

TESTIMONY

Testimony on a Bill to National Homeland Security and Combating Terrorism Act of 2002.

Submitted by:

Dr. Elaine Kamarck

John F. Kennedy School of Government, Harvard University

April 9, 2002

Good Morning and thank you for the offer to testify on this very important topic. As some of you may know I spent four and a half years in the Clinton Administration leading the reinventing government project and I am happy to share with you some of the things I learned during that time.

This bill creates a Cabinet level agency to deal with the problem of homeland defense. It contains some very important recommendations for reform - many of which are long overdue - and I support them wholeheartedly. However, let me begin with a caveat - homeland defense cannot be dealt with in a single agency. The problem itself is simply too big. It spans agencies from the CIA to the CDC; from the FBI to the Portland, Maine police. Therefore we should bear in mind that there are many pieces of homeland defense which are not and should not be dealt with in a single bill. Homeland defense requires reinventing hundreds of federal, state and local agencies by adding new missions to their ongoing missions.

My second caveat deals with the problem of bureaucracy. Twentieth century bureaucracy is ill suited to the new century and we must bear that in mind as we construct new institutions. In the middle of the twentieth century people in government tended to address problems by creating new bureaucracies. But in recent years policy makers have tended to look beyond bureaucracy to solve public problems. Many bureaucracies are too rigid and too slow for modern problems. They cannot compete with the fast changing demands of the global market and they cannot compete with the hide and seek nature of non-state warfare or terrorism. For instance, the intelligence community built a bureaucracy to monitor another colossal bureaucracy - the Soviet Union - and it worked. But that form and structure is clearly inadequate to the monitoring of terrorist networks that may exist in as many as 60 states and change their leadership and mode of operations constantly.

In place of old fashioned bureaucracies we have seen extensive efforts around the world to reform public sector bureaucracies. In addition to reforming existing bureaucracies policy makers have created networks of public and private organizations and they have looked for market based solutions where appropriate. That is why, in thinking about a new agency this Committee should try to avoid saddling it with old fashioned bureaucratic arrangements and in thinking about the problem of homeland defense in general we should not think that one traditional bureaucracy can solve the problem.

The second problem with twentieth century government is that it is organized around borders - part of the government deals with problems inside our borders and part of the government deals with threats outside our borders. The border problem is both metaphorical and real. The government has to adapt to borderless economies and borderless security threats and yet it is organized into entities that have a hard time reacting to problems that do not respect borders. That is why I wholeheartedly support the core of this bill which deals with the border problem.

Border Patrol

So with that in mind let me say that the most important part of this bill is the creation of what we would have called - prior to September 11 - a Border Patrol Agency. Homeland defense will not happen in the White House or in a coordinating council. It will happen on our borders or before our borders when Consular officers, Customs agents, INS agents, Coast Guard personnel and airport security officers, acting on intelligence gathered here or abroad, manage to stop, deter, or prevent terror. Creating a coherent team out of what are now many disparate organizations, as this bill proposes, is one essential part of the solution. But it will not accomplish the mission if the major international and domestic intelligence agencies are not reformed in ways that allow them to share intelligence in real time with the people at the borders. Intelligence about terrorism is useless here in Washington if it manages to make its way to the border only after ripening in the offices of too many important people. While I realize that this is not in the purview of this Committee or this bill I mention it because reform of the intelligence community in ways that emphasize prevention and real time communication is the indispensable other half of the bill we are considering today.

This bill proposes merging six existing agencies into a new Department of National Homeland Security. I would add to this list an agency that I believe has been overlooked and an agency that is surely the first step in protecting our borders, the Consular Services section of the State Department. Before someone can get into the United States they need a visa. Visas are given out at our embassies around the world where overworked consular officers, generally young diplomats trained in diplomacy, not police work, are given the responsibility of deciding who gets to come to America and who doesn't. In recent years the nearly 2000 employees of the Consular Corps have been under extreme stress. The number of people wanting to come to the United States has increased dramatically and appropriations have tended to starve the entire State Department, including the Consular corps, of funds. According to former State Department official T. Wayne Merry, "...visa work is a low prestige poor relation to the conduct of diplomacy and always low in budget priorities. The professional consular corps is often highly competent but is badly overworked, under financed and so few in number as to staff only supervisory positions."

1

The current head of the Bureau of Consular Affairs, Mary Ryan, told a Senate Committee recently that "... consular affairs in American embassies and consulates could have stopped some of the terrorists from entering the country if agencies such as the CIA and FBI shared more information with the State Department." 2 But given the current set up, Consular Affairs is only one of many agencies on the front lines of prevention that did not receive the necessary intelligence. Consular Affairs should be moved into a homeland defense agency. The officers should receive real time intelligence reports and should be trained to spot security problems before they get to the border.

