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Homeland Security: The Presidential Coordination Office

October 10, 2001

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Summary

As part of his response to the September 11, 2001, terrorist attacks on New York City and Washington, DC, President George W. Bush announced in his September 20 address to a joint session of Congress that he was creating, within the White House Office, an Office of Homeland Security (OHS), headed by a director who would have Cabinet rank and would report directly to the President. OHS, as subsequently chartered with E.O. 13228 of October 8, 2001, is an agency of the Executive Office of the President. The success of this office as a coordinator of a comprehensive national strategy to safeguard the nation against terrorism may be guided by past experience with similar such entities. This report reviews past experience—principally with the Office of War Mobilization and its successor, the Office of War Mobilization and Reconversion—and its possible significance for OHS; it will be updated as events recommend.

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Homeland Security: The Presidential Coordination Office

In his September 20, 2001, address to a joint session of Congress, President George W. Bush announced that, as part of his response to the September 11 terrorist attacks on the World Trade Center in New York City and the Pentagon in Washington, DC, he was creating an Office of Homeland Security (OHS). According to the President's initial description of OHS, it was to be located within the White House Office and would be headed by a director who would have Cabinet rank and would report directly to the President. Pennsylvania Governor Tom Ridge was named as the President's choice for director. His mission and that of his office would be, in the President's words, to "lead, oversee, and coordinate a comprehensive national strategy to safeguard our country against terrorism and respond to any attacks that may come."¹

Following the announcement by President Bush, few details were forthcoming regarding OHS. Because the President historically has enjoyed virtually complete authority over the organization of the White House Office, no directive or charter for OHS was publicly released, although this omission contributed to a lack of specificity regarding the office's duties.²

A Presidential Charter

On October 8, 2001, President Bush issued E.O. 13228 establishing OHS as an agency within the Executive Office of the President, which includes such other agencies as the Council of Economic Advisers, the National Security Council, the Office of Management and Budget, and the White House Office.³ Later in the day, Tom Ridge was appointed the Assistant to the President for Homeland Security. The President's directive specifies that the head of OHS is the Assistant to the President for Homeland Security, signifying that the individual directing OHS is a member of the White House Office staff. The Assistant to the President for National Security Affairs, Condoleezza Rice, has a similar status: she is a member of the White House Office staff and directs the staff of the National Security Council. Because the direction of OHS is vested in a presidential assistant, no Senate approval of the Ridge

¹*Weekly Compilation of Presidential Documents*, vol. 37, Sept. 24, 2001, p. 1349.

²The White House Office was established with E.O. 8248. This order organized the primary units within the Executive Office of the President, which had been created by Reorganization Plan 1 of 1939 (53 Stat. 1423). Other than providing appropriations and a personnel authorization for the White House Office, Congress has not legislatively limited the President's prerogatives regarding its operations.

³*Federal Register*, vol. 66, Oct. 10, 2001, pp. 51812-51817.

appointment was necessary, because all White House Office staff are appointed without Senate confirmation. However, this situation and the advisory role that senior White House officials play severely limit congressional access to such presidential aides. Traditionally, they have come before congressional committees only to explain very serious allegations of personal misconduct. Otherwise, attempts by congressional overseers and investigators to require their appearance and testimony before committees has usually been met by presidential invocations of so-called executive privilege—the privilege of the President to exercise a discretion, based upon the constitutional separation of powers doctrine, regarding the questioning of his advisers. Also, because OHS has been established by a presidential directive, its mission, responsibilities, and administration may be readily modified through the issuance of additional executive orders, a situation that has contributed to congressional reluctance to appropriate significant amounts of money for an agency so established or for any length of time before requiring a statutory charter. Furthermore, because it has a presidential mandate and its leader is a member of the White House Office staff, OHS may be funded, in large or small part, from discretionary monies available to the President or amounts from the White House Office budget, with the result that congressional overseers and appropriators may have difficulty determining the adequacy of the OHS budget.⁴ These conditions seemingly militate against the ability of Congress to assess the success of OHS as a coordinator of a comprehensive national strategy to safeguard the nation against terrorism.

