

# CRS Report for Congress

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## **Post-9/11 National Threat Notification Efforts: Issues, Actions, and Options for Congress**

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# Post-9/11 National Threat Notification Efforts: Issues, Actions, and Options for Congress

## Summary

A perceived lack of coordination in the federal government's warning notification process and inconsistent messages regarding threats to the homeland have led to an erosion of confidence in the information conveyed to the Nation. Congress is now considering legislation (H.R. 1817, The Department of Homeland Security Authorization Act for FY2006) to reform the Homeland Security Advisor System to allow for greater confidence in the threat information conveyed to the Nation.

Since September 11, 2001, numerous federal government organizations have notified the public of threats to the Nation. At times, warnings have been issued in a government-wide coordinated manner; other times this has not been the case. In each situation that has led to increasing the threat level, a number of organizations have made public pronouncements regarding the nature of the threat prior to, during, or after the raising of the alert-level. The information conveyed to the public often has been inconsistent regarding the threat or the timing of a suspected attack. This lack of coordination and unity in message has led to a dilution in the American public's belief in the pronouncements and a questioning of the utility of the Homeland Security Advisory System (HSAS). The focus of this paper is the federal government's coordination efforts in publicly alerting the Nation of threats to the homeland. The report reviews past warnings and changes in the alert level, organizations that have made public statements regarding threats to the Nation, and examples of how this lack of unity might lead to confusion and misinterpretations of the threat level. Options for Congress are provided regarding delineation of roles and responsibilities and which government entity should be held accountable for warning the Nation of threats to the homeland .

This paper may be updated based on future National threat notifications or changes in the notification system. For a discussion and options regarding the Homeland Security Advisory System's (HSAS) level of detail with respect to disseminated warnings, Department of Homeland Security's suggested protective measures, coordination of the HSAS with other current federal warning systems, or the costs associated with threat levels changes see CRS Report RL32023, *Homeland Security Advisory System: Possible Issues for Congressional Oversight*.

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# Post-9/11 National Threat Notification Efforts: Issues, Actions, and Options for Congress

## Issues Concerning the Nationwide Threat Notification System

A perceived lack of coordination in the federal government's warning notification process and inconsistent messages regarding threats to the homeland have led to an erosion of confidence in the information conveyed to the Nation. Congress is now considering legislation (H.R. 1817, The Department of Homeland Security Authorization Act for FY2006) to reform the Homeland Security Advisor System to assure greater confidence in the threat information being conveyed to the Nation. A universally understandable, consistent, and reliable national threat notification system is deemed necessary in today's world of increasing and time-sensitive threats to the Nation. Many believe that the notification of a threat to the United States should be conveyed by a single entity and the message should be consistent with other communications federal government officials may offer. In times of crisis or national emergency, the federal government's unity of message and a coordinated delivery of the threat notification are widely seen as crucial to the effectiveness of the system designed to convey the message. "The System's color-coded warnings have become the primary means by which the federal Government communicates directly to the public its bottom-line judgment on the risk of terrorist attack at any given time."<sup>1</sup> However, the circumstances and explanations surrounding the warnings and changes in the Homeland Security Advisory System's (HSAS) color code to date have called into question the utility and credibility of the system. In particular:

- At times it appears the color-code has been raised based on speculation that a terrorist attack may occur rather than receipt of new threat information;
- At other times, warnings of heightened threats have been issued without changing the HSAS; and
- On numerous occasions agencies have provided different, and sometimes contradictory, information about threats to the homeland.

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<sup>1</sup> House Homeland Security Committee Chairman Christopher Cox, Full Committee Hears Testimony Regarding the Homeland Security Advisory System; U.S. House of Representatives Committee on Homeland Security, February 4, 2004.

