division are prone to confusion and delay.”⁴¹ We would add that this duplication wastes time, energy, and resources. Preparedness and response are fundamental to homeland security. If FEMA is removed, a duplicate agency would most certainly be created in DHS, because preparedness and response are so fundamental to DHS’ mission that it could not operate effectively without them.⁴²

Finally, Kettl suggests that for local frontline first responders, there is no line between terrorist and non-terrorist hazards; first responders must focus on all-hazards-plus. The federal approach and structure should match the local approach. “Separation would

⁴⁰ Ibid.

⁴¹ The United States Commission on National Security/21st Century, *Road Map for National Security*, p. 20.

⁴² Senator Susan M. Collins, Opening Statement, Hearing of the U.S. Senate Committee on Homeland Security and Governmental Affairs, National Emergency Management: Where Does FEMA Belong? June 8, 2006.

create deep fissures between national policy and the realities of local response.”⁴³

Goldwater-Nichols Act of 1986

It is worth mentioning, in the context of merging entities and the growing pains that can result, the *Goldwater-Nichols Act of 1986* (P.L. 99-433), which increased integration among the armed services.⁴⁴ Like most “independent” agencies, the defense agencies did not want to be integrated initially, but over time the arrangement has created a stronger DOD. The Defense components did not want their individual roles and authorities to be diminished, and they resisted integration for years. The Desert One episode—the failed attempt to rescue the hostages in Iran during the Carter administration—was the final straw in this arrangement. This failure prompted passage of the *Goldwater-Nichols Act*.

Just as passage of the *Homeland Security Act* did not automatically bring jointness to homeland security functions, neither did the *Goldwater-Nichols Act* immediately solve the challenges in the military. According to Wormuth, “the Department of Defense took more than 40 years to evolve from the War Department into the Defense Department, and then another 20 years after passage of the 1986 Goldwater-Nichols Act to mature into the integrated agency of today.”⁴⁵

Arguments for Making FEMA a Stand-Alone Agency

In the past few months, emergency managers and others have called for FEMA to be removed from DHS. In November 2008, the U.S. Council of the International Association of Emergency Managers (IAEM-USA) formally adopted the position that FEMA’s independent agency status should be restored, with the agency reporting directly to the President. The organization further urged that the FEMA Director be included as a member of the President’s Cabinet.

⁴³ Kettl, Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, *National Emergency Management: Where Does FEMA Belong?* p. 7.

⁴⁴ Chertoff, *Building an Integrated Preparedness and Emergency Management System: The Case for Keeping FEMA Within the Department of Homeland Security*.

⁴⁵ Christine E. Wormuth with Anne Witkowsky, *Managing the Next Domestic Catastrophe: Ready (or Not)?, A Beyond Goldwater-Nichols Phase 4 Report*, Beyond Goldwater-Nichols and the Center for Strategic and International Studies, June 2008, p. 13.

Kettl suggests that calls for FEMA’s removal may be based on a faulty premise— that James Lee Witt transformed the troubled agency and made it successful— under Witt, FEMA was independent— therefore, FEMA should be restored to independent status. Kettl points out, however, that FEMA did not always perform well in the past, even when it was an independent agency. FEMA was an independent agency when it was roundly criticized for its response to Hurricane Andrew in 1992. Problems were also recognized during the TOPOFF 2000 exercise, again while FEMA was an independent agency.⁴⁶

“When viewed against the history of emergency management, the success FEMA enjoyed in the 1990s was the exception, not the rule,” Roberts states.⁴⁷ Kettl suggests that under Witt, “success in managing FEMA flowed from the leader’s ability to lead... restructuring cannot *substitute* for leadership.”⁴⁸ In 2006, David Walker, then-Comptroller General of the United States, said, “there are pros and cons to keeping FEMA in or out, but the quality of leadership... and the quantity of resources has more to do with the success of the agency.”⁴⁹

Calls for Independent FEMA, With Cabinet-level Status and Direct Line to the President

Those who would like to see FEMA removed from DHS are calling for three basic elements: (1) independent agency status, (2) including the FEMA Administrator in the President’s Cabinet, and (3) giving the FEMA Administrator a direct line to the President.

