

March 13, 2006

MEMORANDUM

TO: Chapter Presidents

RE: Letter to the Editor Published in *The Wall Street Journal*

SUMMARY: *The Wall Street Journal* published a letter I sent regarding an editorial page commentary column about cargo inspection at our nation's ports. Their commentary column and the response I sent, and they published, are attached.

This letter is but a small part of our continuing efforts, at both the national and chapter levels, to inform the media and the public about fact versus fiction when it comes to the work of employees in the Department of Homeland Security.

In this particular instance, the writer displayed an all-too-common misunderstanding of how decisions are made about port security—and who makes those decisions. NTEU is committed to doing everything possible to tell the public and the media what the real facts are so we can convey an accurate representation of the work performed every day by federal employees.

Colleen M. Kelley
National President

Attachments

Security Begins Abroad

By Veronique de Rugy

The bipartisan hysteria over Dubai and the ports serves to demonstrate—once again—how misguided Congress is in matters of homeland security. Sen. Charles Schumer and Rep. Peter King introduced emergency legislation to “suspend the handover” of our port operations to Dubai Ports World. The fear appears to be that if ports are turned over to an Arab-owned company, it will increase the chances that terrorists could smuggle dirty bombs or nuclear weapons inside one of the nine-million containers that enter U.S. ports every year.

Is that a legitimate fear? Foreign operation of American ports is nothing new. At least 30% of terminals at major U.S. ports are operated by foreign governments and businesses. In fact the current owner of the port terminals in question is the British company P&O, and other ports are owned by companies from countries as diverse as Singapore and China.

It is absurd to think that this deal will outsource our port security. The Coast Guard and Customs and Border Protection officials provide security independently of ownership. Like P&O, Dubai Ports World would simply be a manager directing American longshoremen to load and unload cargo that is secured by American homeland security officials. Ownership does not affect in any substantive way the dynamics of terrorist infiltration.

Yet more importantly, it has been completely lost in the uproar that our national port security should not depend on who owns which port in the first place. Our port security shouldn't even rely on what type of onsite detection is used at local ports and how much we spend at home to secure our ports.

In ports, as with all stationary targets, attackers have a natural advantage because they get to choose where to attack. An instructive example: The Wehrmacht simply sidestepped the Maginot Line. Similarly, terrorists will attack wherever defenses are weakest. Because terrorists have this jump on us, the best port security comes from a forward-leaning strategy of keeping terrorists and their bombs as far as possible from U.S. shores. So our security strategy ought to be reoriented in three important ways.

Our first priority should be to stop terrorists from acquiring the fissile material to build a bomb. No fissile material, no bomb. We can achieve this by keeping close tabs on nuclear materials around the world, buying foreign stockpiles and helping governments protect/destroy their supplies. This is not to say that no effort should be expended *inside* U.S. ports. However, we should keep in mind how risky it is to rely exclusively on port security at home: If the system fails, the illicit material ends up inside the U.S. or will be used to blow up a port. If a nuclear bomb explodes at the port of Philadelphia, it would kill many of the city's 1.5 million residents. It is a cold comfort to know the detector's alarm might go off five minutes before you're dead.

Today, a dozen government programs are aimed at keeping nuclear weapons and weapon-usable materials out of terrorist hands. These include securing and accounting for nuclear material, helping states intercept nuclear smugglers at their borders, and getting rid of vulnerable caches of bomb material. Yet the 9/11 Commission reports that these programs suffer from

fundamental defects and are in dire need of resources. Approximately \$250 million is spent to protect the stockpiles, compared to the \$360 million spent on in-port detection devices.

The second line of defense should be security mechanisms that prevent nuclear devices from being loaded onto ships bound for the U.S. We should help officials abroad tighten security at ports that feed shipments to the U.S. These efforts could include helping fund sys-

Confront danger at its source, not at our ports.

tems to bolster foreign countries' ability to detect nuclear material in their ports or placing U.S. agents on site. In theory, DHS's Container Security Initiative (CSI) targets high-risk containers for inspection at overseas ports prior to their departure for the U.S. Today, it deploys teams of inspectors, agents and analysts in 42 foreign ports—including Dubai—to inspect containerized cargo for WMD before it's ever shipped. But the system is nowhere as aggressive as it would be if it had more money and authority: Only \$138.8 million was spent last year.