## Threat Notification Responsibility

On March 11, 2002, the President signed Homeland Security Presidential Directive-3 (HSPD-3) and created the HSAS (See Figure 1). This Directive gave responsibility to the Attorney General to administer and make public announcements regarding threats to the Nation.<sup>2</sup> Subsequent to the Homeland Security Act of 2002, enacted November 25, 2002, provided that the Under Secretary of the Infrastructure Analysis and Infrastructure Protection (IAIP) Directorate, subject to the direction and control of the Secretary (of Homeland Security), shall administer the Homeland Security Advisory System (HSAS), including (1) exercising primary responsibility for public advisories related to threats to homeland security (2) in coordination with other agencies of the Federal Government, providing specific warning information to State and local government agencies and authorities, the private sector, other entities, and the public.<sup>3</sup>

**Figure 1. HSAS**



<sup>2</sup> “The decision whether to publicly announce Threat Conditions shall be made on a case-by-case basis by the Attorney General in consultation with the Assistant to the President for Homeland Security. Every effort shall be made to share as much information regarding the threat as possible, consistent with the safety of the Nation. The Attorney General shall ensure, consistent with the safety of the Nation, that State and local government officials and law enforcement authorities are provided the most relevant and timely information. The Attorney General shall be responsible for identifying any other information developed in the threat assessment process that would be useful to State and local officials and others and conveying it to them as permitted consistent with the constraints of classification. The Attorney General shall establish a process and a system for conveying relevant information to Federal, State, and local government officials, law enforcement authorities, and the private sector expeditiously.”

<sup>3</sup> PL 107-296; Sect 201(d)(7). Homeland Security Act of 2002.

Though the Homeland Security Act of 2002 is fairly clear regarding the transition of responsibility of administering a national threat notification system from the Attorney General to the Secretary of Homeland Security, there reportedly have been “a few occasions in the past couple of years that Secretary Ridge was frustrated when Attorney General Ashcroft announced terrorist threat information, despite the fact that the Homeland Security Act of 2002, transferred the responsibility of management of the HSAS from DOJ to DHS. Also at times, DHS has disagreed with the alarming tone of Ashcroft’s announcements.”<sup>4</sup> This paper will discuss examples of uncoordinated national threat announcements between DHS, DOJ, and other federal government entities. It is possible that recent changes of Departmental and Agency leadership may assist in resolving future occurrences of uncoordinated and premature threat announcements. However, the issue remains that previous threat announcements and arguably a lack of discernible processes in determining from whom threat information is to be conveyed, has seriously eroded the HSAS’s credibility generating congressional review and discussion of ways to approach future national threat warning efforts.

## Threat Notifications Chronology

- **September 11 - September 24, 2002**

First time the threat-level is raised from Yellow-Elevated (Significant Risk of Terrorist Attack) to Orange-High (High Risk of Terrorist Attack)

Pursuant to the responsibility given to the Attorney General and delineated in HSPD-3, Attorney General Ashcroft announced on September 11, 2002, that “the U.S. intelligence community has received information, based on the debriefing of a senior Al Qaeda operative, of possible terrorist attacks timed to coincide with the anniversary of the September 11 attacks on the United States.” However, one-week prior to the official notice put forth by the Attorney General, Office of Homeland Security Chief Tom Ridge reportedly stated that “U.S. officials do not have intelligence indicating terrorists are plotting another attack on the September 11th anniversary. We do not anticipate raising the threat level for that day.”<sup>5</sup> Though it is common in the world of intelligence to receive information that contradicts previous analysis, possibly explaining moving from an elevated (yellow) to a high threat (orange) environment in one-week’s time, the concern is that prior to the first use of the HSAS, two senior members of the Administration spoke publicly to the status of the threat environment. In this case the Director of the Office of Homeland Security seemed to have preempted the Attorney General’s responsibility to publicly announce information regarding the threat environment and the status of the HSAS.

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<sup>4</sup> John Mintz, “Chertoff Orders Agency Review, Changes Possible, DHS Chief Says,” *Washington Post*, March 17, 2005, p. A23.

<sup>5</sup> “Ridge Sees No Hint of New 9/11/ Raid,” *The San Diego Union-Tribune*, September 4, 2002.

*The following two items review instances where threat information of a significant nature was discussed by senior Administration officials in an open forum. These instances did not result in a change of the HSAS.*

**On October 17, 2002**, Director of Central Intelligence (DCI) Tenet stated before a joint session of the House and Senate Intelligence Committees, “You must make the assumption that Al Qaeda is in an execution phase and intends to strike us both here and overseas. That’s unambiguous as far as I am concerned.”<sup>6</sup>

**On November 15, 2002**, the FBI stated, “Sources suggest Al Qaeda may favor spectacular attacks that meet several criteria: high symbolic value, mass casualties, severe damage to the U.S. economy and maximum psychological trauma.”<sup>7</sup> Despite the tone of the warning, White House spokesman Scott McClellan said the national alert status would remain unchanged.

