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HOMELAND SECURITY: SHOULD CONSULAR AFFAIRS BE TRANSFERRED TO THE NEW DEPARTMENT OF HOMELAND SECURITY?

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CIVIL SERVICE, CENSUS AND AGENCY ORGANIZATION

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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HOMELAND SECURITY: SHOULD CONSULAR AFFAIRS BE TRANSFERRED TO THE NEW DEPARTMENT OF HOMELAND SECURITY?

WEDNESDAY, JUNE 26, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL SERVICE, CENSUS AND AGENCY ORGANIZATION,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 1:53 p.m., in room 2203, Rayburn House Office Building, Hon. Dave Weldon (chairman of the subcommittee) presiding.

Present: Representatives Weldon, Burton, Morella, Souder, Davis and Norton.

Staff present: Scott Sadler, clerk; Chip Walker, deputy staff director; Garry Ewing, staff director; Jim Lester, counsel; Andrew Wimer; Pamela Groover; Stuart Burns; Michelle Ash, minority counsel; Tania Shand, minority professional staff member; and Earley Green, minority assistant clerk.

Mr. WELDON. Good afternoon. The hearing will now come to order. I apologize to our witnesses. The Speaker of the House called us all to a special meeting.

Certainly I am grateful to have all of our witnesses here today. Today we will further examine one of the most vital components of the President's Homeland Security proposals. Homeland Security starts abroad and nothing is more important than who gets approved for a visa. The issuance of visa can no longer be thought of as a mere diplomatic function. It is now a national security issue and our embassies and consulates must put our national security first.

Common sense tells us that the best way to protect Americans from foreign terrorists is to prevent terrorists from entering the United States in the first place. Just as we work hard to prevent biological, chemical or other weapons from ever making it to our shores, so we must keep terrorists, deadly weapons in and of themselves, from reaching our homeland. A security-focused visa issuance program is essential to achieve that objective. We are all too aware of the fact that 15 of the 19 September 11th terrorists had obtained "appropriate" visas. This is unacceptable. The security of our Nation begins abroad.

Visa issuance should not be about speed and service with a smile. Visa processing should not be an entry-level job, as it is currently in the State Department. The principal focus of visa

issuance should be national security, not diplomatic concerns. This process should be about close and careful examination of each and every visa applicant. Our security depends on it. The safety of the American people depends on it.

While the President recognizes the importance of visa issuance and the obvious problems, the current proposed legislation does not go far enough. The entire Bureau of Consular Affairs should be part of the proposed Homeland Security Department. The State Department views the issuance of visas as a diplomacy tool. The day is past when it should be viewed this way. It is now clearly a national homeland security function. The fragmented arrangement where the Secretary of Homeland Security establishes policies regarding visas, but actual operational control remains under the State Department is not acceptable. Yet, the administration's proposal takes this approach.

Many experts have identified this fragmented approach as a major weakness in the administration's proposal, and I agree. After all, the purpose of the Homeland Security Department is to unify the fragments of our homeland defense into one cohesive department.

Last week the President spoke to this very issue. He said, "There are over 100 different agencies that have something to do with the homeland and they are scattered everywhere, which makes it awfully hard to align authority and responsibility." I couldn't agree with the President more.

The President went on to give examples of the Coast Guard and the Customs Service as agencies whose primary focus should now be homeland defense and how it is no longer appropriate to keep them in the Departments of Transportation and Treasury, respectively. I certainly agree with that philosophy. It makes sense to me.

Equally, the Bureau of Consular Affairs should and must have our homeland defense and the prevention of issuing visas to terrorists as its No. 1 priority. Clearly, this bureau must become a full part of the Department of Homeland Security.

Recent new reports have brought to light a program in Saudi Arabia called Visa Express. It allows private Saudi travel agents to process visa paper work on behalf of Saudi and non-Saudi residents. Three of the September 11th terrorists obtained their visas this way—never being interviewed by anyone in the Consular office. When the program began, it was advertised as "helping qualified applicants obtain U.S. visas quickly and easily. Applicants will no longer have to take time off from work, no longer have to wait in long lines under the hot sun and in crowded waiting rooms."

It seems to me that we have our priorities out of order here. This isn't a customer service issue; it is a national security issue. Visa issuance must be a Homeland Security system from top to bottom. This is the only way the Secretary will be able to completely and thoroughly protect our borders, by preventing terrorists from ever making it to the homeland.

I believe we must also change the culture involved in issuing visas. James Q. Wilson, Professor Emeritus at UCLA, has written extensively about effective government. In a recent book entitled "Bureaucracy: What Government Agencies Do and Why They Do

It," he wrote about the organizational culture in the State Department as one that fosters diplomacy over security.

I will quote from his book: "Every organization has a culture, a persistent, patterned way of thinking about the central tasks of human relationships within an organization. Culture is to an organization what personality is to an individual. Like human culture, generally, it is passed from one generation to the next. It changes slowly, if at all. When criticized, some organizations hunker down and others conduct a searching self-examination."

My sense is that the State Department is in a hunker-down mode and not making a serious effort at self-examination, but rather protecting sacred turf.

We have heard concerns about the career path of Consular Affairs officials and how the path doesn't include working for the Department of Homeland Security. We all have careers and I appreciate those concerns. But it seems to me that we should be placing the security of the American people above those concerns.

It is a pleasure now for me to recognize the distinguished ranking member of the committee, Mr. Davis.

[The prepared statement of Hon. Dave Weldon follows:]

Opening Statement

Hon. Dave Weldon, M.D.

Chairman

Subcommittee on Civil Service, Census and Agency Organization

June 26, 2002

"Good afternoon. Today, we will further examine of one the most vital components of the President's Homeland Security proposal. Our homeland security starts abroad and nothing is more important than who gets approved for a visa. The issuance of visas can no longer be thought of as a mere diplomatic function. It's now a national security issue and our embassies and consulates must be our nation's first line of defense.

"Common sense tells us that the best way to protect Americans from foreign terrorists is to prevent terrorists from entering the United States in the first place. Just as we work hard to prevent biological, chemical or other weapons from ever making it to our shores, so must we keep terrorists, deadly weapons in and of themselves, from reaching our homeland. A security-focused visa issuance program is essential to achieve that objective.

"We are all too aware of the fact that 15 of the 19 Sept 11 terrorists had obtained quote "appropriate" unquote visas. This is unacceptable. The security of our nation begins abroad. Visa issuance should not be about speed and service with a smile. Visa processing should not be an entry-level job, as it currently is at the State Department. The principle focus of visa issuance should be national security, not diplomatic concerns.

"This process should be about close and careful examination of each and every visa applicant. Our security depends on it. The safety of the American people depends on it. While the President recognizes the importance of visa issuance and the obvious problems, the current proposed legislation doesn't go far enough. The entire Bureau of Consular Affairs should be part of the proposed Homeland Security Department. The State Department views the issuance of visas as a diplomacy tool. The day is past when it should be viewed this way.

"It is now clearly a national homeland security function. The fragmented arrangement where the Secretary of Homeland Security establishes policy regarding visas, but actual operational control remains under the State Department is not acceptable. Yet, the Administration's proposal takes precisely this approach.

"Many experts have identified this fragmented approach as a major weakness in the Administration's proposal, and I agree. After all, the purpose of the Homeland Security Department is to unify the fragments of our homeland defense into one cohesive department.

"Last week the President spoke to this very issue, he said, and I quote, "There are over 100 different agencies that have something to do with the homeland. And they're scattered everywhere, which makes it awfully hard to align authority and responsibility" end quote. I couldn't agree more.

"The President went on to give examples of the Coast Guard and the Customs Service as agencies whose primary focus would now be homeland defense. And, how it is no longer appropriate to keep them in the Departments of Transportation and Treasury respectively, because those departments don't have homeland security as their primary mission. Makes sense to me.

"Equally, the Bureau of Consular Affairs must have our homeland defense and the prevention of issuing visas to terrorists as its number one priority, and clearly this Bureau must become a full part of the new Homeland Security Department.

"Recent news reports have brought to light a program in Saudi Arabia called Visa Express. It allows private Saudi travel agents to process visa paper work on behalf of Saudi and non-Saudi residents. Three of the September 11 terrorists obtained their visas this way – never being interviewed by anyone in the Consular office. When the program began it was advertised as "helping qualified applicants obtain U.S. visas quickly and easily…

"Applicants will no longer have to take time off from work, no longer have to wait in long lines under the hot sun and in crowded waiting rooms." It seems to me, that we have our priorities out of order here. This isn't a customer service issue; it's a national security issue. Visa issuance must be a Homeland Security system from top to bottom. That is the only way the Secretary will be able to completely and thoroughly protect our borders, by preventing terrorist from ever making it to the homeland. We must change the culture of the way we issue visas. It's no longer sufficient for this process to be entry level. It's simply too vital to our national security.

"James Q. Wilson, Professor Emeritus at UCLA, has written extensively about effective government. In a recent book entitled Bureaucracy: What Government Agencies Do and Why They Do It, he wrote about the organizational culture in the State Department as one that fosters diplomacy over security.

"I quote: "Every organization has a culture, a persistent, patterned way of thinking about the central tasks of human relationships within an organization. Culture is to an organization what personality is to an individual. Like human culture generally, it is passed on from one generation to the next. It changes slowly, if at all…. When criticized, some organizations hunker down and others conduct a searching self-examination."

"My sense is that the State Department is in hunker-down mode and not making a serious effort at self-examination, but rather protecting their sacred turf at all costs, even at the expense of the security of the American people.

"We have heard concerns about the career path of the Consular officials and how that path doesn't include working for the Department of Homeland Security. We all have careers and I appreciate that, but it seems that we should be more concerned about blocking the paths of terrorists trying to come to America than protecting the career paths of Consular officials.

"The security of the American people begins abroad. The burden is on the Administration to prove to us why the Bureau of Consular Affairs should remain fragmented and a pseudo part of Homeland Security. Thus far they have not convinced me of the need for this fragmentation in our security fence."

Mr. DAVIS. Thank you very much, Mr. Chairman. I, too, want to thank our witnesses and look forward to their testimony.

Chairman Weldon, Section 403 of the Homeland Security Act of 2002 has raised a number of questions and concerns about the processing of visas at the Bureau of Consular Affairs. The chairman raised some of these concerns at last week's full committee hearing and has proposed transferring the Bureau of Consular Affairs in its entirety from the State Department to the Department of Homeland Security.

Those who share the chairman's concerns question the practicality of transferring the authority to established policy regarding issuing visas to the new Secretary of Homeland Security, but leaving operational control of the process to the State Department.

Questions that have been raised include: How would the Secretary of Homeland Security work through the Secretary of State to issue regulations pertaining to the visa process. How would State Department employees be held accountable for carrying out procedures established by an authority outside their chain of command?

However, there are those who argue against transferring the Bureau of Consular Affairs to the new department because the visa function includes an array of policy issues that are unrelated to homeland security. These include supporting American embassies and consulates around the world in such matters as deaths, arrests, citizenship and nationality, international parental child abduction and international adoption.

I think all of these are valid concerns and I certainly look forward to hearing the witnesses as they address not only these particular concerns, but as they help us to address one of the most important issues facing our country today, and that is indeed that of Homeland Security.

I thank you, Mr. Chairman, and yield back the balance of my time.

Mr. WELDON. The gentleman yields back. The chair now recognizes the chairman of the full committee, the distinguished gentleman from Indian, Mr. Burton.

Mr. BURTON. Thank you, Mr. Chairman. I was just reading some of the questions. I probably won't be here for the whole hearing, but just reading the questions raises a lot of concerns as far as I'm concerned. There was an e-mail sent from Thomas Furey to Mary Ryan. When we read that e-mail it is very disconcerting because it appears as though the most important thing to the embassy over there was that this was going to help four groups reduce the long lines at the embassy and there was more concern about that than there was about security.

Of course, this memo was June 26, well before the September 11th tragedy, the attack on the World Trade Center and the Pentagon. But nevertheless, it says, "The guards are going to be happy. The Saudi Government was going to be happy. The RSO was going to be happy. And the Saudi visa applicants were going to be happy. And that they were only going to have to have 15 percent of the number people that would normally come to the embassy for visas because of this express procedure going through these various travel agencies."

The other thing that concerns me—and I don't understand why there wasn't a little more far-sightedness, because we had an attack on the World Trade Center before that, and I think everybody in the country, their antennae had gone up because we were concerned about radicals coming into the country.

I don't understand why this procedure was started in the first place.

The second thing that concerns me is that there is about 200 consular offices overseas that deal with visas. It seems to me that it wouldn't be that great of a problem to transfer those people to Homeland Security jurisdiction so that would be a viable function, Homeland Security, instead of keeping it where it is today.

So, those are a couple of the concerns that I have. I also believe that you are probably going to have to increase the amount of training that the people have as far as dealing with visas, especially in some of these countries where we know the terrorists originate.

They say there is minimal training, less than 1 day. They say they are sent into the field, the anti-fraud techniques they learn are minimal training. The average immigrant visa lasts 2 to 3 minutes. There just have to be a lot of changes. It seems to me that the interview should take place and for anybody who is questionable. There should be some kind of computer analysis that is sent to Homeland Security so that they can review this before that applicant does get a visa to come to this country, especially in view of the fact that in the case of Saudi Arabia we had some of the terrorists get visas through this quick system and came in and did irreparable damage to part of our country.

So, I have a lot of concerns about this. I think in the markup, Mr. Chairman, your concerns should be fully reviewed and I believe the committee will be of a mind to, unless we get some other information that changes our mind, the committee will be of a mind to mark the bill up changing the visa procedure to Homeland Security from the State Department.

With that, thank you, Mr. Chairman.

Mr. WELDON. I thank the gentleman. Are there any other Members who would like an opening statement?

Ms. Morella, you are recognized for an opening statement.

Mrs. MORELLA. Thank you, Mr. Chairman. I just want to begin by thanking you, Chairman Weldon, and Ranking Member Davis for holding this hearing.

There is no more important objective for this country than making sure our citizens are safe. As our committee has been tasked with significant responsibilities to ensure that this actually happens, I welcome the discussion today on the role of the Bureau of Consular Affairs.

This subcommittee is rightly looking into whether the Bureau should remain in the State Department or be moved into the new Department of Homeland Security. There is a real conflict of interest that confronts the State Department officials in that they are tasked with both the administration of the law and very different diplomatic responsibilities. They don't often go hand in hand, as Mr. Wenzel noted in his testimony which we will hear later.

It is likely that the screening process required by the law is subverted to the exigency of public relation. I want to point out, I know that Mr. Mowbray is scheduled to testify, but in reading this article that he had written, I learned about something that had been alluded to called Visa Express, a short two-page form and a photo will do it for people in Saudi Arabia and that there was a variation of it called Visa Waiver. Twenty-eight countries, almost all in Western Europe, participate in the Visa Waiver, which permits travel to America without a visa.

I certainly hope to have these questions and others discussed. Thank you.

I yield back.

Mr. WELDON. If there are no other opening statements, we will go ahead and proceed with the first panel. Our first witness will be Mr. Grant Green, Jr., who is Under Secretary for Management for the U.S. Department of State.

Under Secretary Green was sworn into his current position on March 30, 2001. He has a long and distinguished career working in service for our country starting with his 22-year career serving with the U.S. Army. Mr. Green served in the White House as Special Assistant to President Reagan for National Security Affairs and Executive Secretary of the National Security Council. Following that, Mr. Green served as Assistant Secretary of Defense.

Accompanying Mr. Green is Mr. George Lannon who is the Principal Deputy Assistant Secretary for Consular Affairs for the U.S. Department of State. Mr. Lannon also served as Deputy Assistant Secretary for Passport Services and Deputy Assistant Secretary for Visa Services at the State Department.

