



FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

P.O. Box 326, Lewisberry, PA 17339

(717) 938-2300 • FAX (717) 932-2262 • www.fleoa.org

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TESTIMONY OF

RICHARD J. GALLO
PRESIDENT
FEDERAL LAW ENFORCEMENT
OFFICERS ASSOCIATION

BEFORE THE

FINANCE COMMITTEE
UNITED STATES SENATE

CONCERNING

UNITED STATES CUSTOMS SERVICE MERGER INTO THE
DEPARTMENT OF HOMELAND SECURITY

ON
JULY 16, 2002

On behalf of the Federal Law Enforcement Officers Association (FLEOA), we thank the Chairman, Ranking Member and members of the Committee for inviting us. We are pleased to be here today to discuss the critical issues regarding the United States Customs Service and the proposed Department of Homeland Security. As many of our FLEOA members were present during the 1993 truck bombing of the World Trade Center, as well as the September 11th terrorist attack at the Towers, we take this issue personally.

We sincerely hope the formation of the of the Department of Homeland Security will be a significant step towards making our nation safe as opposed to just a public relations gesture for the American Public.

As frontline investigative representatives, United States Customs Service Agents are one of the best sources of information on this issue. The FLEOA Customs Service agents/members are the ones investigating targets at the borders, the airports, in the harbors and ports, dealing with marine and air interdiction. They are involved in solving investigations germane to targeting, identifying and neutralizing the threats to our borders and our nation. We have first person knowledge of what hasn't changed since September 11th, and what must be done to ensure the Department of Homeland Security can effect a change of America's law enforcement obligation and ensure the safety of our country and its citizens.

Although the Federal Law Enforcement Officers Association represents criminal investigators in all federal agencies, we were asked to focus today on the United States Customs Service. However, we have various comments regarding other agencies because their actions overlap occasionally into Customs Service jurisdiction just as Custom's operational jurisdiction occasionally overlaps into other agencies. These comments cover problem areas and thus may seem to be critical, however, they are not – since for every such point there are many more areas in which the work flows smoothly. We highlight these problem areas to illustrate the impact and interrelations of other agencies' actions. Additionally, times have changed the world is a different place from years ago. The threat is real. Therefore, policies and procedures and “turf protection” acceptable prior to September 11th can no longer remain in effect.

We offer our testimony hoping it will, along with the statements of the other distinguished members of this panel, and with the bipartisan input of the Senators and Representatives, make the concept of a Department of Homeland Security a reality the American Public can be proud of. FLEOA has issued a White Paper on this issue, and its Executive Summary is attached to this testimony.

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US Customs Service Issues:

A) FLEOA's Customs Agents are extremely concerned that **narcotics interdiction** and the **money laundering** task forces they participate in with criminal investigators from the criminal investigations division of the IRS will be sacrificed as a mission; even though corroborated evidence substantiates that the narcotics trade funds terrorism. Our members believe that narco-terrorism is another form of terrorism. Therefore these types of investigations must move with Customs to the Department of Homeland Security. We cannot sacrifice one mission in exchange for another, but must increase the Agent core to enable the defense of our borders from all forms of threats our country faces from the narcotics traffickers.

B) Although the world has significantly changed politically since the Strategic program was at its prime, so the focus must be changed to meet its current threat. **The Custom's Strategic program** which involves the exportation of munitions and high-tech transfer must become a priority again for the U.S. Customs Service. .

C) **Problems on the Northern border**: It is quite obvious a lot of individuals travel across the Northern border. This border crossing traffic occurs at a staggering pace, however there is no way to track these visitors. Nor do we know if true names are being used on the traveler provided identification. On a daily basis we encounter criminals whose business is to sell fraudulent drivers licenses, green cards, passports and other forms of identification used to cross the border. Just this past week, hundreds of arrests were made, of people using phony Social Security Numbers as well as other arrests made in other areas of official government identification document fraud. Add to this mix the tremendous state of disarray that exists within the Immigration and Naturalization Service and the foundation is set for a potential future disaster along our Northern Border.

This significant problem demands a solution. We recommend two suggestions for the Committee 1) fingerprinting and 2) photographing of those crossing the border. With the purchase of an automated fingerprint system which is on-line with government intel and national crime databases; a check can be made and in a timely manner a DHS Agent can get a response.

D) **Clearances for U.S. Custom's agents** need to be upgraded to Top Secret from the current level of Secret, - to allow access for agents involved in investigations requiring review or briefing of classified material (from any US Government Intelligence agencies). This also facilitates information sharing, and eliminates the time lapse currently experienced when upgrading an agent's clearance on a case-by-case basis.