A Model and Principles for Success

OHS is emerging in an environment in which several entities, having established reputations and turf, could become rivals in some policy and administrative areas. The situation is reminiscent of the efforts of President Franklin D. Roosevelt to create an effective war mobilization and preparedness coordination entity. Success was realized with the Office of War Mobilization (OWM), established by presidential order on May 27, 1943, and the man Roosevelt selected to direct it, James F. Byrnes, a former member of the House of Representatives, the Senate, and the Supreme Court, and recent director of the Office of Economic Stabilization.⁵ The OWM mandate was sweeping and general; it was empowered:

- (a) To develop programs and to establish policies for the maximum use of the nation's natural and industrial resources for military and civilian needs, for the effective use of the national manpower not in the armed forces, for the maintenance and stabilization of the civilian economy, and for the adjustment of such economy to war needs and conditions;

⁴In an October 5, 2001, letter to the Speaker of the House, President Bush indicated that he had authorized the transfer of \$195.9 million from the emergency response fund established by statute (115 Stat. 220) for recovery from, and response to, the September 11 terrorist attacks, \$51 million of which appears to be for support of OHS and “other urgent security-related activities.” The White House, letter to the Speaker of the House of Representatives, Oct. 5, 2001, Washington, DC.

⁵E.O. 9347, 3 C.F.R., 1938-1943 Comp., pp. 1281-1282.

(b) To unify the activities of Federal agencies and departments engaged in or concerned with production, procurement, distribution or transportation of military or civilian supplies, materials, and products and to resolve and determine controversies between such agencies or departments, except those to be resolved by the Director of Economic Stabilization under Section 3, Title IV of Executive Order 9250 [concerning agricultural prices]; and

(c) To issue such directives on policy or operations to the Federal agencies and departments as may be necessary to carry out the programs developed, the policies established, and the decisions made under this Order. It shall be the duty of all such agencies and Departments to execute these directives, and to make to the Office of War Mobilization such progress reports as may be required.

Given an office in the White House, Byrnes “soon was regarded as second only to the President on the home front,” and, with “his frequent exhibition of confidence in Byrnes, the President helped established public and governmental understanding and recognition of his position.”⁶ OWM operated with a small staff, which Byrnes “instructed not to constitute an isolating ‘layer between the director and the heads of agencies [but] ... to facilitate the relations of the director with agency heads.’” A small staff “prevented OWM from engaging in administrative activities and operations and from undertaking or interfering with the normal functions of other agencies.” It was also “inadequate to perform the type of central planning function which many people considered OWM’s most important duty.” However, this was not a limitation in Byrnes’s view, for he “felt that most planning should be conducted at agency levels and that it was his job primarily to coordinate such plans.”⁷ A concise, clear understanding of OWM’s functions was offered in a July 27, 1943, memorandum on the general plan for the operation of the agency.

The Office of War Mobilization acts for the President. ... The job of the Office is not to perform the functions of the established departments and agencies but to see that these functions are well performed by those charged with responsibility for their performance. The other primary task of the Office is to assure coordination of separate programs, by securing policy integration, resolving conflicts and rendering responsible authoritative and firm decisions in controversies.⁸

A few months after OWM’s creation, another presidential order expanded the agency’s authority to include aspects of U.S. foreign economic affairs.⁹ As a consequence of congressional concern about the accountability of the OWM director’s exercise of his discretionary power, as well as a desire to begin planning for conversion to a peacetime economy, Congress enacted the War Mobilization and Reconversion Act in 1944, creating the Office of War Mobilization and Reconversion (OWMR) as an independent agency and making its presidentially appointed director

⁶Herman Miles Somers, *Presidential Agency: OWMR, the Office of War Mobilization and Reconversion* (Cambridge, MA: Harvard University Press, 1950), p. 52.

⁷Ibid., pp. 55-56.

⁸Reproduced in *ibid.*, p. 58.

⁹E.O. 9361, 3 C.F.R., 1943-1948 Comp., pp. 257-259.

subject to Senate confirmation with a two-year term.¹⁰ This act, by one near-contemporary estimate, was “considered the broadest grant of power ever legislated by Congress, creating for the first time by statute a superdepartmental director over the whole range of home-front executive activities for war and reconversion—powers so great that some critics questioned the constitutionality of such a grant to anyone short of the President.”¹¹ Upon signing the legislation into law, President Roosevelt issued an order transferring the functions and resources of OWM to OWMR.¹² Byrnes, who was named the director of the new agency, continued to operate from the East Wing of the White House. He left the office in April 1945, and, three months later, was named Secretary of State. OWMR was dismantled at the end of 1946.¹³

A few years after the demise of OWMR, it was evaluated as “a notable, although improvised, attempt to equip the President with a strong staff arm for executive policy and program coordination, as distinguished from administrative management and fiscal control.” The author of the study, a participant-observer who served on the OWM-OWMR staff for 16 months, regarded the agency to be a successful instrument of central control and coordination for the President.¹⁴ Why was OWM-OWMR successful? In response to this question, seven guiding principles were offered.