Thank you all for joining us and being here today to share your thoughts on these issues.

Without objection, your written statements will be placed in the record.

You will each be recognized for 5 minutes to summarize your testimony. There are lights in front of you. The green light indicates that you have 4 minutes. The light then turns yellow, signifying that you have 1 minute left to summarize your statement and the red light indicates your time has expired.

It is the practice of the Government Reform Committee to swear the witnesses at all of our hearings. I would ask that you now rise and raise your right hand while I administer the oath.

[Witnesses sworn.]

Mr. WELDON. Would the court reporter please record that the witnesses have answered in the affirmative?

Mr. Green, you are recognized for 5 minutes.

STATEMENT OF GRANT S. GREEN, JR., UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF STATE, ACCOMPANIED BY GEORGE LANNON, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. GREEN. Thank you, Mr. Chairman, Chairman Burton and members of the subcommittee. I am pleased to have this opportunity to present my comments on what is potentially the most far-

reaching, comprehensive Government reorganization proposal since the Second World War.

The events of September 11th have brought a vigorous, determined and effective response from the people and the Government of the United States, but also the knowledge that we must do better.

The Department of State has and will continue to play a vital role in this effort and we fully support the President's proposal. Although INS has always had the final decision on who actually enters the United States, the authority to make the crucial visa decisions has long been vested in the consular offices of the Foreign Service.

The proposal you have before you would transfer to the new Homeland Security Secretary both the current authority of the Attorney General and the authority of the Secretary of State to establish regulations for the granting and refusal of visas by consulates offices and to administer and enforce the laws regarding the issuance and denial of visas by consular offices.

The new Secretary of Homeland Security will exercise this authority over Consular Offices through the Secretary of State. Because visa decisions abroad are also important to carry out our foreign policy, the President's proposal ensures that the Secretary will retain authority to deny visas on foreign policy grounds.

While it is intuitively obvious to all of us that visa policy is integral to the protection of the United States from terrorists, I think it is important to say very explicitly why this is so. The 19 terrorists who attacked the United States September 11th traveled to the United States on legally issued visas and proceeded on their deadly mission undeterred by U.S. authorities.

Why did we not recognize who they were and what they planned to do? Why did not we refuse visas or subsequent entry when they arrived? There was no way without prior identification of these people as terrorists through either law enforcement or intelligence channels and the conveyance of that knowledge to our consular offices abroad, that we could have known their intention.

I cannot emphasize strongly enough that identification by the intelligence and law enforcement community and the sharing of that information with consular offices abroad is a critical component for fighting terrorism and visa policies. We believe we have come a long way in a short time for the conference of data sharing we must have to prevail in this area, the war against terrorism.

Executive orders and the U.S. Patriot Act require and reinforce such sharing and our files on potential terrorists are far better now than they have been in the past. We believe a new Department of Homeland Security empowered to provide to consular offices abroad all the information that the U.S. Government knows from whatever sources will help us toward this goal.

The Secretary of State fully supports the creation of this department with this authority to ensure full data sharing. It will empower officers of the Foreign Service to protect our country using the tools and systems we have long worked to develop.

As I said, knowing who a potential terrorist is will do little good if we don't have a reliable system to pass that knowledge to consular offices wherever they might be, approached by a terrorist for

a visa. Here our progress has been exponential since the first attempt on the World Trade Center in 1993.

Our Consular Lookout and Support System provides consular offices everywhere in the world with access to the best information on people we do not want in the United States. It is the most advanced foreign language algorithms to ensure that transliteration and common names are not overlooked, and it prevents any visa from being printed until our name-check system, including interagency consultations, have been cleared.

The specialized skill in training of Foreign Service officers work hand in glove with the new Department of Homeland Security to deny visas to potential terrorists. In creating the new department it is important to recognize that visa policy plays a vital role in important foreign policy concerns of the United States which in many ways also support Homeland Security.

Our visa policies advance our economic interest, protect the public health, promote human rights and democratic values. Someone seeking a U.S. visa will find that our laws promote religious freedom, oppose forced abortion and sterilization, enforce the reciprocal treatment of diplomats, insist upon the fair treatment of American property, and punish the enemies of democracy throughout the world.

Finally, the war against terrorism is a world war that cannot succeed without cooperation by our friends and allies who are also threatened by the same terrorists. We have seen the success that a determined United States can have in forging a coalition and in obtaining diplomatic, military, law enforcement, and intelligence cooperation from abroad.

We must be mindful of the need to strengthen these partnerships and to win not only the overt war against terrorists, but the equally important hidden war against freedom and democracy that rages between fanatics who would employ terror to crush these ideals and the large majority of humanity that seeks the same freedoms as their own.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Green follows:]

Statement of

Department of State

Undersecretary for Management

Grant Green

Before

The House Government Reform Subcommittee on

Civil Service and Agency Organization

On

June 26, 2002

—

Testimony of Grant Green on the Proposal to Establish a Department of Homeland Security: the Visa Function

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Mr. Chairman and members of the Committee, I am pleased and grateful to you for inviting my comments on what is certainly the most far reaching and comprehensive US government re-organization proposal since the Second World War. The horrific events of September 11, 2001 have brought a vigorous, determined, and effective response from the people and government of the United States, but also the knowledge

that we must do better. This proposal is a significant down payment on the absolute obligation we have to do everything in our power to protect our country and its people from terrorism. The Department of State has and will play a vital role in this effort, and we fully support the President's proposal.

Although INS has always had the final decision who actually enters the US, the authority to make the crucial visa decision has long been legally vested in consular officers of the Foreign Service of the United States, reporting to the Secretary of State. The Secretary's legal authority to supervise this function is established in the Immigration and Nationality Act of 1952, which requires State to coordinate with the Attorney General and those agencies of the Department of Justice - principally the INS and the FBI - that work for him. The proposal you have before you would transfer to the new Homeland Security Secretary both the current authority of the Attorney General and the authority of the Secretary to establish regulations relating to the granting and refusal of visas by consular officers and to administer and enforce the laws regarding the issuance and denial of visas by consular officers. The new Secretary of Homeland Security will exercise this authority over consular officers through the Secretary of State. Because visa decisions abroad are important to carrying out our foreign policy, the President's proposal ensures that the Secretary will retain the authority to deny visas on foreign policy grounds.

While it is intuitively obvious to us all that visa policy is integral to the protection of the United States from terrorists, I think it important to say very explicitly why this is so. The nineteen terrorists who attacked the US on 9/11 traveled to the United States on legally issued visas and proceeded on to their deadly mission undeterred by US authorities. Why did we not recognize who they were and what they planned to do and refuse those visas or subsequent entry when they arrived? There was no way, without prior identification of these people as terrorists through either law enforcement or intelligence channels ***and the conveyance of that knowledge to consular officers abroad***, that we could have known their intention. This disciplined terrorist organization made use of people with few known prior terrorist associations, clean records, and evidence of economic solvency that they knew would be needed to pass review by visa or port of entry immigration officers.

I cannot emphasize strongly enough that identification by intelligence and law enforcement and the sharing of that data with consular officers abroad is a critical component of fighting terrorism through visa policies. We believe we have come a long way in a short time towards the comprehensive data sharing we must have to prevail in this area of the war against terrorism. Executive orders and The USA Patriot Act require and reinforce such sharing, and our files on potential terrorists are far better now than they

have ever been in the past. We believe a new Department of Homeland Security empowered to provide to consular officers abroad all the information that the US Government knows from whatever source is the most essential element in assuring the denial of visas to those who would harm us. The Secretary of State fully supports the creation of this Department with this authority to ensure full data sharing. It will empower officers of the Foreign Service to protect our country using the tools and systems we have long worked to develop.

As I said, knowing who a potential terrorist is will do us little good if we don't have a reliable system to pass that knowledge to consular officers wherever they might be approached by a terrorist for a visa. Here our progress has been exponential since the first attempt on the World Trade Center in 1993. Our Consular Lookout and Support System (CLASS) provides consular officers anywhere in the world access to the best information on people we do not want in the US. We have invested and will continue to invest heavily in improving its speed and comprehensiveness. It uses the most advanced foreign language algorithms to ensure that transliteration and common names are not overlooked, and it prevents any visa from being printed until our name-check system - including any required interagency consultations - has been cleared. The specialized skills and training of the Foreign Service will work hand in glove with the new Department of Homeland Security to deny visas to potential terrorists.

In creating the new Department it is also important to recognize that visa policy plays a vital role in important foreign policy concerns of the United States which in many ways also support our Homeland Security. Our visa policies advance our economic interests, protect the public health, promote human rights and democratic values. Someone seeking a US visa will find that our laws promote religious freedom, oppose forced abortion and sterilization, enforce the reciprocal treatment of diplomats, insist upon the fair treatment of American property, and punish the enemies of democracy around the world.

Finally, the war against terrorism is a world war that cannot succeed without cooperation by our friends and allies who are also threatened by the same terrorists. We have seen the success that a determined United States can have in forging a coalition and in obtaining diplomatic, military, law enforcement, and intelligence cooperation from abroad. We must be mindful of the need to strengthen these partnerships and to win not only the overt war against terrorists, but the equally important hidden war for freedom and democracy that rages between fanatics who would employ terror to crush these ideals and the large majority of humanity that seeks the same freedoms as their own. Demonstrating that the United States remains open to our friends and partners in the war on terrorism and welcoming society is a crucial element in winning and maintaining the support from abroad

that we need to prevail.

In summary, there is no antagonism between the goals of identifying and denying admission to the US to terrorists and welcoming our friends to join us at home and abroad in this fight.

Mr. WELDON. Thank you, Mr. Green. I understand that Mr. Lannon does not have an opening statement but he is here to answer questions.

Mr. Souder is under a time constraint and he has asked to go first on questioning. So, I'm happy to yield to the gentleman from Indiana for 5 minutes for questions.

Mr. SOUDER. Thank you, Mr. Chairman. I have to chair another meeting.

One of the things that I am concerned about, I am concerned that this isn't in the Department. I have supported that and made public statements to that effect.

You made two statements in your opening statement that I just wanted to clarify because it is something we would have to take into consideration. You refer to the transliteration in common names to make sure they aren't overlooked and the specialized skill and training of Foreign Service personnel.

Certainly having visited embassies around the world, I realize that, that it is arguably among the most highly trained professionals we have in the country and nothing that we are saying in the process of trying to address the problems here in Homeland Security should be taken as any comment by any Member of Congress on the professionalism of the State Department.

I hope employees in the State Department understand that, that we are trying to figure out where the priority comes. Are you saying that the person who does the clearance, that all of them are trained and can speak the native language currently?

Mr. GREEN. They are all trained.

Mr. SOUDER. Even though they do embassy rotation, that if somebody who got the front desk in an African nation has a unique ability to understand that language and communicate?

Mr. GREEN. Yes, sir.

Mr. SOUDER. So that we would have to make sure that however we address that, we don't lose that skill.

Now, are you saying that in the—because in the embassies I have been in, this is a very rapid process. There is often a line. I stand there at the desk. They are clearing the people pretty rapidly and making a very fast judgment.

Do you believe, when you say "transliteration and algorithm, the experience of the Foreign Service," how critical is that at the assembly line rate that we are moving this through as opposed to any intelligence that you could have in front of you? Clearly that is the No. 1 thing.

But the No. 2 thing is what does this ability to understand the language and the references in your statement have to do with what actually they are doing on a day-to-day basis in the clearance when it is moving pretty fast?

Mr. GREEN. The transliteration and the algorithms that we are talking about, it is the Lookout System that is very sophisticated, that basically, for example, if you put Mohammed in with a "u" it would pick up a Mohammed with the "o," double "m" or anything like that. So, you would not have to necessarily make an exact link-up with the name. If the passport was spelled Al Gizer, and it had "al" and then "Gizer" or AlGizer running together, it is supposed

to pick up those kind of things. So, it does not depend on an exact match of the name.

That way the consular office might get a series of names that might match the name of the person in front of them. They are supposed to make a judgment based on that on the other information. It also helps them direct a line of questioning, if they have indications that this might be a person who has come to our purview before.

Mr. SOUDER. Do you sense that has happened?

Mr. GREEN. I know it happened.

Mr. SOUDER. In that case the ability to understand the language and to read it, write it and understand the nuances becomes important.

Mr. GREEN. It becomes important, yeah, because then you talk to the applicant about it and you are better able to understand what they are saying. They are telling you what they are telling you, as opposed to someone else is telling you.

Mr. SOUDER. I yield back, Mr. Chairman. I thank you for your tolerance. That is something we have to look at how we are going to address it in fixing the question of security entrance questions because it is similar at the border. Our language skills and other services are minimal in how we would figure out how to make sure that we can understand what risks there are if the person hasn't been flagged.

What other warnings might there be? That is something we have to factor in to any debate we have and any changes we make.

Thank you, Mr. Chairman.

Mr. WELDON. The gentleman yields back.

It is the intent of the chair to continue the hearing for another 10 minutes or so before we adjourn for the vote. The Chair now recognizes the gentleman from Illinois, Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman.

Mr. Green, did I understand you to discuss that the goals of the Visa Express Program are simply incompatible with Homeland Security?

Mr. GREEN. No, sir, I certainly didn't mean to imply that if that is the way you took the statement.

Mr. DAVIS. Would you refresh my understanding of the testimony?

Mr. GREEN. As you probably know, sir, Visa Express is a processing tool. In the case of Saudi Arabia, which has received the most notoriety, we have a small number of carefully vetted travel agents that do nothing more than hand out forms and collect the completed forms for transmittal to an embassy. It is like you or I going to the Post Office to get our tax forms.

They play no role in the completion of those forms. That goes back to the embassy to the Consular Officers who in turn go through the CLASS system we just talked about and vet the person and make their ultimate decision.

Mr. DAVIS. So, they are really just collecting.

Mr. GREEN. They are passing out a blank form and collecting completed forms and providing them to the embassy. Now, I will say, since September 11th we have required of them, as we do all of our Consular Officers, a supplemental visa questionnaire on

adult male, non-immigrant visas worldwide to elicit more and better information. We also conduct deeper background checks.

We are also reviewing the whole process of offsite availability of forms to see what impact that might have on our work force and the workload. What was done with Visa Express was merely to provide an easier way to distribute these forms so that we didn't have thousands and thousands of people lining up at the embassies, and the consulates that had to be dealt with. It enabled us to focus our limited resources on really evaluating the greatest security risks.

Mr. DAVIS. If one were to try and determine how the individuals who are suspected of being terrorists or having been terrorists were able to slip through the process, if there was to be something changed, what might that be which would make it more difficult on those individuals to come through undetected?

Mr. GREEN. The sharing of information and intelligence by law enforcement.

Mr. DAVIS. So, in terms of just the issue of visas itself, I mean that is not the problem, but information sharing so that everybody has got as much information?

Mr. GREEN. Absolutely. That is something that we have attempted to improve. The new Department of Homeland Security will have that same mission. They have a task force ongoing now that is looking at the integration of all of the various, what I will call "stovepipe" systems that are eating us, the intelligence community, to identify terrorists and other undesirables that we don't want to admit to the country for various reasons.

That whole system has to be brought together and the Office of Homeland Security has a task force that is looking at that.

But I can't stress enough, I would almost say, I don't care who you have sitting across looking through the window at the applicant, unless there is information in the data base, it is very difficult, if not impossible, just by asking questions to determine what their ultimate motive may be.

Mr. DAVIS. If we were to transfer all of the visa-related functions to Homeland Security, what would be left for the consulates?

Mr. GREEN. If it were just the visa function?

Mr. DAVIS. Yes.

