“We Have Some Planes”

No book about homeland security is complete without mention of 9/11 and reference to The 9/11 Commission Report and other factual reporting about the attack. There is then a discussion of what homeland security is. There are sections on what homeland security looks like from the outside and from the inside, and a discussion about the development of homeland security law since 9/11. Next are definitions of terrorism, a list of goals or learning objectives for the reader, and then a little about this text.

9/11

Understanding what happened and how September 11, 2001, affected America and the world is important for understanding homeland security law and policy, but is beyond the scope of this book. I recommend readers familiarize themselves with the documented history and background. The 9/11 Commission Report, the result of an intensive government-sponsored investigation, is the official version of the events. Columbia University’s The World Trade Center Attack: The Official Documents, and City University of New York/George Mason University’s The September 11th Digital Archives both have a wealth of information.

This book and what you are learning about is not just an academic exercise. For a reminder of 9/11, see this poignant video of the burning towers, the people, scene, etc., set to music by Enya.

Up From Zero, a one-hour video from the U.S. Department of Labor, is an uplifting profile of the tradespeople who removed what was left of the World Trade Center after 9/11/2001. A remarkable story in itself, made even more so because some of the same workers also helped to build it years earlier.

The Boston Marathon bombing on April 15, 2013, is the topic of a remarkable 14-minute video by Chris Bellavita and the CHDS media team. Lilacs out of the Dead Land: 9 Lessons to be Learned from Last Week, introduces many of the issues relevant to understanding homeland security.

WHAT IS HOMELAND SECURITY?

Vision of Homeland Security

According to the Homeland Security Council in 2007, “the United States, through a concerted national effort that galvanizes the strengths and capabilities of Federal, State, local, and Tribal governments; the private and non-profit sectors; and regions, communities, and individual citizens – along with our partners in the international community – will work to achieve a secure Homeland that sustains our way of life as a free, prosperous, and welcoming America.”

More recently, the 2014 Quadrennial Homeland Security Review described the Homeland Security Vision as “A homeland that is safe, secure, and resilient against terrorism and other hazards, where American interests, aspirations, and way of life can thrive.”
Mission Statement

The Department of Homeland Security lists five missions:

1. Prevent terrorism and enhancing security;
2. Secure and manage our borders;
3. Enforce and administer our immigration laws;
4. Safeguard and secure cyberspace;
5. Ensure resilience to disasters.10

Homeland Security Distinguished from Homeland Defense

Homeland security and homeland defense are complementary components of the National Security Strategy. Homeland defense is the protection of US sovereignty, territory, domestic population, and critical defense infrastructure against external threats and aggression, or other threats… Missions are defined as homeland defense if the nation is under a concerted attack. The Department of Defense (DOD) leads homeland defense and is supported by the other federal agencies. In turn, the DOD supports the nation’s homeland security effort, which is led by the Department of Homeland Security (DHS).11

Definition of Homeland Security

Homeland Security is defined as “a concerted national effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”12

No Consensus

Despite the definition, mission statement, and vision, there is no consensus among practitioners and the public as to what the term Homeland Security actually means. Different groups view it differently.13 The extremes of opinion are represented, for the narrow view, by those who feel homeland security is only about terrorism. They believe focusing on anything additional dilutes, distracts, and weakens the homeland security mission.

Others say its focus is terrorism and natural disasters. Still others claim homeland security is about “all hazards” (terrorism, man-made disasters, and natural disasters). To some, homeland security is focused on “jurisdictional hazards” (i.e. homeland security means different things to different jurisdictions depending upon that jurisdiction’s particular hazards, risks, and level of preparedness). Examples of some of the jurisdictional hazards include hurricanes, tornadoes, flooding, and earthquakes.

At the other extreme, the broad view of homeland security advocates that homeland security is about everything – that it implicates almost every sector of our lives and there is very little which does not relate to it in some way.

Under this view, the arts (painting, poetry, music, dance, theater, food) have homeland security implications. Known to break down barriers and overcome cultural differences, sometimes the arts are the only connection between otherwise hostile/unfriendly countries.14 “We must never forget that art is not a form of propaganda; it is a form of truth.”15 Even food counts. “It’s often said that the closest interaction many Americans have with other countries’ cultures is through food. That kind of culinary diplomacy is particularly common in Washington, D.C., where immigrants from all over the world have cooked up a diverse food scene…”16

One practitioner uses the term “generational hazards.” These are hazards created by the present generation that “take many decades to metastasize before finally reaching a disastrous end-state that impacts future generations.”17 Global warming is one example.

