

# No Passport Needed

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What do Al Qaeda and the US Department of Homeland Security (DHS) have in common? They obsess about airlines and ignore the fact that US shorelines – some 95,000 miles (152,888 kilometres) – are wide open. Al Qaeda keeps trying to bring down more airplanes, but it also knows that boats can be used to inflict major, headline-grabbing damage. Its agents blew a sizable hole in USS *Cole* in Aden harbour, Yemen, in October 2000. Other terrorists used boats for their dramatic attacks on Mumbai in November 2008. And while there is a limit to what a terrorist can carry when boarding an airplane, small vessels (defined as any watercraft of less than 300 gross tons and used for recreational or commercial purposes) can readily accommodate a terrorist SWAT team, a sizable nuclear bomb and have room to spare. Moreover, many boats have easy access to critical infrastructure, such as nuclear power plants, oil tankers and refineries.

DHS may well be avoiding the subject because it knows that there are some 17 million small vessels that operate in US waters (including commercial fishing vessels, recreational boats and yachts, and towing vessels).<sup>1</sup> Unlike major airports and train stations, where most of the people are funneled through small entry- and exit-points at specific times (arrivals and departures), small boats may land anywhere at any time and have practically the entire space to themselves while they are on the water. They travel great distances, visit other countries, take on passengers or loads, and meet up with boats of other countries. When they return – or arrive for the first time – to the United States, they go unchecked. When I write ‘unchecked,’ you may think that this is just a turn of phrase. After all, it is hard to believe that while the 50,000 Transportation Security Administration agents<sup>2</sup> (who are DHS employees) are taking infants out of their strollers to check for bombs hidden in their diapers, insisting that senior citizens get out of their wheelchairs and ensuring that the volume of carry-on liquids is within security parameters and the liquids are not flammable, they are letting those who sail yachts, motorboats, houseboats and fishing vessels unload persons and goods and come and go without having to present a passport or even a driver’s license or pass *any* checkpoint. And their loads are not examined.

Obviously, DHS is aware of the problem. It does not mince words about the size of the challenge or the fact that the department cannot get its sizable arms around it. It stated in 2008:



*The security screening area at Denver International Airport. While the Department of Homeland Security directs considerable attention to air travel, coastal security is largely neglected.*

The large numbers of small vessels and the dearth of information regarding the user, owner, or operating patterns of those vessels make it extremely difficult to precisely identify the population and distinguish legitimate users from those with the intent to do harm. When evaluating and addressing the risks, law enforcement agencies are faced with sorting through thousands of small vessels, which can be closely intermingled with large commercial cargo vessels, cruise vessels, military warships, and critical infrastructure, at or near hundreds of seaports, along thousands of miles of U.S. coastline and navigable waterways, or originating from foreign waters.<sup>3</sup>

DHS did not merely declare ‘Houston, we have a problem,’ it did what I learned to do during my year in the White House. When we had no clue how to proceed, we did just as DHS has done about small vessel safety: called for more studies, for ‘multi-layered’ and ‘coordinated’ strategies, and we convened meetings to examine whatever we could not handle. True to form, the administration of President George W. Bush decided to turn to the private sector for succour. It held five regional ‘summits’ with the private sector in which small vessel security was explored.

## ***A Communitarian Approach***

The meetings, surprisingly, yielded an approach that warms the cockles of the heart of a communitarian like myself: a neighbourhood watch program called America’s

Waterway Watch. Its mainstay is a 24-hour national hotline established by the US Coast Guard on 10 February 2005. DHS hopes that recreational boaters and the public will call the hotline to report suspicious activity on the water. I write ‘hopes’ because DHS has done little to promote the program. According to the DHS Office of Inspector General, it is likely that more than 90% of registered boaters do not even know that the program exists.<sup>4</sup>

DHS also promotes the Pleasure Boat Reporting System established by the *Tariff Act* of 1930, which requires that all small vessel operators who arrive from foreign ports telephone the local US Customs and Border Patrol office (CBP) upon arrival. Some do not, and those who do may have already unloaded their goods and are not required to show any documents. And terrorists, one can safely assume, are unlikely to comply.

