



Giving States and Localities a Voice in Washington

By Matt A. Mayer

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KEY POINTS

- *When it comes to the fight against terrorism, the tip of the spear is America's local government and law enforcement community. Yet the current national security apparatus gives states and localities limited opportunities to influence policy decisions.*
- *State and local entities should be equal partners with the federal government in all aspects of our domestic national security apparatus, especially in policy development and execution.*
- *Three state and local representatives should be added to the National Security Council process, giving state and local entities permanent seats at the table in Washington, DC.*

In just five months, we have seen barbaric attacks in Paris, France; San Bernardino, California; and Brussels, Belgium, by ISIS-directed or ISIS-inspired terrorists. The construct that kept us largely safe since the attacks on September 11, 2001, focused mostly on policies and actions in the foreign sphere of operations. With the rise of ISIS and its sophisticated use of social media and technology to direct and inspire attacks, our policy construct must evolve to leverage strengths heretofore involved only tangentially.

When it comes to the fight against terrorism, the tip of the spear is America's local law enforcement community. The men and women in local law enforcement have experience, resources, and relationships vital to detecting and stopping terrorist attacks.

Yet, thus far, much of the conversation since September 11, 2001, has focused on federal efforts and programs. Because of the federal

government's inherent bureaucratic nature, lack of resources other than money, and minimal operational experience in communities across America, it simply does not possess all the relevant information to enact optimal policy decisions, no matter how well-intentioned its efforts are. Therefore, when national domestic terrorism policy is being developed, the individuals who actually possess the most knowledge on the subject ironically are given the least opportunity to influence that policy.

To fix this, the president and Congress need to stop giving the principal of federalism lip service and let states and localities play a far more significant role in our domestic national security enterprise. State and local law enforcement have so much more to contribute to our national security than just serving as information sources and criminal referrals. They should instead be equal partners in all aspects of our national security apparatus, especially in policy development and execution.

To ensure that state and local entities have a meaningful opportunity to spur, influence, modify, and when necessary, stop counterproductive national counterterrorism policies, the current process should be modified to give them a permanent seat at the table in Washington, DC.

State and Local Entities Are on the Front Line

As many experts have concluded, terrorist threats “are most likely to be detected by dedicated investigators with both intimate knowledge of the population in question and mastery of human intelligence tradecraft who are backed by the full power and resources of a major law enforcement agency.”¹ No one knows a particular population better than the men and women who spend every day of their lives immersed in it. Local law enforcement expends enormous resources to develop and maintain close relationships across their communities, including with at-risk communities.

The benefits of such engagement is that local law enforcement gets “immediate and unfettered access to local, neighborhood information as it develops,” as community members actively seek “to provide them with new information.”² This early access to information is crucial, because until they act, terrorists blend into our communities, in many cases becoming “one of us.” The disbelief expressed by many friends and coworkers of Syed Rizwan Farook and Tashfeen Malek, the San Bernardino attackers, is the latest example of this problem.

Local law enforcement are best positioned to leverage relationships in their communities to find these needles in the haystack. This is by no means an impossible task: in 188 cases since 9/11 where police publicly identified a Muslim American as a suspected terrorist and disclosed where the initial tip came from, 54 tips (or 29 percent) came from members of the Muslim-American community, making it the largest source of tips.³

In terms of sheer resources, as of the most recent census in 2008, state and local law enforcement

possessed 1,133,000 employees, of which nearly 800,000 are empowered to make arrests.⁴ In contrast, federal law enforcement entities employ roughly 120,000 individuals able to make arrests.⁵ That nearly 8:1 ratio means that local law enforcement entities present arguably our best chance to utilize human intelligence to detect terrorist activities before their plots are achieved. Certainly, they are not a capability to be squandered or sidelined.