For those who think homeland security must also include global and ideological issues such as freedom, self-determination, democracy, sustainable growth and consumption, overpopulation, environmental degradation, inadequate health care, extreme poverty, intolerance, social injustice, etc., homeland security is synonymous with “One World Security.”18 We can plan to prevent, prepare for, and recover from a terrorist attack. We can also take the broader and longer-term view and work to make the world a better place where there will be fewer terrorists.

A Different Name – A Different Focus

The titles we used and the focus of what we now call homeland security have changed over the years19. During the Cold War, we called it “Civil Defense,” focused on nuclear war with the Soviets. When the Cold War ended, the focus moved to natural hazards. After 9/11, we called it homeland security, focused on terrorism. Homeland security is now focused on “all hazards” (terrorism + natural disasters + man-made disasters). Within this list of terms should also be “public safety.”

Views of Emergency Management

Further insight into what is homeland security can be gained by examining different models of emergency management. Michael D. Selves20 describes two philosophically different views of emergency management – the “emergency services” model and the “public administration” model.

The “emergency services [model is] primarily concerned with the coordination of emergency services.” Among other things, Selves points out that under the emergency services model

Organizational interactions tend to be primarily with emergency services agencies. Managers operating under the E-S model may be reluctant to interact with non-emergency
services agencies and especially with senior, elected officials. Often emergency management functions are embedded within an emergency service agency. This has the effect of isolating them further from the policy making functions of the jurisdiction. Access to local executives and elected officials is often indirect and limited by the organizational structure. Interaction with policy level officials is also often characterized by an attitude that the “politicians” are a nuisance during response operations and should be “kept somewhere so they don’t get in the way”.

The public administration model is much broader.

The P-A model is based on a philosophy which views emergency management as an element of the overall administration of government. It sees emergency management as that aspect of public administration which deals with the operation of government during crisis. Because of this, there is an interest in the political, social and psychological factors that are involved in crisis management. The concern is focused on not just the emergency services response, but on the impact of the disaster/emergency in terms of larger jurisdictional issues...

Practitioners operating under the P-A model tend to approach emergency management as a discipline, subject to academic research and debate with the results… being used as tools in implementing a local program...

The “emergency services” model is narrow, restricted, and limited. The “public administration” model is, by comparison, broad, full, and robust. The public administration model must address the full range of issues while the emergency services model just makes sure the fire is out.

Furthering the broad view of homeland security, President Obama stated there is no distinction between homeland security and national security. He “described the nation’s energy challenges as both a matter of national security and environmental protection.” The U.S. Commission on National Security wrote, “We have taken a broad view of national security. In the new era, sharp distinctions between “foreign” and “domestic” no longer apply…” The Director of National Intelligence said growing worldwide energy demand, global warming, food and water shortages, and increasing population are national security issues. The Department of Defense, National Defense Strategy reflects this same sentiment. The 2010 National Security Strategy states that “the danger from climate change is real, urgent, and severe.”

Additional examples of the broad view of homeland security include, “The capacity of America’s educational system to create a 21st century workforce second to none in the world…” and “America’s heavy dependence on a global petroleum market that is unpredictable, to say the least.”

Former president Jimmy Carter said in May 2009, “our inseparable energy and environmental decisions will determine how well we can maintain a vibrant society, protect our strategic interests, regain worldwide political and economic leadership, meet relatively new competitive challenges, and deal with less fortunate nations. Collectively, nothing could be more important.”

INDIVIDUAL RESPONSIBILITY AND FAITH-BASED ASSISTANCE

Hurricane Katrina will be examined thoroughly in the FEMA chapter of this volume (Ch. 8) and blame for the poor response can be debated and assigned to several management-level individuals, entities, and levels of government. It does not, however, fall on them alone. There must be some “individual responsibility.” The question is, just how much?

Many of the people who perished and suffered were very poor, ill, frail, and/or disenfranchised. Is it good governance to expect a person who can barely feed themselves to, on their own, relocate to another city, or go to a hotel for a few days? Which level of government and which individuals were in the best position to know the existing infrastructure weaknesses, the severity of the coming storm, and the constituents?