Mr. GREEN. Well, the two other main areas, of course, are the passport functions and American citizen services. You mentioned that in your opening statement. It is a big job. It is a big function. It is a very important function. You have 6,000 Americans that die overseas every year. Half of them are requested by their families to bring them back here. We have 44,000 births every year that have to be registered. We have 2,000 to 3,000 people in jail overseas that we have to monitor, visit and try to help. We have 20,000 adoptions every year. So, there are a number of things not related directly to security that are missions of this particular bureau.

Mr. DAVIS. Thank you.

Mr. WELDON. I thank the gentleman.

The chair now recognizes the chairman of the full committee, Mr. Burton for 5 minutes.

Mr. BURTON. We have about 9 minutes on the clock, so I'll try to go through this pretty quickly.

According to this article I read in the New York Post, I understand that Mr. Mowbray is going to be testifying on the next panel. It says, "Just a decade ago almost everyone was interviewed at least once before obtaining a visa to enter the United States.

"But Consular Affairs Chief, Mary Ryan has systematically worked to scrap the interview requirement in consulates worldwide, meaning that more and more people arrive in the United States without ever coming in contact with a U.S. citizen until they step off the airplane."

It does go on to say that the Consular Affairs office changed the name, "Visa Express" and it changed the way the Web site of the U.S. Embassy in Riyadh described the program, and that was it. Nothing else has changed.

I guess Mr. Mowbray contacted or someone contacted the embassy over there regarding a visa and he was told, "Don't worry. Only the Web site changed. It is still easy to get a visa."

He goes on to say that only 3 percent of the Saudis were refused last year when in fact 23 percent of all applicants were refused and that if there is a change to take place, the State Department's Inspector General IG audits are by former or current CA employees.

So, it looks like nothing has really changed except that they changed the name, possibly, and the review process goes on. Now, you know, we have had hearings with Health and Human Services and FDA. They have an advisory committee that recommends whether or not a new vaccine is to be used.

I asked them, I said, well, who makes the final decision on these vaccines? They said, "Well, it is the FDA officials themselves."

I said, "Well how many times has the Advisory Committee's recommendation been refused?"

It has never been refused, ever. The thing that concerns me is you have these travel agents preparing these papers and sending them over the Consulates officials who only interview people from 2 to 3 minutes at a time.

I would like to know from you, and you don't have to give it to me today, but I would like to know how many visas are refused that are recommended or sent over by the Visa Express people, because I have a sneaking suspicion that almost every one of them are approved because they are not really reviewed in detail by your consular official over there who works on the visas.

So, I would like to know how many of those people are refused who were recommended in the last year, since last June when you started this process. How many of those people were refused that got documents sent over to the consular official handling that instead of how many were approved.

I'll bet you that almost all of them were approved.

Mr. GREEN. Well, sir, we will certainly get you those numbers, but let me again say that the travel agents or any others, we have American Chambers of Commerce overseas that perform these same kind of oversight function. All they do is provide the form and receive the completed form and transmit that to the embassy where it goes through the same review.

Mr. BURTON. Wait just a minute. It says in this article that only 15 percent of the people then come in for actual interviews. It says

that 85 percent of them, once this process takes place, don't have to come to the embassy.

Mr. GREEN. But the form is still reviewed.

Mr. BURTON. The form is there, but you know, looking the person in the eye and talking to them as you used to, you used to do that with everyone of them up until about a year ago, and now that has changed.

It seems to me after September 11th you would have had an immediate review of this and there would have been a change in the process, but you are doing the same thing and I don't understand that. So people are still coming in to this country, 85 percent of them, without even visiting the embassy and sitting down with the Consular officer. Is that right?

Mr. GREEN. No. We interview at least 50 percent worldwide.

Mr. BURTON. How about in Saudi Arabia? Because it says here only 15 percent of them were actually interviewed. Eighty-five percent, they sent a formal remedy and it is still easy to get a visa.

Mr. GREEN. We have approximately 45 percent, now this is everybody who applies for a visa in Saudi Arabia is interviewed. There is a process they call Visas Condor, where people have to fill out this form. The people who fit into that all have to be interviewed.

Mr. BURTON. What is the difference between Visas Condor and everybody?

Mr. LANNON. This is a program that deals mostly with a certain demographic males between the ages, I think, of 16 and 45.

Mr. BURTON. What about females? They wouldn't fit into the demographics?

Mr. LANNON. They don't fit into that particular demographic.

Mr. BURTON. So, are they interviewed?

Mr. LANNON. Some are.

Mr. BURTON. But all of them aren't? I want you to know in Israel they are using women and children with bombs tied around them to blow up buses and kill innocent civilians. So, for you to say that only people in a certain demographic area are to be scrutinized by a peripheral interview, I don't think is sufficient. That is one of the things that I think we are going to be discussing in the full committee.

In any event, I know we have to go.

Mr. WELDON. We are down to less than 5 minutes, Mr. Chairman.

Mr. BURTON. I'll reserve questions for the second round then, if we have a second round.

Mr. WELDON. The committee stands in recess for approximately 15 minutes.

[Recess.]

Mr. WELDON. The committee will come to order. The chair now recognizes himself for 5 minutes of questioning.

I again thank the witnesses for your patience. Mr. Green, I need to become a little bit more clear on the Visa Express Program. Maybe Mr. Lannon can help me with this.

As I understand it, one of the most important functions in a visa issuance is to make sure that the person applying for the visa is the person they purport to be. In Visa Express the interview is con-

ducted by the travel agent in those cases that are approved without an interview, correct?

Mr. LANNON. No. The interview is not provided by the travel agent. The travel agent is only providing the forms and transmitting to us.

Mr. WELDON. Correct me if I am wrong. You don't interview everybody who is issued a visa through Visa Express, correct?

Mr. LANNON. No, we don't.

Mr. WELDON. OK. So, the process of verifying that the applicant was who he or she purported to be when they came to the travel agent, for those who are not called in for interviews, you are relying on the travel agent to make sure that proper ID was presented, correct?

Mr. LANNON. Well, I have their passport. Their passport is submitted to me. So I now have their document of identity and citizenship that will show me what they look like. It has to match their visa photo. So, I can link my visa to their passport because I have those two photographs.

Mr. WELDON. OK. So, you have a certain amount of checks that you undertake. But the person who verified that was the person in the documents presented ultimately was the travel agent excepting those whom you call in for an interview, correct?

Mr. LANNON. I would say the travel agent is not verifying anything other than they are passing information on to us. The travel agent makes no positive statement that this person necessarily came in and compared a picture of the passport and their face.

The fact is, if we had a different photograph on the application than we had on the passport, we would not issue the visa, because if we had two different pictures we would not issue the visa. We would say we have a problem here.

Mr. WELDON. I believe you are answer my question in the affirmative. Is there any attempt made to verify that the person was the correct person in the ones you don't interview. And the answer is no; you are relying on the documents you are provided.

Mr. LANNON. Yes. We are relying on those documents.

Mr. WELDON. Mr. Green, the question I have for you is: Let us state a hypothetical scenario where the Secretary of Homeland Security feels that there are not enough personnel or dollars being applied to the visa functions within the Consular Affairs Offices.

Under the President's proposal, the Secretary of Homeland Security would then have to go to the Secretary of State and ask for a reallocation of assets to accommodate his desires. He will not have control over those assets, correct?

Mr. GREEN. As I understand it, sir, the Secretary of State would be responsible for the care and feeding of the Consular Corps. Under the scenario that you propose——

Mr. WELDON. I am the Director of Homeland Security. You are the Secretary of State. I don't think you have enough personnel in the Consular Affairs Office in Bahrain. I cannot add more people to that office. I have to go to you and ask you to add more people to the office, correct?

Mr. GREEN. Yes.

Mr. WELDON. OK.

Mr. GREEN. And we would do it.

Mr. WELDON. Well, that is one of my primary concerns. You know, the President, in his speech, he talked about moving the Coast Guard and moving Customs over and have their primary functions to be Homeland Security.

But as we all know, the Coast Guard does a whole bunch of other things other than protecting the coasts. You know, they do boat inspections. They do a whole variety of other things.

Customs has traditionally been primarily a revenue function. Now we are going to shift their responsibility to keeping, I guess, equipment and bombs and other things from coming in.

The same thing applies to Consular Affairs. You do other things, but I see this as being, your primary function as being homeland security, particularly in the ten or so Middle Eastern countries where most of these terrorists are coming out of.

My time is expired. If you would like to response to my comments, I will give you a minute, but then I have to yield.

Mr. GREEN. I don't disagree with you, sir. I think our primary responsibility is security. I think we believe that. The comments that are often made about consular officers sitting there kind of just stamping and approving visas, the numbers don't support that. We refuse a lot of visas. In 2001, out of the 7.5 million that we approved, we turned down 2.8 million.

Mr. WELDON. Well, if my colleagues could just indulge me for 1 minute, I want to make it abundantly clear that there are a lot of very dedicated, patriotic Americans working in the Consular Affairs Office. I am not here to disparage the dedicated Foreign Service employees that have, you know, for many years pursued the goal of keeping bad people out.

It is just when you look at the whole plan and bringing all these different departments in, your office sticks out as the big "why, why aren't you bringing this piece in?"

My time has expired. I now yield to the gentle lady from Maryland for 5 minutes.

Mrs. MORELLA. Thank you, Mr. Chairman. Do you need a little bit more time? I might give you a few seconds?

Mr. WELDON. The gentle lady is very generous. She is nonetheless recognized for 5 minutes.

Mrs. MORELLA. Thank you, Mr. Chairman.

Again, I am going to refer to that Mowbray article that so disturbed me when I read it. He states that visa applicants are screened primarily for financial reasons, not security ones. This is written policy?

I just wondered if you would comment on that statement, specifically his contention that it is written policy. Is it true that someone who buys a tour package will face little further——

Mr. GREEN. Mr. Lannon.

Mr. LANNON. I am not aware of it. Basically, in the process of issuing a visa or adjudicating a visa the consular officer has a tool they use to detect terrorist and law enforcement is again the Lookout System. We try to get the names and have now successfully got the names, more names into the system. So the consular officer has that kind of information.

Normally, and part of the visa adjudication, though, is this whole question of is the person going to remain in the United States or

is this person going to leave? I would say before September 11th a lot more time was spent on that. You would be looking at someone's income, someone's ability to pay for a trip that they said they were going to take in order to determine whether you would issue the visa or not.

If someone comes in and says they make $900 a month and who wants to spend 3 weeks in a hotel in Disneyland, you might say, "Well, you don't seem to have the kind of money that it would take to do that" and refuse the visa.

If someone is very wealthy, had a lot of money, you would say your trip makes sense, so then I would issue the visa.

But again on the security grounds, we were depending on the Lookout System to have the names of terrorists or people who had legal issues, criminals. We were looking to the intelligence community and the legal community to give us that information. They were the experts on that kind of activity.

Mrs. MORELLA. It just seems kind of dangerous to have something like that financially for the primary reason. I began to think when I saw that visa meant the credit card. No, I'm kidding.

Mr. LANNON. No, there is no requirement. You can be very poor and get a visa.

Mrs. MORELLA. I know that, but I meant the idea that you are looking at the financial aspect of it. Is it true that the State Department and the INS data bases are not connected? Do consular offices not have access to INS information when performing background checks on applicants?

Mr. LANNON. The State Department data bases and INS are connected. It is through IBIS, Interagency Border Information System. Not necessarily everything in our system is in their system and not everything in their system is in our system, for various reasons. We, for instance, overseas, we will use information, much more vague information like a name as opposed to a name and date and place of birth for a quasi refusal, where we don't necessarily have anything on someone, but we just want to talk to them.

Whereas, INS, because of the port of entry, has to have much more exact information and has to have a grounds of eligibility if they are to keep somebody out. We get a lot of information from INS. They get a lot of information from us. These systems do talk to each other. We are now integrating a whole lot of NCIC information from the FBI, being provided to us as a result of the Border Security Act. We are seeing much more information coming out of the intelligence community as well.

Mrs. MORELLA. I would think that the information from both would be available to both. They can take what they need and not take what they don't need.

Mr. LANNON. That is essentially it. The protocol is set up between the agencies, what they need and what they don't need. We provide it based on that.

Mrs. MORELLA. Since I may have another minute, since no one has called time yet, could you comment on Mr. Mowbray's statement that not only is the Visa Express Program still active, but that in the 30 days after September 11th the U.S. Consulate in Saudi Arabia interviewed only two of the 104 visa applicants?

Mr. LANNON. Well, the Visa Express or the Travel Agency Referral Program is still being used in Saudi Arabia. I don't know where he got that number, but our information is that they were interviewing up to 45 percent of the people who apply. So, I think they are considering more people being interviewed than he thinks.

Mrs. MORELLA. It may be still not enough. It seems to me they should all be interviewed, shouldn't they? Mr. Green, you were nodding assent?

Mr. GREEN. Well, I think we would love to interview them, particularly in the aftermath of September 11th. I think what all of us acknowledge is that in the whole visa process, the design of it was done as a way to encourage tourism, to encourage economic development, to reunite families and all of those sorts of things.

After September 11th, that has completely changed. I would love to interview everybody, but very frankly, it is a resource issue. It is a people issue. It is a space issue. You know, if we can recruit and train additional consular officers, if we can expand the space—you have all no doubt seen many of our posts overseas and the conditions under which some of these people work, we could certainly do that.

Mrs. MORELLA. It just seems shocking that only two out of the 104, and I know that he will be testifying later and he will respond to that. But I think it is very appropriate that you give someone like you, on the first panel, which is so critically important, an opportunity to respond to something we are going to hear. Two out of 104 is pretty deplorable. Thank you.

Mr. WELDON. The gentle lady's time has expired.

Before I dismiss the panel, I just want to ask one additional question. Would it be feasible to transfer just the visa processing function to the Department of Homeland Security?

Mr. GREEN. Mr. Chairman, you know, anything is possible, certainly. My main concern with that, let me just say that we have a highly trained, very skilled group of Foreign Service officers.

Let me tell you just quickly as an example. In April of this year we had 14,000 people take the Foreign Service exam, 14,000 in April. Of those we will offer jobs to about 450, 20 percent, roughly 20 percent will be consular officers. So, there is a screening process that filters out all but the very best.

I spoke at the graduation at the last A100 class. That is our infantry basic course. That is basic training. Out of the 95 graduates—and this is not atypical—out of the 95 graduates, we had 47 with Master's degrees. We had 12 with law degrees. We had three Ph.D.'s. That is the quality that you are getting in the Foreign Service and in the Consular Affairs Service.

What I am afraid of is that we restrict this group, whether it be all of Consular Affairs or just the visa people, what you are going to get are not those people who want to aspire to be a Chief of Mission, who aspire to a senior job in the State Department, who aspire to be a Deputy Chief of Mission.

What you are going to get is rent-a-cop. That is what you will get in the visa operation, because there are no opportunities or few opportunities for advancement; very limited mid and senior grade people. Whether you can keep folks happy in an environment where they can't rotate around the consular operation and even

into the political and economic cone and they can't come back here to Washington to do different things, I don't think you can keep them happy on the visa line for a very long time, unless you pay them a lot of money.

We will also duplicate because you have posts now where the consular function only occupies a portion of the day. The visa operation runs from 10 to 1 or 10 to 2. The rest of the time those people are doing other consular functions or other embassy functions.

I don't know what someone dedicated to visa operations will do for the rest of the time.

Mr. WELDON. I thank the gentleman for his comments.

The chair now recognizes the chairman of the full committee.

Mr. BURTON. I just want to take a moment. It sounds like to me that if only 45 percent of the people were interviewed that you could find something for them to do in Saudi Arabia for the other 4 or 5 hours of the day, if they have other things to do. You know, we are talking about national security right now.

Mr. GREEN. Yes, sir.

