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SCHOOL**

**MONTEREY, CALIFORNIA**

**THESIS**

**HAS THE DEPARTMENT OF HOMELAND SECURITY  
(DHS) OUTLIVED ITS USEFULNESS?**

by

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December 2012

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USEFULNESS?**

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Submitted in partial fulfillment of the  
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## **ABSTRACT**

The Department of Homeland Security (DHS) continues to be scrutinized for its inability to meet its mission mandate as outlined by the Homeland Security Act of 2002. This study looked at two of DHS's most important functions—intelligence and emergency management. Problems that constrain DHS's ability to play a relevant role in the intelligence community stem from limitations imposed on the organization in the early phase of creation; the missed opportunity of adding the Federal Bureau of Investigation to its organizational structure; and the poor relationship it has with state and local fusion centers. FEMA presents a similar set of challenges whereas the agency has served as an independent organization for much of its existence. Including FEMA in the DHS merger has downgraded the agency's ability to prepare and respond to all-hazards. The call is to reestablish the organization as a stand-alone agency with direct links to the president. DHS's inability to effectively perform two of its most important tasks requires lawmakers to review their 2002 decision and decide if an organizational change is in order. They may find that the way forward for DHS is to downsize and refocus its mission on border security.

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## **LIST OF ACRONYMS AND ABBREVIATIONS**

CBP	CUSTOMS AND BORDER PROTECTION
CIA	CENTRAL INTELLIGENCE AGENCY
DHS	DEPARTMENT OF HOMELAND SECURITY
DOD	DEPARTMENT OF DEFENSE
DOS	DEPARTMENT OF STATE
FBI	FEDERAL BUREAU OF INVESTIGATION
FEMA	FEDERAL EMERGENCY MANAGEMENT AGENCY
HSINT	HOMELAND SECURITY INTELLIGENCE
HUMINT	HUMAN INTELLIGENCE
I&A	INTELLIGENCE AND ANALYSIS
IC	INTELLIGENCE COMMUNITY
ICE	IMMIGRATION AND CUSTOMS ENFORCEMENT
ODNI	OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
NAPA	NATIONAL ACADEMY OF PUBLIC ADMINISTRATION
NSA	NATIONAL SECURITY AGENCY
NSC	NATIONAL SECURITY COUNCIL
TSA	TRANSPORTATION SECURITY AGENCY

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# I. INTRODUCTION

## A. MAJOR RESEARCH QUESTION

This thesis sets out to better understand the role of the Department of Homeland Security (DHS) as the nation's leader in protecting the American people and U.S. resources from terrorist attacks. The overarching question that drives this research is: Has DHS, as a cabinet-level entity, outlived its usefulness today, more than 10 years after the Sept. 11 attacks?

Specifically, this thesis looks at the two most significant missions given to DHS: intelligence and emergency management. This thesis recognizes that there are many other agencies that make up DHS; however, those other major functions like the Coast Guard, Customs and Border Protection, and the Transportation and Security Agency can be researched independently in the future. The goal of this thesis is to understand the importance of intelligence and emergency management as the most important but also most divergent roles assigned to DHS, how they fit within the organizational construct, and whether these functions would be most effective in another department or agency or worst case, if they are needed at all. The overarching goal of DHS is to secure the homeland, and this thesis examines whether DHS is the right organization for the job.

## B. IMPORTANCE

Dozens of agencies charged with homeland security will now be located within one Cabinet department with the mandate and legal authority to protect our people. America will be better able to respond to any future attacks, to reduce our vulnerability and, most important, prevent the terrorists from taking innocent American lives.<sup>1</sup>

— President George W. Bush, November 25, 2002

The quote above shows the sense of urgency to establish a single organization equipped to protect the American people from a new form of warfare—terrorism

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<sup>1</sup> George W. Bush, "Comments at signing of Homeland Security Act 2002," <http://georgewbush-whitehouse.archives.gov/news/releases/2002/11/20021125-6.html>.

conducted inside U.S. borders. That single organization was the Department of Homeland Security. Ten years later, DHS continues to be an organization scrutinized for its inability to meet its mission mandate as outlined in the Homeland Security Act 2002. It is a product of a significant political push, by Congress, to establish an organization that would be responsible for preventing future failures that could lead to a repeat of the September 11, 2001, attacks on the World Trade Center and the Pentagon. This thesis reviews the creation of the organization and some of the challenges that were realized at its inception. Second, this study reviews the role of the Department of Homeland Security's Office of Intelligence and Analysis (I&A). It analyzes its relationship with other members of the intelligence community, as well as, state-established fusion centers. Review of this critical task will help determine if DHS has improved its capability, or not, to prevent future attacks. Finally, emergency management has no traditional ties to preventing terrorism, yet the Federal Emergency Management Agency (FEMA) was added to the organization created to do so. Therefore, this thesis explores the role of FEMA and its effectiveness before and after DHS.

Critics note that there are significant impediments embedded within DHS's organizational structure that may lead to the demise of the organization. These impediments include:

- Too many different organizations with different mission sets.
- All organizations cannot be tasked with a mission of fighting terrorism across the board.
- The span of control for this large organization will make effective management and oversight hard to accomplish.<sup>2</sup>

Exploring each of these aspects will help determine whether, after 10 years, DHS is still a relevant, viable, and necessary organization.

## **C. PROBLEMS**

The Department of Homeland Security has become one of the largest departments in the federal government, but it has not reached its full potential as expected by the

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<sup>2</sup> David Rittgers, "Abolish the Department of Homeland Security," *Policy Analysis*, no. 683, (September 11, 2011), CATO Institute, 1-6. <https://www.hsdl.org/?view&did=686964>.

Homeland Security Act of 2002. One of the main problems involves how the department was organized. Following the terrorist attacks in 2001, there was an immediate recognition that the United States, as a whole, was ill-prepared for such an attack. The country had several different agencies in place that were responsible for ensuring the nation’s safety and security, but the necessary level of coordination and cooperation was conspicuously missing. The Department of Homeland Security was subsequently formed in 2003, elevating the former Office of Homeland Security to a cabinet-level position. This department was created, as shown in Figure 1, by pulling together 22 different governmental agencies and realigning them under one umbrella with a new mission to prevent the next major terrorist attack in the United States.

Table 1. Twenty-two Agencies Transferred to DHS.  
 After “Who Joined DHS?,” from <http://www.dhs.gov/who-joined-dhs>.  
 (continued on next page)

Agency location prior to DHS	Agency locations within DHS
The U.S. Customs Service (Treasury)	<a href="#">U.S. Customs and Border Protection</a> - inspection, border and ports of entry responsibilities <a href="#">U.S. Immigration and Customs Enforcement</a> - customs law enforcement responsibilities
The Immigration and Naturalization Service (Justice)	<a href="#">U.S. Customs and Border Protection</a> - inspection functions and the U.S. Border Patrol <a href="#">U.S. Immigration and Customs Enforcement</a> - immigration law enforcement: detention and removal, intelligence, and investigations <a href="#">U.S. Citizenship and Immigration Services</a> - adjudications and benefits programs
The Federal Protective Service	<a href="#">U.S. Immigration and Customs Enforcement</a> until 2009); currently resides within the National Protection and Programs Directorate
The Transportation Security Administration (Transportation)	<a href="#">Transportation Security Administration</a>
Federal Law Enforcement Training Center (Treasury)	<a href="#">Federal Law Enforcement Training Center</a>
Animal and Plant Health Inspection Service (part)(Agriculture)	<a href="#">U.S. Customs and Border Protection</a> - agricultural imports and entry inspections

<b>Office for Domestic Preparedness (Justice)</b>	Responsibilities distributed within <a href="#">FEMA</a>
<b>The Federal Emergency Management Agency (FEMA)</b>	<a href="#">Federal Emergency Management Agency</a>
<b>Strategic National Stockpile and the National Disaster Medical System (HHS)</b>	Returned to Health and Human Services, July, 2004
<b>Nuclear Incident Response Team (Energy)</b>	Responsibilities distributed within <a href="#">FEMA</a>
<b>Domestic Emergency Support Teams (Justice)</b>	Responsibilities distributed within <a href="#">FEMA</a>
<b>National Domestic Preparedness Office (FBI)</b>	Responsibilities distributed within <a href="#">FEMA</a>
<b>CBRN Countermeasures Programs (Energy)</b>	<a href="#">Science &amp; Technology Directorate</a>
<b>Environmental Measurements Laboratory (Energy)</b>	<a href="#">Science &amp; Technology Directorate</a>
<b>National BW Defense Analysis Center (Defense)</b>	<a href="#">Science &amp; Technology Directorate</a>
<b>Plum Island Animal Disease Center (Agriculture)</b>	<a href="#">Science &amp; Technology Directorate</a>
<b>Federal Computer Incident Response Center (GSA)</b>	<a href="#">US-CERT</a> , Office of Cybersecurity and Communications in the National Protection and Programs Directorate
<b>National Communications System (Defense)</b>	<a href="#">Office of Cybersecurity and Communications</a> in the National Protection and Programs Directorate
<b>National Infrastructure Protection Center (FBI)</b>	Dispersed throughout the Department, including <a href="#">Office of Operations Coordination</a> and <a href="#">Office of Infrastructure Protection</a>
<b>Energy Security and Assurance Program (Energy)</b>	Integrated into the <a href="#">Office of Infrastructure Protection</a>
<b>U.S. Coast Guard</b>	<a href="#">U.S. Coast Guard</a>
<b>U.S. Secret Service</b>	<a href="#">U.S. Secret Service</a>

Table 1. (continued from previous page)

The formation of DHS was the largest governmental reorganization since the combining of the armed services into the Department of Defense in 1947.<sup>3</sup> DHS's creation also spawned an enormous and convoluted web of congressional oversight.

<sup>3</sup> "Homeland Security Department," *Washington Post*, accessed Dec. 7, 2012, [http://www.washingtonpost.com/politics/homeland-security-department/gIQALxPx4O\\_topic.html](http://www.washingtonpost.com/politics/homeland-security-department/gIQALxPx4O_topic.html).

Having to provide reports to more than 100 congressional committees and subcommittees has contributed to the department's inefficiencies and ineffectiveness.<sup>4</sup>

In the immediate aftermath of such a large reorganization, one can expect problems such as difficulty in cross-functional coordination, reduced morale within the different functions because of a perceived loss of identity, and uncertainty surrounding specific agency program viability due to new budget competition. Ten years later, DHS is still dealing with these organizational challenges. It also continues to struggle to find its identity—and its purpose—as its mission focus shifts from terrorism to “all-hazards”<sup>5</sup> and then back to terrorism.

A review of the literature suggests that a need exists to link the intelligence community with state, local, tribal, and private entities to ensure top-to-bottom cooperation in securing the nation. But the question of how to do so effectively still remains. This thesis contends that linking the IC to the state and local level does not have to be performed as part and parcel of a bigger bureaucracy. What is discovered is that the current relationship between state-established fusion centers and DHS is neither perfect nor necessary to improve coordination. President Bush only intended DHS to be a consumer of intelligence and not a leader in the field. He outlined his expectation in his DHS proposal where he states, “The Department would be a full partner and consumer of all intelligence-generating agencies such as the Central Intelligence Agency, National Security Agency and the FBI.”<sup>6</sup> Additionally, he wanted DHS to function as a clearinghouse for all things intelligence and be responsible for “ensuring information from the FBI is analyzed side-by-side with all other intelligence.”<sup>7</sup> This arrangement

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<sup>4</sup> Paul Rosenzweig, Jenna Baker McNeill, and James Jay Carafano, “Stopping the Chaos: A Proposal for Reorganization of Congressional Oversight of the Department of Homeland Security,” *Heritage Foundation WebMemo* 1, no. 3046 (November 4, 2010), *Homeland Security Digital Library*, <https://www.hsdl.org/?view&did=14444>.

<sup>5</sup> All Hazards as defined by a FEMA factsheet: An all-hazards approach refers to preparedness for terrorist attacks, major disasters and other emergencies within the United States. It is also deemed as not all-inclusive and the application of this approach varies from regional area to regional area. In this regard, all-hazards may or may not include terrorism. See Comprehensive Preparedness Guide (502) Factsheet at: [http://www.fema.gov/pdf/about/divisions/npd/cpg\\_502\\_factsheet\\_sept\\_%209.pdf](http://www.fema.gov/pdf/about/divisions/npd/cpg_502_factsheet_sept_%209.pdf).

<sup>6</sup> George W. Bush, “The Department of Homeland Security,” Department of Homeland Security website. 14, <http://www.dhs.gov/proposal-create-department-homeland-security>

<sup>7</sup> Ibid.

places DHS at the center of Homeland Security Intelligence; however, this relationship has become more of a roadblock than a pathway to actionable intelligence. If the analysis has already been accomplished by long-standing U.S. intelligence institutions, what more does DHS have to offer? The Department is an amalgam of many agencies that may or may not have had a significant intelligence role in the past. Despite not having a historical link within the walls of intelligence, DHS moves forward, trying to establish itself as a leader in information sharing. Information sharing is not intelligence; it is the cross-flow of intelligence information to other agencies so all can prepare and respond if necessary. Only having a role as the information sharing leader, DHS will only be as credible and relevant as the information it receives. What the organization needs is a role in collecting intelligence and then analyzing that data alongside other intelligence. Without the ability to collect data, DHS will always be a powerless middleman in the process. With a mandate of preventing the next attack, this limitation places the organization at a disadvantage and increases the risk of failing to “connect the dots” similarly to September 10, 2001.