Of growing urgency is the small but ever-increasing threat from citizens who become radicalized in America. One worrying cause of this radicalization is the US prison system, which too often is a petri dish of disgruntled individuals, creating a breeding ground for converts to Islamic jihadism.⁶ The vast majority of that danger emanates from state and local facilities, not federal ones.

Because they have responsibility for 90 percent of all prisoners in the United States, state and local law enforcement are already deeply integrated into this burgeoning, radicalized population.

For example, as of 2013, state prisons held roughly 1,270,800 prisoners (57 percent of all prisoners in the United States), and local jails held 731,200 inmates (33 percent); in comparison, federal prisons only held approximately 215,000 prisoners (10 percent).⁷ California (218,800) and Texas (221,800) each have more prisoners than the entire federal prison system.⁸ Because they have responsibility for 90 percent of all prisoners in the United States, state and local law enforcement are already deeply integrated into this burgeoning, radicalized population.

Equally important is the radicalization that occurs via social media and the Internet, as appears to have been the case in San Bernardino. ISIS has become increasingly sophisticated in how it targets and inculcates US and European

citizens and immigrants; consequently, opportunities are decreasing for national entities to detect growing threats via signals intelligence. For example, the rapid adoption of encrypted communications technology makes it more difficult to monitor and collect terrorist communications remotely.

Our best defense and offense lies with local law enforcement, working in combination with strong federal partners. The radicalization process can occur subtly, and therefore local law enforcement entities, because of their strong community knowledge, possess a unique capability to detect and disrupt radicalization using human intelligence.

Despite this close nexus with potential terrorists and their operations, state and local entities are grossly underrepresented when national terrorism policy is proposed, developed, and released. The current national security apparatus gives states and localities limited opportunities to

influence policy decisions. Given the current and ever-changing nature of the threat we face, that lack of meaningful state and local participation is a mistake.

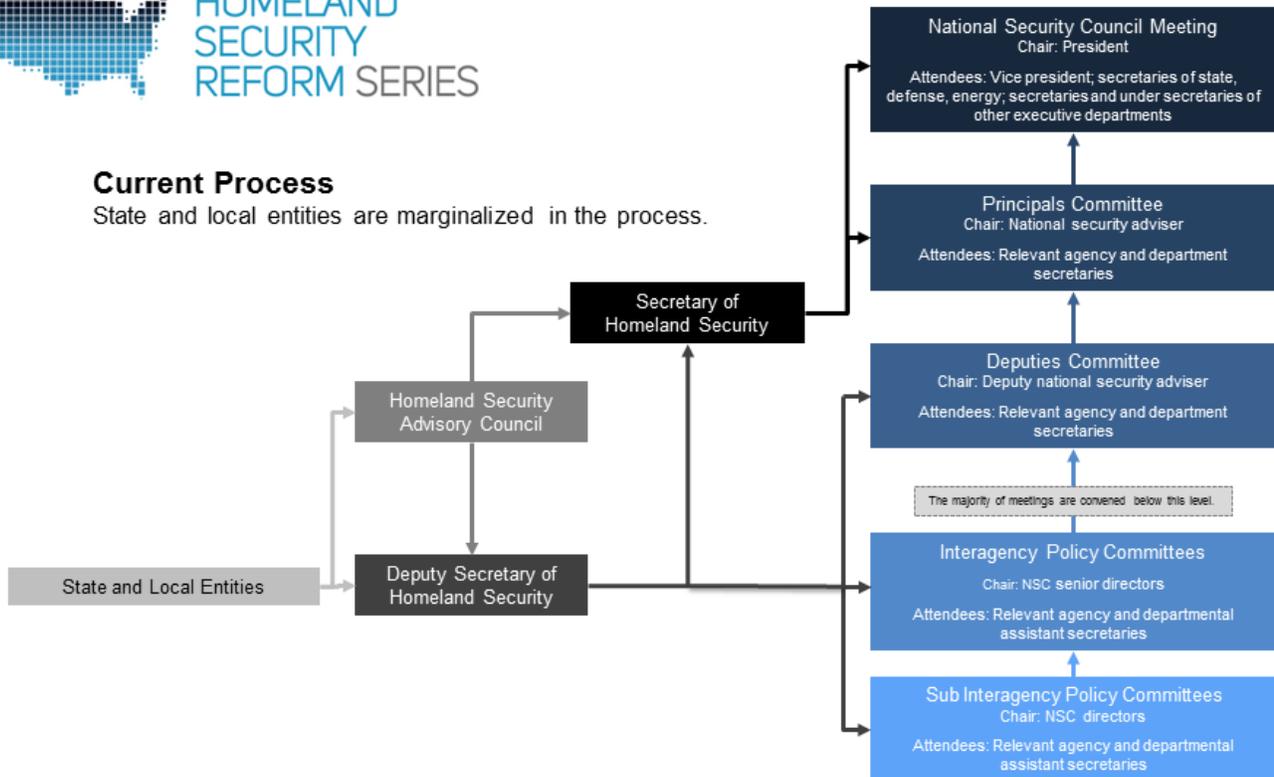
The Current National Security Policy Development Apparatus