The second step, as outlined in this bill, is to take the Border Patrol portion of the Immigration and Naturalization Service and move it into a new prevention based agency. In the past decade, the INS has been in one crisis after another. Two members of Congress have called it "the most dysfunctional agency in all of government," a sentiment echoed by anyone who has ever had anything to do with the agency. 3 Unlike the Bureau of Consular Affairs, the problems of the INS cannot be blamed on lack of money since Congress has increased their funding in recent years. In spite of this they process applications by hand, having inexplicably failed to put in the electronic systems that would help them. When they do buy new systems such as their anti-smuggling electronic systems, they fail to train employees to use them. They can't keep track of their weapons or their property.

The failures of the INS are not new. During the Iranian hostage crisis in 1979, INS was only able to track down 9,000 of the 50,000 Iranian students in the United States. In 1993 the INS had no idea that Jordanian Eyad Ismoil had violated his student visa until he drove a bomb laden truck into the World Trade Center. And recently, the INS mailed out visa extensions to two of the dead hijackers in the September 11 attacks. The INS has

never done a very good job of getting people out of the country who have overstayed their visas. Estimates are that 40% of all illegal immigrants are people who come to the US with visas but don't leave when the visas expire. 4 Of the hundreds of people who have been detained as suspects in the weeks since the September 11 attacks most are being held on immigration charges.

In its 2002 budget the Bush Administration proposed splitting the agency into two parts. This is a good idea and it is long overdue. The naturalization service, which makes legal immigrants into citizens, should be kept in the Justice Department and transformed into an agency respectful of those wanting to become Americans. Border Patrol should be moved to a new agency where, like consular officials, they have access to real time intelligence about who is entering the United States and why. As it now stands, border patrol agents are cut off from real time intelligence, overworked and ill equipped to stop potentially dangerous people from entering the country. We cannot defend the homeland if the agency that screens potential visitors to the US and the agency that inspects them at the borders are overworked, understaffed, badly managed and cut off from essential information.

Keeping bad people out of the country is one problem, keeping bad things out of the country another. That's why the Customs Service should be moved to a new homeland defense agency and its protocols and procedures integrated into the new agency. It is only an accident of history that put Customs in the Treasury Department and the INS in the Justice Department. Both agencies guard the borders. When the Clinton Administration began its reinventing government program these two agencies were renowned for their hostility towards each other and for the pettiness that extended even to their respective (and separate) trained dogs.

Customs does not have the troubled history of Consular Affairs or INS. Unlike INS it uses technology effectively, although its Automated Commercial System is in serious need of an upgrade and it has a shortage of high tech scanning machines at airports. Customs can also boast of having the only front line employee to prevent a terror attack. In December 1999, an alert Customs Inspector on the Canadian border stopped and arrested Ahmed Ressay, as he drove off the ferry to Port Angeles, Washington, in a car filled with bomb making supplies. Ressay, an Algerian, was part of a plot to disrupt the millennium celebrations.

But Customs faces another daunting challenge - protecting the country from everything from cocaine, bio terrorist chemicals and nuclear devices while keeping commerce moving at the same time - especially along our Canadian and Mexican borders. It collects \$20 billion per year in fees and duties on imports and handles about \$1 trillion in imported goods⁵. In the weeks following 9/11 Customs was on high alert along with everyone else, and industry felt the effects as parts from abroad were slow to arrive in American factories. ⁶

But, as the memories of September 11 fade, the pressure will increase to - once again - move goods quickly across borders. The solution to this dilemma will be costly. We need a huge increase in sophisticated technology that would be able to detect dangerous chemicals, explosives and other undesirable materials efficiently. If the cost of detecting terrorism turns out to be a decrease in our global economic engagement the terrorists will have won a battle. That is why one of the most important pieces of this legislation is the creation of an Acceleration Fund for Research and Development of Homeland Security Technologies. If you pass nothing else this year you should pass this section of the bill and get the funding out there.

As proposed in this bill a new homeland defense agency would also contain the United States Coast Guard. Even though the Coast Guard is the nation's fifth uniformed military service, its location in the Transportation Department means it is often forgotten. It was moved from the Treasury Department to the newly created Department of Transportation in 1967 in what one author has called "a marriage of inconvenience" -- and they have

been unhappy there ever since. 7 While approximately one third of the Coast Guard's mission has to do with transportation, most of it has to do with homeland defense.

The Coast Guard has often been a forgotten and ignored piece of the Transportation Department. For instance, a few years ago, increases in military benefits that were supposed to apply to all five services were appropriated only to the Defense Department, forgetting that Transportation needed some extra money if it was to apply the same increases to the Coast Guard. In recent years the active Coast Guard force has fallen to 35,000 - almost the same number as they had in 1967. Their vessels are old and maintenance has decreased by 12% resulting in an overall readiness drop of 20%. 8 With thousands of miles of unprotected coast line, the Coast Guard is the key uniformed service in a newly created agency for Homeland Defense.

The last piece of a new homeland defense agency should also come from the Department of Transportation. As a friendly amendment to this bill I would suggest moving the newly federalized airline security force from the Department of Transportation to this new agency. American "borders" now include every single international airport in the country and the job of screening people and things at those airports is no different than that same job at the borders.