Although taking “individual responsibility” is admired in our society, the term is not a focus in the homeland security literature. That said, America has a long history of religious organizations taking responsibility for those less fortunate. “The White House Office of Faith-based and Neighborhood Partnerships works to build bridges between the federal government and nonprofit organizations, both secular and faith-based, to better serve Americans in need.” There is the DHS Center for Faith-based & Neighborhood Partnerships and FEMA’s Voluntary, Faith-Based, & Community-Based Organizations.

WHAT DOES HOMELAND SECURITY LOOK LIKE FROM THE OUTSIDE?

Using an Office of Homeland Security/Emergency Management (HSEM) as an example, homeland security looks like or reflects the breadth-of-homeland-security view of its leaders. For those with an ‘emergency services’ orientation we would expect to see major involvement by emergency services providers only (police, fire, EMS, etc.). This system might have the best equipment and respond with military precision, yet if these are the only participants, then the job is done as soon as the scene is safe.

An HSEM office with a “public administration” focus would have a vastly broader area of responsibility. This HSEM would involve not just a city’s first responders but also all subsequent responders; those represented in part by the city agencies that will have a role in recovery. These include public works, parks and recreation, public health,
education, animal control, building inspection, child support, city engineer, information technology, environment, housing, mayor or administrator, medical examiner or coroner, power, planning, port authority, zoo, and the finance and tax people. Every city agency would be involved with the HSEM. After surviving a disaster, when the first responders are done, these subsequent responders will make a city resilient.

At the very least, a broad-minded HSEM office will have all of its agencies working as soon after a disaster as possible. Ideally, all of the agencies have practiced working together in alternative locations and with limited communications capabilities. All agencies should have ways to obtain essential equipment, supplies, and other vital resources even without a fully functional city government. For example, the public health department procures latex gloves from the local pharmacy when the traditional supplier is unavailable. In addition, all of this should be practiced and coordinated with federal, state, and tribal governments, the private and non-profit sectors, and regions, communities, and individual citizens. For more on this, see the chapters on preparedness and resilience in this volume (chapters 22 and 23).

WHAT DOES HOMELAND SECURITY LOOK LIKE FROM THE INSIDE?

America faces an “evolving landscape of homeland security threats and hazards. The Deepwater Horizon oil spill in 2010, Hurricane Sandy in 2012, and the Boston Marathon bombing in 2013 illustrate these evolving threats and hazards. We must constantly learn from them and adapt.”13

Homeland security is not static, absolute, or permanent. It is continuous and adaptive. It is dynamic. On every level, homeland security requires cooperation, joint operations, and collaboration. It is integrated, interrelated, and interagency. “The challenges to national security today defy traditional categories. National security now involves a wide array of issues that can be addressed only with a broader set of highly integrated and carefully calibrated capabilities.”34

“The evolution of the terrorist threat demands a well-informed, highly agile, and well-networked group of partners and stakeholders.”15

Emergency services agencies (first responders) all over the country have a grand history of cooperating with each other. Thus homeland security has horizontal integration. Almost every statute and policy document related to homeland security requires that a certain plan or action be coordinated with federal, state, county, city, town, tribal, and regional governments, and with the private sector. There is also, at least in theory, vertical integration.

_The 9/11 Commission Report_ called the attacks a failure of imagination.36 How we think about the subject, or don’t think about it, can be as important as any other aspect of homeland security. “We can’t solve problems by using the same kind of thinking we used when we created them.”37

“Truly successful decision making… demands more than just a picture of the world as it is. It demands in addition a picture of the world as it will (or at least may) be.”38

Homeland security requires that new ways of thinking about or looking at a problem, and new vision, be nourished and encouraged. There must always be room at the table for them. (See chapter 2, _Metacognition and Errors in Judgment Related to Decision Making in Homeland Security_.)

EVERYONE IS A COMPONENT. EVERYTHING IS IMPORTANT

Homeland security has many components and they are all critical. For example, no matter what type of incident, whether it is a storm, earthquake, flood, tornado, man-made disaster such as a train wreck with deadly chemicals aboard, or terrorism, without communications, intelligence cannot reach decision-makers and direction cannot be conveyed to the people in the position to take action. Without good intelligence, those in charge will not know the best actions to take, regardless of whether they can communicate. Without trained, prepared, and properly equipped responders to take action, communication and intelligence are meaningless.