Similar neighbourhood watch programs exist in Canada. Many Royal Canadian Mounted Police (RCMP) branches have developed coastal watch programs, encouraging citizens to report to their local detachments any suspicious activities on Canadian waterways, including vessels without identifying markings or navigation lights, overly sophisticated equipment, or offloading of cargo to trucks ashore.<sup>5</sup> How successful these programs are remains unclear, and resources available to them are limited. For example, only two full-time coordinators and 13 officers overall were dedicated to marine security on Nova Scotia’s 7,300 km coastline as of 2003.<sup>6</sup> Furthermore, while the RCMP is the chief agency mandated with marine security, it relies largely on a convoluted relationship with the Canadian Coast Guard (CCG) and the Canadian Navy for on-water capabilities, including delivery of personnel when boarding vessels. The CCG’s lack of an enforcement mandate on Canada’s coasts and waterways surprises many, and remains a point of contention with Canada’s Standing Senate Committee on National Security and Defence.<sup>7</sup> Despite this, any changes in the organizational relationships have not been forthcoming. Therefore, coastal policing in Canada largely depends upon volunteer-based initiatives of uncertain effectiveness.

I could write a sizable book about neighbourhood watches and asking citizens to volunteer to do good in general, and to enhance homeland security in particular – but I won’t. Instead I’ll make a few comments. Western society is suffering from atomization, from the loss of communal bonds which leaves individuals isolated, lonely and without the informal webs of social controls that help make us better than we would otherwise be. One of the most effective ways to shore up communities is to involve members in meaningful missions. Many tasks other states leave to their government, for which they pay with high



*A US Coast Guard helicopter manoeuvres near a speedboat during a training exercise. Many small vessels – and their cargos – enter and exit the United States without inspection.*

taxes, Americans undertake without compensation – and have a good time serving. Thus, 72% of all firefighting in the United States as of 2008 is carried out by volunteers.<sup>8</sup> Likewise, in Canada, approximately 127,000 firefighters are volunteers, saving the province of Ontario alone an estimated \$1 billion annually in staffing costs.<sup>9</sup> And there are some 600,000 Americans who are trained in advanced first aid so that they can serve as Emergency Medical Service volunteers who, on a moment’s notice, will dash to help people involved in a car crash.<sup>10</sup> Why not enroll these good people in discharging the most important mission of any state – providing security?

One reason is that Americans are extremely allergic to the notion that they should act as eyes and ears of the government – that they should spy on their neighbours. This is not some sociological hypothesis. The United States tried to so mobilize citizens – and at a time when Americans were much hotter under the collar about 9/11 than they have been recently. In July 2002, US Attorney-General John Ashcroft unveiled a program called the Terrorism Information and Prevention System (TIPS), which asked Americans to keep an eye on each other and report suspicious activities, with special appeals to mail carriers and meter readers. The program encountered such a firestorm of opposition, from many different parts of society and the political spectrum – including

the libertarian publication *Reason*,<sup>11</sup> the *Boston Globe* editorial page,<sup>12</sup> Congressman Dick Armey (R-TX) and Senator Patrick Leahy (D-VT) – that Congress rushed to pass a bill prohibiting implementation of the program in November 2002.<sup>13</sup> The only reason I can see that the Waterway Watch program has not elicited a similar response is that next to nobody has heard about it.

In Canada, public willingness to engage in volunteer-based security initiatives is much less tempestuous. In some instances, Canadian citizens have banded together to aid authorities. Thus, for example, following the riots in Vancouver in June 2011, almost 20,000 people mobilized through social media within 12 hours to assist police in identifying rioters and looters, and to clean up the city.<sup>14</sup> While Americans have fiercely opposed initiatives like TIPS, any opposition in Canada to programs like the RCMP's coastal watch seems mute. Still, as noted above, it is unclear how successful such volunteer-based initiatives have been in the realm of marine security.

