STRENGTHENING AMERICA: SHOULD THE ISSUING OF VISAS BE VIEWED AS A DIPLOMATIC TOOL OR SECURITY MEASURE?

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CIVIL SERVICE, CENSUS AND AGENCY ORGANIZATION

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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STRENGTHENING AMERICA: SHOULD THE ISSUING OF VISAS BE VIEWED AS A DIPLOMATIC TOOL OR SECURITY MEASURE?

MONDAY, JULY 15, 2002

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CIVIL SERVICE, CENSUS AND AGENCY ORGANIZATION,
COMMITTEE ON GOVERNMENT REFORM,
Kissimmee, FL.

The subcommittee met, pursuant to notice, at 9 a.m., at Kissimmee City Hall, 101 North Church Street, Kissimmee, FL, Hon. Dave Weldon (chairman of the subcommittee) presiding.

Present: Representatives Weldon and Keller.

Staff present: Garry Ewing, staff director; and Scott Sadler, clerk.

Mr. WELDON. Good morning. Before I begin my opening statement, let me first thank the city of Kissimmee and its staff here at City Hall, particularly Wayne Larson and Ashley Innocenti, for giving up part of their Sunday and helping my staff put this important hearing together this morning. Without objection, Representative Ric Keller will participate in today's hearing.

Today we will examine one of the most vital components of the President's proposal to establish a new Department of Homeland Security. Our homeland security starts abroad and nothing is more important than who gets approved for a visa to enter this country. The issuance of visas can no longer be thought of as a mere diplomatic function. We're in a war on terror 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 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 goal.

Before I go on, I'd like to show a brief news clip from the Fox News Channel that will shed more light on this issue. If we can go ahead and roll the tape.

[News clip shown.]

Mr. WELDON. We thank the staff for putting that together. Let me continue. All nineteen of the September 11th terrorists came to America after obtaining legal visas. This is unacceptable. The secu-

rity of our Nation must begin abroad. Visa issuance should not be about speed and service with a smile.

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 with the process, the current proposed legislation I feel very strongly does not go far enough. The State Department views the issuance of visas as a diplomatic tool and a cash cow that generates at least $500 million a year in fees. The day is past when it should be viewed this way. The responsibility for issuing visas should be with a department dedicated to protecting our shores; the Department of Homeland Security.

However, I can't only cast aspersions on the State Department. Last week my colleagues on the Government Reform Committee and two other committees defeated an effort by Dan Burton from Indiana and myself to move visa operations to the Department of Homeland Security.

So what seems like a no-brainer here in the heart of America is a difficult uphill battle in Washington. In Washington, too often people are more concerned with protecting their jurisdictions than protecting the American people. In Washington, too often politicians are more interested in protecting their party than protecting Americans. In Washington, bureaucracies protect their turf to the very end.

But my like-minded colleagues and I are not finished yet. And we will attempt until the very end to do what is right and what is in the best interests of our constituents.

Recent news reports have brought to light a program in Saudi Arabia called Visa Express. It allows private Saudi travel agents to process visa paperwork 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 Affairs Office.

Fortunately, last week an amendment that I authored to eliminate the Visa Express program and prevent it from ever resurfacing was accepted, albeit by a narrow margin. I will continue to work hard to ensure that this amendment makes it into the final legislation signed by the President.

Finally, my staff recently received a letter addressed to the Justice Department from the State Department stating that it is not enough that another governmental agency recommend that a visa be denied because that agency objects to the applicant's entry.

The letter continues: Unfortunately, the information we have received from the Foreign Terrorists Tracking Task Force so far has been insufficient to permit a consular officer to deny a visa. The information we have received states only that the FTTTF, the Foreign Terrorists Tracking Task Force, believes the applicants may pose a threat to national security and therefore the FTTTF recommends against issuance.

So there you have the heart of the problem. A recommendation from our law enforcement experts that certain applicants may pose a terrorist threat and shouldn't be issued visas and the State De-

partment boldly saying no, they will get their visas despite the warning.