Mr. BURTON. I want very accurate information, as chairman of the full committee. The chairman of the subcommittee and I will share it. I want very accurate information on the number of people who were interviewed personally since this new process started, who were interviewed personally after the travel agent sent the papers over.

If we don't get accurate information, there will be a problem. The reason I saw that is because when I read this newspaper article by Mr. Mowbray, it indicated that he was told one thing on the phone and then found out subsequently that wasn't accurate.

So, tell whoever is giving us that information it is very important that it be accurate.

Mr. GREEN. We will do that, sir.

Mr. WELDON. I thank the panel for your testimony. You may be dismissed now. We appreciate your time and your valuable input.

Our second panel will have Mr. Paul Light, vice president and director of governmental studies at the Brookings Institute. Mr. Light currently teaches at Harvard University's John F. Kennedy School of Government. In the past, he was the director of the Public Policy Program at the Pew Charitable Trust. Also, Mr. Light worked as a senior staffer to the U.S. Senate Governmental Affairs Committee.

Then we will hear from Mr. E. Wayne Merry who is a senior associate at the American Foreign Policy Council. Mr. Merry has a distinguished career, which includes serving as director on european studies in transition for the Atlantic Council of the United States.

Following that we will hear testimony from Mr. Nikolai Wenzel. Mr. Wenzel is director of academic programs at Atlas Economic Research Foundation. In the late 1990's, Mr. Wenzel served as a Foreign Service Officer with the U.S. Department of State. Mr. Wenzel worked as a Vice Consul at the U.S. Embassy in Mexico City, also serving as the Consulate's Anti-Fraud Chief and as Special Assistant to the Ambassador.

Finally, we have Mr. Joel Mowbray. Mr. Mowbray is currently an attorney and contributing editor to the National Review.

I want to thank all of these gentlemen for taking time out of your busy schedules. I again apologize for all the delays.

Without objection, your written testimony will be included in the record. We ask that you try to summarize your comments to 5 minutes.

Again, it is the practice of the Government Reform Committee to ask people to take an oath.

[Witnesses sworn.]

Mr. WELDON. The court reporter will annotate that they all answered in the affirmative. We will begin with you, Mr. Light, and then we will move to the left down the table. You are recognized for 5 minutes.

STATEMENTS OF PAUL LIGHT, VICE PRESIDENT AND DIRECTOR OF GOVERNMENTAL STUDIES, THE BROOKINGS INSTITUTION; E. WAYNE MERRY, SENIOR ASSOCIATE, AMERICAN FOREIGN POLICY COUNCIL; NIKOLAI WENZEL, DIRECTOR OF ACADEMIC PROGRAMS, ATLAS ECONOMIC RESEARCH FOUNDATION; JOEL MOWBRAY, ATTORNEY, CONTRIBUTING EDITOR, NATIONAL REVIEW ONLINE

Mr. LIGHT. It is a pleasure to be here this afternoon. I consider this subcommittee to be the key subcommittee involved in this homeland security discussion on the House side.

It is a pleasure to be before my own representative from Maryland. I hope you will be light on me, go easy on me.

I have never testified before this subcommittee, actually, in 20 years of working on civil service issues. I don't know why that is, but I appreciate the invitation today.

I say in my testimony that I don't know much about Consular Affairs. I know a lot about reorganization. I have been part of reorganizations. I have worked in both Chambers here on this side with Barber Conable, who was on the House Ways and Means Committee and on that side with John Glenn.

I worked on the Veterans Affairs elevation in 1987 and 1988. We took a deep look at past reorganizations. I ask two questions in my testimony. Is this is reorganization too broad? It is. It asks a great deal of the agencies that are being combined.

Simultaneously, I also ask whether it is too narrow and I can answer that question that it is. I do not understand the consular affairs decision. The rule of thumb in reorganization is that you combine agencies with like missions at about 50 percent of activity.

In this case, listening to the testimony of the provide witnesses, I will certainly defer to the expertise at this table, it looked to me from outside that Consular Affairs met that test. There are several agencies involved in these reorganizations that in fact are not at the 50 percent. We know the Coast Guard is about 25 percent. I cannot estimate what percentage of time APHIS, the Animal and Plant Health Inspection Service, is spending on homeland security, but I would gainsay that it is not very much.

So, I ask in my testimony here and am puzzled by the decision to leave Consular Affairs out. I certainly think that the committee and the subcommittee have to struggle with the mechanism through which the Secretary of Homeland Security would influence Consular Affairs.

I am not sure it is workable. I am not sure it is legal. I am certainly puzzled as to whether it is doable, to have a Secretary of one Department able to order changes in regulation through the Secretary of another Department is unusual at best. It is not unprecedented, but it is close to being so.

Because this is the Civil Service Subcommittee, I do talk in this testimony about the three significant waivers that exist in this legislation. We have talked a little bit today already about the culture of this new Department of Homeland Security and the culture of Consular Affairs.

There are three significant waivers in this bill that I think you have to take a close look at. No. 1 is the reorganization authority imbedded in the proposed statute, which I believe is overly broad.

Congress has not been given this kind of reorganization authority in 20 years. We did last see it in the Department of Education Bill back in 1979, but that was a very limited reorganization. Frankly, the reorganization authority here can be structured so that it is perhaps more comfortable to Congress and gives Congress a little bit better opportunity to influence what reorganizations take place within this department once the legislation passes.

I also talk about the Presidential appointee system here. As you may know, there are 27 political appointees in this department, of whom 13 are not subject to Senate advise and consent confirmation. Of those 13, ten are Assistant Secretaries. It is unprecedented historically not to have Assistant Secretaries subject to Senate advice and consent. I would urge you to take a look at that.

Obviously, the most important waiver for this subcommittee to examine is the waiver from Title V. I know that you are all struggling with that and I know you are all thinking about it. It is an extremely broad waiver. It is an important waiver from the standpoint of trying to address historic and troublesome problems in the Civil Service System.

You all know that this system is slow at the hiring. It appears to be permissive at the promoting. It is not very good at the rewarding. It is darn frustrating at the firing. There are lots of problems at the Civil Service System, but this waiver is extraordinarily broad.

I think Congress can legislate more specificity with regard to creating a Civil Service System, a personnel system for the new Department that is quite workable.

Let me conclude by noting that the culture of the Federal Government prior to September 11th was oriented toward increasing customer satisfaction. That was the coin of the realm before September 11th. If you go back to the newspapers, in August you will find that James Ziegler, the Commissioner of INS was spending time hammering his agency to be more customer friendly, shorten those lines, get people through faster.

Obviously, we have changed the culture and we want to create a culture now in Homeland Security and in State and across the Federal Government in which Federal employees understand that part of their mission, wherever they happen to be, is to be concerned about the state of our homeland security.

I will yield to my colleagues here at the table on the expert opinion on consular affairs.

I appreciate the invitation. As you know, Congressman Horn is stepping down later this year. About two-thirds of my testimony was before his subcommittee. My hope is that you will adopt me now before this subcommittee and that I will be back sometime in the future.

Mr. WELDON. Well, considering how reasonably priced your testimony is, we may be able to do that.

Mr. LIGHT. About what it's worth.

[The prepared statement of Mr. Light follows:]

ASSESSING THE PROPOSED DEPARTMENT OF HOMELAND SECURITY

TESTIMONY BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES

GOVERNMENT REFORM COMMITTEE

SUBCOMMITTEE ON CIVIL SERVICE, CENSUS AND AGENCY ORGANIZATION

PAUL C. LIGHT

CENTER FOR PUBLIC SERVICE

THE BROOKINGS INSTITUTION

JUNE 26, 2002

Thank you for inviting me to testify before this Subcommittee regarding the proposed homeland security reorganization. There are many in this city who favor moving forward as quickly as possible on this important legislation, and some who believe that it must be passed before September 11th in honor of the victims of the terrible attacks that make the case for action. However, such legislation can hardly be considered an honor if it is not done well.

Having studied more than a few reorganizations, I can testify that such efforts are rarely complete on signing. Congress often goes back into reorganizations to fine-tune, reconsider, and rearrange its work long after passage. That is certainly the case with the departments of Defense and Health, Education, and Welfare, for example.

Congress has returned to the Defense Department reorganization at least five times over the past fifty years, for example, starting with (1) the 1958 Department of Defense Reorganization Act (PL 85-599), which strengthened coordination among the armed services, (2) the 1980 Defense Officer Personnel Management Act (PL 96-513), which revised military promotion and retirement practices, (3) the 1985 Defense Procurement Improvement Act (PL 99-0145), which was a direct response to the procurement scandals of the early 1980s, (4) the 1985 Goldwater/Nichols Department of Defense Reorganization Act (PL 99-433), which once again sought to strengthen coordination, and (5) the 1989 Base Closure and Realignment Act (PL 100-526).

Congress has also returned to the Health, Education, and Welfare reorganization even more frequently, most notably the Department of Education Organization Act in 1979 (PL 96-88), which set asunder what President Eisenhower had joined together, and the 1994 Social Security Independence and Improvement Act (PL 103-296), which split the Social Security Administration from what had been renamed the Department of Health and Human Services in 1979.

I raise this bit of history to note government reorganizations are usually a work in progress. I cannot find a single reorganization over the past seventy years that has *not* been changed in some material way at a later point in time. Indeed, the *U.S. Government Manual* provides more than 50 pages of executive organizations, which were terminated, transferred, or changed in name since March 4, 1933, the date of Franklin Roosevelt's inauguration. We create new agencies, then rearrange, downsize, coordinate, and terminate them. Then, more often than not, we create them again.

We will almost certainly begin thinking about how to reorganize the new Department of Homeland Security on the day we create it. Indeed, the president has anticipated just that in Sec. 733 of his proposal, which gives the new secretary authority to "establish, consolidate, alter, or discontinue such

organization units within the Department, as he may deem necessary or appropriate." Although the White House rightly notes that this is the same authority granted to the secretary of education under the 1979 statute, one must remember that the Department of Education consists of less than 5,000 employees, while the new department will start with 170,000 employees, if not more.

I do support limited reorganization authority for the president, and believe it is a vital tool for governing the executive branch. However, that authority must be carefully defined so that it is not abused to the detriment of congressional prerogatives.

It seems to me that this subcommittee must ask three basic questions about the Department of Homeland Security:

1. IS THIS REORGANIZATION ALREADY TOO BROAD?

The president was quite right to note that the proposed department is the largest since 1947, at least, that is, in terms of total employees. Although there have been larger reorganizations measured by dollars, the president's proposal dwarfs all others in total number of employees (170,000+), and number of agencies (22).

Impressive though it is in size and scope, I believe the reorganization goes too far. The general rule of thumb, and it is just a rule of thumb, is that such merger and acquisition reorganizations should only combine agencies that share at least 50 percent of the same mission. That is certainly the case for the Customs Service, Immigration and Naturalization Service (INS), Border Patrol, and Transportation Security Administration (TSA), all of which share a common commitment to homeland security. That is not the case for many of the other agencies on the transfer list, including the Agriculture Department's Animal and Plant Health Inspection Service (APHIS), the Coast Guard, and Federal Emergency Management Agency (FEMA). The Coast Guard estimates that only 25 percent of its duties involve homeland security, while FEMA began its remarkable transformation to a high-performing agency in the mid-1990s by abolishing its civil defense function to concentrate on natural disasters.

It is hard to know just where to draw the line on a reorganization of this size. Depending upon the headcount estimates, roughly 75 percent of the department's budget and personnel are located in the Border and Transportation Security directorate, which contains Customs, INS, TSA, and the Border Patrol.

My inclination, and it is just that, an inclination, would be to focus the department more directly on border security, information analysis and infrastructure protection. That would mean, for example, that FEMA would remain exactly where it is, that there would be no chemical, biological, radiological, and nuclear countermeasures directorate, meaning that APHIS would also stay where it is. Although Congress could always remove the Coast Guard, FEMA, APHIS, and the other units should the reorganization prove overly broad, my preference is to start with the most logical combinations, then add as needed. In a similar vein, no pun intended, Congress can always decide later to split the national pharmaceutical stockpile from the Public Health Service.

2. CAN THE DEPARTMENT BE EFFECTIVELY MANAGED?

The president's proposal provides extraordinary authority to manage the reorganization, so much so, in fact, that one wonders whether the reorganization can be managed at all. I am concerned about several of the proposed waivers, including the Sec. 733 reorganization authority, which would give Congress just 90 days to consider the consolidation, alteration, or termination of any entity transferred to the Department and established by statute. I think that authority is much too broad, and would urge Congress to consider alternative means of giving the secretary this flexibility, perhaps through a variation of the Base Closure and Realignment Commission of the 1990s.

I am also concerned about two other waivers in the proposed legislation:

- Under the president's draft legislation, the new department would have 27 presidential appointments. The number is not unusual given the department's size and scope, but the president's appointing authority is unprecedented. Of the 27 homeland security positions, only 14 would be subject to Senate advice and consent. The rest, including 10 assistant secretaries would serve at the president's pleasure, becoming the first assistant secretaries in history to enter office without Senate review. Moreover, the secretary of homeland security would have complete freedom to determine the titles, duties, and qualifications for all 16 assistant secretaries. It is freedom that Congress has refused to give in the three most recent bills that created new departments.

- The president's proposal would also give the secretary authority to create a personnel system that is "flexible and contemporary." Although the two words are never defined, the implication is obvious: the new department would be free to design a new system from scratch. It is hard to blame the president for making the proposal. The current personnel system is beyond comprehension. It is slow at the hiring, interminable at the firing, permissive at the promoting, useless at the disciplining, and penurious at the rewarding. The vast majority of federal employees describe the hiring process as slow and confusing, and a surprising quarter do not call it fair. And less than a third say that the federal government does a good job at disciplining poor performers.

I believe Congress should reject these proposals. Congress cannot allow the president to appoint the first assistant secretaries in history without confirmation, and not just because such action is an affront to constitutional prerogatives. The president's proposal would create two tiers of assistant secretaries within the new department, one with all the prestige that comes from nomination and confirmation, the other a lesser status that comes from entering office without Senate review.

Similarly, Congress as a whole cannot give the new secretary the unfettered civil-service waivers imagined in the legislation. The new secretary needs a workforce that hits the ground running, not one that spends its first days asking how the words "flexible" and "contemporary" might affect each worker's future.

Congress has an obligation to do more than just say "no," however. To the contrary, it should bulldoze the bureaucratic prison that holds both appointees and employees captive by speeding presidential

appointee reform and undertaking long overdue civil service reform. This is clearly the Subcommittee where such reforms should begin, and I urge the members to do so.

1. SHOULD THE BUREAU OF CONSULAR AFFAIRS BE INCLUDED?

Although I believe that the president's proposal is too broad, I also believe it fails to address one key transfer: the Bureau of Consular Affairs. I am not an expert on the visa process, nor do I claim to understand the intricacies of embassy operations.

Perhaps that is why I simply do not understand how the secretary would actually use his visa-issuance authority. Under Sec. 403, the secretary is given "exclusive authority, through the secretary of state, to issue regulations with respect to, administer, and enforce the provisions" of Sec. 104 of the Immigration and National Act and all other immigration and nationality laws. I know of no other statute that gives one secretary of a department such authority over the secretary of another department. What if the secretary of state refuses to issue the secretary of homeland security's order, for example? It seems to me that if the president wants the secretary of homeland security to issue regulations governing the functions of diplomatic and consular officers of the United States in connection with the granting or refusal of visas, the president should transfer the organizational units to the new department. That is precisely what the president proposes for the various units of other departments such as Agriculture, Health and Human Services, Treasury, and Justice.

I also noted with some chagrin that the president decided not to forward his own version of Senator Graham's legislation to create a statutory office of homeland security within the White House. Assuming that the president will continue to employ such an adviser, I believe Congress should give the adviser and his or her office the full statutory authority that it needs.