Although the previous two examples did not represent official public announcements, the effect was the same in that both of these events were widely publicized. Both statements may have been analytically correct, however a potentially troublesome precedent was being set by senior officials offering diverging interpretations of the nation’s threat environment in a public forum.

- **February 7 - February 27, 2003**

Second time the threat-level raised to Orange

Prior to the raising of the alert level, the Homeland Security Act of 2002 had been enacted (November 11, 2002). The act provided that the Under Secretary of IAIP subject to the direction and control of the Secretary (of Homeland Security), shall administer the Homeland Security Advisory System (HSAS). On February 7, 2003, Secretary of Homeland Security Ridge announced that intelligence reports suggested that Al Qaeda was planning attacks on apartment buildings, hotels, and other soft targets.<sup>8</sup>

In the week leading up to the issuance of this threat warning and during the twenty-day duration of this rise in the alert level, numerous Administration officials provided varying descriptions as to the level of specificity and immediacy of the threat. Homeland Security Secretary Ridge said a terrorist attack was unlikely one-week after Attorney General Ashcroft stated that there was an increased likelihood of an attack on the United States. During this same time-period DCI Tenet testified before Congress that the information that led to this threat alert was as specific as it has ever been.<sup>9</sup> Secretary Ridge also stated during this alert level change that the intelligence about a possible attack more often than not is vague, whereas Attorney

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<sup>6</sup> “Tenet: Al Qaida Set to Strike Again,” Associated Press, October 17, 2002.

<sup>7</sup> Posted on the FBI’s website Friday, November 15, 2002.

<sup>8</sup> Homeland Security Threat Level Raised to Orange, February 7, 2003. [http://www.whitehouse.gov/news/releases/2003/02/20030207-6.html]

<sup>9</sup> “Weighing the Risks of Terror, Snippets and Threads Can Sway Threat Index,” *The Washington Post*, February 16, 2003.

General Ashcroft stated that specific intelligence was corroborated by multiple intelligence sources.<sup>10</sup>

On February 24, 2003, in the waning days of this increased alert level, Attorney General Ashcroft stated that the threat of terrorist attack remained high and there were no plans to downgrade the Nation's alert level. Less than three days later, Secretary Ridge announced that the HSAS was being lowered to Yellow- Elevated.

- **March 17 - April 11, 2003**

Third time threat-level raised to Orange

On March 17, 2003, Secretary of Homeland Security Ridge stated that Intelligence reports indicated Al Qaeda would probably attempt to launch terrorist attacks against U.S. interests to defend Muslims and the Iraqi people. On the eve of the war in Iraq, Secretary Ridge informed the public that the terrorist threat level was being raised, not because of any new threatening intelligence, but because the war seemed likely to provoke a terrorist response in the U.S.<sup>11</sup>

Prior to the war in Iraq, numerous Administration officials including some at the CIA and FBI, and lawmakers believed that should the United States commence military operations in Iraq, terrorist attacks in the United States would be an inevitable cost of toppling Saddam Hussein.<sup>12</sup>

In lowering the threat level on April 11, 2003, DHS released a statement that after an assessment of the threats by the intelligence community, the Department of Homeland Security had made the decision to lower the threat advisory level. Defense Secretary Rumsfeld later noted that "the Nation must remain vigilant and alert to the possibility Al Qaeda or those sympathetic to their cause; as well as former Iraqi regime state agents, may attempt to conduct attacks against the United States."<sup>13</sup>

This change of alert level status was accompanied by a continuing pattern of independent official announcements regarding possible threats to the Nation, including statements by the Secretary of Defense countering the reasoning used to lower the alert level: threats remain of an attack from al Qaeda or Iraqi sympathizers.<sup>14</sup>

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<sup>10</sup> "Ridge: Attack Is Unlikely, Keep Duct Tape in Storage," *Newsday*, February 15, 2003.