On the other end of the DHS mission spectrum is emergency management. A review of FEMA shows that the organization has always been an agency with direct links to the President. Adding this agency to DHS’s hierarchy hinders FEMA’s mission because it creates situations that reduces its capacity and capability. FEMA’s ability to create a more resilient nation is heavily dependent on the budget it receives. The preponderance of FEMA’s budget is linked to the Disaster Relief Fund, which is used to provide federal grants to areas following a disaster or before an event to help mitigate the resulting or potential effects.<sup>8</sup> Following the signing of the Homeland Security Act of 2002, FEMA’s budget was now controlled by a different federal entity that was built to detect, prevent, respond, and recover from terrorist events. Now, FEMA’s budget is subject to reallocation to fund other Departmental priorities designed to deter future attacks.

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<sup>8</sup> FEMA, “Department of Homeland Security Federal Emergency Management Agency Disaster Relief Fund Fiscal Year 2013 Congressional Justification,” [http://www.fema.gov/pdf/about/budget/11f\\_fema\\_disaster\\_relief\\_fund\\_dhs\\_fy13\\_cj.pdf](http://www.fema.gov/pdf/about/budget/11f_fema_disaster_relief_fund_dhs_fy13_cj.pdf).

FEMA regained some of its autonomy when the Post Katrina Emergency Management Reform Act 2006 was signed. This act limits DHS Secretary's ability to "substantially or significantly reduce the authorities, responsibilities, or functions of the Agency or the capability of the Agency."<sup>9</sup> Moreover, the Secretary must abide by the rules and ensure FEMA is funded so that it can effectively accomplish its mission.<sup>10</sup> Still, DHS is once again a middleman, now interposed between FEMA and its grant recipients. Having FEMA under DHS requires the agency, now, to reach back to Washington to request authority to respond and to what extent it can respond.<sup>11</sup>

#### **D. HYPOTHESIS**

This thesis contends that President George W. Bush had the organizational structure right following the Sept. 11 attacks. Shortly after these events, he established the Office of Homeland Security (OHS), which functioned as the president's eyes and ears. This office could pull the necessary information and provide an analytic view of potential threats without having to worry about the next hurricane or the number of immigrants granted citizenship, as the department now must do. The transition of OHS to DHS ignited a bureaucratic process which in and of itself comes with complications. Complications such as the need for Congressional approval of senior leaders and budgets or the turf battles as other departments fight to maintain its current relevance. Had the administration maintained the OHS construct, these complications would not exist and the nation would have a streamlined and focused hierarchy to combat terrorism in the homeland.

Some suggest that DHS, at a minimum, should release FEMA and allow it to become its own separate entity again. This step will free up the Department to focus on detecting and deterring future terror plots by securing the borders through the Customs and Border Protection (CBP) and Coast Guard, and disrupting terrorism links to narcotics

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<sup>9</sup> GPO, "Post Katrina Emergency Management Reform Act of 2006," <http://www.gpo.gov/fdsys/pkg/PLAW-109publ295/pdf/PLAW-109publ295.pdf>.

<sup>10</sup> Ibid.

<sup>11</sup> Brian Naylor, "Should FEMA Remain Part of Homeland Security?" February 2009, <http://www.npr.org/templates/story/story.php?storyId=100012612>.

trafficking through the Immigration, Customs and Enforcement (ICE) agency. Regardless of the magnitude of a disaster or catastrophe, emergency management is emergency management, no less and no more. FEMA is capable of preparing for, responding to, and recovering from all hazards, including events that result from terrorism, but it must wait for an event to happen before it really swings into action. Similarly, DHS should relinquish its role in intelligence. Currently, its role in intelligence stems from the federal funding stream it provides to state run fusion centers and not from collecting data to thwart attacks. There is no need for a new bureaucracy to fund operations when existing agencies with a proven track record in intelligence can do the same thing to the same or better effect.

#### **E. FOUR QUESTIONS**

A few significant questions continue to arise with regards to the utility of DHS, including: How effective is DHS and should it be abolished? Why did not DHS include the Federal Bureau of Investigation, and without it, how well has DHS performed its intelligence mission? Finally, should FEMA be removed from the organizational structure?

To address the first question of effectiveness and abolishing the organization, David Rittgers argues in his paper, “Abolish the Department of Homeland Security,” that DHS was “ill-conceived” and the plan to build a more resilient United States of America did not require erecting a new bureaucracy. He outlines the complexities surrounding the organization as it tries to cohere out of the conditions of its creation—what such other experts as Stephen Flynn have dubbed a “corporate merger.”<sup>12</sup> Furthermore, Rittgers adds that “domestic counterterrorism is a law enforcement function, and keeping government within the bounds dictated by the Constitution is both more likely to apprehend real terrorists and avoid labeling large portions of the American public as threats to national security.”<sup>13</sup>

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<sup>12</sup> Stephen Flynn, “Homeland Insecurity: Disaster at DHS,” *The American Interest* (May/June 2009), 20.

<sup>13</sup> David Rittgers, “Abolish the Department of Homeland Security,” *Policy Analysis*, No 683, (September 11, 2011), CATO Institute, 17, <https://www.hsdl.org/?view&did=686964>.



The second question involves the missed opportunity to give DHS a stronger and relevant presence within the IC. Some have expressed that in the haste to establish DHS; one significant organization was left out—the Federal Bureau of Investigation. As the story goes, 9/11 was a result of the FBI and CIA failing to share information which may have led to foiling the plot. DHS was expected to be the answer to this communication and coordination problem. But how can this brand new bureaucratic organization gain legitimacy when it has no history or connection with the already established intelligence community? The addition of the FBI would have given the department the legitimacy it needed. Without this main component of the intelligence community, the Department’s job is harder and more constrained, especially when the legislation that created the organization limited its capability to investigate and prosecute terrorists.<sup>14</sup> This oversight by the administration at the time, intentionally or not, severely limited DHS’s ability to fully protect the homeland.

So what is DHS’s role in the intelligence community? As a collective, the IC constantly attempts to improve collection, analysis, and sharing of critical data necessary for securing the homeland. DHS assumes a role in this process through its Office of Intelligence and Analysis. I&A is responsible for the following missions: “1. Identify and assess the nature of terrorist threats to the homeland; 2. Detect and deter threats of terrorism against the United States; 3. Understand such threats in light of actual and potential vulnerabilities of the homeland.”<sup>15</sup> Although I&A is designated as the lead in providing critical assessment of information to the President to help detect, deter, prevent, respond to, and recover from any event that is natural or man-made, many argue it has not been as effective as expected.

As Representative Mike Thompson notes, “DHS’s place in the US intelligence architecture has been a topic of congressional oversight since its creation and remains a

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<sup>14</sup> Homeland Security Act 2002, PUBLIC LAW 107–296, 6 US Code (2002): Section 201(d), 1A, B, C, <https://www.hsdl.org/?view&did=614>.

<sup>15</sup> Ibid., sec 201: 1 A, B, C.

work in progress without final resolution.”<sup>16</sup> This comment is derived from a report submitted by the Aspen Group (The Group) on the state of DHS intelligence. The report notes the redundancies that exist between I&A and the FBI with regards to responsibilities for domestic intelligence gathering and analysis. The Group makes no distinction between national security and homeland security. All things that fall under homeland security, such as border protection, infrastructure protection, interaction with state and local law enforcement agencies, and transportation have all been lumped together as part of the national security architecture.<sup>17</sup> If national security includes all these task that are also considered Homeland Security, then why do we need a separate department when we already have the National Security Agency (NSA), National Security Council (NSC), CIA, FBI, and Department of State (DOS)—each have major roles in protecting national security? Additionally, the Group notes that DHS must focus on other missions outside of terrorism. Currently, preventing terrorism is being handled by traditional intelligence entities; therefore, DHS must determine where its efforts can be most effective and “value added” while avoiding areas already in the purview of other agencies.<sup>18</sup>

The final question seeks to understand whether the nation needs the Federal Emergency Management Agency to be part of DHS. FEMA has been a staple of American society; its existence can be traced back to the old civil defense organization that was responsible for ensuring the nation could prepare and recover from a nuclear attack during the Cold War era.<sup>19</sup> Many have debated the necessity of FEMA as part of DHS. Senator Carl Levin (D-MI) was an early proponent of removing FEMA from DHS’s organizational structure following FEMA’s botched response to Hurricane Katrina. He felt the organization lacked qualified leadership.<sup>20</sup> Even former employees

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<sup>16</sup> The House Permanent Select Committee on Intelligence, Subcommittee on Terrorism, Human Intelligence, Analysis, and Counterintelligence, “Role of DHS in the IC: A Report by the Aspen Institute,” *Homeland Security Digital Library*, (January 18, 2012), 5. <https://www.hsdl.org/?view&did=697591>.

<sup>17</sup> *Ibid.*, 10.

<sup>18</sup> *Ibid.*, 10–11.

<sup>19</sup> Harry V. Martin, “Secret Government,” <http://dmc.members.sonic.net/sentinel/gvcon6.html>.

<sup>20</sup> National Low Income Housing Commission, “Post Katrina Emergency Management Reform Act of 2006: Overview of Housing,” <http://www.nlihc.org/doc/080906.pdf>.

of the agency, like Andrew Sachs, felt that aligning FEMA under DHS stifled the organization's ability to make quick decisions in times of crises. He further notes that it is important for decision makers to be on the ground in an emergency so he or she can get a true sense of what is going on and how to respond.<sup>21</sup>

On the other hand, there are those who advocate that FEMA is integral to DHS's mission. Secretary Napolitano explained after accepting the job that she would ensure FEMA is capable of meeting the tasks at hand so that "where the organizational box goes... loses a lot of its relevance."<sup>22</sup> Jenna McNeil, from the *Heritage Foundation*, tends to agree with Secretary Napolitano as she offers five reasons why FEMA should remain part of DHS and proposes that the Administration should "create more integration" within DHS so the different components can better "communicate and work together."<sup>23</sup>

Arguments from both sides are very compelling; however, those who support DHS as it stands today seem to fall in line with the United States' model of building bureaucracy as an answer to new problems. Has DHS been successful in achieving its mission? Well, the 2012 report from the House Permanent Select Committee on Intelligence doesn't seem to think so. The department is viewed as a duplication of effort while the FBI thwarts attacks. Moreover, FEMA has proven to be on the wrong track following Katrina. It struggles with getting qualified leaders to help guide the organization through turbulent times. This includes the initial DHS secretaries, Tom Ridge and Michael Chertoff, who removed the preparedness grant programs thereby inhibiting FEMA's ability to provide support.<sup>24</sup> FEMA needs more autonomy and a

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<sup>21</sup> Brian Naylor, "Should FEMA Remain Part of Homeland Security?" February 2009, <http://www.npr.org/template/story/story.php?storyId=100012612>.

<sup>22</sup> Ibid.

<sup>23</sup> Jenna Baker McNeil and Jessica Zuckerman, "Five Reasons FEMA Should Stay at DHS," The Heritage Foundation, no 2736, (December 15, 2009). 1-2; Jenna Baker McNeil, "Restructuring FEMA: Stand-Alone FEMA Would Not Make Cents," The Heritage Foundation, no 2316, (February 27, 2009), 1-2.

<sup>24</sup> U.S. Senate, "Special Report: A Nation Still Unprepared," *Homeland Security Digital Library*, 222, <https://www.hsd1.org/?view&did=462746>.

renewed link to the President who is ultimately responsible for the safety and well-being of all Americans.

## **F. METHODS AND SOURCES**

This thesis involves two different methodologies. The first method reviews the Department of Homeland Security's history and examines how it has progressed since its inception in 2003. Included in this method will be an in-depth look at two of DHS's most important functions—intelligence and emergency management. Analysis of these two functions helped determine if the Department is meeting the intent of its charter or does current dysfunction suggest more still needs to be done.

The second methodology uses case studies to examine how well DHS has performed these two important functions. Two cases involve FEMA's response during Hurricanes Andrew and Katrina. These case studies included analysis of the roles and responsibilities before FEMA joined the Department and shifts in those roles and responsibilities following the creation of DHS. Additionally, to help understand the role and responsibilities of DHS in the intelligence arena, this thesis used the Christmas Day bombing attempt as a case study to examine the role of DHS during this incident. Other plots were reviewed, although not in great detail, as a barometer of how active DHS is in the prevention of attacks and the protection of American citizens' lives.

## **G. THESIS OVERVIEW**

The thesis is broken into four chapters. Following this introduction, Chapter II focuses on one of the Department's core functions, intelligence. Various sources are used to examine whether the Department's Intelligence and Analysis directorate is meeting the intent of established laws that empower the organization to be a lead agency in protecting the homeland. Included in this analysis is a review of how DHS fits inside of the intelligence community. Next, there is an evaluation of intelligence failures and a look at DHS's role in 40 thwarted plots since September 11. Then the chapter addresses the question of whether or not DHS should have received oversight of the FBI. Furthermore, it tackles the ongoing debate of whether DHS's relationship with fusion centers is functional and strong enough to make DHS relevant in the intelligence

community. Finally, the chapter reviews a 2012 report entitled, *Federal Support For and Involvement in State and Local Fusion Centers*. This report was produced by the United States Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs. In it is a breakdown of the current relationship between DHS and fusion centers to include how well they operate with each other and what problems seem to plague the relationship.

Chapter III examines another core function, emergency management, as it is performed by the Federal Emergency Management Agency. The intent of this agency is to ensure that the nation is ready and capable of recovering from any natural or man-made disasters. This chapter provides the historical context of FEMA's creation and performance before and after being placed inside DHS. In this connection, there is an analysis of FEMA's response to Hurricanes Andrew (pre-DHS) and Katrina (post-DHS). This analysis reviews the different dynamics, such as organizational leadership, that played a major role in the response successes or failures. The analysis helped determine whether FEMA and its mission of emergency management should remain one of the Department's core functions.