Mr. MERRY. Mr. Chairman, thank you very much for the opportunity to appear before your committee on this very important topic. Unfortunately, the State Department remains in double denial; denial that it contributed to the failure to prevent the terrorists entering this country and denial that it can and must approve how visas are issued.

The essential problem is one of attitude. The State Department regards visa issuance as a service function and in some cases even as an entitlement program rather than law enforcement.

One half of the consular function is services, American citizen services, and that is a very important function. Visa issuance is not.

I believe the institutional weakness on this problem comes from the Rogers Act of 1924 which combined what was then an independent and quite large Consular Service with a smaller diplomatic service into a single unified Foreign Service.

Since that time the consular function has always been the stepchild of diplomacy at the State Department. No State Department leadership, regardless of political party, treats the consular function as more than a necessary nuisance. None gives visa issuance policy priority, certainly not until September 11th.

Very few Ambassadors accord real importance to their consular sections or personnel and even worse, very many Chiefs of Mission and other embassy staff look on visa issuance as a means to wind friends and to curry favor among local elites. Every visa officer is routinely pressured by his front office and by non-consular colleagues to issue visas for reasons that are totally unrecognized by the Immigration and Nationality Act.

As you know, most visa positions overseas are filled by young, inexperience, probationary Foreign Service officers, most with no interest in consul work. Thus, one of the most important decisions that can be made within the walls or an embassy or consulate abroad, who shall enter the sovereign territory of the United States, is relegated to the least capable, least motivated and least savvy personnel.

Now, consular work as a career attracts some of our best Foreign Service officers, but they are far too few and overworked to provide adequate supervision or mentoring to junior officers.

There are at least two viable alternatives to deal with this problem. If the Congress chooses to assign responsibility for visa issuance to the new Department of Homeland Security, then I believe that department should also possess the budgetary authority and the staff worldwide.

Otherwise, the Congress will simply replicate the current system in which immigration policy is in Justice, but visa issuance is conducted by State. In reality, these officers in the field inevitably will respond to the priorities which come down their own chain of command. If from Homeland Security, that would be law enforcement. If from State, it would be political and diplomatic.

I have heard State's objections. I don't think they hold water. It is true now that staff from many departments and agencies already function within our diplomatic mission abroad. Indeed, at larger embassies, the State Department is very much in the minority.

I can recall when the State Department complained vigorously when the Congress took away the commercial function. That was after years of the State Department ignoring congressional pleas that our diplomats take commercial promotion seriously. I think there is nothing sacred or immutable about the former functions of the State Department, where I used to work, or any Federal agency.

If Congress cannot obtain satisfactory results in the public's business with one bureaucratic arrangement, Congress is within its rights to transfer the work elsewhere.

An alternative approach, and one which I am very sympathetic to, would be to revisit the Rogers Act and create a separate Consular Service within the State Department with greatly increased autonomy, prestige and resources. Such a service must have an unambiguous legislative mandate from the Congress to enforce the visa laws without regard for other considerations and it must also have its own career personnel at all levels.

In either reform, I believe Congress must do four things. First, it must put statutory power behind the reform. To allow the existing agencies to reform themselves is a prescription for failure. What is needed is not just a new wiring diagram, but new leadership and personnel.

Second, whether you put the function in Homeland Security or in a new Consular Service, the visa function will need more personnel and more money. We have staffed consular work on the cheap for many years and we paid the price on September 11th. The number of new employees will be far fewer than the number of lives lost on September 11th and it will prove an immense bargain when skilled and motivated new visa personnel prevent future terrorists from arriving on American soil.

Third, whatever reform option it chooses, Congress for years to come must watch the new visa operation like a hawk to ensure compliance.

Finally, Congress can obtain the best results if it leads by example, by restricting the current tendency of Members of Congress to interfere in visa adjudication cases. I know elected officials like to serve their constituents or supporters by overturning a visa denial. But this pervasive practice corrupts an already weak enforcement regime and encourages the notion which is very widespread in the world today that a visa into the United States is a commodity to be obtained rather than a legal standard to be met.

Mr. Chairman, I believe that citizens of the United States have a right to expect our highest public institution, the Congress now will assure that a visa is no longer an invitation for either international organized crime or terrorism, but becomes an instrument of American sovereign authority at the first line of national defense.

Mr. WELDON. I thank you.

[The prepared statement of Mr. Merry follows:]

AHomeland Security: Should Consular Affairs be Transferred to the New Department of Homeland Security?@

Subcommittee on Civil Service, Census, and Agency Organization
of the Committee on Government Reform,
United States House of Representatives

Wednesday, June 26th, 2002

Testimony of Wayne Merry
Senior Associate, American Foreign Policy Council

Mr. Chairman, thank you for the opportunity to appear before your Committee on this very important topic.

September 11 revealed serious deficiencies in how our national government protects its citizens from external threats. Some are well-known, others less so. While the FBI and CIA have, at least in part, acknowledged their failures and are committed to improve, the State Department remains in double denial: denial that it contributed to the failure to prevent the terrorists entering this country and denial that it can and must improve how visas are granted.

The essential problem is that State regards visa issuance as a service function and, in some cases, even as an entitlement program, rather than as essential law enforcement. The visa window at consulates abroad should be the first line of defense against foreign terrorism and organized crime, but often it is not. At best, the visa process filters out economic migrants, as the law requires, but it remains critically deficient against more serious threats.

State=s institutional weakness on visas originated with the Rogers Act of 1924 which combined a then-large Consular Service and a smaller Diplomatic Service into a single,

unified Foreign Service. Since that time, the consular function has been the step-child of the State Department, in authority, resources, and priorities. No State Department management, regardless of political party, treats the consular function as more than a necessary nuisance, and none regards visa issuance as a policy priority. Very few ambassadors accord real importance to their consular sections and personnel. Worse, many chiefs of mission and other embassy staff look on visas as a means to win friends and curry favor among local elites. Visa officers are pressured by the front office and by non-consular colleagues to issue visas for reasons totally unrecognized by the Immigration and Nationality Act.

The heart of the problem is the way the visa function is staffed. Most visa positions overseas are filled by young, inexperienced, probationary Foreign Service officers, most with no interest in consular work but merely fulfilling a mandatory assignment before going on to the more glamourous diplomatic side of their profession. Thus, one of the most important decisions that can be made within the walls of our embassies and consulates B who shall enter the sovereign territory of the United States B is relegated to the least-capable, least-motivated, and least-savvy personnel. While consular work as a career attracts some of our best Foreign Service officers, they are far too few and overworked to provide adequate supervision or mentoring to junior visa officers, who often fall prey to applicant sob stories or outright fraud.

My own consular experience demonstrates what is wrong. After several years of political work, I was assigned to head the visa section of a major embassy without any consular experience and with wholly inadequate training. (The training has since improved.) I know I made many mistakes on visa cases. Of the six officers in this consular section, only one was a true consular officer, while both supervisors were not. If we did an adequate job, it was in spite of State=s personnel policies, not because of them.

The current system cries out for basic structural reform, which only the Congress can supply. There are at least two viable alternatives: transfer the visa function *in toto* to the new Department of Homeland Security or restore the independence and authority of a Consular Service within the Department of State.

If Congress assigns responsibility for visa issuance to Homeland Security, then that department should also possess the budget and staff world-wide. Otherwise, you will just replicate the current system, with immigration policy vested in Justice, but visa issuance conducted by State. Visa officers in the field inevitably will respond to the priorities which come down their chain of command: law enforcement if from Homeland Security, diplomatic and political if from State.

State may respond to the prospect of losing the visa function by saying it has issued visas since the early days of the Republic, that it would be unworkable for large numbers of Homeland Security personnel to operate within our overseas missions, or that it is unfair to deprive State of an important aspect of our foreign affairs. None of these arguments holds water. The United States Coast Guard is as venerable an institution as State (and more respected), but it will become part of Homeland Security. Staff from many departments and

agencies already function within diplomatic premises abroad; indeed, at larger posts the State Department is very much in the minority. State also complained when the Congress took away the commercial function, after years of ignoring Congressional pleas that our diplomats take commercial questions seriously. There is nothing sacred or immutable about the form or functions of the State Department or of any federal agency. If Congress cannot obtain satisfactory results in the public=s business with one bureaucratic arrangement, then Congress is within its rights to transfer the job elsewhere.

An alternative approach would revisit the Rogers Act and create a separate Consular Service within the State Department, but with greatly increased autonomy, prestige, and resources. Such a service must have an unambiguous legislative mandate to enforce the visa laws without regard for other considerations. It must also have its own career consular personnel at all levels, from the visa window to the office of the Consul General, to end the perilous practice that visas are issued by junior staff just passing through the consular section.

With either reform approach, Congress must do four things.

First, Congress must put statutory power behind the reform. To allow existing agencies B whether State or INS B to reform themselves is a prescription for failure. Our present danger demands more than a new bureaucratic wire diagram, it requires a new attitude with new leadership and personnel. The prevailing customer-service approach must be replaced by the mentality of law enforcement. This will not be easy, but new law is the critical first step.

Second, whether in Homeland Security or in a new Consular Service, the visa function will need more personnel and more money. We have staffed visa work on the cheap for many years, and we paid the price on September 11. The consular function must recruit its own career staff for the needs of consular work (including the important American Citizen Services task), which are very different than the requirements of diplomacy. The number of new employees will be fewer than the lives lost on September 11 and will prove a great bargain when skilled and motivated visa officers prevent future terrorists arriving on American soil.

Third, whatever reform option it chooses, Congress for years to come must watch the new visa operation like a hawk. Without constant and active Congressional oversight, bureaucracies will fall back into the easy and well-trodden paths. This committee and its members must resolve themselves not only to write new law on visa issuance, but to monitor and enforce compliance.

Finally, Congress can obtain the best results if it leads by example, by restricting the tendency of Members to interfere in visa adjudication. I know that elected officials like to serve their constituents or supporters by overturning a visa denial, but this pervasive practice corrupts an already-weak enforcement regime and encourages the notion B very widespread in the world today B that a visa into the United States is a commodity to be obtained rather than a legal standard to be met.

Mr. Chairman, as citizens of a large and complex society, we Americans are accustomed to rely on our public institutions. When we dial 911, we expect local police to respond. If we get into trouble at sea, we believe the Coast Guard will come to our aid. If we are endangered by fire in New York City, we hope the New York Fire Department will perform miracles on our behalf. On September 11, the entire world saw that many of our institutions respond to the call of duty with heroism and self-sacrifice. However, all the heroes of that terrible day and all of the victims and their families had a rightB a right B to expect our national institutions to fulfill their duties so that such attacks could not happen. We recognize that our intelligence and law enforcement bodies fell short and must be reformed. The State Department warrants its share of the blame, despite reluctance to accept it. Citizens now have the right to expect our highest public institution, Congress, will assure that a visa is no longer an invitation for crime or terrorism but is again an instrument of American sovereign authority and the first line of national defense.

Thank you again for the honor of appearing here today, Mr. Chairman.

Mr. WELDON. Mr. Wenzel, you are recognized for 5 minutes.

Mr. WENZEL. Good afternoon. Thank you, Mr. Chairman, Representative Davis, Chairman Burton, and members of the subcommittee, for this opportunity to share some comments on the importance for the sake of national security of transferring all immigration and visa functions away from the State Department.

The State Department's view of consular affairs has two major functions. The first, American citizen services, which is the traditional function of the consular Corps and on which I would say the State Department is doing a good job, is not the topic of this testimony.

The second is immigration law and specifically the adjudication of non-immigrant and immigrant visas. Under U.S. immigration law, applicants for most non-immigrant visas carry the burden of proof for showing that they will not overstate a visa illegally. Yet, an estimated 50 percent, one half, of all the illegal aliens currently in the United States entered the country on non-immigrant visas issued by the State Department.

Similarly, studies indicate that each successive wave of immigrants is poorer in spite of the State Department's legal obligation to deny a visa if the applicant is apt to become a public charge.

These figures are too strong to indicate mere coincidence. Rather, they evince a pattern of selective application of the law. These statistics are not surprising. Entrusting the administration of laws to officials with diplomatic responsibilities is a recipe for trouble.

Diplomacy entails dialog, cooperation, compromise and public relations. Conscientious administration of the law, on the other hand, entails adherence to the rule of law and intolerance of illegal behavior, even if that is unpopular or might conflict with other diplomatic priorities.

We thus see an emphasis within the State Department on numbers and issuances to avoid the embarrassment of long lines outside of consulates or too many refusals. Consular offices are often judged on speed and politeness rather than proper administration of the law.

This disconnect is epitomized in a recent article on the Bureau of Consular Affairs so-called Best Practices, "The best practices initiatives undertaken by the Bureau of Consular Affairs are improving consular operations on a daily basis. Through fundamental management changes, consular managers can now meet their customers," that is how these applicants are referred to "the customer's expectations and make the most of available resources while projecting a positive image of the Department worldwide."

The article then lists some examples which I which will not cite here for lack of time. "These are but a few of the best practices that consular managers have initiated to achieve the balance between better service to the public and an improved work environment."

No mention of national security, no mention of conscientious administration of the law. The State Department and the Bureau of Consular Affairs appear to have chosen public diplomacy to the detriment of proper administration of the law.

Such was the situation before the terrorist attacks of September 11th. All 19 of whose perpetrators entered the United States on non-immigrant visas issued by the State Department. I have not

seen any significant or serious changes to the department's modus operandi since September 11th, or any attempt to lower the massive numbers of interviews and more importantly, issuances and thus reduce the chance of erroneous issuance to a known terrorist.

Instead, I have seen a number of comments indicating that the State Department's priorities have not changed. Those are detailed in my written testimony.

Now, if selective enforcement of the law allows large numbers of aliens to enter the United States to work peacefully, that is one thing. It is a problem of rule of law, but one with which we could ultimately live.

However, if misguided priorities and selective administration of the law were ever to allow terrorists to enter the United States to harm us, that would be very different, and a much more serious matter.

One may agree or disagree with current U.S. immigration law. I should point out in passing that I myself am the son of an immigrant. My mother was naturalized a U.S. citizen just 4 years ago. I personally favor exploring the practicality of liberalizing access for aliens who seek entry for peaceful purposes. But that is not the point here. We are trying to protect the country from terrorists.

The Bureau of Consular Affairs should continue to provide services to American citizens. For the sake of national security, however, we should remove all visas functions from the State Department. This includes complete and direct policy and operational control of all officials involved in immigration and visa-issuing functions and ideally, new staff, rather than current State Department employees as the corporate culture in the State Department is too entrenched to be changed by a mere shift in bureaucratic supervision.

The proposed Department of Homeland Security appears to be the best candidate for these functions. They would not fact the same conflicting diplomacy priorities as the State Department and it would present the advantages of a centralized information repository.

Thank you.

[The prepared statement of Mr. Wenzel follows:]

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON CIVIL SERVICE, CENSUS AND AGENCY ORGANIZATION

TESTIMONY OF NIKOLAI WENZEL

WEDNESDAY, JUNE 26, 2002

INTRODUCTION

My name is Nikolai Wenzel. I am a former Foreign Service Officer with the U.S. Department of State (1996-1999). From 1997 to1999, I worked as a vice-consul at the U.S. Embassy in Mexico City, where I also served as the consulate's anti-fraud chief and as special assistant to the ambassador. During my tenure as a non-immigrant visa officer, I processed 30,000-50,000 applications, and served temporarily as the section's deputy chief. For one month, I processed immigrant visa applications at the U.S. Consulate in Ciudad Juarez, Mexico. Even though I received strong performance evaluations and an exciting onward assignment as a political officer to Rabat, Morocco, I resigned from the Foreign Service after only one tour, along with several other first-tour junior officers. I had become discouraged by rampant bureaucratic inefficiency, poor management, and a corruption issue that was ultimately resolved, but not after high-ranking State Department officials attempted to protect the offender. Since resigning from the Foreign Service, I have researched and written on the State Department and U.S. immigration law. I am now the Director of Academic Programs for the Atlas Economic Research Foundation, a free-market think-tank that does not take any position on immigration, nor endorse any of my views, but does advocate the importance of rule of law. I am also a doctoral candidate in economics at George Mason University (Fairfax, VA), where my work will focus on institutional economics, public choice theory and international development.