<sup>11</sup> "A Nation at War: Domestic Security; New Signs of Terror Not Evident," *The New York Times*, April 6, 2003.

<sup>12</sup> "A Nation at War: Domestic Security; New Signs of Terror Not Evident," *The New York Times*, April 6, 2003.

<sup>13</sup> "Terror Threat Level Dropped to Yellow; Easing of War in Iraq Cited," *The Washington Post*, April 17, 2003.

<sup>14</sup> *Ibid.*



- **May 20 - May 30, 2003**

Fourth time threat-level raised to Orange

On May 20, 2003, the Department of Homeland Security announced that the United States intelligence community believed Al Qaeda had entered an operational period worldwide, including plans to attack the United States

On the morning of May 20, 2003 DHS Secretary Ridge appeared before the House Committee on Homeland Security and stated that “America had the terror networks off-balance and that we are much safer (as a Nation)”. Later that day in a press conference held to announce raising the threat alert level, Secretary Ridge reportedly stated “in response to intelligence reports concerning anti-U.S. terrorist group intentions and the recent attacks in Saudi Arabia and Morocco<sup>15</sup> we are raising the HSAS to Orange”. “While there is not credible, specific information with respect to targets or method of attack, the use of tactics similar to those seen in recent terrorist attacks overseas include small arms equipped assault teams, large vehicle-borne improvised explosive devices, and suicide bombers.”<sup>16</sup> Simultaneous with this announcement, DHS Under Secretary for Border and Transportation Security Asa Hutchinson announced at a press conference on Capitol Hill that the alert level had been raised because “there is increased specificity in what we hear, but not necessarily in terms of the target.”<sup>17</sup>

On the following day FBI Director Mueller stated that there was no specific information regarding potential targets or the timing of an attack. DOD Secretary Rumsfeld reportedly stated that same day that some Al Qaeda leaders in Iran were plotting attacks.<sup>18</sup>

In this instance, a number of senior members of the Administration discussed the information considered in the raising of the alert level, and one of the Secretary of Homeland Security’s principal deputies offered conflicting information regarding the specificity of that information.

- **December 21, 2003 - January 9, 2004**

Fifth time threat-level raised to Orange

On December 21, 2003, Secretary of Homeland Security Ridge stated that the United States intelligence community had received a substantial increase in threat-related intelligence reports and that credible sources suggested the possibility of attacks against the homeland around the holiday season and beyond. “The information we have indicates that extremists abroad are anticipating near-term

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<sup>15</sup> “U.S. Less Vulnerable, but Terror Attacks Still Possible: Ridge,” *Agence France Presse*, May 21, 2003.

<sup>16</sup> DHS Website, “Statement by Homeland Security Secretary Tom Ridge on Raising the Threat Level,” May 20, 2003.

<sup>17</sup> CNN, “United States Goes on Orange Alert,” May 20, 2003.

<sup>18</sup> “Terror Alert Raised to High amid Fears Foreign Attacks Could Spread,” *The Associated Press*, May 21, 2003.

attacks that they believe will either rival or exceed the attacks that occurred in New York and the Pentagon and the fields of Pennsylvania nearly two years ago.”<sup>19</sup>

On numerous occasions since the inception of the HSAS a variety of senior government officials have been quoted saying that it may never be known if raising the alert level stopped a terrorist act from occurring. However, two days after the alert level was raised for the fifth time since its creation, the Secretary of Defense stated that “there’s no question that there are any number of terrorist acts that were stopped prior to their actually occurring.”<sup>20</sup> Also, six days after this HSAS threat level was lowered, the FBI Director stated that he did not foresee a time when the country could drop its guard and that “we probably will at some point in time have another attack.”<sup>21</sup>

*There were two public discussions in 2004 of threat information of a significant nature that produced some anxiety among U.S. citizens and frustration on the part of the Congress. Neither of the following instances resulted in a change of the HSAS.*