Finally, the third line of defense: Create partnerships with foreign manufacturers and importers to ensure that their shipment methods are protected against infiltration. These partnerships would reduce the need of screening every cargo equally. That is the objective of the Customs-Trade Partnership against Terrorism (C-TPAT) program. In theory, the 9,000 foreign manufacturers and importers involved have agreed to meet “supply chain” standards for establishing a secure chain of custody for every unit of cargo traded overseas.

GAO reports, however, have found crippling flaws in DHS's foreign programs. It appears that the National Treasury Employees Union has more to say about where and when customs inspectors work than management does. As a result, 35% of U.S.-bound shipments from CSI ports are not inspected. Also only 24 out of the 42 busiest foreign ports are involved in the CSI, which means that there is little security oversight in a majority of megaports from which U.S.-bound cargo originates. Terrorists are smart enough to know not to try any funny business at closely watched ports, since so many more alternatives exist.

Another recent GAO report highlights that the verification process for applications to the C-TPAT program does not provide “an actual verification that the supply chain security measures . . . are accurate and are being followed before CBP grants the member benefits.” There is no evidence that the program prevents terrorists and terrorist weapons from entering the U.S.

There are many weaknesses with our port security. But the problem is not that some terminals will be sold to an Arab company. And it is not that port security at home is underfunded. On the contrary, it is that too much money is spent by DHS in local ports. If properly allocated, spending money abroad would make us safer. By focusing on the nationality of a well-respected ports management company instead of providing cost-effective suggestions for making the nation safer, members of Congress have shown once again how useless they are when it comes to homeland security.

Ms. de Rugy is a research scholar at the American Enterprise Institute.

...of creating a de facto compulsory licensing system that will compromise patents of undoubted merit.

Pittsford, N.Y.

We Agree: Foreign Cargo Merits Strict Inspection

The Feb. 27 editorial-page commentary "Security Begins Abroad" by Veronique de Rugy claims that the National Treasury Employees Union (NTEU) controls where and when customs inspectors work and that such control somehow jeopardizes homeland security. This is not so: All programs in which U.S. Customs and Border Protection (CBP) employees inspect and clear cargo have been designed and implemented by CBP management, not NTEU. It is CBP management that determines how many shipments get inspected and which ports participate in programs like the Container Security Initiative (CSI).

NTEU, which represents 14,000 front-line CBP employees, has long held that while foreign-based security initiatives are important, stringent security measures at U.S. ports are imperative and should be increased exponentially. If it were indeed up to us and the homeland security employees we represent, a much larger percentage of cargo shipments would be inspected.

CBP has routinely ignored our concerns, relying instead on special programs like the ones criticized by Ms. Rugy. This "management knows best" mentality reflects a devaluation of physical inspections, a refusal to acknowledge the expertise of a highly experienced workforce, and a failure of the federal government to provide sufficient funding for a reasonable number of physical inspections. NTEU has repeatedly advocated for additional funding to increase the number of CBP employees at ports.

Ms. de Rugy talks at length about CSI employees yet seems unaware that CSI employees are non-bargaining-unit employees and thus not eligible to be represented by any union. NTEU should not, and will not, be held responsible for decisions we did not make and with which we disagree.

Colleen M. Kelley
National President
National Treasury Employees Union
Washington

Richard A. Epstein
F. Scott Kieff
Polk Wagner
Chicago

(The authors—who take no position on the merits of this case—are law professors in the patent area who have written an amicus brief in favor of injunctive relief in the Supreme Court on the side of MercExchange in its dispute with eBay.)

Gender Enlightenment

Harvey Mansfield's vintage thinking springs right from the pages of Ian Fleming ("Calling All Hombres" by Naomi Schaefer Riley, The Weekend Interview With Harvey Mansfield, March 4). He seems to have missed the boat in one important area: that, as women have changed, so have men (at least some of them). Our age of gender enlightenment has left some men longing for the good old days, while others have discovered new and substantially more rewarding ways to relate to women. I wouldn't go back to the 1950s scenarios for anything.

Todd R. Lockwood
Burlington, Vt.

On Taste

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- **Complain all you want, but chores are just not such a burden anymore,** writes Karlynn Bowman.
- **The IRS is threatening to strip churches of their tax-exempt status if they don't stop getting into politics.** Brendan Miniter shows why the agency is on shaky constitutional ground.
- **If you can say whatever you want, whenever you want, without consequences,** Bret Stephens explains, you're not a dissident.

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