Addressing the third element first, the FEMA Administrator already has a direct line to the President during a disaster. Congress recognized this shortcoming in the aftermath of Hurricane Katrina and legislated this relationship in the *Post-Katrina Reform Act*. GAO recently found that the FEMA Administrator does give advice directly to the President during meetings.⁵⁰

⁴⁶ Kettl, Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, National Emergency Management: Where Does FEMA Belong?

⁴⁷ Roberts, “FEMA After Katrina.”

⁴⁸ Kettl, Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, National Emergency Management: Where Does FEMA Belong? p. 5 (Emphasis is in original).

⁴⁹ Aimee Curl, “Senate Panel Unlikely to Recommend Taking FEMA Out of DHS,” *FederalTimes.com*, March 15, 2006, available at <http://www.federaltimes.com/index.php?S=1598146>.

⁵⁰ Government Accountability Office, Letter to Congressional Requesters: Actions Taken to Implement the Post-Katrina Emergency Management Reform Act of 2006.

The critical thing to note here, however, is that having a direct line to the President does not necessarily equate to having the ear of the President. As mentioned above, Witt did have the ear of President Clinton, but this likely stemmed more from his personal relationship with the President than from his status as FEMA Director. The *Post-Katrina Reform Act* “assures that there will be direct access but it cannot assure that the relationship with the President will be strong or that the Administrator will have the president’s confidence.”⁵¹

The second element, including the FEMA Director in the Cabinet, is a decision that cannot be legislated. While not defined in law, the Cabinet traditionally includes the Vice President and the heads of 15 executive departments. The President has the discretion to accord Cabinet-level rank to other officials. Currently, in addition to the heads of the 15 executive departments, Cabinet-level status has been given to the White House Chief of Staff, the Director of OMB, the United States Trade Representative, the Administrator of the Environmental Protection Agency, and the Director of the Office of National Drug Control Policy. Executives who do not currently have Cabinet-level status include the Director of the Central Intelligence Agency, the Administrator of the Small Business Administration, and the Administrator of the National Aeronautics and Space Administration.

The first element of the argument, granting FEMA independent agency status, arguably could be accomplished legislatively or by Executive Order. But this arrangement will not necessarily solve FEMA’s problems or address the concerns of those who would like to see FEMA removed from the Department of Homeland Security. As evidenced above, FEMA often performed poorly even when it was an independent agency. According to Kettl, “structure matters. But leadership counts far more.”⁵²

Conclusion

In 2001, the Hart-Rudman Commission, addressing the topic of military intervention abroad, warned that “resisting the ‘CNN effect’ may be one of the most important requirements of U.S.

⁵¹ Memorandum from Congressman Bennie G. Thompson to President-elect Barack H. Obama, Re: A Strong, Effective Federal Emergency Management Agency.

⁵² Kettl, Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs, National Emergency Management: Where Does FEMA Belong? p. 3.

policymaking in the coming period.”⁵³ This admonition is all the more important today, when the country faces an increased threat of terrorism and has experienced a number of serious disasters over the past few years.

Just over 5 years ago, the approach to and structure for homeland security were completely revamped. Have things gone perfectly since? Clearly, the answer is no, but that is not enough justification to undertake a major reorganization that would have far-reaching effects, particularly before a careful study of the potential consequences can be carried out. In addition to the arguments made above, there are two key arguments for not removing FEMA from DHS, at least not in the short term.