On **March 24, 2004**, the FBI issued a threat advisory indicating that the Texas oil industry may have been targeted by terrorists. While DHS is statutorily responsible for public advisories relating to the announcement of homeland security threats, specifically as they pertain to alerting infrastructure owners and operators of threat related information, the advisory came solely from the FBI. As House Committee for Homeland Security Chairman Christopher Cox stated two-weeks after this occurrence, “Clearly this is a very troubling development. Was it simply a one-time glitch or has there been a breakdown in communications between some of our key federal agencies?” Chairman Cox added, “Congress and the American people need to know, given the dangerous, uncertain times we live in today, cooperation among all authorities is more important than ever. We simply can’t afford to be sending confusing messages to a nervous public.”<sup>22</sup>

**May 26, 2004**, On May 26, 2004, Secretary Ridge appeared on five television news shows stating that although the prospect of a terrorist attack is significant, Americans should “go about living their lives and enjoying living in this country.” At 3 p.m. that same day Attorney General Ashcroft and Federal Bureau of Investigation Director Mueller held a press conference and gave a warning to the American public. The Attorney General announced that based on “credible intelligence from multiple sources, Al Qaeda intends to attack the United States in the next few months. This disturbing intelligence indicates Al Qaeda’s specific intention to hit the United States hard.” Ashcroft said the intelligence — along with recent public statements attributed to Al Qaeda — “suggest that it is almost ready to attack the United States.” He further stated that after the March 11 train bombings

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<sup>19</sup> “Error Fear Alarms Homeland,” *The Boston Herald*, December 22, 2003.

<sup>20</sup> Defense Department Operational Update Briefing, December 23, 2003.

<sup>21</sup> “FBI Head Says U.S. Defense Is Stronger,” *Star Tribune* (Minneapolis), January 15, 2004.

<sup>22</sup> “Chairman Cox and Subcommittee Chairman Gibbons Concerned About Coordination of Terrorist Threat Advisories,” Congressman Jim Gibbons Press Release, April 2004.

in Madrid, Spain, an Al Qaeda spokesman said the network had completed “90 percent of preparations” to attack the United States.<sup>23</sup>

During this press conference a reporter asked if there was credible intelligence suggesting the United States is going to be attacked between now and the election, why the threat level had not been raised. Attorney General Ashcroft responded that “the Homeland Security Council, led by Secretary Ridge, would make such a decision, and for me to try to speak for them at this time would be inappropriate.”<sup>24</sup> After Mr. Ashcroft’s announcement, Mr. Ridge seemed surprised by the Attorney General’s warning. Asked why the National Color-code alert had not been raised, Mr. Ridge replied “there is nothing specific enough (to raise the alert level).”

This seemingly uncoordinated effort was followed by a response from Representative Christopher Cox, Chairman of the House Select Committee on Homeland Security. “Dissemination by our government of sensitive terrorism warnings must be closely coordinated across our intelligence and law enforcement communities,” Cox said. “In the Homeland Security Act, DHS was assigned the central coordinating role in this process. The absence of Secretary Ridge from yesterday’s news conference held by the attorney general and the FBI director, and the conflicting public messages their separate public appearances delivered to the nation, suggests that the broad and close interagency consultation we expect, and which the law requires, did not take place in this case.”<sup>25</sup>

These last two examples are cited by many observers as suggesting a general lack of coordination and unity in message of warnings to the nation of threats, and also reflecting a lack of overall collaboration between DHS and other federal intelligence community and law enforcement organizations. Homeland Security employees have complained that their CIA and FBI colleagues show them little respect. Intelligence agents reportedly counter saying that DHS has been known to go public with terror alerts based on information that other agencies found to be sketchy.<sup>26</sup> This latter contention does not seem to be supported by the pattern of Administration officials, other than the DHS Secretary, openly discussing threats to the Nation.

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<sup>23</sup> Attorney General Ashcroft and FBI Director Mueller Press Conference, DoJ Media Advisory, May 26, 2004.

<sup>24</sup> Transcript, “Ashcroft, Mueller Discusses Terrorist Threat,” FDCH E-Media, Wednesday, May 26, 2004.

<sup>25</sup> Statement from Christopher Cox, Chairman of the House Select Committee on Homeland Security, May 28, 2004.

<sup>26</sup> Michael Isikoff and Daniel Klaidman, “Look Who’s Not Talking — Still, A new report says U.S. intelligence agencies haven’t learned to share information, despite lessons of 9/11” *Newsweek*.