Institutional Status in the President’s Office. A presidential coordination entity, like OWM-OWMR, “must have permanent institutional status and must be clearly a presidential arm accountable only to him.” It is also “essential” that the director of such an office or “coordinator be known to have full presidential confidence and backing.” While it was thought that “the permanent establishment of such an Office [as OWM-OWMR] should probably be recognized by [statutory] law,” it was also considered to be “undesirable that the coordinator have any statutory powers or be accountable to Congress.”¹⁵ Byrnes did not have “statutory powers,” such as responsibility for administering a program, so he was not accountable to Congress in that regard, but he did serve as a presidential liaison to Congress to negotiate the drafting of legislation.¹⁶ He also informally kept in touch with Members of Congress, and agreed to follow up on conflicting war programs identified by Senator Harry S. Truman and his Senate Special Committee to Investigate the National Defense Program,¹⁷ but avoided interceding with Congress on behalf of individual departments, and appears to have been an infrequent witness before congressional committees, which is reportedly why Congress made the appointment of the OWMR director subject to Senate confirmation.

¹⁰58 Stat. 785.

¹¹Somers, *Presidential Agency*, p. 1.

¹²E.O. 9488, 3 C.F.R., 1943-1948 Comp., 345-346.

¹³See E.O. 9809, 3 C.F.R., 1943-1948 Comp., pp. 591-592.

¹⁴Somers, *Presidential Agency*, pp. 1-2.

¹⁵*Ibid.*, p. 224.

¹⁶*Ibid.*, p. 74.

¹⁷Donald H. Riddle, *The Truman Committee: A Study in Congressional Responsibility* (New Brunswick, NJ: Rutgers University Press, 1964), p. 98.

Jurisdiction Over All Agencies. A presidential coordination entity’s span of jurisdiction “must include all agencies and, in effect, be as broad as the President’s,” but should “not involve curtailment of the existing policy-making jurisdiction of any agencies.” While the “inclusion of the military within the coordinative jurisdiction may prove most difficult to work out,” the “problems of the military have to be reconciled with the interests of the other agencies, and this must be done in the President’s office,” or in the office of the coordinator acting on behalf of the President.¹⁸

Restriction of Functions to Top Policy and Program Issues. The OWM-OWMR “experience demonstrated clearly that successful central coordination must be completely divorced from any operating or administrative responsibilities.” Indeed, when “the central unit is the capstone of an operating organization, it will soon become just another operating agency, however important its operations may be.”¹⁹

Non-involvement in Normal Functions of Individual Departments. The OWM-OWMR experience suggests that the “coordinator must avoid the two-edged evil of either allowing departments to feel that some of their normal responsibilities—either for administration or policy-making within their regular jurisdiction—have been taken away, or of being drawn into the innumerable detailed problems which they may bring to him to obtain support.” The coordinator “should take jurisdiction only over issues not susceptible of settlement at the department level ... or where inter-agency conflict has caused an impasse.” Similarly, he “should not be concerned with development of methods of operation but only with seeing that agencies concerned are following through.”²⁰

Maintenance of Reasonable Control. Because reasonable discipline is essential to effective coordination, in situations where “the coordinator’s authorized decisions are flouted, he must take prompt and appropriate action either directly or, preferably, through the President.” Also, the coordinator “should not attempt to eliminate all disputes among agencies, but rather to reduce their volume and magnitude through early delineation of general policy and the provision of a locale for final arbitration.” As a corollary consideration, “Agencies must be given relatively free rein for debate and for working out their differences among themselves, within the broad framework of administration policies.” Ultimately, when resolving a conflict, the coordinator should “indicate that he is bringing together all elements in the issue for the President, and assisting him in arriving at a decision, but that the decision is the President’s.”²¹

Qualifications of the Program Coordinator. Recognizing that “paper authority and organizational lines rarely prove adequate in the higher echelons of government,” the OWM-OWMR experience suggests that a successful coordinator

¹⁸Somers, *Presidential Agency*, pp. 225-226.

¹⁹*Ibid.*, p. 226.

²⁰*Ibid.*, p. 227.

²¹*Ibid.*, pp. 228-229.