This is a more important point than it might appear to be at first glance because “everyone” is a lot. It includes not just the decision-makers, intelligence officials, and first responders mentioned in the preceding paragraph. “Everyone is a component” means the entire community. For example, if there is a major catastrophe and if members of the community know basic first aid, that will free up overwhelmed first responders to deal with major injuries. FEMA’s CERT (Community Emergency Response Team, sometimes it goes by other names) training is an excellent resource that increases the number of people who can contribute. Please see chapters 22 and 23 on preparedness and resilience.

WHAT IS HOMELAND SECURITY LAW?

One definition of homeland security is that it is “a concerted national effort to prevent terrorist attacks within the United States, reduce America’s vulnerability to terrorism, and minimize the damage and recover from attacks that do occur.”39

Adding the Department of Homeland Security’s all hazards approach, it follows logically, then, that Homeland Security Laws are those statutes enacted to prevent, mitigate, respond to, and recover from man-made or natural disasters, catastrophic accidents, or terrorist attacks.40

Homeland Security Law had its official beginning on September 11, 2001. Prior to then, our nation “lacked a unifying vision, a cohesive strategic approach, and the necessary institutions within government to secure the Homeland
Six weeks later, October 26, 2001, Congress passed the USA Patriot Act. On November 25, 2002, it passed the Homeland Security Act establishing the Department of Homeland Security (DHS). Documents called National Strategies, produced by the Executive Branch of government, enunciate the nation’s overriding homeland security strategies. For example, there is the National Security Strategy, the National Strategy for the Physical Protection of Critical Infrastructures and Key Assets, and the National Strategy for Combating Terrorism. A complete list of these and other related documents can be found in the Homeland Security Digital Library. We will discuss some of these later in the book.

Presidential Directives are much shorter than the strategies. Each one is focused on a specific subject area. Some of them are public, and some classified. The administration of President George W. Bush called them “Homeland Security Presidential Directives” (HSPDs). HSPD 7 relates to critical infrastructure identification, prioritization, and protection. HSPD 8 deals with national preparedness. HSPD 9 is entitled “Defense of United States Agriculture and Food.”

In President Barack Obama’s administration, they are called “Presidential Policy Directives” (PPDs). PPD 2 is about Implementation of the National Strategy for Countering Biological Threats. PPD 20, about U.S. Cyber Operations Policy, is classified and only a fact sheet is available, not the full text. PPD 21 is entitled “Critical Infrastructure Security and Resilience.” PPD 28 is about signals intelligence. We will study some of these.

The Disaster Relief Act of 1974 established the procedures for presidential disaster declarations. The Federal Emergency Management Agency (FEMA), created during the administration of President Jimmy Carter in 1979, consolidated under one agency the disaster management functions that previously were scattered among several independent agencies. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (1988) amended and incorporated the provisions of the 1974 Disaster Relief Act. “The Stafford Act,” as it is called, sets forth the procedures for declaring a disaster and requesting federal assistance, and then guides the subsequent emergency response through ultimate recovery.

After a clearly inadequate response to hurricane Katrina, the Post-Katrina Emergency Management Reform Act (PKEMRA), made significant changes to FEMA and DHS, and helped to clarify the State and Federal Government’s roles, including FEMA’s and DHS’s roles, for responding to large-scale events.

The national strategies, HSPDs, PPDs, and statutes such as the Patriot Act, the Homeland Security Act, the Stafford Act, PKEMRA, and others, executive orders, plus portions of related statutes, comprise homeland security law and policy and are the homeland security framework and are what this book is about. The Department of Homeland Security itself and all homeland security actions it takes exist only in compliance with these foundational documents.

THE DEVELOPMENT OF HOMELAND SECURITY LAW

It is impossible to understand the complexity, scope, and depth of the Patriot Act without reading the statute, thus significant portions are reproduced here. The Patriot Act was extremely controversial and invoked public protests claiming it violated rights to privacy. One of its most controversial provisions involved increasing the availability of surveillance without the need for a judicially approved warrant. Supporters of the Patriot Act claim it was sharply focused to achieve its goal and to decisively correct some of the country’s security weaknesses.