Finally, Chapter IV provides the conclusion and recommendations centered on the restructuring of the department and ways to improve mission effectiveness. It revisits the main question—whether DHS has outlived its usefulness—and reviews the analysis in the area of intelligence and emergency management to help draw reasonable conclusions. After reviewing the literature, it is clear that DHS has outlived its usefulness. It is irrelevant in the intelligence arena because the FBI was not added to the organization. The FBI would have provided the legitimacy that the organization needed to establish equal footing inside the community. Additionally, DHS is only a funding source for fusion centers. The department does not create day-to-day intelligence agendas for these centers, this is done either internally at the direction of the local center directors or state governors. In essence the department's objective of syncing all things intelligence was eroded at its creation and has yet to see any congressional activity that would change it. Emergency management would also be better served outside of the department. FEMA's

focus would return to ensuring State and local governments are prepared for and can respond to any and all disasters, to include those resulting from terrorist acts.

## **II. WILL DHS EVER PLAY A LEADING ROLE IN THE INTELLIGENCE COMMUNITY?**

Following the brutal, unprovoked surprise attacks on the World Trade Center and the Pentagon in 2001, processes and procedures for gathering, analyzing, and sharing intelligence were placed atop the political discussion docket. The establishment of the Department of Homeland Security's Intelligence and Analysis directorate was meant to improve information sharing among the members of the intelligence community, state, and local governments; however, it has contributed to reduced cross-functional sharing of data because of new bureaucratic turf wars. Many of these intelligence gathering and sharing issues already existed between the Federal Bureau of Investigation and the Central Intelligence Agency but now, with the addition of DHS, the questions of who does what, when, where, and how in the intelligence realm is even more complicated.

DHS continues to portray its role in the IC as important and significant. Michael Chertoff, the second Secretary of DHS, explained that "intelligence is at the heart of everything DHS does."<sup>25</sup> He continued to explain that the uniqueness of the organizational structure has given the department a daily intelligence function that is sure to provide actionable intelligence helping to keep America safe.<sup>26</sup> This chapter will examine the role of the Department of Homeland Security in the intelligence community and determine if it is preventing terrorist attacks as expected.

### **A. DHS AS PART OF THE INTELLIGENCE COMMUNITY**

The United States has built a very robust intelligence framework, with an intelligence community that consists of seventeen agencies, including: the Office of the Director of National Intelligence (ODNI), Defense Intelligence Agency (DIA), Central Intelligence Agency, National Geospatial-Intelligence Agency (NGA), National Reconnaissance Office, National Security Agency, and the Federal Bureau of

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<sup>25</sup> Charles Allen, "Terrorism in the Twenty-First Century: Implications for Homeland Security," The Washington Institute for Near East Policy, May 6, 2008. 4. <http://www.washingtoninstitute.org/policy-analysis/view/terrorism-in-the-twenty-first-century-implications-for-homeland-security>.

<sup>26</sup> Ibid.

Investigation.<sup>27</sup> This network is mandated to ensure the safety and security of all Americans as well as the nation's critical infrastructure. Every agency must work independently and cooperatively in order to be successful. Each has similar tasks that include the production and collection of information, intelligence sharing, and the creation of capabilities to protect against domestic or international hostilities.<sup>28</sup>

Actionable intelligence is the “demands on intelligence for foreknowledge and for precision sufficient for interdiction,”<sup>29</sup> and because of this demand, DHS developed Homeland Security Intelligence (HSINT). It is much different than the other “ints” in that it involves the interaction and information sharing between state, local, tribal, private industry partners and the federal government. HSINT gives DHS a role in the IC as it becomes the conduit for passing information that originate at the local levels but has national implications and vice-versa.<sup>30</sup>

One limiting factor that has plagued DHS is its inability to generate or collect intelligence. As part of the merger, DHS received organizations that could be considered quasi intelligence agencies—TSA, CBP and ICE. Neither of these organizations played a significant role inside the intelligence community before joining DHS. Therefore their relevance and know-how was limited and contributed to DHS's overall ineffectiveness in intelligence.

Other collection platforms, such as human intelligence (HUMINT), imagery intelligence (IMINT), signals intelligence (SIGINT), and geospatial intelligence (GEOINT), have been the primary means for gathering data for analysis. Each one helped shape the national political framework in response to Soviet aggression during the

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<sup>27</sup> Mark M. Lowenthal, *Intelligence: From Secrets to Policy* (Washington D.C., SAGE/CQ Press: 2012), 35.

<sup>28</sup> Office of the Director of National Intelligence, “U.S. National Intelligence: An Overview 2011,” 7-8; The remaining agencies that make up the IC are: Air Force Intelligence, Army Intelligence, Department of Energy, Department of State, Department of Treasury, Drug Enforcement Administration, Marine Corps Intelligence, Navy Intelligence, Department of Homeland Security, and Coast Guard Intelligence. See: <http://www.dni.gov/index.php/intelligence-community/members-of-the-ic>.

<sup>29</sup> Jennifer, Sims, “Understanding Friends and Enemies: The Context for American Intelligence Reform,” in *Transforming U.S. Intelligence*, ed. Jennifer E. Sims and Burton Gerber (Washington, D.C., Georgetown University Press: 2005), 26.

<sup>30</sup> Lowenthal, *Intelligence*, 285.



Cold War. Unlike those stovepipe collection capabilities, HSINT is derived from day-to-day information compiled and analyzed by almost anyone, but it does not gain relevance until it has been “fused together” to make sense of the puzzle pieces as they are assembled into a completed form.<sup>31</sup>

Although HSINT involves the collection of data, a lack of independence is its major flaw. To clarify, DHS does not have agents who are out traversing local cities, suburbs, towns or villages gathering information to analyze. The information the department acquires comes from other sources. Charles Allen, the first Undersecretary of Homeland Security for Intelligence and Analysis, confessed that DHS takes “advantage of the work of the National Counterterrorism Center (NCTC) all source, integrated assessments of terrorist threats...we look at threat information from the NCTC, from the FBI, CIA and elsewhere in the Intelligence Community as well as from the DHS components.”<sup>32</sup> DHS appears to enjoy riding the coat tails of others in the community. Getting information from other sources is part of information sharing, but DHS’s analysis will only be as good as the data points received. The department is operating at the mercy of others, which in the long run may prove detrimental to its survival.

## **B. DHS INTELLIGENCE FAILURES**

The department has experienced numerous intelligence failures throughout its nearly 10-year existence. For example, the Christmas Day bombing attempt that occurred on December 25, 2009, was a near-disastrous event carried out by a young Nigerian, Umar Farouk Abdulmutallab, who volunteered to conduct a mission against the West on behalf of Al Qaeda. Specifically, he volunteered to board a plane with plastic explosives in his underwear, which he meant to detonate on the flight from Amsterdam to Detroit. He was working for a Yemeni cell that publicly announced, through the Al Jazeera network, that it was at war with America, and those who labeled themselves as

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<sup>31</sup> Allen, 4.

<sup>32</sup> Allen, 5.

friends of the infidel state should be very concerned for their own safety.<sup>33</sup> In other words, TSA arguably ought to have known he was coming. Instead, the man was subdued by several passengers on the flight who had noted his odd behavior leading up to the attempted bombing.

The Christmas day “underwear bombing” attempt sent shockwaves across the country. Americans wanted to know how a Nigerian man, whose own father had approached U.S. officials in Nigeria with his concerns about his son’s rising radicalism, could board a commercial airliner, destined for a major city in the United States, with explosives hidden in his underwear, and not be detected? Had the lessons of Richard Reid’s Christmas 2001 attempt to bring down a jetliner with explosives hidden in his shoe not registered with those officials charged with keeping American air travel safe—that is, beyond requiring all passengers to remove their shoes at the X-ray machine? With the millions of dollars that had been spent since Sept. 11 to acquire systems that are designed to detect weapons of this magnitude; a close call like this should have been prevented.<sup>34</sup>

So who is to blame for such an egregious oversight? Many lawmakers voiced their concerns with the leadership of the department, especially when Secretary Napolitano claimed that the failed attempt really showed that “the system worked.”<sup>35</sup> There were strong calls for Secretary Napolitano’s resignation. The community was right in questioning her ability to lead. How could she claim success for a failed attempt that could have easily ended in a major disaster—and was interrupted not by experts in her agency but by a couple of sharp-eyed coach passengers and a flight attendant with a fire

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<sup>33</sup> Eric Lipton, Eric Schmitt, and Mark Mazzetti, “Review of Jet Bomb Plot Shows More Missed Cues,” *New York Times*, January 17, 2010, [http://www.nytimes.com/2010/01/18/us/18intel.html?\\_r=1&pagewanted=all](http://www.nytimes.com/2010/01/18/us/18intel.html?_r=1&pagewanted=all).

<sup>34</sup> Ibid.

<sup>35</sup> Politico, “Napolitano: The System worked,” Politico Live, December 27, 2009, [http://www.politico.com/blogs/politicolive/1209/Napolitano\\_The\\_system\\_worked.html](http://www.politico.com/blogs/politicolive/1209/Napolitano_The_system_worked.html).

extinguisher?<sup>36</sup> If Umar had been stopped before boarding the plane, then “mission accomplished” would be in order; but, critics said, DHS’s inability to detect this device proves the department is not on the cutting edge and has limited capability and capacity for preventing attacks.<sup>37</sup>

In fact, the intelligence community had warned that an explosive device, similar to one used in an assassination attempt in Yemen, could be smuggled onto a plane and detonated. There were also reports of chatter out of Yemen that Al Qaeda was looking for someone to carry out a potential attack against the United States on Christmas Day. Many of these reports pointed to Nigeria as a potential source of providing a volunteer for this mission. Nearly one month before the attempted plot, the name Umar Farouk was noted among international intelligence operators as a potential volunteer. Then there was the report by Dr. Alhaji Umaru Mutallab, Umar Farouk Abulmutallab’s father, to the U.S. embassy in Nigeria that his son was missing and he may be affiliated with an extremist group out of Yemen. This piece of information was shared and Umar was placed into the 550,000-person Terrorist Identities Datamart Environment (TIDE), which was used to track potential terrorists. Based on the data points received, it is hard to imagine that DHS was unable to prevent the Christmas Day plot.

But there was one problem that hampered any such action, namely that each of the critical pieces of information was in the hands of other agencies. Not one, to include DHS’s Intelligence and Analysis directorate, was able to piece all the data together in

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<sup>36</sup>Kendra Marr of Politico published an article title, “System did not work, Napolitano Revises her comments.” In this article Secretary Napolitano admits that the system failed in this instance and there was work that still needed to be done. ([http://www.politico.com/politico44/perm/1209/system\\_did\\_not\\_work\\_3b634a50-3a24-4e4e-8467-079e76a6d1d0.html](http://www.politico.com/politico44/perm/1209/system_did_not_work_3b634a50-3a24-4e4e-8467-079e76a6d1d0.html)) This reversal came as a result of increased scrutiny by members of Congress and a Presidential directive to review the terrorist watch list system and air travel screening procedures (<http://www.whitehouse.gov/the-press-office/statement-president-preliminary-information-his-ongoing-consultation-about-detroit> ).

<sup>37</sup> Fox News, “Democrats Join Call for Napolitano to Step Down Following Failed Attack,” January, 1, 2010, <http://www.foxnews.com/politics/2010/01/01/democrats-join-calls-napolitano-step-following-failed-attack/>.

order to get a real sense of what was about to transpire.<sup>38</sup> There were plenty of dots but, once again, no one agency clearly tasked to or capable of connecting them. Well, that one agency should have been DHS.

Since Sept. 11 there have been at least forty recorded—and thwarted—attempts to inflict terror on the civilian population of the United States. Table 1, below, shows each of these 40 attempts and the lead agency involved.<sup>39</sup> What can be derived from this table is that of the 40 attempts, none of them indicate involvement by the Department of Homeland Security. Instead, it shows that the FBI is accomplishing DHS’s assigned task of preventing terrorism.

Table 2. Thwarted Attacks since 9/11 (derived from the journal entry in the *Backgrounder*, September 7, 2011, titled “40 Terror Plots Foiled Since 9/11: Combating Complacency in the Long War on Terror”)

THWARTED ATTACK	DATE	LEAD AGENCY
Richard Reid (“Shoe Bomber”)	December 2001	Passengers and Crew
Jose Padilla	May 2002	FBI
Lackawanna Six	September 2002	FBI
Iyman Faris (Brooklyn Bridge Plot)	May 2003	FBI
Virginia Jihad Network (“Paintball Terrorist”)	June 2003	Not recorded
Nuradin M. Abdi (local shopping mall)	November 2003	Not recorded
Dhiren Barot (New York Stock Exchange Plot)	August 2004	Not recorded
Subway near Madison Square Garden	August 2004	New York City Police Department
Pakistani diplomat	August 2004	FBI, Bureau of Alcohol, Tobacco

<sup>38</sup> Lipton, “Review of Jet bomb plot,” *New York Times*, <http://www.nytimes.com/2010/01/18/us/18intel.html?pagewanted=all> ; Diane Russel Ong Junio, “Report on the Attempted Bombing of Northwest Airlines Flight 253 Christmas Day Plot,” *International Centre For Political Violence and Terrorism Research*, <http://www.pvtr.org/pdf/GlobalAnalysis/SpotReportOnChristmasDayAirlineBombPlot2009.pdf>.

<sup>39</sup> James Jay Carafano and Jessica Zuckerman, “40 Terror Plots Foiled Since 9/11: Combating Complacency in the Long War on Terror,” *Backgrounder*, no. 2604 (September 7, 2011): 1.

