

Homeland Security Bill Is on a Fast Track

by Carl Osgood

Since President Bush announced his proposal to create a Department of Homeland Security on June 6, Congressional leaders have been falling all over each other to present a bipartisan front in support of the legislation, which was delivered to Capitol Hill on June 18. The fact that the proposal creates all sorts of jurisdictional problems has not prevented, in particular, the Democratic leadership from promising to have the bill ready for President Bush's signature by the first anniversary of the attacks on the World Trade Center and the Pentagon. However, a number of potential stumbling blocks have already arisen.

Under Bush's proposal, the new department would have four primary functions: information analysis and infrastructure protection; chemical, biological, radiological and nuclear countermeasures; border and transportation security; and emergency preparedness and response. To carry them out, agencies spread out across the Federal government that include security functions in their missions would be transferred to the new department. These include, among others, the FBI's National Infrastructure Protection Center, the Customs Service, the U.S. Coast Guard, the Immigration and Naturalization Service, and the Federal Emergency Management Agency. Also to be transferred are certain relevant functions of the Departments of Energy, Defense, and Health and Human Services, relating to response to chemical, biological, and nuclear attack. The primary mission of the new department will be preventing terrorist attacks, reducing U.S. vulnerability to terrorist attacks and assisting in recovery should an attack occur.

Both the House and the Senate are grappling with jurisdictional issues, given that oversight of the agencies that Bush proposes to put under the new department are spread across most of the committees in the two chambers. In the House, Speaker Dennis Hastert (R-Ill.) and Minority Leader Dick Gephardt (D-Mo.) have agreed on a procedure intended to streamline the process. On June 13, the two announced that the House Government Reform and Oversight Committee and each other committee with jurisdiction over aspects of the bill, will be instructed to make recommendations on the parts of the legislation under their purview; the recommendations will then be referred for mark-up to an ad hoc committee, chaired by House Majority Leader Dick Armey (R-Tex.).

In the Senate, Majority Leader Tom Daschle (D-S.D.) indicated on June 13 that he will likely piggy-back the administration proposal onto existing legislation already written by Sen. Joe Lieberman (D-Conn.). That bill, which was reported out of the Senate Governmental Affairs Committee on May 22, is similar to the Bush proposal, but smaller in scale. Daschle said that an amendment to the Lieberman bill will likely be put together, using advice from all the relevant committees, and then be brought to the floor sometime in July. He indicated that he thought the timing in the House will be approximately the same, making possible a final vote in September.

Some Questions Being Raised

This fast-moving reorganization comes in the context of a police-state drive coming out of Attorney General John Ashcroft's Justice Department. At least a few members of Congress are calling for a slower approach. The *Washington Post* reported, on June 13, that Sen. Chris Dodd (D-Conn.) is arguing that the proposed reorganization is so complex, including determining what relationship the Central Intelligence Agency and the Federal Bureau of Investigation will have with the new department, that a blue ribbon commission of intelligence experts should be assembled to study the issue and report back to the Congress, sometime next year. Another voice of caution is that of Rep. Dennis Kucinich (D-Ohio), who, during a June 11 joint hearing of two subcommittees of the House Government Reform and Oversight Committee, called for a comprehensive threat assessment to be done before proceeding with the reorganization. He said that such a threat assessment "will address the issue of inevitability [of another terrorist attack] and what kind it will be, because there are some of us who feel that perhaps if we had that kind of assessment, we'd be able to make the determination as to whether or not these alleged or predicted attacks are in fact inevitable."

Besides the issue of the FBI and the CIA, another issue of possible contention is the budget for the new agency. Bush has said that the reorganization, being described as the most significant since the 1947 National Security Act, is to be "budget-neutral." Democrats, however, are insisting that not enough resources are being made available for homeland security, and have been trying to add money above what the White House has been asking for, for those functions, almost from the time of the Sept. 11 attacks.

After Homeland Security Director Tom Ridge briefed a large group of Senators on June 13, Senate Appropriations Committee Chairman Robert Byrd (D-W.Va.) told reporters, "You can't do all these things without resources, and here we are talking about a brand new, shiny toy called a department, here, and we're not talking about the resources that need to go along with it. So, when are they going to send up the budget for this new department?" He called on Bush to sign the supplemental appropriations bill, passed by the Senate a week earlier, which, in Byrd's view, does more to

make the country safe from terrorism than Bush's new department.

