

TESTIMONY TO THE COMMITTEE ON HOMELAND SECURITY

UNITED STATES HOUSE OF REPRESENTATIVES

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*Homeland Security Policymaking:
HSC at a Crossroads and Presidential Study Directive 1*

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Chairman Thompson, Ranking Member King, distinguished members of the Committee.

Considering how the National Security Council and Homeland Security Council – and their respective White House staffs – relate to one another and coordinate their roles is appropriate and important. It would, however, be troublesome if such an examination was merely to conclude the HSC and its staff should disappear into the National Security Council and its staff.

The Homeland Security Council is not only a creature of the executive. The Council and staff were specifically authorized by Title IX of the Homeland Security Act of 2002. Whatever proposals emerge from Presidential Study Directive 1, I urge this Committee to ensure that the particular needs of homeland security are strengthened in any reorganization. To advance our nation's security a reorganization of the HSC should:

1. Support the President's role in prevention, mitigation, response and recovery to catastrophic threats of every sort – intentional, accidental, and natural;
2. Support the President's role in working with the Governors and the homeland security leadership of the states in framing and executing a shared strategy of prevention, mitigation, response, and recovery to catastrophic risk; and
3. Fulfill the risk assessment role of the Homeland Security Council as set out in Title IX of the Homeland Security Act.

Some quick comments on each of these priorities:

Terrorism and other Threats

There is – and ought to be – particular concern that the counterterrorism mission not be complicated by the existence of the two Councils and separate White House staffs. Counterterrorism is ill-served by battles over turf. Under Title IX the President can call joint meetings of the HSC and NSC. There is well-established precedent for dual-hatted NSC and HSC staff. Indeed, Mr. Brennan is currently dual-hatted. In recent days the President has given joint assignments to the HSC and NSC in regard to border security and cybersecurity. The Executive Office of the President has wide latitude in how Presidential personnel are assigned and managed. Where there are obvious synergies, these collaborative and coordinative mechanisms should be utilized.

At the same time those expert in counterterrorism and other more traditional aspects of national security are unlikely to be as adept in addressing hyper-hurricanes, urban wildfire, once in a thousand year flooding, city-smashing earthquakes, potential pandemic and other risks many of which can have intentional or accidental or natural origins. There is a need for the Executive Office of the President to include individuals with expertise in policy, strategy, public-private coordination, and inter-governmental cooperation in regard to the full range of catastrophic risks.

Whether the threat comes from a Katrina or an al-Qaeda, the President – and the nation – requires a White House staff with sufficient expertise to shape meaningful policy and strategy for prevention, mitigation, response and recovery.

Working with the Governors

Across this risk continuum the intergovernmental role requires particular priority. Catastrophic risk by its very nature must be prevented or mitigated in advance. Response and recovery to a true catastrophe is very expensive in lives and every other way. In most ways a catastrophe is beyond full recovery; that is what makes it a catastrophe.

To effectively prevent and mitigate domestic sources of catastrophic risk requires the voluntary and enthusiastic cooperation of states and localities. The federal government does not have sufficient resources or reach to prevent and mitigate on its own. The states and localities are practically in the lead in terms of prevention and mitigation. The states and localities have the eyes, ears, and boots on the ground that the federal government does not. One recent study noted that states and localities have 2,200,000 personnel assigned to core homeland security functions, while the federal government has about 50,000. It can also be argued that this is the balance of responsibility that our Constitution set out for good reason.

Secretary Napolitano, especially as a former Governor, can play an important role here. In Judith Kayyem both the Secretary and the President have a talented public servant as Assistant Secretary of Intergovernmental Programs. But if we are serious about Homeland Security there must be an ongoing dialogue between the White House and the Governors' Mansions. When the principals are not involved then the President's Homeland Security Advisor should be in sustained conversation and strategic engagement with the 54 State and territorial Homeland Security Advisors. This is the way we will generate practical strategic progress. This is the way our Constitution expects us to behave.

Political Assessment of Risk

Someone inserted into Title IX a very interesting role for the Homeland Security Council supported by its staff. Section 904 of Title IX states that the first function of the HSC is to, "assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President."

This is a tough assignment – especially the risk assessment role. It is also an assignment exactly right for the White House. As you have certainly seen in testimony before this committee, risk is not a technical decision. No detailed survey, no supercomputer, no panel of experts can antiseptically generate a meaningful set of risk priorities. All of these tools can make important contributions to a risk decision. But such a judgment – truly made – is preeminently a political judgment.

Establishing risk priorities is the kind of decision where high policy and high politics meet and fold into one another. Without this sort of political engagement risk assessments are just an illusory numbers game.

Three Priorities and the Culture of the NSC

For more than fifty years, the National Security Council has ably served the Commander-in-Chief. Every element of the NSC's organizational DNA reflects the responsibilities and power of the Commander-in-Chief. In foreign and defense policy – and the intelligence agencies supporting foreign and defense policy – the President's authority is preeminent. The NSC has been a creature of that preeminence. Even with the legal, budgetary, and direct command-and-control authority of the President, the NSC can have difficulty doing what is needed to coordinate defense, foreign affairs, and intelligence policy. But after fifty years there is an authoritative NSC institutional ethos that well serves the President and the nation.

This same ethos may well be counter-productive in solving Homeland Security problems and especially in addressing the three priorities I have set out. For the purposes of domestic counter-terrorism and prevention, mitigation, response, and recovery the authority of the Commander-in-Chief is not what matters. Most of the Governors will not respond positively to a command and control approach. Neither will the Adjutants General, nor County Sheriffs, nor most Mayors, nor police chiefs, nor emergency managers, and then there is the private sector that actually owns most of our critical infrastructure. These are partners who must be cultivated.