I believe that there is room for citizen homeland security volunteers, and the shorelines might be a good place to engage them. However, several issues must first be sorted out. Can Americans and Canadians learn to accept that acting as the eyes and ears of the government is a public service? Can they be protected when they come forward? Can we find a way to bridge the differences among local, state and federal agencies involved? And can political leaders recapture the call to service, before there is another major attack?

## Key Questions

In the United States, the issues at hand have been dealt with in a pattern all too familiar to us from our courts in which we rely on an adversarial system to form a judgment. Thus, we assume that if each side puts its case in a one-sided way, however biased, the clash between these conflicting presentations will allow the truth to appear. No wonder our politicians, many trained as lawyers, follow the same pattern when they engage in policy formation and law-making. Public dialogue often takes the same pattern. Thus, the American Civil Liberties Union (ACLU) (and its Canadian equivalent too, I suspect) and other civil libertarians see in new security measures the end of freedom, the death of privacy, the shredding of the constitution. And security advocates consider such criticisms as leaving the country vulnerable to terrorist attacks, and aiding and abetting the enemy.

Lost in these adversarial contortions is, first of all, the fact that rights are not cast in stone and have been recalibrated throughout history as technological and social conditions changed. Strong advocates of rights tend to imply that rights have clear and immutable definition, and for good reason: if rights are cast in stone, any changes entail breaking them. The reality is that rights have been redefined and modified throughout their history. Thus, the right to free speech/expression, embodied in the 1<sup>st</sup> Amendment of the US Bill of Rights and Section 2 of the Canadian *Charter of Rights*, did not begin to gain its present understanding until the 1920s in the United States,



RCMP and Canadian Coast Guard officers cooperate to board and inspect a sailboat during an exercise in 2005.

and even later in Canada. Privacy is not mentioned in the US Constitution and its Bill of Rights, or the Canadian *Charter*. It was forged out of a line of court cases throughout the 20<sup>th</sup> century. The Universal Declaration of Human Rights, now often cited as semi-sacrosanct, was issued by the United Nations in 1948. Not only were numerous new rights minted (e.g., of women and minorities), but some were scaled back (e.g., the rights of those charged with treason). Other rights are constantly recalibrated. Miranda rights in the United States were not established until 1966, and since then there has been a tug-of-war about their expansion and retraction, particularly with regard to terrorism suspects.

So we must ask if another such recalibration is called for. For instance, in the days when people had one phone, courts authorized wiretapping of one particular phone number. However, given that these days people have many different phones, the *Patriot Act* changed the specifications of warrants regarding particularity from one instrument to one person. This seems reasonable. (Remember that both the 4<sup>th</sup> Amendment and Section 8 of the *Charter* do not state that there shall be no search and seizure, but only that there shall be no *unreasonable* search and seizure – and what is reasonable changes as technology and other conditions change.)

Next we must ask which new requirements boaters should be expected to honour without unduly intruding on their freedom of travel, and whether these will significantly enhance security. Benjamin Franklin is often quoted as having stated, “[t]hose who would sacrifice liberty for security deserve neither.” Actually he stated, “[t]hose who would give up *essential* liberty to purchase a *little* temporary safety deserve neither liberty nor safety” (emphasis added).<sup>15</sup> That is, we must learn to accept that carefully limited recalibration of rights for important security gains are legitimate and very much a part of American (and Canadian) constitutional history.