The bulk of national security policy occurs under the auspices of the National Security Council (NSC). In addition to the president, the NSC includes “the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, and the Assistant to the President for National Security Affairs,” with the chairman of the Joint Chiefs of Staff and the director of national intelligence serving as topic advisers.⁹ Other Cabinet members are invited to attend



Current Process

State and local entities are marginalized in the process.



Source: Brimley et al., *Enabling Decision: Shaping the National Security Council for the Next President*, Center for a New American Security, 2015, http://www.cnas.org/sites/default/files/publications-pdf/CNAS%20Report_NSC%20Reform_Final.pdf.



meetings based on what issues will be discussed. Absent from the list of participants are state and local leaders, especially local law enforcement.

In terms of interagency activity, the “majority of national security meetings at the White House are convened by NSC staff—directors or senior directors—in interagency policy committees (IPCs) and sub-IPCs.”¹⁰ The NSC uses IPCs to flesh out issues via the deputy secretaries of various federal entities involved in national security issues.¹¹ IPCs engage in the following activities:

- Conduct interagency analysis;
- Generate courses of action, policy development, and coordination;
- Determine necessary resources; and
- Plan how best to implement policy.¹²

Again, state and local leaders are not involved in IPCs.

There are likely more than 1,000 IPC and Deputy Committee meetings throughout a presidential term, and the federal policy apparatus engages in policy discussions that are both frequent and broad. Therefore, cases where homeland security policy formation will have local political “effects and implications” are to be expected.¹³ Yet state and local entities have very little say in the process. Typically, they are limited to injecting their views on national policy via the US Department of Homeland Security (DHS).

For homeland security issues, the DHS has the Homeland Security Advisory Council (HSAC), which “leverages the experience, expertise, and national and global connections of the HSAC membership to provide the Secretary real-time, real-world, sensing and independent advice to support decision-making across the spectrum of homeland security operations.”¹⁴ The HSAC specifically “conducts research and provides policy analysis and recommendations on a variety of security issues [and] evaluates the impact of security related public and private policies in an attempt to formulate prospective security policies.”¹⁵ It is a valuable entity, but only 4 of the 40 members are currently active state or local leaders, with twice as many members from consulting firms.¹⁶

State and local entities can also influence the national security policy process by reviewing draft policies distributed by the DHS Office of State and Local Law Enforcement and Office of Intergovernmental Affairs.¹⁷ Once policies are received, state and local entities get a set period of time to review them and provide comments. The DHS executive secretariat then assembles all of the comments from DHS components—including those sent by state and local leaders and accepted by the DHS—and discloses those comments to the interagency process discussed earlier.