Cyber-Security

I also commend placing the Critical Infrastructure Assurance Office, the Institute of Information Infrastructure Protection, The National Infrastructure Protection Center and the National Domestic Preparedness Office into one agency. Just over ten years ago, a graduate student in Berkeley California identified a computer hacker who was targeting sensitive government military networks. The hacker turned out to be part of a Russian espionage ring. As the grad student, Cliff Stoll, went about trying to do the right thing he found a government wholly unprepared and sometimes unwilling to take responsibility for this new kind of espionage.

Some things have changed since Stoll told his story in his book *The Cuckoo's Egg* - but not as much as needs to. Once again, going back to my original caveats - the cyber security problem cannot be solved with a traditional, closed bureaucracy. Any new organization must be willing to lead and to build trust among the thousands of critical private and public databases that are vulnerable to attack. Just recently we learned that most companies under attack never tell anyone about it. This impedes the ability of law enforcement to learn what it needs to learn in order to solve and deter similar crimes. A great deal of thought needs to go into the design of this new entity. The government needs to offer protection to the private sector such as making corporate information about cyber-vulnerabilities exempt from public disclosure - as has been proposed. In order for this new entity to work it must reverse the cynicism which usually greets the phrase - "We're from the government and we're here to help."

Emergency Response

The other major element of this new department is the inclusion of FEMA, the Federal Emergency Management Agency. The other pieces of the proposed new department go together well because they are all concerned with pre-empting a terrorist threat. One can see the advantages of putting them under one leader and building a coherent, protective system that uses technology effectively so that it can offer maximum protection with the minimum of economic disruption. There are synergies - of management and of technology - that result from the creation of a coherent border patrol agency.

The challenges in emergency response are different. Disasters on the scale of September 11 could occur as the result of an earth quake in the wrong place at the wrong time or from other natural causes or from human, accidental, non terrorist causes. The federal government's disaster response ability has come a long way since Hurricane Andrew in South Florida more than a decade ago proved that the US disaster agency was itself a

disaster. But while FEMA itself has proved to be a success story in terms of federal level reform, too many state and local governments remain totally unprepared to respond to acts of catastrophic terrorism.

FEMA can go into a new Department or stay where it is. That issue is less important than giving FEMA a clear leadership role in emergency preparedness. Whether as part of this department or not, FEMA should be given the legal and budgetary power to conduct training and practice enterprises with all major American cities. We need to create a seamless network of local, state and federal responders that are capable of dealing with terrorist related emergencies as well as with other emergencies. When thinking about the future of emergency preparedness it is useful to borrow a concept from the military – the CINC. As Terrence Kelly originator of this idea, suggests, CINC's are charged with "... developing the plans to meet the requirements of the National Security Strategy and National Military Strategy." 9 FEMA should be given the authority to act as CINC in the United States for emergency response.

Staffing a new department

As I said at the outset, this department must avoid the problems of old fashioned bureaucracy. It bears mentioning that over 50% of the United States government has managed, over the years, to get themselves out from under Title V, the Civil Service Law. There is a reason for this. The law is no longer serves today's government well. I shudder at the thought of trying to hire the hot dog computer hackers necessary to staff a first rate cyber security office using the current classification system and the Rule of 3. It will not work. If this new agency is to attract the talent to do its job it must have its own personnel system, one that is consistent with merit principles but that allows for flexibility in hiring and for accountability. It must also have the leeway to pay salaries that are competitive with the private market. All of this means the construction of a new personnel system.

National Office for Combating Terrorism

In closing, allow me to make a short comment on the provision in this bill calling for a National Office for Combating Terrorism. I am very skeptical that Congress can ever guarantee the primacy of a policy within the White House by legislation. Ultimately the Executive Branch needs to speak with one voice – that of the President. In setting up what appears to be a dual budget process this bill complicates the job of the President and removes responsibility from OMB for submitting a coherent budget proposal. A similar provision – decertification – can be found in the legislation that created the Drug Czar's office. It is instructive to note that in 14 years the provision has been invoked exactly one time and then the President and OMB had to broker the dispute. As anyone who has ever spent any time in the White House knows, this is not something you want to force on your president with any regularity.

This office is set up to conflict with the duties and practice of OMB and the NSC – the two powerful offices of the President's Executive Office. I do not think it will accomplish the objectives set out here and it could vastly complicate the President's job.

Conclusion

We should think about homeland defense along a continuum that runs from prevention to pre-emption and protection to response. This bill makes an enormous contribution to the second challenge – pre-emption. But it must have, along the way companion pieces that will strengthen our intelligence capacity and our response capacity. Taken together we can, in fact, increase our security.

Thank you.

[Committee Members](#) | [Subcommittees](#) | [Hearings](#) | [Key Legislation](#) | [Jurisdiction](#)
[Press Statements](#) | [Current Issues](#) | [Video of Select Hearings](#) | [Sites of Interest](#)