Regardless of whether one approved of the Patriot Act or not, it was an intellectual accomplishment representing a tremendous effort in a very short time period. It involved understanding many complex and interrelated statutes covering many areas of existing law, and it created new law.

Although the Homeland Security Act was not written in the same short time period as the Patriot Act, and not under the immediate shock of 9/11, it too was a remarkable document. Even though many disagree with some of its provisions, organizational structure, or the inclusion of FEMA as an agency within DHS, in creating DHS the Act accomplished the largest reorganization of government in more than fifty years. (See chapter 7 about DHS and chapter 8 about FEMA.)

The Homeland Security Act created DHS, brought FEMA under DHS control, and “transferred more than two-dozen federal entities – some in their entirety, some only in part – and 180,000 employees to the new department.”

From its inception, homeland security included an important focus on science and technology. Homeland security relies on technology for many purposes, including situational awareness, early detection and monitoring of weapons of mass destruction, and communication. DHS promotes the expedited development, acquisition, and introduction of new technology.

The Homeland Security Act mandated:

… that [DHS] agencies’ databases be compatible with one another and with other federal agencies.

It

established within the Department of Justice an Office of Science and Technology … to serve as the national focal point for work on law enforcement technology; and … to carry out programs that, through the provision of equipment,
training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.\textsuperscript{50}

The homeland security framework was designed and implemented at an extraordinarily rapid pace. For example, in addition to the Patriot Act coming only six weeks after 9/11, a particular HSPD would have deadlines for each subsequent step, such as the design or implementation of the related national strategy. For example, for the National Incident Management System (NIMS), first mentioned in HSPD 5, dated February 28, 2003, the Secretary of DHS was directed to have guidelines, standards, and protocols to implement NIMS by June 1, 2003. Each Federal Department was to have a plan to adopt and fully implement NIMS by August 1, 2003.

**A FEW DEFINITIONS OF TERRORISM**

There is no consensus as to the definition of terrorism.\textsuperscript{51}

**DHS**\textsuperscript{52}

(15) The term “terrorism” means any activity that—
   (A) involves an act that—
      (i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and
      (ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and
   (B) appears to be intended—
      (i) to intimidate or coerce a civilian population;
      (ii) to influence the policy of a government by intimidation or coercion; or
      (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
   (C) occur primarily within the territorial jurisdiction of the United States.

**International Terrorism, 18 USC 2332b**\textsuperscript{54}

(a) **PROHIBITED ACTS.**—
   (1) **OFFENSES.**—Whoever, involving conduct transcending national boundaries and in a circumstance described in subsection (b)—
      (A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any person within the United States; or
      (B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States by attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States; in violation of the laws of any State, or the United States, shall be punished as prescribed in subsection (c).
   (2) Treatment of threats, attempts and conspiracies.—Whoever threatens to commit an offense under paragraph (1), or attempts or conspires to do so, shall be punished under subsection (c).

(b) **JURISDICTIONAL BASES.**—
   (1) **CIRCUMSTANCES.**—The circumstances referred to in subsection (a) are—
      (A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;
      (B) the offense obstructs, delays, or affects interstate or foreign commerce, or would have so obstructed, delayed, or affected interstate or foreign commerce if the offense had been consummated;
      (C) the victim, or intended victim, is the United States Government, a member of the uniformed services, or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or of any department or agency, of the United States;
      (D) the structure, conveyance, or other real or personal property is, in whole or in part, owned, possessed, or leased to the United States, or any department or agency of the United States;
(E) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

(F) the offense is committed within the special maritime and territorial jurisdiction of the United States.

(2) **CO‐CONSPIRATORS AND ACCESSORIES AFTER THE FACT.**—Jurisdiction shall exist over all principals and co‐conspirators of an offense under this section, and accessories after the fact to any offense under this section, if at least one of the circumstances described in subparagraphs (A) through (F) of paragraph (1) is applicable to at least one offender.

CIA, State Department, 22 USC Sec. 2656f

(d) **DEFINITIONS.** As used in this section—

(1) the term “international terrorism” means terrorism involving citizens or the territory of more than 1 country;

(2) the term “terrorism” means premeditated, politically motivated violence perpetrated against non‐combatant targets by subnational groups or clandestine agents;

**United Nations**

The UN does not have an agreed upon definition of terrorism. On Dec. 9, 1994, however, Resolution 49/60, “Measures to eliminate international terrorism” was adopted by the General Assembly, containing the following:

(3) Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.