THWARTED ATTACK	DATE	LEAD AGENCY
assassination attempt Hamid Hayat	June 2005	and Firearms and local police FBI
Attack on L.A. National Guard facilities, synagogues and other targets	August 2005	Not recorded
Michael C. Reynolds	December 2005	FBI
Mohammed Zaki Amawi, Marwan Otherman El- Hindi, and Zand Wassim Mazloum	February 2006	Not recorded
Syed Haris Ahmed and Ehsanul Islam Sadequee	April 2006	Not recorded
Sears Tower Plot	June 2006	Not recorded
Assem Hammoud (NYC and NJ underground transit links)	July 2006	FBI
Liquid Explosive Plot	August 2006	British Law Enforcement
Derrick Shareef (Chicago shopping mall)	December 2006	FBI JTTF
Khalid Sheikh Mohammed	March 2007	Captured in Pakistan
Fort Dix Plot	May 2007	FBI
JFK Airport Plot	June 2007	Not recorded
Hassan Abujihaad	March 2008	Not recorded
Christopher Paul	June 2008	Not recorded
Synagogue Terror Plot	May 2009	NYPD
Najibulla Zazi	September 2009	FBI
Dallas skyscraper bombing plot	September 2009	FBI
Michael Finton	September 2009	FBI
Tarek Mehanna and Ahmad Abousamra	October 2009	FBI
Christmas Day Bomber	December 2009	Passenger and crew
Raja Lahrasib Khan	March 2010	FBI JTTF
Paul, Maria Rockwood and Nadia Pirotska	July 2010	FBI JTTF
Farroque Ahmed	October 2010	FBI
Air Cargo Bomb Plot	October 2010	Not recorded
Portland Christmas Tree Lighting Plot	November 2010	FBI
Antonio Martinez	December 2010	FBI
Khalid Ali-M Aldawsari	February 2011	FBI

THWARTED ATTACK	DATE	LEAD AGENCY
Ahmed Ferhani and Mohamed Mamdouh	May 2011	NYPD
Abu Khalid Abdul-Latif and Walli Mujahidh	June 2011	FBI
Emerson Winfield Begolly	August 2011	FBI

### C. THE CIVIL LIBERTIES ASPECT

As DHS seeks to understand where and how it fits within the information-sharing network, it oftentimes ends up in unsettled waters with regards to civil liberties, in part because of its inexperience in the intelligence community. The department continues to argue that it will “take very seriously our responsibility to protect the civil rights and liberties of the American people,” but its actions lead one to think otherwise.<sup>40</sup> For example, in March 2008, the department’s intelligence office produced a “terrorism watch list” report highlighting American speakers who were scheduled to speak at a Muslim conference held in Georgia. There was little information gathered on this event and none of the information led analysts to believe the participants were part of any extremist group or promoted an extremist ideology. Despite not having credible information, the department added the speaker’s names to the terrorism watch list anyway, which could have resulted in an infringement on Americans’ First Amendment rights.<sup>41</sup>

Some may say that violation of rights from time to time is the cost of keeping America safe, but the reality is that DHS is outside of its area of expertise. This example does not represent especially surprising failures in the security-liberty balance; just about every agency in the IC has had its share of civil-liberties issues. The point is, though, that these other agencies have already been through the “growing up” process on this count, while DHS seems to be slogging through the kinds of problems that gave rise to the last great wave of First and Fourth Amendment jurisprudence in the 1970s. If these new-old

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<sup>40</sup> Charlie Savage and Scott Shane, “Intelligence Improperly Collected on U.S. Citizens,” *New York Times*, December 16, 2009, <http://www.nytimes.com/2009/12/17/us/17disclose.html>.

<sup>41</sup> Savage, “Intelligence Improperly Collected on U.S. Citizens,” <http://www.nytimes.com/2009/12/17/us/17disclose.html>.

missteps continue, it is likely to reduce what little faith and credibility it has as a leading intelligence agency against terrorism.

#### **D. WHY NOT THE FBI?**

When it comes to gathering information in a domestic capacity, the FBI has always been the premiere organization to do so. Its initial powers stemmed from a decision by the U.S. Attorney General in 1908 to create an organization that would be used to help his office gather information and prosecute crimes against the United States.<sup>42</sup> Over the years, it has grown stronger and stronger, especially during the years that included the United States' involvement in World War I. The country passed varied legislation on Immigration (1917), Espionage (1917), Sedition (1918), and Anarchism (1918), acts that provided the FBI "legal authority to conduct domestic intelligence activities."<sup>43</sup>

With the passage of the Homeland Security Act of 2002, DHS was given a mandate:

To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.<sup>44</sup>

This mandate puts the organization squarely in the realm of affecting policy with regards to law enforcement information and other intelligence. On the other hand, DHS's creation did not include the one organization that, throughout its history, has been the elite force in national law enforcement and domestic intelligence—the FBI. From the beginning, syncing of DHS and the FBI was never intended. The lobby for the FBI was too strong and before the final decision was made to stand up DHS, the large intelligence bodies (DoD, FBI, and CIA) had positioned themselves to minimize the impact of a new

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<sup>42</sup> Brian A. Jackson, "The Challenge of Domestic Intelligence in a Free Society," RAND Homeland Security Program and the Intelligence Policy Center (Arlington, VA, RAND Corporation: 2009). 16.

<sup>43</sup> *Ibid.*, 18.

<sup>44</sup> Homeland Security Act of 2002, Sec 201, D-8.

bureaucracy. Andy McCarthy sums up this point perfectly when he states, “the department’s entire purpose was moot before it was even born...the original idea behind DHS was to solve the Wall problem—impediments to intelligence sharing that were making the FBI, our domestic intelligence service, ineffective.”<sup>45</sup>

In the event, the points of overlap and disconnection between DHS and the FBI pose their own in-built challenge to reconciling or streamlining the homeland intelligence function. Representative Sue Myrick, subcommittee chairwoman on the Permanent Select Committee on Intelligence, Subcommittee on Human Intelligence (HUMINT), Analysis, and Counterterrorism noted in January 2012:

There are key areas of overlap between the roles and responsibilities of DHS and other federal agencies, namely the FBI, including: The prevention and disruption of terrorist threats to the United States, including through the collection, analysis, and dissemination of intelligence information and warnings on terrorist threats; and the collection, analysis, and dissemination of information regarding vulnerabilities and preparedness with respect to terrorism.<sup>46</sup>

DHS was never intended to be a significant intelligence force multiplier. Some have argued that the department was an “ill-conceived”<sup>47</sup> attempt at creating a bureaucratic structure capable of being accountable and responsive to the protection of the homeland. If one of the goals of the administration was to provide the American people with a more robust solution, then the Federal Bureau of Investigation would have been the twenty-third organization added to the newly formed department. The FBI is the nation’s primary domestic intelligence organization, with an established presence in the Intelligence Community. With numerous reports proclaiming Sept. 11 was an

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<sup>45</sup> Tobin Harshaw, “The Homeland Secretary’s Job Security,” *New York Times*, January 1, 2010. <http://opinionator.blogs.nytimes.com/2010/01/01/the-homeland-secretarys-job-security/>; Andrew C. McCarthy, “The ‘Fire Napolitano’ Debate,” *National Review Online*, December 30, 2009, <http://www.nationalreview.com/corner/192101/fire-napolitano-debate-andrew-c-mccarthy>.

<sup>46</sup> The Role of DHS in the IC: A Report By the Aspen Institute: Hearing Before the United States House of Representatives, Permanent Select Committee on Intelligence, Subcommittee on Terrorism, HUMINT, Analysis, and Counterintelligence. 112th Cong. (January 18, 2012) (statement of Sue Myrick, Subcommittee Chairwoman).

<sup>47</sup> David Rittgers, “Abolish the Department of Homeland Security,” Policy Analysis, No 683, (September 11, 2011), CATO Institute, 17, <https://www.hsdl.org/?view&did=686964>.



intelligence failure that involved the FBI and the CIA, it seems reasonable that DHS would have gained command and control over the FBI.<sup>48</sup>

Each organization plays a role in combating terrorism. The FBI is to “protect and defend...against terrorist and foreign intelligence threats,” and DHS is to “prevent” them from even occurring.<sup>49</sup> In light of the perceived differences in mission, guidance in the Homeland Security Act of 2002 empowered affected Federal, State, and local law enforcement agencies, not DHS, to investigate and prosecute acts of terrorism.<sup>50</sup> Josh Filler contends that, “that clause, coupled with the FBI being kept out of DHS, has been a major factor in the division between DHS and the means to carry out its mission.<sup>51</sup>

#### **E. ARE FUSION CENTERS THE ANSWER?**

Without the FBI in its inventory, DHS is moving forward with establishing a networked relationship with fusion centers. This connection to the fusion centers is ideal because they are designed to collect domestic information and ensure that important information is shared with other agencies that have a need to know. There are seventy-seven fusion centers today, one in every state and twenty-two more that are “secondary designated” fusion centers.<sup>52</sup> These centers are owned and operated by the states and localities where they are located and are intended to meet the needs of the state government.<sup>53</sup> There is an expectation that each of these centers will collaborate and maximize their joint capabilities to keep Americans safe.

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<sup>48</sup> Ibid., 5–6.

<sup>49</sup> Homeland Security Act 2002, PUBLIC LAW 107–296, 6 US Code (2002): Section 201(d), 1A, B, C. <https://www.hsdl.org/?view&did=614>; Josh Filler, “The Disconnect between DHS and the Homeland Security Mission,” *Emergency Management*, February 15, 2010, <http://www.emergencymgmt.com/emergency-blogs/homeland/The-Disconnect-between-DHS.html>.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> GAO, “Information Sharing: DHS Could Better Define How it Plans to Meet its State and Local Mission and Improve Performance Accountability,” Homeland Security Digital Library, December 2010. <https://www.hsdl.org/?view&did=12819>. 19; Justin Lewis Abold, Ray Guidetti, and Doug Keyer, “Strengthening the Value of the National Network of Fusion Centers by Leveraging Specialization: Defining “Center of Analytical Excellence,” *Homeland Security Affairs* 8, no. 7 (June, 2012): 3, <http://www.hsaj.org/?fullarticle=8.1.7>.

<sup>53</sup> DHS OIG, “DHS’ Role in State and Local Fusion Centers is Evolving,” December 10, 2008, [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_09-12\\_Dec08.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_09-12_Dec08.pdf).

So where does DHS fit into this equation? In Public Law 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007, DHS was directed to “establish a Department of Homeland Security State, Local, and Regional Fusion Center Initiative to establish partnerships with State, local, regional fusion centers.” Through this initiative DHS will “provide operational and intelligence advice and assistance to State, local, and regional fusion centers,” and “support efforts to include State, local, and regional fusion centers into efforts to establish an information sharing environment.”<sup>54</sup> As a result, DHS has implemented its *Interaction with State and Local Fusion Center (SLFC) Concept of Operations (CONOPS)*. This CONOP is designed to “establish DHS presence in SLFCs, enable the national fusion center network, operate, and sustain investment and activities.”<sup>55</sup> DHS’s inability to break through the glass ceiling of the intelligence community and its relegation to a small intelligence role only raise more questions as to its utility in this regard.

DHS is supposed to be the ultimate fusion center. Establishing a link between the federal, state, local, tribal, and corporate partners is what DHS is chartered to do. Having such a massive bureaucratic organization and not giving it the authority and resources necessary to succeed shows a lack of commitment, by American lawmakers, towards instituting change necessary for success. When creating these centers, DHS was neither leading the effort nor were they consulted on how these resources should be organized. It was only after the fact that DHS has tried to establish a link with fusion centers. The department lacks the authority to direct actions so it has assumed the role of resourcing, personnel training, ensuring cooperation and coordination throughout the intelligence environment.<sup>56</sup> If this is all that DHS is responsible for doing, there could be an argument that the department should hand this responsibility over to another agency that has more of a direct role in the day-to-day intelligence collecting and analysis mission.

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<sup>54</sup> *Implementing Recommendations of the 9/11 Commission Act of 2007*, Public Law 110-53, U.S. Statutes at Large 121 (2007): 317, <https://www.hsdl.org/?view&did=478863>.

<sup>55</sup> Department of Homeland Security, “Interaction with State and Local Fusion Centers Concept of Operations,” Department of Homeland Security, 7, <http://www.fas.org/irp/agency/dhs/conops.pdf>.

<sup>56</sup> *Ibid.*, 9-14.

## F. STILL FLEDGLING IN THE INTELLIGENCE COMMUNITY

For nearly a decade, DHS continues to struggle to establish a strong intelligence security environment. Although there have been many initiatives put forward, a recent two-year study of DHS's progress in support of state and local fusion centers, published in October 2012 by the United States Senate Permanent Subcommittee on Investigations, argued that the Department is neither meeting expectations nor is it improving its compliance with its federal mandates.<sup>57</sup>

The report points out several relationship deficiencies between DHS and fusion centers. Many of them are significant and further support the argument that DHS is out of its league in the Intelligence Community. The report identified:

- DHS personnel assigned to fusion centers disseminated intelligence data that was of “uneven quality—oftentimes shoddy, rarely timely, sometimes endangering citizens’ civil liberties and Privacy Act protections, occasionally taken already-published public sources, and more often than not unrelated to terrorism.”<sup>58</sup>
- Involvement in improving the effectiveness of fusion centers was lacking. This included DHS’s lack of management and oversight of the centers’ counterterrorism intelligence reporting process and federal dollars provided to support operations<sup>59</sup>
- Some fusion centers were identified as lacking “either the capability or stated objective of contributing meaningfully to the federal counterterrorism mission. Additionally, “many didn’t consider counterterrorism an explicit part of their mission...some were simply not concerned with doing counterterrorism work.”<sup>60</sup>

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<sup>57</sup> United States Senate Permanent Subcommittee on Investigations: Committee on Homeland Security and Governmental Affairs, *Federal Support for and Involvement in State and Local Fusion Centers*, (October 3, 2012), 6, <https://www.hsdl.org/?view&did=723145>.