- **August 1 - November 10, 2004**

Sixth time threat-level raised to Orange

On August 1<sup>st</sup>, 2004, Secretary of Homeland Security Ridge stated that the HSAS was being raised to Orange based on threat intelligence that indicated Al Qaeda was planning attacks against financial institutions in New York, Washington, D.C., and New Jersey prior to September 11, 2001. In announcing this threat level change, the DHS Secretary Ridge stated that the United States had new and unusually specific information about where al Qaeda would like to attack.

The following day, Monday, August 2, 2004 White House Homeland Security Advisor Fran Townsend similarly stated that the increase in threat level was based on information showing that Al Qaeda had been surveilling financial targets in 2000 and 2001. However, she also added that the most recent intelligence included mention of threats to the U.S. Capitol and Members of Congress. This prompted Washington, D.C. Capitol Police Chief to remark that the briefings he had received on the recent intelligence did not speak to specific, credible, direct threats against Congress as an institution, or its Members.<sup>27</sup> Secretary Ridge did not mention the Capitol or Congress in his statement announcing the increase in the threat level. However, one month later, Secretary Ridge reportedly admitted that though the Administration viewed the threat as “credible,” the information was “sketchy and incomplete.”<sup>28</sup>

On October 12, 2004, in view of the uncertainty of the intelligence that was presented and the subsequent announcements regarding the threat environment, Senator Mark Dayton temporarily closed his Washington, D.C. Office, “based upon that information, I have decided to close my office until after the upcoming election. I do so out of extreme, but necessary, precaution to protect the lives and safety of my Senate staff and my Minnesota constituents, who might otherwise visit my office in the next few weeks. I feel compelled to do so, because I will not be here in Washington to share in what I consider to be an unacceptably greater risk to their safety.”<sup>29</sup>

During this threat level change, a senior member of the White House proffered additional information as to the reason the threat level was raised in Washington, D.C. The additional information led to further confusion, producing follow-on statements and actions by the Washington D.C. Police Chief and a Member of Congress that further called into question the credibility of the originally announced information that led to the raising of the HSAS.

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<sup>27</sup> “Capitol Police Chief Sees no Specific Threat to Hill; Gainer Disputes Charge by White House Adviser,” *The Washington Post*, August 10, 2004.

<sup>28</sup> “Security Measures Buying Time Before New Plot,” *The Financial Times*, September 2, 2005

<sup>29</sup> Press Release, Senator Mark Dayton, October 12, 2004.

# Effects of Uncoordinated or Inconsistent Threat Warnings

## Homeland Security Advisory System

Given the history of these seemingly uncoordinated threat notifications, local governments and the public have complained about being confused by the varying details supporting the decision to raise the alert level. Many have lost confidence in the system.

In February 2003, the Governor of Hawaii decided to keep Hawaii at the blue (guarded) level when the federal government raised its level to orange (high risk). Monetary cost of increased security and the public's psyche were figured into the decision as well as the potential loss of life. Ed Teixeira, vice director of the civil defense division of the Hawaii's Department of Defense reportedly commented that, "just because [Secretary of Homeland Security Tom] Ridge and [Attorney General John] Ashcroft go on TV and say we are on orange, it doesn't mean states and counties have to be at orange."<sup>30</sup> Though a lack of information regarding place and timing of an attack was noted as the reason to not follow the federal government's recommendation regarding raising the alert level, it is equally telling that the Hawaii State Homeland Security advisor pointed to the Secretary of Homeland Security and the the Attorney General as the individuals Hawaii State officials listen to regarding threat warnings.

Business leaders argued for better threat information from law enforcement, as well as better coordination among agencies providing threat information. Specifically, they said that they did not receive sufficient specific threat information, and frequently received threat information from multiple government agencies.<sup>31</sup> Some federal agencies, as well as state and local officials reported hearing about notification of national threat level changes from other entities, such as the FBI and media sources, before being notified by DHS.<sup>32</sup>

## Other Warning Advisory Problems

There have been examples and findings that speak to the issue of coordinated warnings and unity of message. A significant finding of the USS Cole Commission acknowledged that contradictory threat levels played a role in the level of protection of the ship on the day of the attack.<sup>33</sup> Similarly, the Commission on the Intelligence

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<sup>30</sup> Pacific Business News; [<http://www.bizjournals.com/pacific/stories/2003/02/24/story4.html>]

<sup>31</sup> GAO-05-33, *Homeland Security: Agency Plans, Implementation, and Challenges Regarding the National Strategy for Homeland Security*, January 12, 2005.