However, state and local leaders are largely dependent on the DHS to accept and advocate for their comments during the IPC process. No mechanism holds the DHS accountable as a credible representative of those state and local entities’ interests. For example, just because a local law enforcement agency sends a comment to the DHS on a policy proposal does not mean the DHS has to or will include that comment in its injects to the IPC. With equal or greater equities at stake compared to some federal departments, state and local entities should be provided an equal opportunity to shape policy.

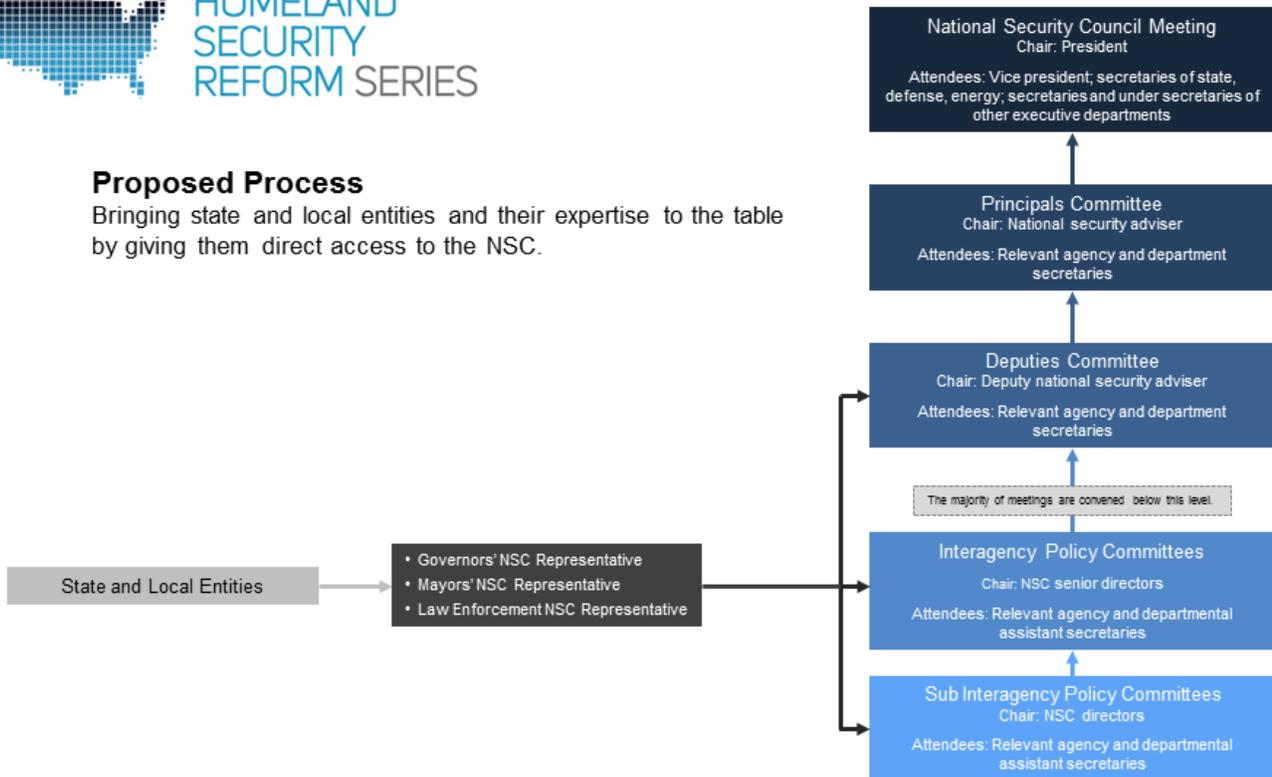
State and Local Players Need to Be at the Table

Because of state and local law enforcement’s minor role in national security policy development, there is a substantial risk that the policies developed in Washington, DC, will not entirely work on Main Street America. Unlike Russia or China, where central security apparatuses ensure control over large territorial areas, the US operates under a decentralized model without a national police force. Given the wealth of experience and knowledge state and local entities can bring to the table, continuing to push those entities to the edges of policy formation simply makes no sense.