<sup>58</sup> U.S. Senate, *Federal Support for Fusion Centers*, 8.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

Each of these shortcomings is damaging to the credibility of the department. Not only does the Congress expect more but the American people deserve better, a sentiment echoed by Representative Coburn after his committee released the report.<sup>61</sup>

Probably the most egregious offense is the lack of fiscal accountability. Today, the United States nears a fiscal cliff where enormous spending cuts will take place in an effort to put the economy on a more fiscally responsible path. This fiscal cliff is rather steeper for DHS's inability to account for and show where more than \$1 billion in federal funds had been spent. Through review of many documents, the committee identified that significant amounts of federal funds were spent on things not related to the fusion center mission. Some examples provided included:

- Thirty-three thousand dollars spent on a Chevy Tahoe by Arizona's Department of Public Safety—which was money awarded to support Arizona's Counter Terrorism Information Center. One year later, an additional truck was purchased using the justification that the asset would serve as a Chemical, Biological, Radiological, and Nuclear response vehicle. In the end, the asset was given to the Arizona State University Police Department and outfitted as a K-9 vehicle.<sup>62</sup>
- Fifteen thousand dollars spent on ruggedized laptops to support the Northeast Ohio Regional Fusion Center which are utilized by the county medical examiner's office.<sup>63</sup>
- Eighty thousand dollars a month for two years, totaling \$960,000, to support lease space of the Arizona's Counter Terrorism Information Center. This transaction seems allowable, however, the rules prohibit using these funds for Management and Administration—and leases and rent falls within this category.<sup>64</sup>

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<sup>61</sup> U.S. Senate Permanent Subcommittee on Investigations, "Investigative Report Criticizes Counterterrorism Reporting, Waste at State & Local Intelligence Fusion Centers," Homeland Security and Governmental Affairs Press Release, <http://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>.

<sup>62</sup> U.S. Senate, Federal Support for Fusion Centers. 74–5.

<sup>63</sup> *Ibid.*, 78.

<sup>64</sup> *Ibid.*, 75–6.

As one analyzes these examples it is obvious that DHS is failing at providing the expected oversight of fusion centers required by the Homeland Security Act of 2002. This failing, in turn, gives the appearance of an intelligence framework on the brink of collapse.

## **G. CONCLUSION**

The intelligence apparatus following 9/11 has not experienced the necessary change it needs to be successful. The creation of DHS through the collective binding of different parts of other federal agencies has only clouded the view of what actions should have been implemented after such a tragedy. One of the missed opportunities was not including the FBI in this merger. As the premiere domestic intelligence organization, it only seems plausible that lawmakers would have added this necessary capability to DHS's toolbox. Having quasi-intelligence functions such as CBP and ICE are valuable, but they are inexperienced in the ways of collecting and fusing intelligence. Adding the FBI to the team would have linked all sources together for a more rapid interdiction across the nation.

Because DHS lacks true intelligence capacity and capability, the first recommendation is to remove the organization, as a whole, from the domestic intelligence equations. Its mission focus should be relegated to monitoring and securing the nation's borders through CBP; monitoring and enforcing immigration laws through ICE; and protecting the flying public from unauthorized use of the airways by aggressive non-state actors.

DHS, in many instances, is an impediment to successful intelligence work. This has been shown in the recent report completed by the U.S. Senate. This report shows that the link between DHS and fusion centers is fragile, almost non-existent with the exception of the federal funding provided. The truth of the matter is that fusion centers are not the answer to DHS's woes in the intelligence community. The viability of fusion centers remains strong even if one removed the department from its lines of communication. Additionally, DHS's formulation of HSINT is unlikely to gain traction

in the IC because it is out of the ordinary. The function of HSINT will only become relevant when one of the nation's major intelligence arms takes control of it.

The second recommendation is to make the FBI the link between the members of the IC, state, local, tribal and corporate partners. Since Sept. 11, the FBI has been the force behind disrupting terrorism plots such as the Brooklyn Bridge and Sears Tower attacks. The Bureau is so engrained in the American psyche as a defender of justice that it only makes sense that it leads the homeland in collecting and analyzing massive amounts of data to foil the next big plot. Its relationship and ties to the Department of Justice will help it be more sensitive to individual freedoms and civil liberties enjoyed by all Americans.

### III. A RENEWED FOCUS ON EMERGENCY MANAGEMENT

Before Sept. 11, FEMA was reeling from a mission change where it had to transition from preparing the nation for recovery from an all-out nuclear war to a new five-prong mandate:

- To improve state and local response and recovery capabilities
- To coordinate with other support providing federal agencies
- To provide federal aid to affected citizens
- Issue grants to affected state and local municipalities
- Be the lead agency for ‘grants, flood plain mitigation’ and other mitigation factors<sup>65</sup>

This five-prong mandate was implemented by James Witt. He was committed to reshaping the image of the organization and placing it on a path to long-lasting success. Unfortunately, FEMA’s merger with DHS following the Sept. 11 attacks created roadblocks and detours that hindered the organization from maintaining its focus on improving state, local, tribal government’s emergency management capabilities. For example in 2004 Secretary Ridge “removed numerous preparedness grant programs from FEMA and placed them in another office inside DHS.”<sup>66</sup> Additionally, Secretary Chertoff, in 2005, stripped FEMA of any remaining preparedness programs.<sup>67</sup> Without the management oversight of the preparedness grant programs, FEMA lost its ability to provide support in times of crisis. This weakness was evident during its response during Hurricane Katrina in 2005.

The preponderance of FEMA’s failures, both before and after the agency joined DHS, involved the lack of effective communication between FEMA and state and local emergency management offices. Additionally, the agency is continually beset with leaders who lack a background in emergency management who unintentionally create an

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<sup>65</sup> Richard T. Sylves, “Ferment at FEMA: Reforming Emergency Management,” *Public Administration Review* 54, no. 3 (May/June 1994): 303, <http://www.jstor.org/stable/976738>.

<sup>66</sup> U.S. Senate, “Special Report: A Nation Still Unprepared,” *Homeland Security Digital Library*. 222. <https://www.hsdl.org/?view&did=462746>.

<sup>67</sup> *Ibid.*

environment where lessons learned must always be relearned. These shortcomings are compounded even more now with FEMA in DHS. As a consequence of this merger, the agency's core principles have been reshaped to meet other priorities. FEMA's response to Hurricane Katrina demonstrated that its ability to respond in a timely manner with food, shelter, clothing, and financial assistance has been eroded by the new bureaucracy. Some are calling for FEMA to return to the basics of emergency management and leave homeland security to more clearly specialized agencies.<sup>68</sup>

#### A. THE RISE OF FEMA

Before 1950, emergency management's national identity consisted of an ad-hoc approach to response and recovery because national priorities were centered on keeping the world safe from a potential nuclear holocaust during the Cold War era.<sup>69</sup> In 1950, Congress passed legislation aimed at streamlining the federal response—the Disaster Relief Act. This law empowered federal agencies to respond in a timelier manner and provide disaster assistance to states and their municipalities in the wake of a major disaster.<sup>70</sup>

For nearly 30 years following the passage of the Disaster Relief Act, emergency management oversight transitioned from one federal agency to another. The 1950 Act placed responsibility on senior leaders to determine when federal assistance was needed. State governors were required to request assistance, and the President had to make a federal declaration making available federal personnel, expertise, equipment, and funding. But constant shifts in oversight and renewed focus on providing required assistance, the nation's emergency management bureaucracy still operated as if it was paralyzed—each level of government—the states and federal government—waited for

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<sup>68</sup> Patrick Roberts, "FEMA After Katrina," *Policy Review* no. 137 (June, 2006), 5. <http://www.hoover.org/publications/policy-review/article/7897>.

<sup>69</sup> DHS Office of Inspector General, "FEMA: In or Out?" *Homeland Security Digital Library* (February 2009), 3. <https://www.hsdl.org/?view&did=229723>.

<sup>70</sup> FEMA, "A Citizen's Guide to Disaster Assistance," [http://training.fema.gov/emiweb/downloads/is7unit\\_3.pdf](http://training.fema.gov/emiweb/downloads/is7unit_3.pdf). From 1803 to 1950, Congress passed 128 separate disaster assistance laws to help states that had been overwhelmed by a major disaster. During this period in history, states bore the burden for funding preparation, response and recovery efforts. The federal government was a source of last resort when the local capabilities were overextended.



the other to make the first move. Eventually, miscues such as the botched response to the Three Mile Island Unit No. 2 Nuclear Power Plant accident in March 1979 were more than the Executive could bear.<sup>71</sup> As a consequence, on July 20, 1979, President Jimmy Carter used his executive power and issued Executive Order 12148 thereby forming the Federal Emergency Management Agency.<sup>72</sup>

The agency's primary responsibility, at conception, was to take on the nation's civil-defense mission that focused on ensuring that the United States could survive and recover from a nuclear attack. In addition to its responsibility for civil defense, FEMA had to focus on natural disaster response and recovery operations with a mandate to establish and strengthen communications with state and local emergency management agencies.<sup>73</sup> But as a Department of Homeland Security Inspector General (IG) Report noted, even after the creation of FEMA, emergency management operations were still disconnected and "struggled to become a cohesive, effective organization."<sup>74</sup>

## **B. A WAKE-UP CALL FOR THE AGENCY**

What started out as a calm day in Florida's Dade County quickly turned into a frightful event that the state would never forget. Tropical Storm Andrew, which formed off the coast of West Africa, moved through the Atlantic Ocean with an eye focused on the southern Florida coastline. On its trip, Tropical Storm Andrew's force teetered back and forth and nearly subsided before reaching Bermuda and Puerto Rico. Unfortunately for residents in South Dade County, the storm encountered favorable weather conditions that quickly intensified the storm to Category 4 status. Andrew first reached landfall on August 23, 1992, near Homestead, Florida, where the National Hurricane Center reported "142 miles per hour sustained winds and 169 miles per hour gust" with an initial

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<sup>71</sup> Richard T. Sylves, "Ferment at FEMA: Reforming Emergency Management," *Public Administration Review* 54, No. 3(May/June 1994): 303, <http://www.jstor.org/stable/976738>.

<sup>72</sup> This organization has been considered a "secret government" because it was not created through congressional means but as a result of a Presidential Executive Order. This fact has likely contributed to the apprehensive relationship between Congress and the agency.

<sup>73</sup> Harry V. Martin, "Secret Government," accessed December 5, 2011, <http://dmc.members.sonic.net/sentinel/gvcon6.html>.

<sup>74</sup> DHS IG, 4.

seventeen-foot storm surge wall at the landfall point. The sustained winds and gust alone made it the third-most intense hurricane on record to ever hit the United States.<sup>75</sup>

Andrew quickly pushed through to South Dade County, which many survivors claimed was not an area expected to feel the full force of the storm. Therefore, most of South Dade County's 415,000 residents remained in their homes, expecting the storm to pass by with the force of the storm being absorbed by Miami. Through the course of the storm's travels, there existed a limited capability of the National Hurricane Center to effectively predict the storm's path. Reports across the Florida peninsula warned residents of Miami to begin evacuations and implement emergency management shelter, response, and recovery plans. A shift of a mere five degrees south from the original course placed South Dade County in the center of the storm's bulls-eye, with local notifications and the powerful storm strike only minutes apart.<sup>76</sup>

The lack of notification was a major hindrance to emergency planning in South Dade. As the storm raged over the Bahamas at the Category 4 level, many of Florida's residents were expecting the storm to take a different path. There is at least one report that declared the storm was miscalculated by weather personnel. In the story of Harold Keith, a survivor of the storm, it accounts that the National Hurricane Bureau was well aware of the Hurricane's track but chose to shelter only residents of Palm Beach and Miami due to limited shelters.<sup>77</sup>

Hurricane Andrew was the third-costliest hurricane in American history. It caused more than \$26 billion in damage, but surprisingly, only 23 directly related deaths.<sup>78</sup> Additionally, 250,000 of the county's 415,000 residents were reported as homeless<sup>79</sup> and a staggering 126,000 homes destroyed.<sup>80</sup>

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<sup>75</sup> National Hurricane Center, "Hurricane Andrew," <http://www.nhc.noaa.gov/outreach/history/#andrew>.

<sup>76</sup> K.T. Frankovich, "Deadly Silence," [http://www.bariumblues.com/deadly\\_silences.htm](http://www.bariumblues.com/deadly_silences.htm).

<sup>77</sup> Ibid.

<sup>78</sup> Eric Bradley, Christopher W. Landsea, and Ethan J. Gibney, "The Deadliest, Costliest, and most Intense United States Tropical Cyclones from 1851 to 2010 (and other frequently requested hurricane facts), 9, <http://www.nhc.noaa.gov/pdf/nws-nhc-6.pdf>.

<sup>79</sup> Frankovich, "Deadly Silence," 11-14.