Some have argued that more of a command-and-control culture is needed to motivate sufficient attention to domestic counterterrorism. It is true that many local jurisdictions across the United States do not give sufficient priority to counterterrorism. But we cannot command them to do otherwise. We cannot even pay them enough to do otherwise. If we are serious about preventing latter day Beslans or Mumbais – or worse, we must do the hard work of communicating, cooperating, building relationships, developing trust, and engaging together in meaningful local and regional risk analysis. Only when state and local authorities are ready – of their own volition – to invest time, energy, and their own dollars into consistent counterterrorism work will we be closer to real defense-in-depth regarding the terrorist threat.

Local authorities are – not unreasonably – actively engaged with disasters that threaten with some regularity: floods, hurricanes, tornadoes, wildfires, earthquakes... each place and each region is different. They are not inclined to give sufficient attention to threats that are outside the pattern. They tend to undervalue a whole continuum of catastrophic possibilities: intentional, accidental, and natural. Given limited financial and human resources this tendency is understandable. Given recent financial extremities the tendency has been exacerbated.

The Federal government can and should play a role in helping ensure reasonable local attention to catastrophic possibilities – including terrorism. The federal government can play this role through consulting, educating, training, making grants, and through a variety of other mechanisms. When the federal government engages state and local authorities as peers and fellow professionals, the response will usually be productive. Ordering or even paying state and local professionals to do something they don't believe in tends to produce very creative avoidance behavior.

These practical issues reflect in a wonderful way our constitutional system. We are dramatically reminded that the President is the Commander-in-Chief of the armed forces, not the nation. We are forced to recall that we are – even now – a federal union of sovereign states. These are not just abstract constitutional principles. These are very helpful realities to recognize, embrace, and use to our advantage. As the executive consults with the Congress on how the Homeland Security Council might be more effective, these are realities that should be reflected in any reorganization.

SUMMARY STATEMENT

Chairman Thompson, Ranking Member King, distinguished members of the committee: As I review the various studies recommending reorganization of the Homeland Security Council and listen to rumors emerging from the PSD1 interviews, I am concerned that well-intended parties are trying to remove politics from Homeland Security. This would be a serious mistake.

I hope we can minimize partisanship in Homeland Security. But we need more – not less – politics in Homeland Security. And I perceive the Homeland Security Council is uniquely positioned to play a crucial role in domestic political organization for Homeland Security.

The Homeland Security Council is a political creature: it is the legitimate child of executive and legislative action. Both mother and father wanted it. The executive has been inclined to treat the HSC as its sole creation. But Congress was wise enough to enshrine the HSC in Title IX of the Homeland Security Act of 2002. There is joint custody.

This joint custody gives the HSC its legitimacy and provides the foundation for its potential coming-of-age as a profoundly important political player. In this regard, I would highlight three especially important roles for the Homeland Security Council:

First, supporting the President's role in prevention, mitigation, response and recovery to catastrophic threats of every sort – intentional, accidental, and natural;

Second, supporting the President's role in working with the Governors and the homeland security leadership of the states in framing and executing a shared strategy of prevention, mitigation, response, and recovery to catastrophic risk; and

Third, fulfilling the risk assessment role of the Homeland Security Council as set out in Title IX of the Homeland Security Act.

The Congress – perhaps someone on this Committee – bestowed on your child a crucial responsibility. Section 904 of Title IX states that the first function of the HSC

is to, “assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President.”

This is precisely right. Assessing our comparative risks is the essential foundation of Homeland Security. Assessing risk is a profoundly political process.

We live in a time when specialization, professionalization, and technical expertise enjoy great respect. Risk assessment can – must – draw on technical resources. But choosing which risk is most risky is almost always a political choice. By which I mean, it is a choice that can only be made by people of different perspectives who come together to reason with one another.

In Homeland Security it is especially important that the federal government reason together with the states on preparedness, prevention, response, recovery and other activities that are foreign to operators in the national security sphere. Practically the states have the local resources to prevent, mitigate, respond, and recover.

Constitutionally the states are where the founders meant for such power and authority to principally reside.

This very nuanced engagement in domestic politics strikes me as ill-matched with the strengths of the National Security Council. The NSC behaves, as it ought, to support the President’s role as Commander-in-Chief. The role of the President and his administration in working with the States is entirely different.

The federal and state governments need to reason together over Homeland Security policy, strategy, and risk. The Department of Homeland Security cannot do this alone. As a former Governor, Secretary Napolitano can do it better than most. Judith Kayyem, the new DHS Assistant Secretary for Intergovernmental Programs, will contribute a great deal to the process. But for the Department to really be able to do its work effectively there needs to be an ongoing and meaningful dialogue between the White House and the Governors Mansions on shared Homeland Security policy and strategy. Unless and until this highest level of political accommodation is achieved, the Feds will continue to be perceived – and will often behave – as outsiders trying to impose or buy-off local attention. That works just as long as the Feds are in the room.

Politics is about building coalitions and motivating support for tough choices. When the choices are too tough for enthusiasm, politics cultivates self-interested compliance through a process of shared choosing. In Homeland Security we must make tough choices. The President's Homeland Security Advisor and his or her HSC staff should be – and are needed to be – the President's trusted agents in crafting the political compact with the states to make those tough choices.

I look forward to answering your questions.

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Testimony argued that the Homeland Security Council, as established by Title IX of the Homeland Security Act of 2002, should be preserved in order to:

1. Support the President's role in prevention, mitigation, response and recovery to catastrophic threats of every sort – intentional, accidental, and natural;
2. Support the President's role in working with the Governors and the homeland security leadership of the states in framing and executing a shared strategy of prevention, mitigation, response, and recovery to catastrophic risk; and
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