EXECUTIVE SUMMARY

The U.S. State Department's consular corps, with its authority to issue visas, plays such a crucial role in the administration of U.S. immigration law that it can be considered "America's Other Border Patrol." In many ways, it is America's first line of defense. Close to half of the illegal aliens living in the U.S. hold non-immigrant visas issued by the State Department, and studies suggest a strong correlation between the State Department's immigrant visa issuance policies and the increasing level of immigrant poverty in the U.S. These figures indicate that the State Department's bureau of consular affairs is administering U.S. immigration law selectively. Given the institutional and bureaucratic traits of the State Department, these statistics are not surprising. Indeed, entrusting the administration of laws to officials with the conflicting priorities of diplomacy is a recipe for trouble. The terrorist attacks of September 11 change the landscape from an ultimately secondary problem of immigration to the very serious problem of national security.

One may agree or disagree with the tenor or details of current U.S. immigration law. I personally favor exploring the practicality of liberalizing access for aliens who seek entry for peaceful purposes, while removing the economic distortions caused by the U.S. welfare state. But that is not the point. Rather, U.S. immigration law is the law of the land, and the State Department lacks the constitutional authority to rewrite the law. In light of the State Department's demonstrated inability to administer U.S.

immigration law properly, national security considerations dictate that all immigration functions (including policy and operational control) be completely removed from the State Department and given to an agency that can administer laws without the conflicting priority of public diplomacy. The proposed Department of Homeland Security should take over all visa and immigration functions from the State Department's bureau of Consular Affairs, leaving it to manage services to American citizens.

CONSULAR FUNCTIONS AND EXPLANATION OF VISA LAW

The State Department's Bureau of Consular Affairs ("CA") has two basic functions: assistance to American citizens abroad (including issuance of passports and reports of birth abroad, notarials, children's issues, and help to crime victims), and the administration of certain aspects of immigration law (non-immigrant visas (most commonly "tourist" visas), immigrant visas (the first step towards obtaining a "green card"), and anti-fraud activities related to the administration of visa issuances). U.S. immigration laws and regulations can be found in the Immigration and Nationality Act of 1952 ("INA"), as amended by subsequent legislation.

Non-immigrant visas are the short-term, temporary-stay entry permits for which the State Department has primary responsibility. They fall into more than 20 categories, depending on the stated purpose of the applicant's stay. The B visas (B-1 and B-2) for business and tourism are the most common type of non-immigrant visa and are also the most relevant category for this discussion. The section of law governing issuance of non-immigrant visas is Section 214(b) of the INA, which states that, unless seeking entry under certain work visa categories, "every alien…shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officer at the time of application for admission, that he is entitled to non-immigrant status…." In other words, all tourist visa applicants, and thus a majority of non-immigrant visa applicants, are ineligible to receive visas until they can prove otherwise. This premise of ineligibility is the exact opposite of the presumption in the U.S. legal system, and is a critical point to make in examining the scope of State Department responsibility in administering U.S. immigration law. A consular officer must ascertain a visa applicant's ties to his country of origin and determine the likelihood that the applicant will not overstay his visa.

In order to make this determination, a consular officer relies on the applicant's answers to a few cursory questions during a brief interview, knowledge of the economic and social conditions in the applicant's country, the applicant's supporting documents – and intuition. The interviewing officer will issue the visa if he is convinced that the applicant's ties to his home country necessitate his return after travel to the U.S. (and if the applicant passes a computerized background check). Otherwise, the officer will deny the visa. The Immigration and Naturalization Service (INS) official at the U.S. port of entry makes the final determination and may deny entry if he believes that the visa holder is an intending immigrant. However, INS inspectors consider possession of a visa a *prima facie* evidence of eligibility and will typically grant entry. Thus, the visa serves as an informal mode of communication between State Department consular officers in the country of origin and INS inspectors at the port of entry.

Consular officers are also responsible for interviewing applicants for immigrant visas, which are the first step toward obtaining permanent U.S. residency, or a "green card." As with non-immigrant visas, the

law provides for different types of immigrant visas, from family-based and employment-based visas to so-called "diversity" visas, issued by lottery to citizens of many countries. Although INS prepares and approves the initial paperwork in the U.S., most applicants must complete an interview at the U.S. consulate in their country of origin. As with non-immigrant visas, consular officers play a critical role in determining who will obtain permanent U.S. residency. During an immigrant visa interview, the consular officer verifies that relevant forms are completed and signed. The consular officer also verifies the applicant's claim to immigrant status, and through a computerized background check, verifies that the applicant has no legal ineligibilities. For family-based visas, which constitute the majority of immigrant visas, the most noteworthy issue is verification of the affidavit of support. Each applicant is sponsored by one or more family members (and, in some cases, a joint sponsor), who pledge to support the immigrant financially for an initial period. If the sponsor's income falls below established poverty guidelines, or the consular officer suspects that the immigrant is likely to become a public charge, the visa must be refused under Section 212(a)(4) of the INA. This section states that "Any alien, who in the opinion of the consular officer at the time of application for a visa…is likely at any time to become a public charge is excludable."

As one might expect, applicants throughout the world may use fraudulent means to obtain a visa. It is indeed easier and safer to attempt to mislead a consular officer who has received training in cultural sensitivity and interview courtesy, than it is to attempt to enter the U.S. illegally. The prevalence of fraud varies from country to country and from consulate to consulate. At U.S. consulates, anti-fraud units vary from units staffed by several officials, including a full-time, mid-level officer, to nominal units consisting of a single junior officer who also shoulders the full-time responsibility of conducting regular daily visa interviews. An anti-fraud unit fulfills several functions. Investigators screen paperwork before interviews, conduct in-depth interviews of applicants suspected of fraud, and can mount more significant investigations.

PUBLIC DIPLOMACY AND BEST PRACTICES TRUMP THE LAW

Some startling statistics on U.S. immigration indicate that the State Department is not administering the law properly. First, according to recent congressional testimony by a senior INS official, aliens who enter the U.S. legally but overstay their visas constitute almost 50% of the estimated illegal alien population in the U.S. In other words, almost half of the estimated six million illegal residents now in the U.S. entered the country on (putatively) non-immigrant visas issued at U.S. consulates abroad. Second, a recent report by the Center for Immigration Studies indicates that "each successive wave of immigrants is doing worse and worse. Each wave of immigrants has a higher poverty rate, and a much larger share of their children will grow up in poverty." These statistics do not seem to indicate mere coincidence, nor do they indicate the odd bad visa issuance. Rather, they show patterns clear enough to evince a distinct re-interpretation of visa law by the State Department and its Bureau of Consular Affairs.

Given the institutional and bureaucratic traits of the State Department, the statistics are not surprising. Entrusting the administration of laws to officials with diplomatic responsibilities is a recipe for trouble. In fact, it is difficult to imagine two governmental functions that are more incompatible than diplomacy and proper administration of the law. Diplomacy entails dialogue, cooperation, compromise, and conciliation between nations – all within a context of mutual esteem. Conscientious administration of the law, on the other hand, entails adherence to the rule of law and intolerance of illegal behavior, even if enforcement of the law is unpopular or not politically correct. This disconnect is epitomized in a recent article on the Bureau of Consular Affairs so-called consular "best practices," a series of guidelines that purports to improve consular operations – or at least some of its aspects. While the article is not

official State Department policy *per se*, it appeared in the Department's official *State* magazine, and was written by the former "best practices" coordinator in the Bureau of Consular Affairs.

> The "best practices" initiatives undertaken by the Bureau of Consular Affairs are improving consular operations on a daily basis. Through fundamental management changes, consular managers can now meet their customers' expectations and make the most of available resources – while projecting a positive image of the Department worldwide… [T]raining programs that focus on listening skills, effective communication and time management have improved the quality of services the staff provides. The techniques help to defuse tensions and reduce stress while providing better customer service… These are but few of the "best practices" that consular managers have initiated to achieve the balance between better service to the public and an improved work environment.

Surely public diplomacy and efficiency are important, but what happened to the priority of administering the law? While the tensions between customer service and adherence to the law may not be mutually exclusive, there do exist strong tradeoffs, and it is impossible to comply fully with both priorities. The State Department and the Bureau of Consular Affairs appear to have chosen public diplomacy to the detriment of proper administration of the law.

OTHER PROBLEMS – STAFFING, FRAUD AND INSTITUTIONS

To this problem of misguided priorities are added several other difficulties: staffing patterns, fraud control and institutional isolation.

State Department Foreign Service Officers select one of five career specializations (administrative, consular, economic, political or public affairs). However, due to a chronic shortage of consular personnel and the large visa workload, all incoming junior officers are required to spend a minimum of 12 months in a consular position that usually entails adjudicating visa applications. Like hazing in college fraternities, these early tours are considered an unpleasant rite of passage during which foreign policy enthusiasts perform work that is not directly relevant to their professional aspirations. Many junior officers with no interest in consular work withdraw mentally from the drudgery of visas duties. For these officers, consular tours are a temporary state through which they must pass before they can begin the work for which they really joined the Foreign Service. Added to junior officers are State Department employees from Washington on so-called "excursion" tours, as well as the spouses of Foreign Service Officers who are hired to fill the many vacant interviewing positions at visa offices worldwide. Although these non-traditional recruits can perform as well as standard consular officers, this staffing practice reflects the State Department's priority on putting live bodies behind interview windows, rather than the most qualified personnel. Given the workload, one cannot blame visa officers for turning inward: demand for visas is high and inelastic at most consulates throughout the world. The result of high visa demand could be the eyesore of long lines of applicants outside many U.S. embassies

or consulates; but due to the diplomatic priority of maintaining good public relations, there is pressure on the consulate to reduce the lines. Supervisors are pressured into accepting unsustainable numbers of daily interviews, and visa officers are pressured to move the applicants through the lines as quickly as possible. In the end, the screening process required by the law is subverted to the exigency of public relations.

The main section of immigration law governing fraud is section 212(a)(6)(c) of the INA, which states that "an alien who, by fraud of willfully representing a material fact, seeks to procure a visa, other documentation, or entry into the United States…is excludable." According to the letter of the law, the ineligibility resulting from an act of fraud results not in a temporary refusal, but in a life-long ban from entering the U.S. Given this strong penalty, Congress must have intended for an act of fraud to constitute an offense serious enough to bar a second chance. However, in setting guidelines on fraud enforcement, the bureau of Consular Affairs has set a very high standard for fraud – in favor of the applicant. The penalty for fraud often ends up being a slap on the wrist. Compare this with the penalty for misrepresentation to, say, the IRS, and one begins to realize the distortion of the law as administered by the State Department. During a visit to Mexico City in 1999, Assistant Secretary for Consular Affairs (Ambassador Mary Ryan, who remains at the helm of that bureau to this day) told visa officers that one could properly speak of fraud only if a misleading or untrue statement was made in the context of smuggling of drugs, women or children. Any other misleading and "fraudulent" applications were to be refused temporarily under Section 214(b) of the INA, as regular and temporary ineligibilities. Thus, the head of all U.S. consular services articulated to junior officers a hollow – but very telling – standard for implementation of the law.

Finally, the State Department suffers from institutional isolation. As the State Department and INS databases are not connected, consular officers do not have access to INS information when performing background checks on applicants. This means that officers either issue visas without knowledge of past immigration difficulties, or go through an arduous process of requesting information on applicants from INS. Also, it appears that the State Department does not always have the most up-to-date information on potential terrorists.

THE POST 9/11 STATE DEPARTMENT AND CA

Such was the situation before the terrorist attacks of September 11. If one considers the State Department's selective enforcement of the law against the backdrop of a terrorist attack -- an estimated 16 out of 20 of whose perpetrators entered the U.S. on non-immigrant visas issued by the State Department -- the situation is even more troubling. If the State Department's chosen priorities allow a few hundred thousand peaceful aliens entering the U.S. to work and support their families, that is one thing. It is a problem of rule of law, but one with which we could ultimately live. However, if misguided priorities and selective administration of the law allowed – or ever allow – terrorists to enter the U.S. to harm us, that is a very different, and much more serious matter.

In light then, of the September 11 attacks, one would have expected the State Department to change its *modus operandi* in the name of national security. Instead, shortly after the attacks, Assistant Secretary of State for Consular Affairs Mary Ryan advised American consular posts that "in keeping with the spirit of American justice and fairness, [pre-September 11 rules] must be followed, and "consular officers should not refuse visa applicants…without first giving the applicant an opportunity to be interviewed in person." Ambassador Ryan then closed those instructions with the reassurance that the State Department was "working with interested parties on [Capitol] Hill to ensure that new measures taken to improve security do not undermine America's fundamental ideals as a nation of immigrants." Surely, fairness and

courtesy are important, but – especially in the wake of 9/11 – one would expect a greater emphasis on national security. Such comments indicate the State Department's continued priority on public diplomacy over law enforcement and now, national security.

The *National Review* reported on June 15, 2002 on the "Visa Express" program, which allows many Saudi applicants to obtain U.S. visas without an interview from a consular officer, by delegating an already shoddy process to travel agents. What is most troubling, though, is that the program continued to be in place after September 11, even though three of the Saudis among the September 11 murderers obtained non-immigrant visas through that program. As of this writing, I understand that the State Department has still not closed down the Visa Express program, but has instead removed mention of it on the Embassy website, due to the embarrassing publicity caused by the *National Review* article.

Finally, the question of background checks and institutional isolation brings pause. The *International Herald Tribune* of June 20, 2002, reported that at least two of the hijackers were on terrorist watch-lists, which the State Department should have had. In addition, an anonymous Consular Affairs employee, reacting to an op-ed piece I wrote for the Washington Times, recently contacted me to allege that the State Department possessed derogatory watch-list information on several of the 9/11 hijackers, but that information never made its way to the field, and the terrorists were issued visas. In light of the State Department's bureaucratic proceedings, this would not be surprising. It would be interesting to confirm now if any of the terrorists were in fact on State Department watch-lists (or should have been), and fell through the cracks – a very possible consequence of the numbers-mentality, where quantity of interviews trumps quality. In Mexico City, for example, officers would often review dozens of "hits" from the background checks, due to such common names as Garcia or Hernandez. Although background checks were performed relatively thoroughly, the sheer numbers of applicants, the emphasis on speed, and the difficulty of poring through similar-looking names to confirm that an applicant was not indeed on the background list, could lead to misses. Spanish is a relatively easy language, and relatively close to English. I shudder to think of Arabic-language background checks and names – and the possibility for mistakes when dealing with high numbers of applicants and issuances.

NATIONAL SECURITY – REMOVING ALL VISA FUNCTIONS FROM STATE

I have argued elsewhere that all visa functions should be removed from the State Department and given to an agency that does not face a contradictory mission, but could properly enforce immigration law. This was before the events of September 11. The situation has now changed dramatically, as we no longer face the relatively benign entry of peaceful aliens seeking economic improvement, but the very real threat of fanatics who want to kill us in our own country. In the past, I have made a number of recommendations to fix the implementation of U.S. visa law. Three are particularly relevant in light of the national security considerations of the post-9/11 environment. First, staff visa offices with personnel who actually want to work there. The administration of visa laws is serious enough that it should not be handled by personnel with other aspirations, priorities, or professional interests. It should not be a hazing process. Second, increase inter-agency communications (especially State-INS and State-Intelligence Community). Third, remove all immigration functions from the State Department. These functions should be assigned to an agency that does not face an inherent conflict between diplomacy and the responsibility to administer the law. All should be sworn (and appropriately trained) law enforcement officers.