It Takes Years for a Complex Organization to Develop

When DHS was created 5 years ago, 22 disparate agencies were merged into one large organization. These agencies brought their own missions, processes, systems, and cultures. Merging them into a single organization was a complex undertaking, and this type of undertaking is not accomplished quickly. GAO reported that its work on mergers and acquisitions shows that successful transformation of a large organization can take at least 5 to 7 years, even for organizational mergers that are less complex than DHS.⁵⁴

On the fourth anniversary of DHS’ creation, GAO wrote,

“Prior to the creation of DHS, we testified on whether the reorganization of government agencies might better address the nation’s homeland security needs. At that time, we testified that the nation had a unique opportunity to create an effective and performance-based organization to strengthen the nation’s ability to protect its borders and citizens. We noted that the magnitude of the challenges that the new department would face would require substantial time and effort and that implementation of the new department would be extremely complex. Often it has taken years for the consolidated functions in new organizations to effectively build on their combined

⁵³ The United States Commission on National Security/21st Century, *Seeking a National Strategy: A Concert for Preserving Security and Promoting Freedom: The Phase II Report on a U.S. National Security Strategy for the 21st Century*, April 15, 2000, p. 7.

⁵⁴ Government Accountability Office, Department of Homeland Security: Progress Report on Implementation of Mission and Management Functions (GAO-07-454), August 2007.

strengths, and it is not uncommon for management challenges to remain for decades.”⁵⁵

As an example, GAO points to the creation of the Department of Defense. As discussed above, the most recent major DOD restructuring began 20 years ago with the *Goldwater-Nichols Act of 1986*. GAO reports that DOD continues to face serious management challenges. Wormuth also points to DOD as an example of the time it takes for complex organizational changes to succeed, stating that “DHS is a young member of the federal bureaucracy, and it will need considerable time to fully mature.”⁵⁶ DHS must make more progress, but “reorganization is not a panacea.”⁵⁷

Further, the *Post-Katrina Reform Act*, enacted just a little over 2 years ago, brought major changes to DHS, and to FEMA in particular. These reforms have not had time to work, and restructuring now would only set the department and FEMA back further.

Success Depends on Leadership More Than Structure

The success of an organization is often more about the organization’s leadership than its structure. The Hart-Rudman Commission recognized this when first considering a restructuring of national security policy. “Organizational reform is not a panacea. There is no perfect organizational design, no flawless managerial fix. The reason is that organizations are made up of people, and people invariably devise informal means of dealing with one another in accord with the accidents of personality and temperament. Even excellent organizational structure cannot make impetuous or mistaken leaders patient or wise, but poor organizational design can make good leaders less effective.”⁵⁸

It is interesting to note that when people talk about FEMA’s “successful years,” these years are invariably linked with James Lee Witt. Credit for turning the organization around is generally ascribed to Witt personally, not to an outside force mandating reorganization.

⁵⁵ David M. Walker, Department of Homeland Security: Progress Report on Implementation of Mission and Management Functions.

⁵⁶ Wormuth with Witkowsky, *Managing the Next Domestic Catastrophe*, p. 13.

⁵⁷ Ibid.

⁵⁸ The United States Commission on National Security/21st Century, *Road Map for National Security*, p. vi.

Chertoff recently stated, “I would say that one of the lessons I’ve learned, maybe ‘the’ lesson I learned in the last eight years is we’ve had three major catastrophic events, 9/11, Hurricane Katrina, and the financial meltdown. In each case, the real nub of the problem was [that] leaders made decisions looking only at the short term and sacrificing the long term.”⁵⁹

Now is not the time to think short term, particularly when it comes to our homeland security. Terrorism is not a threat only in the short term, and natural disasters certainly are not, so we need to be thinking long term. Thinking long term requires giving the Department of Homeland Security the time any large organization needs to mature. Thinking long term means giving the reforms introduced by the *Post-Katrina Reform Act* time to work. Thinking long term means resisting the “CNN effect” mentioned above and ensuring that FEMA is positioned to continue as a vital component of our homeland security and emergency management infrastructure.

⁵⁹ Remarks by Homeland Security Secretary Michael Chertoff at Johns Hopkins University, December 3, 2008.



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