In the aftermath of the hurricane, the wind and rain torn municipalities in South Dade waited for help and assistance from any and every one. The likely source of recovery following something this devastating had to originate from the outside, preferably the federal agency created specifically for this purpose—FEMA. Andrew served as an eye-opener for FEMA. During this time of crisis, limitations in communication between federal, state, and local emergency management agencies were highlighted. Over the course of 72 hours, FEMA was nowhere to be found.<sup>81</sup> Although Florida had submitted a request for federal assistance through normal channels, Dade County emergency manager, Kate Hale, was flabbergasted at the lack of federal support received in the early efforts of recovery. She cried out, “Where the hell is the cavalry on this one? We need food! We need water! We need people! If we do not get more food into the south end (South Dade) in a very short period of time, we are going to have more casualties.”<sup>82</sup>

The agency was required to act only after receiving a Presidential federal emergency declaration, which, in turn, had to be prompted by a request from state officials. This significantly hampered the agency’s ability to be proactive and respond to the wind torn region of South Florida. The slow response diminished the trust in the organization created to provide relief and comfort during national emergencies such as this. As a result of these failures, senior leaders took action and decided that changes needed to be made.<sup>83</sup>

### **C. FEMA GOES TO CONGRESS**

The biggest critic of FEMA is the U.S. Congress. Congress took FEMA to task following the less-than-stellar response by the agency in the aftermath of Hurricane Andrew. Congress commissioned two studies of FEMA, one by the U.S. General

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<sup>80</sup> “FEMA learned from Hurricane Andrew in 1992,” *USA Today*, August 29, 2004, [http://www.usatoday.com/weather/hurricane/2004-08-26-charley-fema\\_x.htm#](http://www.usatoday.com/weather/hurricane/2004-08-26-charley-fema_x.htm#).

<sup>81</sup> Daniel Franklin, “The FEMA Phoenix: Reform of the Federal Emergency Management Agency,” *Washington Monthly* (July/August 1995). <http://www.washingtonmonthly.com/features/2005/0509.franklin.html>.

<sup>82</sup> Frankovich, “Deadly Silence,” 10.

<sup>83</sup> Sylves, “Ferment at FEMA,” 303.

Accounting Office (GAO) and one by the National Academy of Public Administration (NAPA) in 1993. Both reports put the agency under a very critical light, asking whether FEMA should be dismantled; what type of relationship the agency should have with the U.S. military; ways to improve the relationship between the agency and civil defense as they respond to a nuclear incident; general areas for improvement; a need for a streamlined working relationship with state and local emergency elements; and the need to bolster interaction with both the executive and legislative branches.<sup>84</sup>

Of the two commissioned studies, NAPA's *Coping with Catastrophe* provided the most insightful recommendations to the Congressional committees. The study did not advocate for the outright abolition of FEMA because NAPA determined a need existed for a federal entity to manage recovery and response operations during periods of national crisis. In the aftermath of Andrew, the military bore the brunt of the recovery efforts because FEMA's actions were not well coordinated to meet the need. This opened a debate as to whether the military was better suited to handle domestic relief efforts and whether the agency should be restructured and placed under the Department of Defense. NAPA's study concluded "that core domestic emergency management operations should not be transferred to the military and that the military should assume a supplemental disaster relief role."<sup>85</sup>

The reports were also clear that the relationship between FEMA and Congress required improvement. One of the recommendations was for Congress to develop "a clear legislative charter"<sup>86</sup> that would reduce the number of committees providing oversight of the organization. This streamlined approach to oversight would allow the agency the flexibility it needed to amass capabilities and allow Congressional personnel to focus on providing the agency the tools it needed to be successful.<sup>87</sup> Congress took another bold step when it passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), an amended extension of the Federal Disaster Relief Act

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<sup>84</sup> Sylves, "Ferment at FEMA," 303.

<sup>85</sup> Ibid., 304.

<sup>86</sup> Sylves, "Ferment at FEMA," 306-7.

<sup>87</sup> Ibid., 306-7.

of 1950, giving the President more latitude to use federal resources in response to domestic emergencies. The Stafford Act also empowered the president to use military personnel and equipment whenever necessary to support a state declared emergency or major disaster. The Stafford Act further clarified the process by which governors or the state appointed representative must work with FEMA to request federal assistance. It established timelines for requests to be submitted and identified cost-sharing levels of support. Under these cost-sharing measures, the federal government is responsible for no less than seventy-five percent and the non-federal funds provided to states are usually in the form of interest-bearing loans from the Small Business Association.<sup>88</sup>

#### **D. A NEW BEGINNING**

Restructuring of FEMA seemed to be the only logical solution to remedy some of the challenges it constantly faced when dealing with state and local offices. The primary limitation was the lack of understanding by local and state agencies of how to request assistance either before the incident occurs or in the aftermath. One of FEMA's core tenets is to ensure state agencies understand how to communicate their needs so they are able to get the assistance required in a timely manner.<sup>89</sup>

In the wake of Andrew and the reports to Congress, James Lee Witt was appointed FEMA director by President Bill Clinton in 1993. Mr. Witt was the first qualified emergency management professional to lead the agency. His emergency management background included being appointed the director of Arkansas' Office of Emergency Services (OES) and serving in this post from 1988–1992. While serving as director of OES, he oversaw the merger of the state's Fire Protection Services Program which included its board and grant programs.<sup>90</sup> He replaced Wallace E. Stickney, an engineer, career government employee, and director during the failed response to Hurricane Andrew, and acting director William C. Tidball, also a career government

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<sup>88</sup> James E. Baker, *In the Common Defense* (New York, NY: Cambridge University Press, 2007). 272-73.

<sup>89</sup> Eric Holdeman, "Destroying FEMA," *Washington Post*, August 30, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/29/AR2005082901445.html>.

<sup>90</sup> The Encyclopedia of Arkansas History and Culture, "James Lee Witt," <http://www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=3709>.

employee; neither had any previous emergency management experience. Mr. Witt's first order of business was to motivate the organization to improve its response and recovery capabilities to man-made or natural disasters. Mr. Witt described his plan during a Senate confirmation hearing in which he pledged to "develop a partnership, a new partnership, wherein the Congress, the White House, Federal agencies, state and local emergency management agencies, and private organizations are partners in planning and executing the emergency management program."<sup>91</sup>

This declaration was what the agency needed to repair the internal shortcomings realized by the growing reduction in morale. Witt's also committed to bridging the gaps between the federal, state, local, tribal, and private agencies with a streamlined focus on mitigation, preparation, response and recovery during and natural disaster events. In addition to the renewed focus on emergency management practices, he was able to establish a direct relationship with the president because the FEMA director was now a Cabinet-level position—giving him and his staff unimpeded access for immediate decision making during times of crisis.

#### **E. FEMA AFTER 9/11**

FEMA seemed better prepared to respond following the Sept. 11 terrorist attacks. There were three procedural changes that made the difference:

First, FEMA did not require state or local governments to provide a share of federally provided disaster response and recovery costs. The second distinct aspect of FEMA's public assistance to New York was that there was a funding target that became a cap on the level of the assistance. Third, the size and type of work funded were quite different from the public assistance provided after prior major natural disasters.<sup>92</sup>

Each of these changes removed a significant hindrance that had impeded FEMA's ability to respond during Hurricane Andrew. Removing these administrative roadblocks opened up communication lanes and allowed disaster assistance to occur quickly. Hence,

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<sup>91</sup> Nomination of James Lee Witt: Hearing before the Committee on Governmental Affairs United States Senate, 103<sup>rd</sup> Cong. 6 (March 31, 1993), <http://archive.org/details/nominationofjame00unit>.

<sup>92</sup> GAO Report, "Disaster Assistance: Information on FEMA's Post 9/11 Public Assistance to the New York City Area," (August 2003), 5–6, <http://www.gao.gov/new.items/d03926.pdf>.

approximately \$8.8 billion in public assistance in the form of “grants to state and local governments for emergency response, such as debris removal, and permanent work, such as the repair of disaster damaged public facilities”<sup>93</sup> was issued, making it the largest aid package ever rendered by the agency.<sup>94</sup> Although there were still oversight and funds management problems uncovered by the GAO following the response, the changes implemented under Witt, opened the gateway for FEMA to meet executive and legislative mandates for providing support to those in need following the terrorist attacks.

## **F. MESSING WITH SUCCESS**

Following the events on Sept. 11, President Bush directed the establishment of DHS in an effort to consolidate resources and streamline intergovernmental agency interaction designed to prevent future terrorist attacks. FEMA would be absorbed by the department because of its earlier role in civil defense. Now the agency added detection and prevention of weapons of mass destruction to an already long to do list. Although FEMA has always been viewed as “a president-serving and president-dependent agency,”<sup>95</sup> this organizational realignment was the end of the agency’s autonomy and its direct link to the President was dissolved.

The loss of FEMA’s autonomy and presidential backing was only one of the organization’s setbacks. FEMA, as a member of DHS, must also compete with 21 other federal agencies for departmental funding. In addition, the lines of communication between federal and state emergency management office are even more diluted as an additional layer of bureaucracy is added. Local emergency managers, who need to understand how the system works, expressed concern that they are unaware of whom to communicate their requirements to. This point was made by Russ Decker, an Ohio emergency management director, when he expressed his frustration with the new

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<sup>93</sup> GAO Report, “Disaster Assistance,” Introduction.

<sup>94</sup> Ibid., 1–2.

<sup>95</sup> Richard Sylves and William Cumming, “FEMA’s Path to Homeland Security: 1979-2003,” *Journal of Homeland Security and Emergency Management* 1, iss. 2 (2004): 1.

organizational setup by asking, “Are we supposed to talk to the DHS guy? Are we supposed to talk to the FEMA guy? Who are we supposed to be talking to to get help?”<sup>96</sup>

President Bush’s appointment of Joseph Allbaugh as the FEMA Director to replace James Witt heralded a new era for emergency management in the United States. Mr. Allbaugh, unlike James Witt, had zero emergency management experience. Prior to his appointment, he worked as one of President Bush’s campaign managers. Additionally, DHS was creating a staff filled with young, new, and energetic personnel whose main focus, as one of the staffers put it, was to “detect and defeat terrorism so there would be no need for response and recovery.”<sup>97</sup> There was a level of uncertainty now that FEMA’s core mission is overshadowed by terrorism. This level of uncertainty is sure to bring back remnants of old FEMA, an organization unable to provide lifesaving and sustaining support to American citizen after a disaster.<sup>98</sup>

## **G. THE TEST**

Nearly four years after the attacks on New York and the Pentagon, the administration would be given a chance to prove that its decision to create DHS and place FEMA under its command and control was indeed the right decision for the nation. On August 29, 2005, another devastating storm struck the Gulf Coast of the United States. The areas hit hardest were New Orleans, Louisiana, and the Gulf Coast of Mississippi, where the cost rose into the billions. Ultimately, Hurricane Katrina caused some three times the devastation of Hurricane Andrew.<sup>99</sup>

Tropical Storm Katrina formed while moving through the Bahamas on August 24, 2005. The storm became a Category one storm two hours before it made landfall in

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<sup>96</sup> Brian Naylor, “Should FEMA Remain Part of Homeland Security?” February 2009, <http://www.npr.org/templates/story/story.php?storyId=100012612>.

<sup>97</sup> Leo Bosner, “Part Three: FEMA during the Bush Years (2001 – 2004),” [http://truth-out.org/index.php?option=com\\_k2&view=item&id=2515:part-three-fema-during-the-bush-years-2001--2004](http://truth-out.org/index.php?option=com_k2&view=item&id=2515:part-three-fema-during-the-bush-years-2001--2004). Leo Bosner is a former FEMA employee from the 1979-2008. He was also president of the FEMA Headquarters employees’ union, AFGC Local 4060.

<sup>98</sup> Sylves, “FEMA’s Path to Homeland Security,” 15–16.

<sup>99</sup> Vincent Laforet, “Hurricane Katrina,” *New York Times*, Aug 25, 2010, [http://topics.nytimes.com/top/reference/timestopics/subjects/h/hurricane\\_katrina/index.html](http://topics.nytimes.com/top/reference/timestopics/subjects/h/hurricane_katrina/index.html).



South Florida. Katrina pushed through the southern tip of Florida and intensified once it hit the warm waters of the Gulf of Mexico. As the storm plowed through the Gulf on August 26, it quickly became a Category two hurricane. Over the course of 48 hours, the storm's central pressure dropped considerably causing sustained winds to increase from "95 mph to an estimated 175 mph...making Katrina a Category 5."<sup>100</sup> On August 29, in the early hours of the morning, Hurricane Katrina made landfall along the southeastern coast of Louisiana as a Category 4 storm with the potential of storm surges upwards of 20 to 25 feet. Nearly three hours after making the initial landfall, Hurricane Katrina pummeled New Orleans with sustained winds of 145 mph and 15 foot storm surges. Katrina and all its fury caused three of New Orleans' levees to breach, causing much of the city, which already sits below sea level, to experience massive flooding. The effects of the flooding were hard to overcome because of the failure of the levee pumps and the overwhelming number of citizens and tourists, estimated to be 100,000, who still remained in the city. The death toll from the storm totaled an approximate 1,200 people while tens of thousands more were displaced.

Many who were unable to leave took refuge in the Louisiana Superdome. There were many sick, elderly, and bed-ridden people in hospitals and nursing homes who suffered a horrific fate as staff members chose not to evacuate patients due to either the lack of capability or the means to acquire it. This was the case at the St. Rita's nursing home, where 40 of the 60 residents died as a result of the floodwaters overtaking the facility. The owners of this facility were later convicted of negligence for refusing to follow a mandatory evacuation mandate, contributing to the untimely death of its residents.<sup>101</sup>

Katrina offered FEMA another opportunity to prove how important it was to the country. In the Witt years, the agency appeared to have recovered from the internal and organizational problems it experienced before, during, and following Hurricane Andrew. FEMA's performance leading up to and following the Gulf Coast storm reminded many

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<sup>100</sup> National Oceanic and Atmospheric Administration, "Service Assessment: Hurricane Katrina August 23-31, 2005," <http://www.nws.noaa.gov/om/assessments/pdfs/Katrina.pdf>.