In light of the post-9/11 environment, the State Department's pre-9/11 demonstrated inability to administer visa laws properly, and the State Department's post-9/11 apparent change of no more than a

few cosmetic efforts, I was surprised that visa functions were initially not discussed as a serious part of the portfolio of the proposed Department of Homeland Security. I was, however, not surprised that the State Department was concerned about losing visa functions. Secretary of State Powell is reported to have placed an angry phone call to Director of Homeland Security Tom Ridge recently, complaining that removal of visa functions would hamper the Secretary's ability to conduct foreign policy. Another State Department official was quoted as saying that "there's more to this visa thing than just law enforcement." Surely, there are merits to these concerns. However, we face a dangerous world, and law enforcement should be the priority. As important as public diplomacy, fairness, courtesy and cultural sensitivity may be, they would seem to be trivial, insignificant considerations when compared to the responsibility of keeping our country safe from future terrorist attacks.

CONCLUSION

I should finish with a disclaimer. One may agree or disagree with the tenor or details of current U.S. immigration law. I personally favor exploring the practicality of liberalizing access for aliens who seek entry for peaceful purposes, while removing the economic distortions caused by the U.S. welfare state. But that is not the point. Rather, U.S. immigration law is the law of the land, and the State Department, the Bureau of Consular Affairs, and the Assistant Secretary of State for Consular Affairs lack the constitutional authority to rewrite the law. Furthermore (beyond the general implications for rule of law) selective enforcement that allows hundreds of thousands to enter the U.S. for peaceful purposes, to work, and to better their lot in life, is one thing. Selective enforcement that could lead to admitting terrorists, is another, much more serious matter.

The State Department has proven itself unable or unwilling to heal itself, even when confronted with the consequences of its activities. The State Department should continue to practice diplomacy and foreign policy, including service to U.S. citizens abroad (a function that should remain within the bureau of Consular Affairs). For the sake of national security, we must remove all visa functions from the State Department. This includes direct operational control of all officials involved in immigration and visa-issuing functions, as the corporate culture in the State Department is too strong to be changed by a mere shift in bureaucratic supervision. The proposed Department of Homeland Security appears to be the best candidate for these functions. It would not face the same conflicting public diplomacy priorities as the State Department, and it would present the advantages of a more centralized information repository, to avoid the bureaucratic isolation that has hampered the immigration process to date.

Mr. WELDON. Mr. Mowbray, you are recognized for 5 minutes.

Mr. MOWBRAY. Thank you, Mr. Chairman, Mr. Ranking Member, Mr. Committee Chairman and Congresswoman Morella. Thank you for inviting me here to testify today.

I first became aware of the disturbing culture and reckless practices of Consular Affairs when I was contacted by a senior employee at the agency. After reviewing dozens of internal cables and other related documents, I decided to investigate further.

The Visa Express Program, which is how three of the September 11th hijackers entered this country, even though it had only been in place for 3 months before September 11th, is what drew me in initially. Unfortunately, that was just one chapter of a very scary book.

Visa Express is a symptom of deeply rooted problems in the Bureau, which is charged with the unique and conflicting pair of goals: to provide public diplomacy on the front lines and to screen out potential terrorists before they reach our shores.

Over the past decade, Consular Affairs has done an excellent job of the former, but has done a very poor job because it has come at the expense of the later and our border security.

Needless to say, I was alarmed by what I found. After talking to many current and former consular officers, a clear pattern emerged. Consular Affairs, under the direction of Assistant Secretary of State for Consular Affairs, Mary Ryan, over the past decade has pressured agents in the field to not only be courteous and polite to all visa applicants, but also to issue as many visas as quickly as possible.

The policies created by Ms. Ryan have also contributed to the situation that made it possible for all 19 of the September 11th hijackers to obtain legal visas. In the vast majority of countries around the world, these applicants are only interviewed if they fill out a paper first, a marked departure from just a decade ago when almost everyone was interviewed at least once before obtaining a visa to enter the United States.

There are only two basic reasons someone's application fails. Either the person is poor, or the person's name appears on a watch list. As intelligence reports have shown, Al-Qaeda sleepers come primarily from upper middle-income backgrounds, have large cash accounts set up for them and have no criminal record.

Thus, current policies at Consular Affairs severely hamper our efforts to keep Al-Qaeda operatives from obtaining legal visas.

Ms. Ryan has assiduously and systematically worked to scrap the interview requirement in consulates worldwide—meaning more and more people arrive in the United States without ever coming into contact with a U.S. citizen until they step off the plane and on to American soil.

Ms. Ryan, in her own words, thinks that this is "a very worthy goal."

Even when Consulates do focus on border security, though, consular officers gear their screening so that they are more likely to keep out poor people who want to build a new life in America than terrorists who want to destroy our way of life.

Consular Affairs written policy is that "if the travel agency is reasonably satisfied that the traveler has the means to buy a tour

package, there will be little further evaluation of the applicant's qualifications.

In other words, anyone able to flash a wad of cash, something any Al-Qaeda operative could do, is deemed eligible for a visa. Consular officers in Saudi Arabia have stepped up the number of interviews in recent months, but only for men under the age of 45; this in a day and age when we have female suicide bombers in the Middle East.

In recent days, consular officials, by way of defending Visa Express, have been fond of noting that 12 of the 15 Saudi Arabian September 11th terrorists were interviewed before being issued a visa. That fact, however, shows not that interviews don't work, but that interviews designed by Consular Affairs don't work.

At the root of the problem is the woeful training consular officers receive, particularly for interviews. Consular officers receive a grand total of 5 hours of training for interviews, before being expected to defend our borders at the front line and to screen out potential terrorists.

Even after September 11th, consular officers received no training in law enforcement interviewing techniques and methods. That goes to the heart of the problem. Consular Affairs is not a law enforcement agency, but it needs to be. It is an intransigent that has stubbornly refused to change, even after the horrific actions of 19 terrorists, all of whom obtained legal visas.

The quote from a senior Consular Affairs official that haunts me still is that Consular Affairs executives act as if the World Trade Center Towers were still standing. To better understand their thinking, look how Consular Affairs responded to my in-depth report on Visa Express.

Consular Affairs did just two things to the program. First, it dropped the name, Visa Express, and second, it changed the Web site description of the program. That Consular Affairs CRS those two non-actions the appropriate response speaks volumes about the frighteningly insular and backward nature of the agency.

Consular Affairs slavish devotion to diplomacy is leaving open a gaping hole in our border security. It is still business as usual for the program formerly known as Visa Express.

The quick call yesterday from an associate of mine in Arabic to one of the participating travel agencies in Riyadh confirms that the program is still going strong. As the agent explained to him, "Don't worry. Only the Web site changed. It's still easy to get a visa."

Change will not happen from within Consular Affairs either. When the State Department's Inspector General audits Consular Affairs, the inspection team is headed up by a current or former Consular Affairs employee. That's right—Consular Affairs audits itself.

If it wasn't clear before September 11th, it must be now. Visa screening is the front line of our border security. Consular Affairs is bloated, bureaucratic, trapped in the death grip of inertia and it will not change, not even in the wake of the worst terrorist action in our history.

The only solution is making Consular Affairs part of the new Department of Homeland Security.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Mowbray and the two New York Post articles from June 18 and June 26, 2002, written by Mr. Mowbray, follow:]

TESTIMONY OF JOEL MOWBRAY BEFORE THE CIVIL SERVICE SUBCOMMITTEE ON JUNE 26, 2002

Thank you for having me here to testify today.

I first became aware of the disturbing culture and reckless practices of Consular Affairs when I was contacted by a senior employee at the agency. After reviewing dozens of internal cables and other related documents, I decided to pursue my investigation further.

The Visa Express program, which is how three of the September 11th hijackers entered this country from Saudi Arabia in the less than three months it was in operation before 9/11, was what drew me in initially. Unfortunately, that was just the *tip* of the iceberg. Visa Express is a symptom of deeply rooted problems in the bureau, which is charged with a unique—and conflicting—pair of goals: to provide public diplomacy on the front lines *and* to screen out potential terrorists before they reach our shores. In the past decade, Consular Affairs has done an excellent job achieving the former objective, but it has come at the expense of the latter—*and* our border security.

Needless to say, I was alarmed by what I found. After talking to many current and former consular officers, a clear pattern emerged: Consular Affairs, under the direction of Assistant Secretary of State for Consular Affairs Mary Ryan over the past decade, has pressured agents in the field to not only be courteous and polite to all visa applicants, but also to issue as many visas as quickly as possible.

The policies created by Ms. Ryan have also contributed to the situation that made it possible for all 19 of the September 11th hijackers to obtain legal visas.

In the vast majority of countries around the world, visa applicants are only interviewed if they fail on paper first—a marked departure from just a decade ago, when almost everyone was interviewed at least once before obtaining a visa to enter the United States. And there are only two basic reasons someone's application fails: either the person is poor, or his or her name appears on the watch list. As we all know, al Qaeda sleepers come primarily from upper-middle-income backgrounds, get set up with large cash accounts, and typically have no criminal record. Thus, current policies at Consular Affairs severely hamper our efforts to keep al Qaeda operatives from obtaining legal visas.

Ms. Ryan has assiduously and systematically worked to scrap the interview requirement in consulates worldwide—meaning more and more people arrive in the United States without ever coming into contact with a U.S. citizen until they step off the airplane onto American soil. And Ms. Ryan, in her own words, thinks this is a "very worthy goal." Dozens of former consular officers—many of whom approached me—told me that it was understood that high visa issuance rates and exemplary customer service were the keys to advancement within Consular Affairs.

Even when consulates do focus on border security, though, consular officers gear their screening so that they are more likely to keep out poor people who want to build a new life in America than terrorists who wish to destroy *our* way of life.

Consular Affair's written policy is that "if the travel agency is reasonably satisfied that the traveler has the means to buy a tour 'package,' there will be little further evaluation of the applicant's qualifications." In other words, anyone able to flash a wad of cash—something any al-Qaeda operative could do—is deemed eligible for a visa. Consular officers in Saudi Arabia have stepped up the number of interviews in recent months, but only for men under the age of 45; this in a day and age when we have female suicide bombers in the Middle East.

Ms. Ryan's steadfast belief that interviews are unnecessary in most cases stands in stark contrast to her own statements about the value of face-to-face contact with visa applicants.

Ms. Ryan strongly believes that interviews are essential to the visa process—but only when someone might otherwise be *refused* a visa. Let me read a passage from a 2001 cable from Ms. Ryan: "When it comes to judging credibility, there is simply no substitute for a personal interview." The cable goes on to instruct consular officers to "rely primarily on the interview itself, and only minimally on supporting documentation." But Ms. Ryan praises interviews not as a way to keep out potential terrorists, but as a way to avoid keeping out "qualified aliens who may have appeared weak on paper, but could have overcome [that appearance] with a strong showing of credibility." She never discusses the possibility that interviews could screen out applicants who look strong on paper but are not credible in person.

In recent days, Consular Affairs officials—by way of defending Visa Express—have been fond of noting that 12 of the 15 Saudi Arabian September 11th terrorists were interviewed before being issued a visa. That fact, however, shows not that interviews don't work, but that *interviews designed by Consular Affairs* don't work.

The visa screening process is conducted by junior-level officers who are new to the Foreign Service, typically young, often unmotivated, and almost always under-trained and under-prepared. Consular officers who check visas are derisively referred to within the Foreign Service as "visa-stampers." At the root of this problem is the woeful training consular officers receive, particularly for interviews. Consular officers receive a *grand total* of less than five hours of training for interviews—including 5-10 mock interviews, which last roughly 2-3 minutes each—before being expected to defend our borders and screen out potential terrorists. Even after 9/11, consular officers receive no training in law enforcement interviewing techniques and methods. And that goes to the heart of the problem.

Consular Affairs is not a law enforcement agency, but it needs to be. Worse still, it is an intransigent agency that has stubbornly refused to change, even after the horrific actions carried out by 19 terrorists, all of whom obtained legal visas.

The quote from a senior Consular Affairs official that still haunts me is that Consular Affairs executives "act as if the World Trade Center towers were still standing."

To better understand their thinking, look at how Consular Affairs responded to my in-depth report on Visa Express. Consular Affairs did just two things to the program: 1) it dropped the name "Visa Express," and 2) it changed the way the program was described on the U.S. Embassy in Riyadh's web site. *That was it.*

That Consular Affairs considers dropping the name "Visa Express" and toughening the website's depiction of the now-nameless program the appropriate response speaks volumes about the frighteningly insular and backward nature of the agency.

Consular Affairs' slavish devotion to diplomacy is leaving open a gaping hole in our border security. It is still business-as-usual for the program *formerly* known as Visa Express: A quick call yesterday to one of the participating travel agencies in Riyadh confirms that the program is still going strong, as the agent explained, "Don't worry—only the web site changed. It's still easy to get a visa."

Change will not happen from within Consular Affairs, either. When the State Department's Inspector General audits Consular Affairs, the inspection team is headed up by a current or former Consular Affairs employee. That's right—Consular Affairs is responsible for auditing *itself.*

If it wasn't clear before 9/11, it must be now: Visa screening is the frontline of our border security. Consular Affairs is a bloated bureaucracy trapped in the death grip of inertia, and it will not change, not even in the wake of the worst terrorist action in our history. The only solution is making Consular Affairs part of the new Department of Homeland Defense.

Mr. WELDON. I thank all the witnesses for you very, very valuable testimony.

Mr. Chairman, I was going to go to you first.

Mr. BURTON. I have some questions, but I have to leave. I think they have pretty much covered the ground that I am interested in. I look forward to working with you, Mr. Chairman, and your subcommittee in drafting some possible amendments to the bill.

Mr. WELDON. The Chair now recognizes himself for 5 minutes.

Mr. Light, you are an expert on reorganization, is that correct?

Mr. LIGHT. I have an awful lot of experience studying them and I participated in one or two.

Mr. WELDON. You know, the American people hold the President responsible for running the Government and all its agencies. The President, under this new reorganization, is going to be turning to his Secretary of Homeland Security to protect our homeland, protect the American people from attacks from terrorists.

Understanding that all 19 of these September 11th terrorists came into this country with what has been terms, "an appropriately issued visa," how can you have the appropriate accountability if we are going to leave this function within the State Department?

Mr. LIGHT. Well, I mean, I think that is a fairly simple question to answer. There are more than 100 agencies involved in homeland security. We have to make decisions about which ones to pull into the reorganization and which not.

I would recommend to the chairman that you use a simple rule of thumb. You take a look at the mission of the agencies involved and you evaluate whether that mission is central or not central to the new mission of homeland security.

Not being an expert on consular affairs, just looking in from the outside, it would be on my "A list" for further review. It has a mission that appears to have significant impact on the core focus of the new department. We would want to take a close look at it. We would want to say why is it being left where it is. Are there good and compelling reasons?

Mr. WELDON. You know, the corollary to this, if I could just interrupt you for a second, is the question I asked the first panel which is, what if the Secretary of Homeland Security, under the President's proposal, does not feel the Secretary of State is allocating sufficient resources to a particular mission, to a particular Consular Affairs office, how would he then get the Secretary of State to allocate the resources appropriately?

Mr. LIGHT. Well, you are going to have to fix that provision of the bill. You all are going to have to say exactly what authority the Secretary of Homeland Security has in this relationship with the Secretary of State.

I have not seen anything like this in a while. I would have to dig back through my files to find something as sort of unwieldy. But is it possible for the Secretary of Homeland Security to order the Secretary of State to act? I don't think so. I don't think constitutionally or in terms of the legal structure of these two departments that is going to be possible.