“must not only be a man [or woman] of highest ability and broad perspective, but should possess independent position and prestige based on wide experience and public respect.” Those who suggest that a highly regarded individual appointed to the coordinator position might become the President’s political competitor are reminded that this individual is a presidential agent, whose “effectiveness can be brought to a halt by a few public nods of disapproval from the President” because his “office is empty of power without presidential backing.” Indeed, the likelihood exists that, no matter how prestigious a coordinator may be, he may become expendable when White House decisions require a scapegoat.²²

Small High-Level Staff. The OWM-OWMR experience suggests that a coordinator’s staff “should be small, probably not exceeding 25 persons, other than clerical help.” Such a staff “should all have high rank, be of recognized high caliber and broad-gauged ‘generalists,’” and “[s]taff work requiring technical expertise should be assigned to other units of the Executive Office or regular agencies.” Also, staff members “are political personnel in the high sense of the term” and “must be willingly and patently identified with the President’s program.” Finally, because the coordinator “must either review or direct the actions of heads of agencies on matters not susceptible of final determination at the departmental level, unusual caution must be exercised regarding delegation of authority to staff members.” However, this consideration must be tempered by a caution against rigid adherence, so that the coordination office does not become “an irritating bottleneck.”²³

Implications for the Homeland Security Office

What implications do these principles have for the Office of Homeland Security (OHS) as chartered by E.O. 13228? Created by presidential directive, OHS does not have the “permanent institutional status” of the statutorily established OWMR. A statutory mandate for OHS could reduce congressional reluctance to appropriate funds to an agency subject to having its mission, responsibilities, and administration readily modified by presidential order. Fashioning a statutory charter for OHS would also provide an opportunity to determine when and how the head of the agency would be accessible to Congress. Would this OHS leader continue to hold status as a member of the White House Office staff, or be subject to Senate confirmation, to appearing before appropriators to present the OHS budget, or to keeping Congress currently and continuously informed?

It would appear that the man named to direct OHS, former Pennsylvania Governor Tom Ridge, has the President’s confidence and backing. He reportedly will be allocated office space in the West Wing of the White House. However, his mandate to “coordinate the executive branch’s efforts” to combat terrorism, “work with executive departments and agencies” in this regard, and “identify priorities” concerning same does not appear to convey authority equal to that of the OWM-OWMR director, who was empowered to “develop programs,” “establish policies,” and “issue ... directives on policy or operations to the Federal agencies and

²²Ibid., pp. 229-230.

²³Ibid., pp. 231-232.

departments.” Consequently, in this regard, the head of OHS, compared with the OWM-OWMR director, may, of necessity, have to make more frequent resort to the President to resolve disputes, including opposition to his initiatives.

Stated in the executive order in the most general terms, the jurisdiction of OHS for performing its functions is not clear, and it is questionable if it, compared with OWM-OWMR, has any jurisdiction “over” other agencies. The executive order establishing OHS also mandates a Homeland Security Council, chaired by the President and composed of at least 10 members, the head of OHS being among them. Five other officials are invited to attend council meetings, and numerous other officials may be invited to attend council sessions “when appropriate.” The relationship between the functions of the head of OHS and the council, which serves “as the mechanism for ensuring coordination of homeland security-related activities of executive departments and agencies and effective development and implementation of homeland security policies,” is not clear. A similar question concerns the relationship of the head of OHS with a new national director for combating terrorism on the staff of the National Security Council (NSC). What will be the responsibilities of this NSC staff position, recently filled by retired Army general Wayne Downing, a career specialist in counterterrorism?²⁴ The executive order offers no definition of the “homeland security” concept.

The OWM-OWMR experience also warns against OHS becoming involved in operating or administrative responsibilities. Nonetheless, the Assistant to the President for Homeland Security is designated “the individual primarily responsible for coordinating the domestic response efforts of all departments and agencies in the event of an imminent terrorist threat and during and in the immediate aftermath of a terrorist attack within the United States.” Such activity not only suggests the exercise of operating or administrative authority, but also a duplication of, or intrusion into, the responsibilities of the director of the Federal Emergency Management Agency (FEMA).

In early May, President Bush announced that, in conjunction with the development of a coordinated effort to assure domestic preparedness against weapons of mass destruction, he had asked the director of FEMA to create an Office of National Preparedness (ONP).²⁵ The following month, the FEMA director announced a realignment of functions within his agency and the establishment of ONP “to coordinate all federal programs dealing with weapons of mass destruction consequence management.”²⁶ Again, the question arises concerning the relationship of the head of OHS to this FEMA coordination office.