<sup>101</sup> Laura Parker, "What Really Happened at St. Rita's?" *USA Today*, November 28, 2005. [http://www.usatoday.com/news/nation/2005-11-28-st-ritas\\_x.htm](http://www.usatoday.com/news/nation/2005-11-28-st-ritas_x.htm).

of the failed response that occurred in Florida in 1992.<sup>102</sup> During the response to Katrina, FEMA was slow to move critical supplies such as ice and water to affected areas. Additionally, FEMA failed to review the lessons learned from the previous year's simulation exercise, *Hurricane Pam*, which addressed many of the issues the organization experienced in the aftermath of Katrina.<sup>103</sup>

Some of those lessons learned from that earlier exercise involved the need for additional landfills to store debris, and a need for additional shelters, staffing, and a plan to replenish them. Also, transportation plans were developed to address the movement of stranded residents from the affected area as well as the transport of patients and the resupply of hospitals.<sup>104</sup> Every issue identified during the *Pam* exercise came to fruition. In the aftermath of Katrina, 100 million cubic yards of debris needed to be removed and two years after the event, more funding was still needed to support the cleanup effort<sup>105</sup>; thousands of people were displaced and housed in the Superdome as a make-shift shelter; and residents waited for days to be rescued from the flood stricken areas while many of the local hospitals and nursing homes, like St. Rita, were unable to relocate its patients due to limited numbers of helicopters and busses to support the plan.<sup>106</sup>

Questions begin to arise as to how an organization could completely fail to do its job. Consistent failures of the organization resurfaced discussions of whether the agency needed to remain within DHS.<sup>107</sup> FEMA seemed to have reverted to its pre-9/11 state which, as with the aftermath of Hurricane Andrew, led to renewed Congressional scrutiny

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<sup>102</sup> Seth Borenstein, "Federal Government Wasn't Ready for Katrina, Disaster Experts Say," *Knight Ridder*, <http://www.mcclatchydc.com/2005/08/31/12240/federal-government-wasnt-ready.html>.

<sup>103</sup> Leo Bosner, "Part One: FEMA and Disaster-a look at What Worked and What Didn't from a FEMA insider," <http://www.truth-out.org/fema-and-disaster-look-what-worked-and-what-didnt-fema-insider/1312379185>.

<sup>104</sup> Global Security, "Hurricane PAM," <http://www.globalsecurity.org/security/ops/hurricane-pam.htm>.

<sup>105</sup> CRS Report, "Disaster Debris Removal after Hurricane Katrina: Status and Associated Issues." Accessed September 7, 2012, <http://www.fas.org/sgp/crs/misc/RL33477.pdf>.

<sup>106</sup> Global Security, "Hurricane PAM." Accessed September 5, 2012. <http://www.globalsecurity.org/security/ops/hurricane-pam.htm>. Global Security, "Hurricane Katrina – Week 2," <http://www.globalsecurity.org/security/ops/hurricane-katrina-02.htm>.

<sup>107</sup> Joseph I. Lieberman, "Hurricane Katrina: A Nation Still Unprepared: Additional View," <http://www.npr.org/documents/2006/apr/katrina/additionalviews.pdf>.

and prompted the legislative branch to pass the 2006 Post Katrina Emergency Reform Act.<sup>108</sup> This piece of legislation, led by Senators Susan Collins and Joseph Lieberman, would revise the current Stafford Act and set in place provisions to:

Reform and reorganize national preparedness and response; make staffing improvements to the Department of Homeland Security (DHS) and the Federal Emergency Management Agency; improve disaster planning, including the evacuation of people with disabilities and other vulnerable populations; improve preparedness and training; and implement new measures to prevent fraud, waste and abuse during emergencies.<sup>109</sup>

## **H. WHAT IS WRONG WITH FEMA?**

Under the leadership of James Witt, FEMA lost the stigma of an incompetent and incapable federal agency.<sup>110</sup> So what went wrong during Katrina? The simple answer is that it was the lack of effective, professional leadership. This was noted in a “Special Report,” conducted in 2006 by the Senate’s Committee on Homeland Security and Governmental Affairs; where Michael Brown, FEMA director during the response to Katrina, was criticized for lacking “the leadership skills that were needed”<sup>111</sup> to lead the agency. Additionally, DHS Secretary at the time, Michael Chertoff, was also cited for lacking leadership, which contributed to the failed response. The report stated:

More broadly, DHS – as the Department charged with preparing for and responding to domestic incidents, whether terrorist attacks or natural disasters – failed to effectively lead the federal response to Hurricane Katrina. DHS leadership failed to bring a sense of urgency to the federal government’s preparation for Hurricane Katrina, and Secretary Chertoff himself should have been more engaged in preparations over the weekend before landfall.<sup>112</sup>

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<sup>108</sup> Stephen Barr, “New FEMA Emerges from the Wreckage of Past Disaster,” *Washington Post*, February 7, 2011, [www.washingtonpost.com](http://www.washingtonpost.com).

<sup>109</sup> National Low Income Housing Commission, “Post Katrina Emergency Management Reform Act of 2006: Overview of Housing,” <http://www2398.ssldomain.com/nlihc/doc/080906.pdf>.

<sup>110</sup> DHS OIG, “FEMA: In or Out?” *Homeland Security Digital Library* (February 2009), 5, <https://www.hsdl.org/?view&did=229723>.

<sup>111</sup> U.S. Senate, “Special Report: A Nation Still Unprepared,” *Homeland Security Digital Library*, 6, <https://www.hsdl.org/?view&did=462746>.

<sup>112</sup> *Ibid.*

Former Director James Witt commented on the Katrina response to a reporter from *Knight-Ridder* news in August 2005, essentially highlighting FEMA unpreparedness. He stated, “These things need to be planned and prepared for; and it just doesn’t look like it was.”<sup>113</sup>

There have also been claims that the funding programmed, planned, and budgeted by FEMA continues to be redirected to meet other priorities within DHS.<sup>114</sup> Former FEMA Administrator Brown noted in his testimony before the Select Committee that funding after moving to DHS became contentious. The organization continued to experience budget cuts despite Brown’s call for a funding to support catastrophic disaster planning. He recounts being told in 2005 by DHS’s Under Secretary for Management, Janet Hale, to not request this funding because “you are not going to get it.” She further explained that if Administrator Brown would push back and submit anyway he would be viewed as not being a “team player.”<sup>115</sup>

## I. FIXING THE FEMA PROBLEM

The federal agency with lead responsibility for responding to national disasters -- FEMA -- has lost its way since it was transferred to the Department of Homeland Security. This is simply not the same agency that responded so effectively to the Oklahoma City bombing in 1995.

— Congressman Sandy Levin<sup>116</sup>

The big problem with FEMA, as outlined by Congressman Sandy Levin, is the loss of identity now that it is part of DHS. Leaders within the executive and legislative branch must assist in establishing the identity of the agency they lean so heavily on during times of crises. In many cases this has been done through the Stafford and Post Katrina acts which have expanded and clarified roles and responsibilities for emergency

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<sup>113</sup> Borenstein, “Federal Government Wasn’t Ready.”

<sup>114</sup> “Special Report,” 216–217.

<sup>115</sup> House of Representatives, Select Bipartisan Committee to Investigate Preparation For and Response To Hurricane Katrina, “Deposition—FEMA Director Michael Brown,” *Homeland Security Digital Library*. Accessed September 10, 2012, <https://www.hsdl.org/?view&did=467790>, 43–44.

<sup>116</sup> “Providing For Consideration of the Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From Consequences of Hurricane Katrina, 200,” accessed 10 February 2012, <http://levin.house.gov/providing-consideration-second-emergency-supplemental-appropriations-act-meet-immediate-needs>.

management. There exists a huge debate as to whether FEMA and DHS should continue its marriage in hopes that the results will mirror those of the U.S. military as a result of the Gold-Waters Nichols Act. This act's purpose was to design a culture of jointness among the Services, in order to improve coordination, communication, and cooperation in peacetime and wartime.<sup>117</sup>

There are many who view the merger a positive sign for the future. Scholars like Jenna McNeil of the *Heritage Foundation* proposed five reasons that FEMA should remain part of DHS. The first reason is that despite the call for separating the two organizations, it will not make the U.S. safer. She argues that removing FEMA will not protect the nation from "acts of terror or natural disaster."<sup>118</sup> Doing so would inhibit cooperation and coordination with other federal entities like TSA and the Coast Guard who play a role in responding to disasters. Second, constant restructuring will hamper the organization to capitalize on the gains it has made. Third, removing FEMA would minimize the involvement of the federal government. Fourth, senior leaders are confident that the necessary oversight of disaster operations will be taken care of by the Secretary of DHS. Finally, she believes that the current organization structure is working. Each of these reasons appears to be sound, but they continue to run into resistance.<sup>119</sup> Those on the opposite aisle, like Senator Levin, constantly call for separating FEMA from DHS; other former agency employees are just as passionate. For example, Andrew Sachs, a former FEMA employee before the merger, said:

The agency has to have the flexibility to make decisions on the fly on the ground within the broad authorities that it has. Now there is no decision that can't be made without it having to go back to Washington, D.C., and that causes problems when you're dealing with a disaster time frame and a disaster context.<sup>120</sup>

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<sup>117</sup> "FEMA: In or Out?" 14.

<sup>118</sup> Jenna Baker McNeil and Jessica Zuckerman, "Five Reasons FEMA Should Stay at DHS," *The Heritage Foundation*, No 2736, (December 15, 2009), 1–2

<sup>119</sup> Jenna Baker McNeil and Jessica Zuckerman, "Five Reasons FEMA Should Stay at DHS," *The Heritage Foundation*, No 2736, (December 15, 2009), 1–2.

<sup>120</sup> Brian Naylor, "Should FEMA Remain Part of Homeland Security?" February 2009, <http://www.npr.org/template/story/story.php?storyId=100012612>.

Former Administrator Michael Brown also spoke out against the merger despite being named the first Administrator under DHS. He expressed that adding FEMA to DHS's organizational structure would "fundamentally sever FEMA from its core function," "shatter agency morale," and "break long standing, effective and tested relationships with states and first responder stakeholders."<sup>121</sup>

## **J. CONCLUSION**

It is important for the American people to have complete trust and confidence in its government to assist during times of overwhelming destruction and despair that results from man-made or natural disasters. Today, FEMA is part of the Department of Homeland Security as a direct result of the September 11 terrorist attacks. This shift in organizational culture has muddied the waters for the organization as it searches to understand which role it should focus on, terrorism or natural disasters, while also competing for funding against more than twenty additional agencies. Additionally, the organization in the past has consistently been plagued with ill-trained and ineffective leadership which was the crux of its failures prior to Hurricane Katrina. President Clinton's appointment of James Witt, a seasoned emergency management specialist, as his FEMA director showed the importance of having qualified leadership in the organization. FEMA refocused itself and started to show the American people that it was capable of accomplishing its federal mandate. Not only was it able to perform, but the organization had direct access to the Executive. Following 9/11, this direct access was severed as FEMA lost its autonomy and placed inside of DHS. Problems that resulted from this realignment were realized during the response and recovery efforts to Hurricane Katrina. The sitting Administrator was not qualified therefore he was unable to lead the organization in the aftermath of the storm. It quickly became evident that FEMA had returned to the FEMA of old.

DHS was created as a response to terrorism not to combat hurricanes, tornadoes, wildfires, and earthquakes; therefore, FEMA has no place within the organization. When

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<sup>121</sup> Patrick Roberts, "FEMA after Katrina," *Policy Review* (June 1, 2006), no. 137, [www.hoover.org/publication/policy-review/article/7897](http://www.hoover.org/publication/policy-review/article/7897).

extreme natural disaster events happen and requires a federal response, no one is looking for DHS; everyone is looking for answers from FEMA and the President of the United States. FEMA is an American staple and needs to be resurrected to a stand-alone agency so it can prepare and perform the job it was designed to do.

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## IV. CONCLUSION

This thesis set out to answer the question of whether the Department of Homeland Security has outlived its usefulness. Additional questions that the thesis set out to answer included: how effective is the department and should it be abolished, why was not the FBI included in the merger which created DHS, how well has DHS performed its intelligence mission, and should FEMA remain part of DHS. The framework used to reach a conclusion was an analysis of two of DHS's most important functions—intelligence and emergency management. The assumption was that reviewing these functions would either justify DHS's creation or prove that it is no longer necessary and should be restructured, at best, or abolished.

Chapter I of this thesis recognized that this study would not be all-inclusive, meaning that there are other DHS agencies, specifically Customs and Border Protection, Transportation Security Agency, Secret Service, or the Coast Guard, that could be studied in order to arrive at an absolute conclusion regarding whether DHS has outlived its usefulness. Yet, it highlighted some of the problems that stem from DHS's creation, which included how the organization was formed. Essentially, it was a rapid and ad-hoc commingling of 22 different federal agencies, with different tasks and organizational structures, which were now expected to join forces to prevent terrorism in the United States.

There was very little commonality in what these agencies did day to day before joining DHS and there is still some apprehension that after establishing DHS, many of the functions still don't fit—for example, the Federal Emergency Management Agency. Another problem was that each of these new functions added to its task list a new mission that involved combating terrorism. The thesis notes that the formation of DHS was the largest bureaucratic transformation since the creation of the Department of Defense in 1947. Even in establishing DoD, though, the different military services had a common bond, which was to fight the nation's wars. This common bond did not exist for of the several agencies newly assigned to DHS in 2002. The lack of a common bond, as this

thesis explored, affected the effectiveness of DHS inside of the intelligence community as well as the role it played in emergency management.