FBI and CIA Included?

The larger issue of the FBI and CIA relationship to the new department, crosses into the question of the provision of intelligence for homeland security purposes. The White House is resisting proposals to fold those two agencies into the new department. However, Lieberman has endorsed, at least in principle, bringing in the FBI. During the June 11 joint hearing, Lieberman questioned whether the provisions in the bill providing for intelligence from different sources was sufficient. "I hope at some point," he said, "that we consider whether the entire FBI or the parts of it involved now in domestic intelligence . . . ought to become part of the Department of Homeland Security." He admitted, however, that doing that at this point in the process might be a little too much to take on. House Majority Leader Armev has been somewhat less direct than Lieberman on that issue. He indicated on June 18 that the FBI should be "more formally" involved with homeland security, but apparently did not say that the FBI should be under the new department.

One counter-argument being made against inclusion of the FBI and the CIA in the new department was put forward by retired Gen. William Odom, former director of the National Security Agency. In an op-ed in the June 12 *Wall Street Journal*, Odom called for the FBI to be split in half, with all the counter-terror and counter-espionage functions to be turned over to a new National Counterintelligence Service, to be devoted solely to that work. Odom dismissed those who call for the FBI to return to the "good old days." He disabused the reader of the idea that there ever was a good old day of FBI competence, tracing a string of Bureau failures to catch spies, going all the way back to World War II.

Odom argued that the techniques that the FBI can use to catch criminals do not work in catching spies and terrorists, who are far more sophisticated than even the most organized-crime operatives. "The FBI's main weapons, tapping telephones, using informers, and heavy-handed interrogations, can be effective against many criminals. Such techniques do not work against spies, however, and more recently against terrorists."

General Odom concluded with a direct hit at Ashcroft. "Those who fear that such an agency [National Counterintelligence Service] could threaten American civil liberties have a point, but their concerns can be met with proper judicial and Congressional oversight. Given today's realities, prudence dictates going ahead with an NCS but also building safeguards. A bigger danger is Attorney General John Ashcroft returning powers to the FBI that were taken away in the 1970s because it had abused them. It couldn't catch spies when it had these powers before. Why should we believe that the FBI can use them to catch spies and terrorists today?"

Jewish Scholars Speak Out

Call To Kill Terrorists' Families Is 'Desecration'

by Michele Steinberg

Jewish scholars in the United States have reacted with outspoken anguish to the proposal by former U.S. Justice Department official Nathan Lewin, that Israel and the United States begin assassinating the families of alleged suicide terrorists. Lewin, a prominent attorney now in private practice, made the proposal in the May 2002 issue of *Sh'ma*, an English-language journal.

Brandeis University Prof. Arthur Green, the former president of the Reconstructionist Rabbinical College, wrote that his "first desire upon reading Lewin's essay was to 'tear my garments as a sign of mourning on hearing the desecration of God's name,' " according to the newspaper *Forward* on June 7. Many other Jewish leaders have joined this denunciation of Lewin.

Who is Nathan Lewin, who has called for the "punishment of innocents," as the only way to provide a deterrent for suicide bombers, since they no longer fear capital punishment, and apparently fear life under occupation more than they fear death?

Lewin, once dubbed by *Washingtonian* magazine as the most powerful attorney in Washington, D.C., has friends in high places. He argues cases before the Supreme Court. His clients have included then-U.S. Attorney General Ed Meese, when Meese was being investigated by an Independent Counsel. Lewin also served the U.S. government for many years in top positions in the Justice Department and State Department: He was Special Assistant to the Assistant Attorney General, Criminal Division, Department of Justice 1962-63; Assistant to the Solicitor General, Department of Justice, 1963-67; Deputy Administrator of the Bureau of Security and Consular Affairs of the State Department, 1967-68; and ironically, Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, 1968-69.

Why should Americans tolerate that such an advocate can continue to practice law before the Supreme Court of the United States?

Following Nazi Practice

In his article in *Sh'ma*, Lewin not only spells out how Israel and the United States should embark on killing the