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E) The US Customs Service has their **Internal Affairs** while the Immigration and Naturalization Service falls under the Inspector General for Justice. FLEOA is in favor of a strong and independent Internal Affairs/Inspector General, for this gives credibility to the agents and the department – but the question is: Who would be responsible for this duty under the new Department of Homeland Security.

F) **Overseas Attaché Offices**: There is growing concern within the Customs Service's Overseas Attaché Offices because in recent years the FBI has opened overseas offices, despite having a domestic charter. Currently, the FBI dictates the terrorism investigative function overseas, and in the past, Customs financial investigators have been excluded from participation in the investigations conducted by FBI overseas. This has occurred even if the Customs agents have more expertise in, or information regarding, that investigative arena, i.e. financial investigations.

In our Attaches' office on the Northern border, Customs believes it has made successful inroads in strategic investigations, as Canada is functioning as a transshipment point for currency going to the Middle East circumventing Office of Foreign Asset Control (OFAC) regulations, and prohibited ITAR items (International Trafficking Arms Regulations). We hope this function is not lost in the merger into the Department of Homeland Security.

Overseas Attaché offices may well be the front line in our Homeland Security. Therefore the big question is: Who will direct the investigations into overseas matters? The Department of Homeland Security? The Department of Justice? Or, the Agents of the Department of State's Bureau of Diplomatic Security which has, at least one, criminal investigator (over 450 total) in every single United States embassies/consulates (205 of them) throughout the world, representing the law enforcement interest of the US Government?

FLEOA's puzzlement over this issue extends to domestic homeland security investigations – as well, since in the original proposal this fantastic concept of a Department of Homeland Security is charged with protecting American's homeland security.... a different department, the Department of Justice (Federal Bureau of Investigation) retains the mission of investigating terrorism. Why?

The duplication of effort is illustrated in the following example: If a terrorist suspect enters our country at an airport, the Customs agent (soon to be a Department of Homeland Security agent) is supposed to call his/her local FBI office and ask for the duty agent. This agent will run the suspect through the computers to see if there is any trigger that would prompt a trip to the airport. If yes, the call is referred to the Joint Terrorism Task Force for assignment and someone responds to the airport. If not, the Customs/Homeland Security agent conducts an interview to have a record of the suspect. Is not our Department of Homeland Security good enough to work this case from the get-go? Aren't they supposed to have criminal investigators from Secret Service, US Customs, and INS working there? Why are we building potential turf wars into the new organization?

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G) Financial Investigations

After September 11th, the Treasury Department, with numerous Customs Service agents, started *Operation Greenquest*, an initiative to address financial investigations connected with terrorism. The FBI's Joint Terrorist Task Force and Financial Review Groups have little or no contact with the Treasury initiative, as the Treasury Department has historically led financial investigations. Since *Operation Greenquest* had no intelligence component to establish terrorist links it can only investigate financial leads on Middle Eastern subjects in the hope of backing into terrorists. This issue should be addressed, since these types of investigations should continue in the Department of Homeland Security, and an intelligence component should be part and parcel of any such investigation.

H) **OFAC**- Office of Foreign Assets Control- Obviously, funding for terrorist organizations is crucial to their operations. Additional countries must be added, i.e. Lebanon. OFAC laws must be rewritten with clearer language; presently letters can be considered somewhat vague. The knowledge requirement should be taken out, as was outlined for 18 USC 1960 (unlicensed remitters), under the Patriot Act. OFAC must be more proactive with outreach programs to other countries/communities to publicize what constitutes OFAC violations and the resulting sanctions. The letters OFAC sends out do not quote the law and are not worded strongly enough. A strongly worded letter could be better evidence in a criminal case. One suggestion would also be to put a limit on family remittances as is done with Cuba.

I) Communication Flow Between Federal Law Enforcement Agencies

By keeping the FBI, CIA and NSA as the premier terrorist agencies, will the creation of the Department of Homeland Security just create another agency with the same problems we experienced today, in the lack of sharing, dissemination and investigative cooperation? We don't believe that the current communication problems will be magically solved by the formation of the Department of Homeland Security. But we do believe that without the flow of cross-departmental information, the mission of the Department of Homeland Security will be seriously, if not fatally, compromised.

An example of post September 11th communication sharing/flow, or actually the lack thereof, is best exemplified by this: there is a New York based Treasury Department task force, in which the FBI is a participant. The FBI Agents have Treasury Enforcement Communication System (TECS) access, but Treasury Agents are not permitted to have direct access to FBI data, including the fact a computer terminal can not be co-located on the same site. The FBI computer has to be kept at another site in totally different building. Is this reciprocal sharing of information?

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J) Keeping the organizational components of the Customs Service dealing with trade and revenue collection under the Treasury Department, criminal investigators would still require access to the **Treasury commercial databases** (i.e.: Automated Commercial System) to assist in Homeland Security. In addition, agents would not want to lose access to the Treasury Enforcement Communication System.