On October 8, 2004, Security Council Resolution 1566 was adopted containing the following:

(3) criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act...are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature...

Links to more definitions of terrorism are in this footnote

**Hate Crimes**

In some cases, it is difficult to distinguish a “hate crime” from “terrorism.”

A hate crime is a traditional offense like murder, arson, or vandalism with an added element of bias. For the purposes of collecting statistics, the FBI has defined a hate crime as a “criminal offense against a person or property motivated in whole or in part by an offender’s bias against a race, religion, disability, sexual orientation, ethnicity, gender or gender identity.”

**Federal Hate Crime Law, 18 USC 249**

(a) **IN GENERAL.—**

(1) **OFFENSES INVOLVING ACTUAL OR PERCEIVED RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.—**Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person—

(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(i) death results from the offense; or

(ii) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(2) **OFFENSES INVOLVING ACTUAL OR PERCEIVED RELIGION, NATIONAL ORIGIN, GENDER, SEXUAL ORIENTATION, GENDER IDENTITY, OR DISABILITY.—**

(A) **In General.**—Whoever, whether or not acting under color of law, in any circumstance described in subparagraph (B) or paragraph (3), willfully causes bodily injury to any person or, through the use of fire, a firearm, a
dangerous weapon, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability of any person—

(i) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(ii) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(I) death results from the offense; or

(II) the offense includes kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(B) Circumstances described.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(I) across a State line or national border; or

(II) using a channel, facility, or instrumentality of interstate or foreign commerce;

(ii) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A);

(iii) in connection with the conduct described in subparagraph (A), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce; or

(iv) the conduct described in subparagraph (A)—

(I) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

(II) otherwise affects interstate or foreign commerce.

(3) OFFENSES OCCURRING IN THE SPECIAL MARITIME OR TERRITORIAL JURISDICTION OF THE UNITED STATES.—Whoever, within the special maritime or territorial jurisdiction of the United States, engages in conduct described in paragraph (1) or in paragraph (2)(A) (without regard to whether that conduct occurred in a circumstance described in paragraph (2)(B)) shall be subject to the same penalties as prescribed in those paragraphs.

(4) GUIDELINES.—All prosecutions conducted by the United States under this section shall be undertaken pursuant to guidelines issued by the Attorney General, or the designee of the Attorney General, to be included in the United States Attorneys’ Manual that shall establish neutral and objective criteria for determining whether a crime was committed because of the actual or perceived status of any person.

(b) CERTIFICATION REQUIREMENT.—

(1) IN GENERAL.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, or a designee, that—

(A) the State does not have jurisdiction;

(B) the State has requested that the Federal Government assume jurisdiction;

(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvalidated the Federal interest in eradicating bias-motivated violence; or

(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(c) DEFINITIONS. In this section—

(1) the term “bodily injury” has the meaning given such term in section 1365(h)(4) of this title, but does not include solely emotional or psychological harm to the victim;

(2) the term “explosive or incendiary device” has the meaning given such term in section 232 of this title;

(3) the term “firearm” has the meaning given such term in section 921(a) of this title;

(4) the term “gender identity” means actual or perceived gender-related characteristics; and

(5) the term “State” includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.

(d) STATUTE OF LIMITATIONS.—

(1) OFFENSES NOT RESULTING IN DEATH.—Except as provided in paragraph (2), no person shall be prosecuted, tried, or punished for any offense under this section unless the indictment for such offense is found, or the information for such offense is instituted, not later than 7 years after the date on which the offense was committed.
(2) DEATH RESULTING OFFENSES.—An indictment or information alleging that an offense under this section resulted in death may be found or instituted at any time without limitation.

PURPOSE OF THIS TEXT

The purpose of this text is threefold. First, it is to familiarize the reader with the extensive and complex legal codes that come under the heading of homeland security. Second, it is to demonstrate the importance of thinking to homeland security – critical thinking, creative thinking, outside-the-box thinking – and keeping an open mind. Third, to teach that homeland security is a complex and ever-changing interplay of many things.

LEARNING OBJECTIVES

(1) Know the threat terrorism presents.61 The Strategic Environment chapter (chapter 4) and the Extreme Right Wing Ideologues chapter (chapter 5) describe the current and near future threats to the United States as well as some possible future strategic environments.