You are going to have to clarify that. It makes little sense to me from a reorganization standpoint.

Mr. WELDON. Do any of the other witnesses wish to comment upon his comments?

I have in front of me a cable. I think it is an unclassified State Department cable. They talk about struggling with how to deal with all these visa applicants in an environment described as under constant pressure to find management solutions to ever-present circumstances of decreasing resources.

Mr. Merry, you are a former Consular Affairs officer, is that right?

Mr. MERRY. I was in fact a political affairs officer who, on one occasion, was given a consular assignment. As I point out in my prepared testimony, I was made the head of a visa section with no previous consular experience and almost no training, the classic example of how it should not be done.

Mr. WELDON. Mr. Mowbray, do you have any information? You have been studying this issue for several weeks now. Do you have any information that these consular offices have not been getting the resources they need to process these visas in a secure fashion to protect us from terrorists?

Mr. MOWBRAY. I have actually had dozens of consular officers, many of them current, coming out of the woodwork to contact me about this.

A lot of them commented that it seems to be very selective. I would actually encourage you to look at the GAO report that was just prepared for Congressman Snyder about understaffing at very important posts, vital posts as they describe them; Saudi Arabia being one of them.

I have here in front of me which I provided for the committee the document showing the fee schedule for various visas. There are also MRV fees, machine-readable visa fees, that Consular Affairs now has the authority over. In a sense, they set their own budget by being able, like a business, to raise prices and make extra money.

Looking at this, it indicates, just this fee schedule that I have, that they aren't doing everything they can to raise the funds they need.

One person, and I can't say that this is true, but I can tell you what one Consular Officer told me, which is that it seemed as if Mary Ryan, by choice, maybe not intentional choice, but certainly as the logical consequence of her actions, to keep certain vital posts understaffed and overworked; that it didn't matter in a sense because if they were moving to more third-party screening and things of that nature, then they would be able to get around that.

One thing I would also like to do is add on third-party screening. It seems as if they are doing this again at the expense of border security and then covering up about it. I believe the Department of State provided the Consular packages which has information there about visa refusal rates.

If you look there at the Consular package from Riyadh, which is what I had obtained over a month ago, the Consular Affairs, after the news broke that 15 of 19 September 11th hijackers were Saudis, the Consular Affairs told the public that the refusal rate for Saudis was 3 percent.

Not only is that a bald-faced lie, but 23 percent of the country overall is refused. In fact, nearly 20 percent of Saudi nationals at the Riyadh post, which handles about two-thirds of the visas or more, were actually refused. So, I don't know how to square 3 percent versus 20 percent. It seems as if Consular Affairs was attempting to cover its tracks to justify a program where they violated their own internal protocols which said that you can't set up third-party screening in countries that have visa refusal rates of 6 percent or higher.

Mr. WELDON. My time has expired.

The Chair now recognizes the ranking member for 5 minutes.

Mr. FORD. Thank you very much, Mr. Chairman. It sees to me that we have talked a great deal about the culture of the State Department, the culture of Consular Affairs within the State Department, to the extent, unless I am hearing something different than what is being projected, that there are some people who seem to think that it is incompatible to think that the activities of processing and granting visas, if they are handled within the State Department with some of its focus being on diplomacy or with more of its focus perhaps being on diplomacy or with more of its focus perhaps on homeland security being more geared toward police action of law enforcement, my question becomes: Shouldn't there be more emphasis based upon law enforcement in the granting of visas than what we have experienced or seem to be experiencing in the past? Either one or all.

Mr. MERRY. Congressman, I think the law, the Immigration Nationality Act, is actually quite clear to what the priorities are supposed to be. What the law says and what the culture of the institution in the carrying out of the law are not necessarily the same thing.

As you have heard from a number of the other witnesses here today, there has been a pervasive tendency to try to make visa issuance into a service function for customers, whereas the law is very clear that the visa function is a legal hurdle which any alien must meet before entry into this country.

I think a large part of the problem is that since most visa employment is given to first term probationary, very green new officers who are inevitably influenced by the priorities that come down from on high within their embassies, that it is very unlikely that such people would have a mentality of law enforcement. Such a mentality has to be either trained or inculcated.

In any other law enforcement organization that I have ever had any experience of, new employees are mentored. The young police officer is paired with an older police officer so he can gain some of the experience, street smarts, of law enforcement.

Unfortunately, our experienced consular people who have the talent for being suspicious of potentially fraudulent or dangerous applicants don't have the time and they don't exist in sufficient numbers to do that kind of mentoring to our junior visa officers, most of whom are only spending a very short period in the function in any case. This is a very dangerous way to go about it.

For the price of a few hundred more full-time visa officers, that could in large measure be corrected.

I certainly do not agree with Mr. Green's view that this would be Robo-Cop. We have in this country a great many institutions that are in the business of law enforcement. I don't feel that they should be disparaged. I think we saw on September 11th that a lot of institutions where people are not very well paid and don't get a lot of prestige are nonetheless capable of responding to a crisis magnificently.

The notion that somehow the processing of this decision as to who should be allowed to come into this country is one that won't attract people who will be willing to do a good job I just don't agree with, particularly if the Congress gives those people, whether they are in a new autonomous Consular Service in the State Department or whether they are in Homeland Security, if they gave them the legislative mandate and the resources they need.

Mr. WENZEL. Yes, Congressman, I would like to add, I think visa issuances should be seen as first a law enforcement and national security function, with courtesy and public diplomacy as important, but ultimately secondary considerations and not the other way around as it has been thus far.

I would also add I think it would be helpful if all visa and immigration officers were sworn and appropriately trained law enforcement officers with national security and law enforcement as their primary function, not as a conflicting function with other priorities that are set from above.

Mr. DAVIS. So, we are really saying that the event of September 11th and its aftermath changes in some ways our perception of the point of this function and that we need to look at it differently than perhaps we did before.

Mr. LIGHT. Let me just, you know, by way of historical context, we have been working for the last 12 years in the Federal Government, first with the first Bush administration and then with the Clinton administration to improve customer satisfaction with government all across our agencies. We have made a lot of progress.

But when you switch to a law enforcement approach, you are going to have to counter-weigh with more of a customer approach. That is why the Transportation Security Administration right now is bringing in consultants from Disney and Marriott to help train baggage and passenger screeners to treat the vast majority of passenger who come through their screening machines with courtesy and respect and speed. It is a balancing test.

Right now, post-September 11th, we have to put more pressure on the law enforcement function. I think the appropriate place for that would be in what is going to be a law enforcement agency, which is Homeland Security.

Mr. DAVIS. Thank you, Mr. Chairman.

Mr. MOWBRAY. I was going to respond.

Mr. WELDON. Go ahead. You can respond.

Mr. MOWBRAY. First of all, I am from Homewood, Illinois, right near your district, Congressman Davis.

One of the things that I have noticed again and again in comments from people with whom I spoke before writing the story and after, is that very little has changed at most consulates and embassies from a culture standpoint.

I also want to say just from the executive standpoint that very little has changed in terms of training. Here is the full chapter that I have, and again, I have provided it for the committee, showing the entire chapter on interview training for consular officials.

However, this part here, three pages, is all that is spent on actually the interview itself. The rest of it is explaining what each question on the forms mean. On that two-page form you get some very bizarre answers sometimes or non-answers, and yet it clears the system.

People will write down clearly bogus reasons why they are going. A Consular Officer, rather than wanting to spend the time necessary to process a refusal and then have someone come in for an interview, will simply approve. Some Consular Officers will write "barely passing" on the OF156 forms, and yet these people are brought in.

Superiors oftentimes will overturn the refusals of junior Consular Officers, some of whom are seen as too aggressive to refuse people. They are told that there is no problem that issuing visas can't fix.

The person at Saudi Arabia, Thomas Furey, who oversaw the implementation of Visa Express, he was there from the summer of 2000 to the fall of 2001, his catch phrase for which he is known, apparently, throughout Consular Affairs is "People gotta have their visas."

This is a mindset that has not changed, either in culture or in training. They don't train people with a single, even a degree, of law enforcement techniques or methods which are vital for keeping people out.

I talked to a number of security experts as well as far as the value of an interview. Many say there is, even just to talk to them for a couple of minutes.

Mr. WELDON. The gentleman's time has expired.

The gentle lady from Maryland is recognized for 5 minutes.

Mrs. MORELLA. Thank you very much and I thank the panel, too.

Mr. Mowbray, when I mentioned to Mr. Green the concept that the Visa Express Program was still active in the 30 days after September 11th, the U.S. Consulate in Jiddah interviewed only two of the 104 applicants, how did you get those figures?

Mr. MOWBRAY. That was from a State Department cable. The Wall Street Journal reported that as well.

Mrs. MORELLA. What is this Visa Viper? Can you tell us something about that?

Mr. MOWBRAY. Well, Visas Viper is a protocol by which consulates and embassies, they essentially gather around and they say, "Who are some possible terrorists or bad guys in a particular region?"

It is a way of screening people out who are not on the watch list, but combined with local intelligence information and sometimes by being in an area for a couple of years you know who the drug dealers are.

So, Visa Viper is an attempt to create a secondary watch list to keep out people whose names aren't on the watch list for criminal records or for all other purposes. But the implementation and actual practicing of Visa Viper has been spotty at best, from what I understand.

Several people with whom I have spoken who have been supervisors at consulates and embassies have said that they place very little emphasis in many consulates on Visa Viper. That is true to this day. There was a cable that just came out this week that talked about how you need to implement it. It was stern language, but that was it. There was no punishment associated with not implementing this program to screen out terrorists.

Mrs. MORELLA. Well, that gets into—I guess I could ask both Mr. Wenzel and Mr. Merry, in your opinion what should be done to reform the visa issuing process in order to reflect the need for homeland security to be a priority at our embassies overseas. Do you have any suggestions?

Mr. WENZEL. Well, my first comment would be simply remove it from the State Department and hand it over to an agency that doesn't have these conflicting priorities. I have met a lot of good people within the State Department Consular Affairs. I don't think they are consciously out to violate the law, but they are facing an incentive structure that is not conducive to proper issuance of visas because there are other priorities.

So I think it is important to remove all those functions completely from the State Department and hand them over to another agency that can focus on law enforcement and national security even if that comes down to some amount of loss on the side of public diplomacy.

Mrs. MORELLA. Mr. Merry.

Mr. MERRY. Yes. I think, as I said in my statement, that there are potentially alternative ways of doing it, keeping in mind that this question of removing visa issuance from the State Department did not just come up after September 11th. There has been talk about using only Immigration and Naturalization personnel at embassies and consulates abroad. That has been discussed for many years.

There are some consulates where INS does do much of the work, precisely because INS had so much trouble in a number of cases.

I continue to believe that the restoration of an independent Consular Service within the State Department would be a viable way of doing the job. If the Congress is concerned that the new Department of Homeland Security is going to be so large, so complex and be such a management challenge that this vital function might not get the kind of priority, the kind of attention, and the kind of oversight that it would require in this vast new government agency which is going to be created, if that is a concern and you would perhaps wish to look for an alternative, I think an independent Consular Service could work.

However, since the question of moving the visa function out of State long predates September 11th, I think if the rationale was valid a year ago and 5 years ago and 10 years ago, why should it be any less valid after September 11th?

The only difference would be that rather than moving the function to a subsidiary unit of the Department of Justice, we are talking about moving it to the new Department of Homeland Security.

I certainly do agree with the suggestion that has been made here that visa officers should be not only trained, but sworn law enforcement personnel. I think being a sworn law enforcement officer

would do a great deal to affect an individual's mentality when they approach the job.

Mrs. MORELLA [assuming Chair]. Maybe then more criteria could be established in order to judge the performance?

Mr. MERRY. I think establishing performance criteria and exercising continuing oversight is going to be an obligation of the Congress, of this committee, and of all of you who are involved in writing the new law.

You cannot trust the bureaucracies to reform themselves. You are going to have to keep an eye on them.

Mrs. MORELLA. We have that GPRA law, the Government Performance and Results Act.

I also sense from what I have heard from this panel, too, we don't offer enough incentives or initiatives too, for them to know this is an important job.

Little did you know, Mr. Light, when you became the Executive Director of the new Voelcker Commission, that you would have this vast responsibility and challenge ahead of you with the Homeland Security? If I could just ask that question, does that cast a whole different flavor or perspective to the initiative of recruiting Federal employees?

Mr. LIGHT. Sure, it absolutely does. I mean, we are hearing sort of a subtext here about how we recruit and train and lead human capital in government. Now, the story here today is about Consular Affairs. Tomorrow it could be about the FBI. The day after that, it could be about EPA. The cast and the characters change, but the story remains the same.

I think you do have an opportunity in this bill to deal with some of the human capital barriers that we have in the Federal Government.

As I said in my testimony, I do not think you can adopt a waiver as broad as the one imagined in the President's proposal, but certainly this subcommittee has the talent to legislate some waivers and carefully circumscribed waivers that will allow the new department to do an effective job in recruiting, paying and incentivizing high performance. I hope you will take that on.

Mrs. MORELLA. My time has expired. But I think the other members of the subcommittee would agree with me: We are ready to adopt you.

Mr. LIGHT. Thank you very much. I am looking for a new home.

Mrs. MORELLA. I am pleased to recognize Congresswoman Norton.

Ms. NORTON. Thank you, Mrs. Morella. I regret that markups and hearings kept me from hearing all of the testimony. I am fascinated by what I heard thus far.

I, like many people, Americans, am extremely concerned about casual visa issuance, particularly from what we know about the perpetrators of September 11th.

As I listened to the discussion, I regard it as kind of questionable as Members try to fathom what functions or parts of functions should be transferred. In one way or the other, these same questions are going to be raised about every agency and each and every function.

The problem I see with raising it is that unless there are standards that we can somehow agree upon for deciding what gets moved or what part of what gets moved, this is going to become a very arbitrary process. It is going to be based on what committee is hearing it and the power on that committee or the preferences, whether strongly expressed or not in that committee.

It is going to be based on the power or the political or the prestige concern of the agency or of committees here without some standard, preferably one that cuts across or would apply easily enough to the agencies involved.

I see a real problem developing. I think this was a very good test case because it involves one of special concern. That is what we know now.

I don't have any particular questions for you. I did want to raise for the chairman that in law school we would call this a wonder hypothetical because it raises the kinds of issues where you then say to the students, "OK, where should it be moved?"

Then you get the kind of answers we get back. You know, the professor marks you based on which set of answers she likes, but she is most likely to like the set of answers that look like they are based on some rational standard.

I think the Chair has opened up the larger question for all of us considering these issues. What is a rational standard for judging what should be moved or what part of what should be moved and can we get general agreement on such a standard.

I thank you.

Mr. WELDON [resuming Chair]. Well, I thank the gentlelady and let me just assure her that I would like to use, and I believe the ranking member agrees with me strongly on this, is what is the best interest for the safety and security of the American people.

I understand what you are alluding to, that if you draw the net too wide we could get bogged down in minutia. But I think clearly in light of the fact that the majority, maybe all of it, I don't remember the exact figure of the terrorists on September 11th had gone through the process at Consular Affairs. The Congress has the responsibility to look very, very closely at Consular Affairs.

I want to thank all of the witnesses for their very, very valuable testimony. I ask unanimous consent to include in the record the e-mail from Thomas Furey to Mary Ryan referred to by the chairman of the full committee. Would objection, it will be included in the record.

Without objection the Chair will keep the hearing record open for 7 days so that Members may submit written questions for the record to our witnesses.

This panel is now excused. The committee greatly thanks them for their time and their attention to this.

The hearing is now adjourned.

[Whereupon, at 3:57 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

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