Even more challenging is the call for sacrifices for the common good. When Barack Obama was running for office, he chastised President Bush for not asking Americans to make sacrifices after 9/11 – beyond asking them to go shopping. However, since President Obama has taken office, he has also been rather reluctant to ask Americans to put their shoulders to the wheel. If security requires that boaters watch for suspicious activities, we will have to reconsider our deeply ingrained precepts about privacy and surveillance, about what the right to be let alone entails. It is a challenge the US government so far has not dared to pose to the American people, and instead has chosen to sort out these issues in narrow, ad hoc ways – trying to define Miranda one day and to expand the



In the days following the June 2011 Vancouver riots, Canadian citizens utilized social media to aid authorities by identifying looters and rioters.

possibility for more internet surveillance without court orders the next day. No wonder it has not gotten around to small vessels.

### ***What Might Be Done?***

Meanwhile, there is no way on earth to hire enough border patrol agents to secure US shorelines, which are 10 times longer than US land borders with Mexico and Canada combined. At the same time, it makes no sense to control air passage tightly and leave the shorelines wide open. So what might be done? For starters, the United States could treat small vessels like cars. It could rule that every boat owner must register his/her boat and get a tag to be displayed on it like a license plate on a car. Better yet, it could include a transponder, a locator device, that would help identify the boat as well as help locate it, if disaster strikes. After all, this is a service many cellphone companies now provide, by allowing authorities and others to find out, using GPS, where a given caller is. (By the way, this could be a new source of revenue for the states, which they dearly need.) The owners would be made responsible for any use to which their boat is put. Thus if they rent it out or let someone else use it, they would know that they are accountable for what and whom is carried into North America. The US Coast Guard, acting like traffic cops, could conduct random checks of boats, especially those that lack a transponder. Alert citizens could supplement such border enforcement, especially if the problems noted earlier are sorted out, rather than shouldering this burden all by themselves.

Additional restructuring might be needed in Canada where, even if vigilant citizens phone in their tips, the RCMP's limited marine capabilities and the CCG's lack of an enforcement mandate may impede responses. As



Coast Guard Auxiliarist, Arnie Heath, on the lookout during a Waterway Watch security patrol at Port Hueneme, CA.

the Standing Senate Committee on National Security and Defence observed:

Resources that *could* be used to defend our country remain underutilized and the resources that *are* used to defend our country remain inappropriately utilized. The Coast Guard – which really could play a useful role in guarding coasts if it were properly outfitted and given a constabulary mandate – instead spends 99 percent of its time doing other things.<sup>16</sup>

Therefore, either a stronger on-the-water presence for the RCMP or a constabulary role for the CCG would endow Canada with the capabilities and capacities to conduct random traffic stops on the Canadian side of the border. Such changes could also ensure that Canadian marine security authorities effectively respond to alarms raised by keen Canadian volunteer coast-watchers.

The situation at hand highlights a major point that is often ignored by the simplistic exhortations to civic duty and volunteerism, and facile notions that civil society could replace ‘Big Government.’ It is typically not a question of citizens taking over missions but rather supplementing, backing up and augmenting government efforts. In some cases, citizens may carry a great part of the burden but still could not do so without the government.

Thus the work of charities and voluntary associations, from United Appeal to the Red Cross, depends in part on government. Governments indirectly subsidize their work by allowing donations to be tax deductible and directly by covering an important part of their budgets, and by providing security, for instance, when the volunteers rush into places like Haiti. The EMTs play an important role, and one cannot but admire the willingness of volunteers to expose themselves to the blood and gore of the traumas

they encounter. However, they mainly supplement the work of ambulance crews and emergency room teams.

Once we stop unnecessarily romanticizing volunteerism, we can see more clearly what must be done. Citizens have a role to play. Surely they could be encouraged to lock their boats better so there are fewer opportunities for criminals and terrorists to hotwire them. And they could act as border patrol deputies, but only if properly trained, supervised and in cooperation with security forces such as the Coast Guard, Border Patrol, or RCMP. 🇺🇸

#### Notes

- \* The author would like to thank Matt Gillis of the Centre for Foreign Policy Studies at Dalhousie University for his excellent work adding some details about Canadian programs.
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- 15. Benjamin Franklin; Pennsylvania Assembly: Reply to the Governor, 11 November 1755.
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