(2) Put terrorism in perspective. We face bird flu, swine flu, global warming, migrating fire ants, killer bees, hurricanes, earthquakes, floods, tornadoes, and the full spectrum of man-made accidents. Terrorism is a real threat, but one of these other catastrophes is more likely to happen to you.

(3) Develop a conceptual understanding of homeland security law and policy – the foundation and framework of homeland security.

(4) Appreciate the complexity of this framework. For example, the Critical Infrastructure Protection chapter (chapter 13) has approximately twenty-five contributing documents. There are 100 legal authorities “that guide the structure, development, and implementation of the National Response Framework…”62

(5) Evaluate homeland security law and policy and its application. Does what we have established work? Why are we doing it? How can we improve it? Is a proposed new idea worth implementing?

(6) Engage in meaningful discussion about America’s homeland security.

(7) Recognize that the government, whether it is state, local, tribal, or federal, cannot protect us from every hazard all the time, and whether it is a natural disaster, man-made disaster, or terrorism, it may take three or more days for rescue to arrive. Thus, we must be able to take care of ourselves, our families, and our neighbors, without electricity, running water, or communications. The cry, “where’s my FEMA water;”63 may simply not be heard. Every community and everyone in those communities must participate in preparedness.

(8) Recognize that resiliency, our ability to return to normal after a disaster, catastrophic accident, or terrorist attack, depends both on us as individuals and on our infrastructure. It is a cooperative endeavor between all levels of government, the private sector, faith based providers, and individuals.

(9) Recognize that “[c]ritical infrastructure is the enabler of our national economic and social activity,”64 and that resiliency requires resilient infrastructure.

(10) Recognize that a significant portion of our nation’s infrastructure is in need of repair, and that there are several predictable, foreseeable, and preventable ‘cascading infrastructure failures’ – disasters – that are ready to happen.65 Recognize that we must take action now to rebuild and repair our infrastructure, to prevent these predictable disasters and to achieve resiliency.

ABOUT THIS TEXT

On any topic, the material in this text is not exhaustive – there is more than is presented here. My goal is to scratch the surface in a way that captivates – to whet the appetite.

The statutes and other documents are edited, vast portions are omitted, and I include only those sections sufficient to present the essence of the document. If you want the full document, finding it is easier because everything in this book has a citation. Also, repetitive material has been eliminated. For example, almost every directive contains instructions that the Secretary of DHS or the Administrator of FEMA is to cooperate with or consult with, followed by a long list of names. To save space and repetition, these have been omitted. In addition, almost every program came with a requirement for a mandatory report to Congress on the program’s progress, for the establishment of a method of measuring the program’s performance, and to monitor implementation. These paragraphs have been eliminated too.

In addition to being organized by topic, the book is organized chronologically. The older documents come first in the chapter. Many of the acts, like the Patriot Act and the Homeland Security Act have had changes or amendments made to them. Where the original act is available, the portions reproduced here are in their original form. Amendments coming later in time are presented later in the chapter. However, there are a few instances where only the most up-to-date version is reproduced. For example, the Insurrection Act of 1807 (10 USC § 331).
“Homeland security” had its beginnings on September 11, 2001 and with only a few exceptions, that is the starting point of the material in this text. This 2nd edition does not delete the older documents – it adds on the newer ones with the ending point in 2016. This provides the unique opportunity of being able to see the development of the field over time and to see how it has changed.

Where appropriate, the chapter summaries highlight the most important of the acts included in each chapter.

CONTRIBUTING AUTHORS

There are truly extraordinary contributing author chapters that round out the text and make it greater than the sum of its parts. They are written by experts in their field and are not available anywhere else. Chapter 2, Metacognition and Errors in Judgment Related to Decision-Making in Homeland Security by Angi English is about thinking, how we think, and how that can affect homeland security. Ethical, Legal, and Social Issues in Homeland Security – What They Are and How to Address Them, chapter 3, by Alexander Siedschlag discusses how what we do must be grounded in the law and ethics. Chapter 5, Extreme Right Wing Ideologues, Conservative Secession and Terrorism, by Tobias T. Gibson and Richard Q. Sterns is about home grown terrorists. They are already here.