²⁴Mike Allen and Thomas E. Ricks, “Bush Names Army General to NSC Post on Terrorism,” *Washington Post*, Sept. 30, 2001, p. A3; Mike Allen and Eric Pianin, “Two Key Advisers are Filling New Posts to Fight New War,” *Washington Post*, Oct. 10, 2001, p. A21.

²⁵Federal Emergency Management Agency, “President Bush on Domestic Preparedness Against Weapons of Mass Destruction,” May 8, 2001, press release, Washington, DC, available at [http://www.fema.gov/nwz01/nwz01_33.htm].

²⁶Federal Emergency Management Agency, “FEMA Announces Organizational and Functional Changes,” June 18, 2001, press release, Washington, DC, available at [http://www.fema.gov/nwz01/nwz01_60.htm].

A former member of the House of Representatives and a popular governor, Ridge is generally thought to be a qualified appointee to head OHS. Press accounts have indicated that OHS might have a staff of 100, four times the number suggested by the OWM-OWMR experience. Most of these, at least initially, would be detailees—civil servants, not “political personnel”—from agencies within the jurisdiction of OHS.²⁷

Finally, apart from the OWM-OWMR experience, some have argued that the proposed OHS should have some authority over the budgets of agencies responsible for combating terrorism or homeland security.²⁸ One model is provided in the case of the director of the Office of National Drug Control Policy (ONDCP), a coordinator, who, in conjunction with preparing a national drug control strategy, prepares a consolidated national drug control program budget to implement the strategy. The ONDCP director certifies the adequacy of agency drug control program budgets. In cases where a budget is deemed inadequate, the ONDCP director recommends a new funding level. These recommendations are considered during the preparation of the President’s annual budget. Also, no national drug control program agency may submit to Congress a reprogramming or transfer request for any appropriated funds greater than \$5 million in the national drug control program budget unless the request has been approved by the ONDCP director. In the event of a disapproval, the agency may appeal the ONDCP director’s decision to the President.²⁹

E.O. 13228 authorizes the head of OHS to review agency budgets and make recommendations to agency heads and to the director of the Office of Management and Budget (OMB) regarding the levels and uses of funding for homeland security-related activities. Prior to the forwarding of the proposed annual budget submission to the President for transmittal to Congress, the head of OHS is to certify to the OMB director the funding levels that he “believes are necessary and appropriate for the homeland security-related activities of the executive branch.” No further guidance in this regard is offered by the order.

Legislation

Bills currently pending before the 107th Congress providing an alternative model to the OHS established by the President include the following measures.

H.R. 525 (Gilcrest). The Preparedness Against Domestic Terrorism Act of 2001 amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide for improved federal efforts to prepare for and respond to terrorist attacks, and for other purposes, including the establishment of the President’s Council on

²⁷Elizabeth Becker and Tim Weiner, “New Office to Become a White House Agency,” *New York Times*, Sept. 28, 2001, p. B5; Eric Pianin, “Unresolved Issues for Ridge’s Job,” *Washington Post*, Sept. 29, 2001, p. A16.

²⁸Noelle Straub, “White House, Senate Clash on Ridge’s Role,” *The Hill*, Oct. 3, 2001, pp. 1, 22.

²⁹21 U.S.C. 1502(c).

Domestic Preparedness. Introduced Feb. 8, 2001, and referred to the Committee on Transportation and Infrastructure; referred to the Subcommittee on Economic Development Feb. 9; subcommittee hearings held April 24 and May 9; subcommittee mark-up session Sept. 20; referred, as amended, to the full committee Sept. 20.

H.R. 1158 (Thornberry). The National Homeland Security Agency Act establishes a National Homeland Security Agency as an independent agency with a director appointed by the President and subject to Senate confirmation. Introduced March 21, 2001, and referred to the Committee on Government Reform; referred to the Subcommittee on National Security April 23; subcommittee hearing held April 29.

H.R. 1292 (Skelton). The Homeland Security Strategy Act of 2001 requires the President to develop and implement a strategy for homeland security, including designating a single government official responsible for homeland security. Introduced March 29, 2001, and referred to the Committee on Armed Services with additional referral to the Committees on Transportation and Infrastructure, the Judiciary, and Intelligence; Transportation Subcommittee on Economic Development hearing held April 24.

S. 1149 (Graham). Establishes a National Office for Combating Terrorism within the Executive Office of the President with a director appointed by the President and subject to Senate confirmation. Introduced Sept. 21, 2001, and referred to the Committee on Governmental Affairs.