K) **Other concerns:** As mentioned before, several federal agencies have overlapping real-life operational jurisdiction, although they may appear separate on paper. We have comments regarding these predicaments, and these comments may seem critical but, again, they are not meant as such – since for every such point there are many more areas in which the operational needs mesh. We list these concerns to highlight the far-reaching elements and relationships and interconnections that other government agencies actions have on this topic. And again, we want to stress that times have changed since the 11th of September, and policies and procedures and “turf protection” acceptable prior can persist no longer.

FLEOA believes to ensure the Customs Service component of the Homeland Security Department can fulfill their mission, other agencies must:

a) INS: The integration of Customs Service with Immigration and Naturalization Service (including the INS’ Border Patrol) into one department; obviously restructuring the agencies will be an enormous job, with the different levels of managers in all the concerned agencies. One example of the opposing operational concerns will be in the area of controlled delivery of narcotic shipments. Presently the US Customs Service, working with the Drug Enforcement Administration, will allow an illegal alien, arrested at the port of entry for smuggling, to proceed into the interior of our country to complete the shipment of narcotics. This controlled delivery allows the Customs Service agents to “work up the ladder” in narcotics conspiracies. However, the Immigration and Naturalization Service is predisposed to preventing any illegal alien from continuing into the interior of our country. The policy of each organization will have to be reconciled.

Considering FLEOA has testified on Capitol Hill seven times on the issue of the separation of INS into separate agencies, one dedicated to law enforcement and one dedicated to immigrant services, and the recent House of Representatives vote resulting in 405 affirmative votes in favor of this breakup, one must think there will be a tremendous revamping of all aspects of the INS. To this FLEOA exclaims: It is about time! Accepting Trojan Horses should not be one of the functions of an agency that should be endeavoring to protect us, and this also goes for the US Customs Service in any overzealous facilitation of commerce due to NAFTA (there has always been a mission conflict with facilitating trade and the law enforcement arm of Customs – however we should not blindly sacrifice the safety of our nation’s citizens for economic reasons). Regarding INS: as one FLEOA member stated: Releasing people into the population while awaiting hearings, so that they can disappear is adding to the destruction of this nations’ security.

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b) The Department of State must tighten up the visa procedure and process, since this greatly impacts upon whom we have entering this country.

c) The pay of federal agents in high-threat metropolitan areas: All agencies, especially the FBI have a very young force in high-threat metropolitan areas (also synonymous with high cost of living metropolitan areas). FLEOA has been told that over a majority of the FBI agents in areas such as New York, San Francisco, and Los Angeles have less than five years experience. These are the agents working everyday with US Customs Service agents, and agents from other federal law enforcement agencies, on various task forces. Although we know these agents are committed, dedicated and are willing to do whatever it takes, do we really think they have the expertise or experience to be the premier law enforcement agency in the fight on terrorism?

Such inexperience can have terrible consequences on our success in the war on terrorism. As an example, the 1993 bombing of the World Trade Center, in which prior to the truck bombing, an informant provided information about the future plans for the truck bombing, but this information was discounted and not followed up on - until after the bombing. This is indicative of inability to evaluate intelligence and to properly use informants ... and this was by experienced agents. We need experienced agents in high threat metropolitan areas. Three connected problems prevent this: 1) our seniority system allows for transfers to lower cost of living areas, 2) the extremely high cost of living metropolitan areas force agents to seek a city in which our salaries go further, and 3) the locality pay of agents has not kept pace with the law (Boston and New York City based agents have not had a locality pay raise since the law was passed in October 1990 – while Los Angeles based agents have had one increase of 0.05% since 1990). The solution to this is HR 3794 in the House of Representatives and a Senate bill about to be introduced by Senators Christopher Dodd, Charles Grassley, Joseph Lieberman, John Warner, Joseph Biden and several others. We graciously acknowledge Senator Grassley for his original co-sponsorship of this bill, and commend him for taking care of the street agents, while holding HQ's feet to the fire. These bills will grant partial increases to federal law enforcement criminal investigators.

d) The Nuclear Regulatory Commission must implement tighter controls on missing nuclear material and enforce accountability with heavy sanctions.

In closing, we see no problem that is insurmountable, however, we must not turn a blind eye and say there are no problems. With bi-partisanship and the knowledge that 3,000 of our fellow citizens, among who were Larry Virgillo the NY Fire Department hero, brother of US Customs Agent Tommy Virgillo, Patricia Kuras the sister of US Customs Service Agent Tommy Kuras, Diane Barry, the mother of US Customs Agent Kevin Barry, and other relatives including some of my own, cry out for us to respond, we can create a functioning department that we all can be proud of. Thank you for your time and attention to this matter.

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