It's apparent to me that the new Department of Homeland Security must take over the visa issuing process. The security of the American people must begin abroad.

And with that, I would like to now recognize my colleague from Florida, Ric Keller, for an opening statement.

Mr. KELLER. Well, thank you, Congressman Weldon, and I want to begin thanking you for your leadership on this issue. As was seen in the Fox News clip, Congressman Weldon's really been one of the people we look to in Washington for guidance on this issue in light of his position and knowledge of these issues from serving on the Government Reform Committee. And I also want to thank the witnesses that are taking time out of their busy schedules to advise Congressman Weldon and myself and the other Members of Congress who will read your testimony.

I want to thank the members of the public for taking the time out of their schedules to come here and finally I'd like to give a special thanks to the people from the city of Kissimmee for graciously hosting the event.

Today we will be discussing a national security issue that has a direct impact on Central Florida's tourism-based economy; 43 million tourists visit Central Florida every year. One out of every two of these tourists come here by airplane. And after September 11th because people became afraid to fly, we saw theme park attendance and hotel occupancy rates go down and unemployment go up. So the key to revitalizing our tourism-based economy is to make sure people feel safe about getting on airplanes again.

As Congressman Weldon mentioned, most of the nineteen terrorists received visas issued by the State Department and issuing visas to potential foreign terrorists we believe should be a matter of national security, not a diplomacy related issue. To be frank, there is a split in Congress as we speak right now on this issue. Should the entry level State Department officials with minimal law enforcement training be allowed to continue to issue visas or, on the other hand, should this function be considered a matter of national security and transferred to the Department of Homeland Security.

Second related question is if this issuance of visas stays within the State Department, should their training and skills be upgraded so that they know what they're doing in terms of dealing with these potential foreign terrorists. On these issues, we welcome your input. Congressman Weldon and I will take your advice and suggestions back to Washington with us and the U.S. House of Representatives will resolve this issue one way or another before the August recess.

And with that, Mr. Chairman, I will yield back the balance of my time.

Mr. WELDON. Thank you, Ric, and again I want to thank you for being here and being part of this very important hearing.

Our first panel today is a local one. I cannot tell you the importance of hearing from local people beyond the Washington beltway, those that I think truly are affected by the laws that we pass and the policies that we implement. It is particularly important to hear

from people here in Central Florida. As my colleague just said, our Nation's No. 1 tourist destination is obviously an area of concern to all of us here in Central Florida that critical assets all over our Nation are protected.

Joining us today are two representatives from local law enforcement, the first responders, and also two people from our business community and our tourism industry. We will hear from Deputy Chief of Police John Klein, city of Kissimmee. We will also hear from Lieutenant Ken Glantz, Office of Homeland Security with the Orange County Sheriff's Office. And after that, we will hear from Tim Hemphill, Executive Director of the Kissimmee/St. Cloud Convention and Visitors Bureau, along with Mike Horner, President of the Kissimmee/Osceola County Chamber of Commerce.

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

Opening Statement

Hon. Dave Weldon, M.D.

Chairman

Subcommittee on Civil Service, Census and Agency Organization

July 15, 2002

"Good morning. Today, we will examine of one the most vital components of the President's proposal to establish a new Department of Homeland Security. Our homeland security starts abroad and nothing is more important than who gets approved for a visa to enter this country. The issuance of visas can no longer be thought of as a mere diplomatic function.

"We're in a war on terror 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 goal.

Before I go on, I'd like to show a brief news clip from the Fox News Channel that will help shed more light on this issue.

"All 19 of the September 11th terrorists came to America after obtaining legal visas. This is unacceptable. The security of our nation must begin abroad. Visa issuance should not be about speed and service with a smile.

"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 with the process, the current proposed legislation doesn't go far enough. The State Department views the issuance of visas as a diplomacy tool and a cash cow that generates at least $500 million in fees per year. The day is past when it should be viewed this way. The responsibility for issuing visas should be with a department dedicated to protecting our shores -- the Department of Homeland Security.