Cybersecurity Legislation and Critical Infrastructure Vulnerabilities, by William A. Carter and Daniel G. Sofio, chapter 14, describes some past attacks on critical infrastructure and then discusses the state of cybersecurity legislation in the United States.

In chapter 25, Creating the Guardians: The Status of Homeland Security Education, Laura Manning Johnson and Robert Hayhurst discuss how “After the attacks of 9/11 Americans recognized the need for more and different security, directed towards a different kind of enemy, by a new group of ‘guardians’ with the broad-based wisdom and skills to prevent or protect against transnational threats and to respond to and recover from attacks as needed.” Their chapter is about homeland security education.

Chapter 26, Applying Management and Organizational Theory Education to Create Effective Agencies by Judson M. Freed, discusses the need for and benefits of applying management and organizational theory to homeland security. U.S. Economic Statecraft, Homeland Security, and the Trans-Pacific Partnership, chapter 27, by David A. Parker and Daniel G. Sofio, is a fascinating study of economic statecraft, its relationship to homeland security, and how the Trans-Pacific Partnership can be a part of that.

Chapter 28, Deconstructing Latin American Security, by Pablo Brum, is much more than a brilliant essay about deconstructing. It is also about thinking – how we describe Latin America to ourselves, and the homeland security implications of a one-size-fits-all approach.

Chapter 29, The Power of Pop Culture in the Hands of Isis, By Joseph Russo, is about how popular culture is being utilized by ISIS.

DISCLAIMER

All of the documents in this text have been edited and much has been omitted. In addition, statutes and policy documents are continuously updated. Because of this, this text should not be used as a substitute for the complete and up-to-the-minute authorities themselves.

NOTES


“From the mid-1950s and continuing through the 1970s, many American jazz greats traveled the globe as music envoys under the sponsorship of the U.S. Department of State. Today’s music diplomacy programs, including American Music Abroad, Center Stage, OneBeat, and Next Level, and the State Department’s other arts-based initiatives, serve to open dialogue with new audiences, encourage collaboration, create economic opportunities, and empower women and youth by providing positive and popular avenues for engagement.” U.S. Dept. of State, April 16, 2015. Accessed March 13, 2016. http://www.state.gov/r/pa/prs/ps/2015/04/240749.htm.


18. The author’s term.


32. The terms Office, or Department, or Agency of Emergency Services, or Emergency Management, or Homeland Security are, or should in practice be, synonyms. HSEM covers them all.


37. Albert Einstein.


40. This is the author’s definition. There is not yet an agreed upon definition.


48. “… after the first National Security Council meeting, the President turned to the Attorney General and said very simply, ‘John you make sure this does not happen again.’ The Attorney General then turned to the men and women of the justice [sic] and asked for a very carefully vetted set of proposals that would serve to prosecute the war against terrorism on the short term and to win that war in the long term…”

49. “The USA Patriot Act served a very, very central purpose. That is to update the law to the technology so that the terrorists and other criminals … can not evade investigations simply by switching cell phone [sic] or changing from phone to internet. And likewise and much more significantly, Congress allowed for the criminal investigators to communicate with our intelligence investigators and vice versa. So when all hands are on deck, in order to fight the common fight against terrorism the right hand knows what the left hand is doing so that we can coordinate action … contrary to the law of separation that existed prior to the USA Patriot Act…” Viet Dinh, principal author of the Patriot Act, interview by Bryant Gumbel, “Sacrifices of Security” with Bryant Gumbel and Gwen Ifil, 07/15/2003. Accessed March 15, 2016. http://www.pbs.org/wnet/pointofview/20030715/infocus/topic_03/trans_pat_act.html.


61. “We lack insight into specific details, timing, and intended targets of potential, current US Homeland plots, although we assess al-Qa’ida continues to pursue plans for Homeland attacks and is likely focusing on prominent political, economic, and infrastructure targets designed to produce mass casualties, visually dramatic destruction, significant economic aftershocks, and/or fear among the population.” Dennis C. Blair, Director of National Intelligence, February 12, 2009, Annual Threat Assessment of the Intelligence Community for the Senate Select Committee on Intelligence, p.6. Accessed October 1, 2016. http://www.au.af.mil/au/awc/awcgate/dni/threat_assessment_12feb09.pdf.


65. See, The Edge of Disaster, by Stephen Flynn, 2007, for several well described existing, predictable infrastructure failures.