<sup>32</sup> GAO Report, *Homeland Security Advisory System: Preliminary Observations Regarding Threat Level Changes from Yellow to Orange*, February 26, 2004, page 8.

<sup>33</sup> On October 12, 2000, the USS Cole was attacked by a small boat laden with explosives while at a refueling stop in the Port of Aden, Yemen. The USS Cole at the time of the attack

Capabilities of the United States regarding Weapons of Mass Destruction reported on the confusion associated with threat warning products destined for the President and senior decision makers.<sup>34</sup>

## Discussion and Options for the 109<sup>th</sup> Congress

“The American public, state and local law enforcement, governors and mayors, and private sector officials with responsibility for critical infrastructure all deserve crystal clarity when it comes to terrorism threat advisories.” (Representative Christopher Cox (R-Calif.), Chairman of the House Select Committee on Homeland Security)

A number of options exist that include clarifying DHS’s primacy in alerting the Nation of impending threats, eliminating the Homeland Security Advisory System, or transferring the national threat notification responsibility to the National Counter Terrorism Center.

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was operating under Department of Defense threat condition Bravo, the second lowest alert level that denotes the current threat condition. Central Command’s decision, based in part on the current defense threat condition, continued to use Yemen during this period as a refueling location despite a U.S. State Department warning against travel to Yemen on September 14, 1999, stating that Yemen is experiencing higher incident of hostility and violence toward Americans. Also, the annual State Department Patterns of Global Terrorism report released in April 2000, characterized Yemen as a haven for terrorists. This same report did not mention Djibouti; a neighboring Country that would have been available for refueling, as a concern for terrorist. The inconsistency between the Department of Defense and the Department of State warning offered conflicting information as to the level of threat faced by the USS Cole as it waited to be refueled off of the coast of Yemen. This differing analysis and lack of coordination between DOD and DOS resulted in the lack of recognition of the danger that the U.S.S. Cole’s crew faced.

The USS Cole Commission, in investigating the attack and making policy and procedure recommendations to improve the DOD’s system of protecting its forces, released a report on January 9, 2001, acknowledging contradictory threat alerting mechanisms. One of the recommendations stated that the geographic Commander in Chief (CINC) should have the sole authority for assigning the threat level for a country within his area of responsibility. The Commission report further recommended that the Geographic CINC’s be solely responsible for establishing the threat level within the appropriate area of responsibility with input from DIA, and that the Secretary of Defense coordinate with Secretary of State, where possible, to minimize conflicting threat levels (being issued) from the Department of Defense and the Department of State. DOD, *USS Cole Commission Report*; Executive Summary, Unclassified Findings and Recommendations, January 9, 2001.

<sup>34</sup> “The Community’s inability to implement a “one team, one fight” strategy in the terror war may be attributed both to ongoing bureaucratic battles between agencies charged with responsibility for counter terrorism analysis and warning, as well as the failure of Community leaders to effectively resolve these disputes and clearly define agency roles and authorities.” WMD Commission Report, Chapter 4; Finding 2, Page 288.

## **Option: Clarify DHS's Primacy in Alerting the Nation of Impending Threats**

One issue is whether the intent of Section 201d7<sup>35</sup> of the Homeland Security Act of 2002 was to give DHS explicit authority and responsibility to be the sole federal entity charged with conveying homeland security threat information to the American people. In delivering to Congress the proposed legislation to create the Department of Homeland Security, President Bush recommended that “one department coordinate communication with State and local governments, private industry, and the American people about threats and preparedness.”<sup>36</sup> Section 102(c)(3) of the Homeland Security Act also states that the Secretary of Homeland Security has the authority and responsibility for “distributing or, as appropriate, coordinating the distribution of warnings and information to State and local government personnel, agencies, and authorities and to the public.” Congress could reemphasize DHS’ primacy in alerting the Nation of impending threats. This might put other Agency officials on notice as to whom is authorized to be the public face of national threat notifications. Another option would be to allow other Departments to disseminate threat information regarding the security of the homeland when such information is deemed credible and extremely time-sensitive (exigent circumstances).