In Chapter II, this thesis addressed the role of DHS within the IC. It was noted that by law, DHS was expected pull information from the various members of the IC, perform an analysis, and provide recommendations on how to prevent the next big attack inside the homeland. It was determined that shortly after the signing of the Homeland Security Act of 2002, DHS's task to assimilate information was removed when the Office of the Director of National Intelligence (ODNI) was established. This was the first of many roadblocks for the organization. Another roadblock was the missed opportunity to add the Federal Bureau of Investigation to DHS's organizational structure. What was lost was the credibility the department would have gained from having an existing member of the IC with a history of preventing, investigating, and protecting against extreme events, such as terrorism, on its team. This would have given the organization instant legitimacy among the other intelligence agencies when dealing with domestic intelligence.

Chapter II also focused on the events surrounding the underwear bomber plot, which occurred on December 25, 2009. It looked at missed opportunities and failures across the board to include one of DHS's agencies, the Transportation Security Agency. What was found is that information was collected by different agencies within the IC. Some of the information was shared and some was not, so the nation nearly repeated the 9/11 event because implemented fixes to the system did not work. It was realized that failure in this regard was not solely DHS's fault, but the quick admission by DHS's Secretary Napolitano that "the system worked," promoted a closer look at the department and the role it plays in the intelligence arena. The results of this closer look revealed that of the 40 reported terrorist plots attempted and thwarted since 9/11, it is unclear that DHS has had anything to do with preventing them. What was determined is that the FBI is not only protecting the homeland but it is also preventing terrorism—which is a task given to DHS to perform.

Despite DHS's inability to be a leader in the intelligence community, it was given another opportunity to excel. In 2007, the Implementing Recommendations of the 9/11 Commission Act was signed into law, which tasked DHS to implement a fusion center

initiative that would link Federal, State, and local fusion centers to improve the information sharing between these levels of government. The question here was: would fusion centers be the answer to DHS's intelligence woes? What was determined was that the relationship between fusion centers and DHS is one based purely on the federal dollars the department provides. DHS does not exercise any oversight of the centers. In fact, these centers are state run and operated with no jurisdictional or operational ties to the federal government. The relationship between fusion centers and DHS has been a fledgling one. There are very few examples of any success that can be derived from their relationship. A 2012 report, completed by the U.S. Senate Permanent Subcommittee on Investigation, reveals many ongoing problems that exist between DHS and fusion centers. Some of these problems are: DHS personnel assigned to fusion centers are unqualified and provide poor quality assessments that oftentimes border on violations of civil liberties; DHS still does not exert oversight and management of what information fusion centers gather and how the information is used; and despite the millions of federal dollars invested in these centers, many of them are not capable of providing quality assessments and many of them do not feel that counterterrorism is what they are supposed to do. This report shows that DHS is still failing to function well in the IC. It alludes to the fact that maybe DHS should just give up this role and focus on other areas that it may be able to do well.

In Chapter III, the thesis looks at the opposite end of the spectrum by evaluating FEMA. FEMA was one of those outlier agencies that had neither ties to combating terrorism nor anything to do with any law enforcement activities. Yet, it was pushed into the organization anyway. FEMA's mission has evolved throughout its existence but through this evolution it has not experienced anything as radical as being added to DHS. A review of Hurricanes Andrew and Katrina offered insight to the performance of the agency before and after it became a member of the department. What was noted was that in both instances, FEMA's response was viewed as inadequate and in need of much improvement. Additionally, the leadership of the organization at the time was ridiculed because those in charge lacked emergency management expertise, which many cited as the real problem for its failures. Before Katrina, many of these shortfalls were remedied,

and FEMA had regained a respectable status as an agency capable of preparing the nation to respond to all-hazards. This resurgence was led by James Lee Witt, the only experienced emergency management director in FEMA's history at the time. This chapter notes that adding FEMA to the new homeland security organizational chart returned the agency to its inefficiencies of the past. In essence, the success gained was suddenly washed away with the stroke of the presidential pen. FEMA was no longer a Cabinet level agency with direct access to the president, but it was buried with the other 21 agencies, inside DHS with a new focus on preventing terrorism. The most egregious offense was the redistribution of its budget to support other agencies in preventing terrorism. This shift in mission, inadequate leadership, along with a disparaging budget was the catalyst to DHS's failed response during Hurricane Katrina.

In order to ensure the nation does not have another situation like Hurricane Katrina, it is imperative for lawmakers to assess whether leaving FEMA in DHS is right for the nation. History has shown that with the right leadership and proper resourcing, FEMA will perform emergency management task regardless of where it sits. But, the agency is seen to work much better when it has direct access to the ultimate decision maker, the president, to ensure a rapid and impactful response.

This thesis concludes that based on DHS's irrelevance in the intelligence community and the fact that FEMA would better serve the public as a stand-alone agency again, DHS has outlived its usefulness.

## **A. WHAT TO DO ABOUT IT?**

This thesis offers three recommendations:

### **1. RECOMMENDATION 1: REMOVE DHS FROM THE IC**

This recommendation is reasonable, considering the historical failures that have plagued the department with regards to intelligence. It is not that the department has not received numerous opportunities to be successful. It is mystifying, however, that a department has been created to prevent terrorism and yet lacks the capability to collect intelligence, arguably the key preventive function. DHS exercises no control over any

agency in the IC. If it is simply waiting to use analysis that has already been accomplished by others, then what purpose does it really serve? Removing DHS would streamline the process because the system would no longer have a middleman in search of a role. Lawmakers have to accept that adding an additional layer of bureaucracy was not the answer to the intelligence failure of September 11. All that has been accomplished is the muddying of the proverbial waters to the point where questions of who does what, when, where, and how is even harder to answer.

**2. RECOMMENDATION 2: MAKE THE FBI THE LINK BETWEEN FUSION CENTERS AND THE IC**

Domestic terrorism is a matter best handled by domestic law enforcement. This thesis discovered that the FBI has been instrumental in thwarting nearly 40 attacks since 9/11. Instead of just protecting and defending against terrorist and foreign threats, it has taken on the role that DHS was to fill, namely preventing attacks from occurring. The Bureau is only doing what it should have been charged to do following 9/11. The FBI has implemented procedures to prevent crimes why not empower the organization to implement procedures to prevent terrorism. Those existing relationships between the FBI and state and local law enforcement would have quickly enabled a link with fusion centers, making them relevant in the fight against terrorism. Making it the leader in collecting and fusing domestic intelligence will bring a level of legitimacy to homeland security intelligence and improve the relationship between the federal government and state level fusion centers. Additionally, building on this existing institution reduces the number of oversight committees needed to monitor domestic intelligence activities. It also limits the stranglehold that lawmakers have as they look for ways to flex their legislative muscle and use homeland security as a political football enroute to a reelection bid.

**3. RECOMMENDATION 3: MAKE FEMA A STAND-ALONE AGENCY AGAIN**

Throughout FEMA's history, it has operated with full autonomy with direct links to the President. But adding it to DHS severed that relationship and made the

organization less effective. Hurricane Katrina was not an anomaly; it bordered on dereliction of duty. But complete fault is not absorbed by FEMA because it was no longer in charge of its own fate. Placing FEMA in DHS created a wall between it and the president; therefore, quick and decisive decision became a distant memory as the agency now had to wait for the order to come down through its new chain of command.

Arguments for reestablishing FEMA as a stand-alone agency are strong, and a more recent storm—Superstorm Sandy, which slammed into the American northeast in October 2012—shows the importance of FEMA receiving direct orders from the president. FEMA’s response thus far has been viewed as “outstanding” by New Jersey Governor Chris Christie.<sup>122</sup> FEMA is still under DHS, but the difference so far is the experienced leadership FEMA has in Administrator Craig Fugate and direct involvement from President Obama. During a visit to FEMA headquarters prior to the storm making landfall, the President directed FEMA and other applicable federal agencies to find a way around the bureaucracy and red tape and find ways “to get to yes as opposed to no.”<sup>123</sup> These statements were directed to FEMA, and not FEMA’s boss on paper, the DHS Secretary. This experience shows that a direct link is needed between FEMA and the president.

The bottom line is that DHS was created as a response to terrorism, not to combat hurricanes, tornadoes, wildfires, and earthquakes; therefore FEMA has no place within the organization. When extreme natural disaster events occur and require a federal response, no one is looking for DHS; everyone is looking for answers from FEMA and the President of the United States—just ask the folks who were impacted by Hurricane Katrina.

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<sup>122</sup> Steve Vogel, “Official and Experts praising FEMA for its response to Hurricane Sandy,” *Washington Post*, November 1, 2012. [http://www.washingtonpost.com/politics/decision2012/officials-and-experts-praising-fema-for-its-response-to-hurricane-sandy/2012/11/01/7a6629d8-2447-11e2-ac85-e669876c6a24\\_story.html](http://www.washingtonpost.com/politics/decision2012/officials-and-experts-praising-fema-for-its-response-to-hurricane-sandy/2012/11/01/7a6629d8-2447-11e2-ac85-e669876c6a24_story.html).

<sup>123</sup> Associated Press, “Obama visit FEMA for storm update, sends official to NY, NJ, and Conn,” *New York Post*, November 3, 2012, [http://www.nypost.com/p/news/national/obama\\_visits\\_fema\\_for\\_storm\\_update\\_v2blfQqXcEtTpc2xVyX5N](http://www.nypost.com/p/news/national/obama_visits_fema_for_storm_update_v2blfQqXcEtTpc2xVyX5N).

## **B. ARE THESE CHANGES POSSIBLE?**

For the foreseeable future, the pressure is likely to continue for DHS to be reformed or reorganized. For example, the chairman of the House Homeland Security Oversight, Investigations, and Management Subcommittee has recently called for “an independent, top-to-bottom examination of deficiencies in Department of Homeland Security (DHS) leadership and management structure.”<sup>124</sup> But can it be reformed? With every recommendation presented to solve a problem there are numerous limitations that exist. With limitations and all, these recommendations are in line with competing arguments of today. In reviewing them, a question is posed as to whether these recommendations are ones that can be implemented without degrading current capabilities. In short, the answer is yes. As long as lawmakers are willing to make the tough choices that are proven to be for the greater good, there should be no problem with implementing the aforementioned recommendations.

Removing DHS from the IC would have negligible effect because it is not doing much as it stands today. The transition out would only build a stronger case for creating a link between the FBI and state fusion center. FEMA, on the other-hand, is an outlier. Its core mission is emergency management, which only responds to a terrorist event after it occurs; it does not have, nor has it ever had, anything to do with preventing them beforehand. Emergency management is emergency management, regardless of whether an event occurs as a result of terrorism or a Category-5 hurricane, the response is virtually the same.

## **C. THE WAY FORWARD**

This thesis did not conduct an all-inclusive study of the different agencies that make up DHS to determine whether it has outlived its usefulness. Rather, it looked at two of the department’s most important functions—intelligence and emergency management. In the future, studies of agencies like the Transportation Security Agency, Secret Service, or even the Coast Guard could also provide a deeper look into the

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<sup>124</sup> Michael T. McCaul, “Correcting Homeland Security Corruption,” *Washington Times*, November 26, 2012, at <http://www.washingtontimes.com/news/2012/nov/26/correcting-homeland-security-corruption/>.

usefulness of having a department level agency responsible for preventing terrorism. An assumption exists that looking at any of the department's agencies would present questions of whether it functions as it should and how effective it is under DHS's umbrella. Additional cases are also available for study, especially the most recent hurricane and severe weather that hit the East Coast and have been named Superstorm Sandy. Such research could provide a more in-depth look at the relationship between FEMA and the president during times of disasters.

Initially, this study sought to recommend that DHS be dissolved. But the truth behind building bureaucracies is that once they are in place they are very hard to remove, no matter how inefficient or ineffective they may be. Because bureaucracies are built in the United States as a response to a problem, the American people become very dependent on them in a short amount of time. This creates a dilemma for U.S. politicians who may feel that creating DHS was indeed an overreaction. It is expected that there will be others who will dispute the recommendations presented in this thesis and view them as unnecessary because it is hard to breakdown bureaucracies. If the overwhelming response is such, then this thesis offers one last recommendation: restructure DHS.

Because a number of agencies within DHS have zero ties to preventing terrorism—i.e., FEMA and the Secret Service—an argument can be made that these agencies provide little value toward achieving DHS's mission. Lawmakers should consider restructuring DHS in a manner that gives it a more focused set of responsibilities. A proposal for DHS would be to focus primarily on protecting America's borders. In order to do so, remove all other agencies and build the department around four of its current agencies: Customs and Border Protection, Immigration and Customs Enforcement, Transportation Security Administration, and the Coast Guard. This structured approach will make DHS the premier defender of the nation's borders—land, sea, and air. It will still have some insight into what goes on in the intelligence community through the Coast Guard, which was a member before joining DHS. The difference will be that the department will not carry a huge burden tied to the responsibility it now carries for fusing information together. As a partner in the overall homeland security network, the data generated will still be shared but the overall



responsibility for domestic intelligence will reside with the Office of Director of National Intelligence or the FBI if recommendation two above is implemented.

Second, the congressional oversight that plagues DHS today would be reduced. There are more than 100 committees and subcommittees within the two congressional bodies that exercise some level of oversight of DHS.<sup>125</sup> If each committee required one brief a month this would result in 1,200 briefing annually, which is more than the 365 days in one year's timeframe.

Finally, common tasks and functions of protecting the borders will provide a level of synergy that will make the department relevant in that field. Just as the armed services shared a common bond based on fighting the nation's wars, those four DHS agencies also, today, share a common bond with protecting the land, sea, and air borders. It only makes sense that the way forward for DHS is to downsize and refocus its mission on border security.

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<sup>125</sup> Paul Rosenzweig, Jenna Baker McNeill, and James Jay Carafano, "Stopping the Chaos: A Proposal for Reorganization of Congressional Oversight of the Department of Homeland Security," *Heritage Foundation WebMemo* 1, no. 3046 (November 4, 2010), *Homeland Security Digital Library*, <https://www.hsdl.org/?view&did=14444>.

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