As I noted before the rise of ISIS in a 2010 paper coauthored with Los Angeles County Sheriff Lee Baca, a national security priority “will be establishing more robust state and local representation within the executive branch that puts the principle of federalism into practice,

Proposed Process

Bringing state and local entities and their expertise to the table by giving them direct access to the NSC.



Source: Brimley et al., *Enabling Decision: Shaping the National Security Council for the Next President*, Center for a New American Security, 2015, http://www.cnas.org/sites/default/files/publications-pdf/CNAS%20Report_NSC%20Reform_Final.pdf.



allowing their participation in the formation of policy that directly affect all levels of government on vital security issues.”¹⁸ The current process by which state and local views are filtered and edited marginalizes their opportunity to influence policy. Six years later, in the face of a growing risk of ISIS-directed and ISIS-inspired attacks in the homeland, giving state and local entities a seat at the table makes even more sense now than it did when the threat to America came from nation-state actors or terrorists groups focused on large-scale attacks.

President Barack Obama, or his successor, should amend Presidential Policy Directive 1 to add three state and local representatives to the NSC process, perhaps at the Deputy Committee and IPC levels, to represent the 50 state governors (i.e., a homeland security adviser), the major city mayors, and the major city police chiefs and county sheriffs. These individuals would adequately represent the equities of the states and cities where terrorist planning and attacks could happen, as well as the law enforcement

entities who are most likely to detect and stop a terrorist attack in partnership with the FBI.

The representatives could be selected through processes adopted by the National Governors Association, the National Conference of Mayors, and the Major Cities Chiefs Police Association or National Sheriffs’ Association. To ensure continuity and seamless transitions, detailees could serve two-year terms, with terms staggered so that there is overlap among the three detailees. This sequence would allow current detailees to train new detailees as they came onboard. With the DHS awarding more than a billion dollars in grants to states and localities every year, a portion of homeland security grants could be used to cover their salaries and housing costs during their details.

Ideally, these individuals would be detailees who are current members of a gubernatorial administration or local law enforcement entity and who already possess Top Secret/Sensitive Compartmented Information clearances. To ensure that state and local entities possess

members with robust intelligence knowledge, the process for granting security clearances should be reviewed to facilitate granting clearances to state and local officials and law enforcement officers, when necessary. They also should have access to Sensitive Compartmented Information Facilities to keep up-to-date on current threats.

While it may be true, as some have argued, that the NSC has grown too big and reforms to make it smaller might be preferable,¹⁹ that shrinkage should focus on the sheer number of federal players already involved. The three additional members proposed here should be considered independently of federal-centric reforms that may or may not be warranted.

We are entering a new phase of our fight against terrorists. The very difficult task our policymakers face is to ensure that how we fight that battle gives us the greatest odds of detecting and stopping terrorist attacks here at home.

It simply makes little sense to continue to exclude state and local entities from developing, refining, and finalizing national domestic antiterrorism policies. They have more knowledge and experience to contribute to the policy process than do many of the federal agencies that have seats at the table. It is time we treat them as the partners they are, not as mere afterthoughts who must live with the consequences of federal policy changes.

About the Author

Matt A. Mayer is a visiting fellow in homeland security studies at AEI. He is a former senior official at the US Department of Homeland Security and author of *Homeland Security and Federalism: Protecting America from Outside the Beltway* (Praeger, 2009).

Notes

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13. Ibid., 43.

14. US Department of Homeland Security, "Homeland Security Advisory Council," <https://www.dhs.gov/homeland-security-advisory-council>.

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16. List of members accessible at US Department of Homeland Security, "Homeland Security Advisory Council Members," <https://www.dhs.gov/homeland-security-advisory-council-members>.

17. These entities should continue to exist even if the three state and local seats are added to the NSC, as there are countless actions that occur well below the

NSC level where robust contacts between the DHS and state and local entities are needed.

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