## **Option: Eliminate the Homeland Security Advisory System**

Given the short history of the HSAS, uncoordinated warning efforts, lack of uniformity in the type of information conveyed, and an increasingly wary populace as to the credibility of the message, Congress could choose to eliminate the system. The natural question that follows is what would the replacement system be and would it be an improvement on the current system.

One could argue that, given the uniqueness of each threat situation requiring a communication to the public, threat notifications may not allow for a system per se. According to this line of reasoning, each “warning-notice” should be handled as its own entity. Threat information, geographic location, target location, timing of perceived attack, defensive measures, and the like should be addressed individually and not formulated to fit into a neat category of threat-levels. This might be problematic for a number of reasons. First, many federal and state programs are tied to the current color-code with numerous actions and funding decisions tied to a raising or lowering of the alert. Secondly, though cumbersome and non-specific, the current HSAS allows for an assessment, by federal and state governments, the private

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<sup>35</sup> HSA2002; Sect 201d 7. The Under Secretary of IAIP, subject to the direction and control of the Secretary (of Homeland Security), shall administer the Homeland Security Advisory System (HSAS), including (1) exercising primary responsibility for public advisories related to threat to homeland security (2) in coordination with other agencies of the Federal Government, provide specific warning information to State and local government agencies and authorities, the private sector, other entities, and the public.

<sup>36</sup> Message to the Congress; Transmittal of proposed legislation to created the Department of Homeland Security, June 18, 2002. [<http://www.whitehouse.gov/news/releases/2002/06/20020618-5.html>].

sector, and the public as to a general threat level that comes with certain expectations regarding the federal response. Lastly, if a warning-notice type system were introduced, the inevitable question would arise regarding how one compares today's threat warning to past color-coded warnings and other warning-notices.

### **Option: Transfer the Threat Notification Responsibility to the National Counter Terrorism Center (NCTC)**

As stated in the Intelligence Reform and Terrorism Prevention Act of 2004, a mission of the National Counter Terrorism Center is to serve as the primary organization for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counter terrorism (except intelligence pertaining exclusively to domestic terrorists and domestic counter terrorism) and to serve as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support.<sup>37</sup>

Since the relevant Departments concerned with terrorism are represented at the NCTC and legislatively NCTC is the focal point of all federal analytical and strategic operational planning terrorism efforts, this entity may be well positioned to review all applicable information regarding the terrorist threat and also coordinate the warning message to be conveyed to the public. One option would be to designate the NCTC the federal government's communicator of threat information to the Nation. Precedence exists for this option as Secretary Ridge and the Director of the NCTC (formerly the Terrorist Threat Integration Center) held a joint press conference discussing the threat environment and suggested protective measures.<sup>38</sup> Formalizing the NCTC as the national threat messenger would allow Congress to hold one organization (NCTC) responsible for terrorism analysis and the warnings that are derived therein. DHS could continue to provide specific advice regarding protective measures to the private sector, state and local governments, and the public. However, the advice and collaborative efforts would be based on threat information compiled and communicated by the NCTC. Congress could include language to allow for other Departments to disseminate threat information under exigent circumstances.

Whether the threat notification process continues in the current form of the HSAS, is eliminated and replaced by situation specific warning-notices, or is transferred to the NCTC or some other entity, the issue remains one of coordination and unity of message, rather than in what form the threat information should be conveyed. Undoubtedly, numerous government agencies will continue to comment on various aspects of a given threat condition. However, critics argue that future national threat announcements should occur in a coordinated manner that allows for an unambiguous message. Due to a lack of coordination and unity in message it appears that the general public and affected localities are becoming desensitized or disinterested in the information contained in national threat warning notification messages. The lack of confidence brought on by confusion in the current notification process could be a severe liability in an actual emergency.

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<sup>37</sup> P.L. 108-458; Section 119, 3(d)(1)and (6).

<sup>38</sup> "Feds Decide Against Raising Terror Alert"; Fox News, October 20, 2004, [<http://www.foxnews.com/story/0,2933,137160,00.html>]



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