However, I can't only cast dispersion on the State Department. Last week my own colleagues on the Government Reform Committee and two other committees defeated an effort by Dan Burton of Indiana and myself to move visa operations to the Department of Homeland Security.

So what seems like a no-brainer here in the heart of America is a difficult uphill task back in Washington. In Washington, too often people are more concerned with protecting their jurisdiction than protecting Americans. In Washington, too often politicians are more interested in protecting their party than protecting Americans. In Washington, bureaucracies protect their turf to the very end.

But my like-minded colleagues and I are not finished yet. And, we will attempt till the very end to do what's right and what's in the best interests of our constituents.

"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.

Fortunately, last week an amendment that I authored to eliminate the Visa Express program and prevent it from ever resurfacing was accepted, al-be-it by a narrow margin. I will continue to work hard to ensure that this amendment makes it into the final legislation signed by the President.

"Finally, my staff recently received a letter addressed to the Justice Department from the State Department stating that "it is not enough that another governmental agency recommend that a visa be denied because that agency objects to the applicant's entry."

The letter continues: "Unfortunately, the information we have received from Foreign Terrorists Tracking Task Force so far has been insufficient to permit a consular officer to deny a visa. The information we have received states only that the FTTTF believes the applicants may pose a threat to national security and therefore the FTTTF recommends against issuance."

So there you have the heart of the problem. A recommendation that our law enforcement experts that certain applicants may pose a terrorist threat and shouldn't be issued visas and the State Department boldly saying no, they will get their visas despite the warning.

"It's apparent to me that the new Department of Homeland Security must take over the visa issuing process. "The security of the American people must begin abroad.

Mr. WELDON. I'd like to thank all of our witnesses for being here today, particularly on such short notice. It is the policy of the Government Reform Committee to swear in all witnesses who provide testimony at our hearings. Would the witnesses please rise?

[Witnesses sworn.]

Mr. WELDON. Let the record show that the witnesses responded in the affirmative. Gentlemen, you may be seated.

Officer Klein, you may begin. We have a policy of trying to have our witnesses provide their verbal testimony in about 5 minutes. We'll be flexible on that. For those of you who were able to submit written testimony, we will have your entire written testimony included in the record. This gives you an opportunity if you would like to summarize your written testimony from your verbal testimony; you can do that. Officer Klein, go ahead.

STATEMENT OF JOHN KLEIN, DEPUTY CHIEF, CITY OF KISSIMMEE POLICE DEPARTMENT

Chief KLEIN. Good morning, Mr. Chairman and Representative Keller. I thank you for this opportunity to come and testify before your subcommittee. I apologize and regret that I was unable to prepare written comments prior to today's testimony given the expediency of the hearing and the expeditious notice, plus the process by which it was put together.

I have to remark on the Fox News clip that I saw this morning. I have to really respectfully disagree with the statement I heard the Under Secretary of State make and that had to do with his reasoning behind why there were issues or difficulties in the visa approval process and those issues as he characterized them were it's really an issue, I believe he said, of people, personnel and space. And I would respectfully disagree with that.

I think that what we're talking about here is an issue of national security. I think what we're talking about is the safety of the people, the American public. I think what we're talking about is an issue of security and accountability. That's the way I would characterize it.

I was thinking about this this morning as I came in and the issue of who does what or which bureaucracy handles which, I've been in bureaucracies in government long enough to understand and appreciate territoriality and turf wars as they occur, but I think that the issues here transcend those territoriality and turf war common problems that people experience.

I think that the safety and the security of the American public demands that. Accountability is an issue that we hear constantly bandied about in the United States with respect to public service and I would expect no less from either the Foreign Service or the Department of Homeland Security.

When you bifurcate responsibility, you basically have no responsibility, in my mind, and if the proposals go forth as suggested that perhaps the State Department would continue to have either final approval or disapproval authority for visas and some other entity, be it Homeland Security or another, they would have the ability to set standards and I believe you basically would end up with no standards.

I would liken that to me in Kissimmee having responsibility for public safety and having the responsibility to suppress and/or prevent the crimes of arson and having arson investigators hired by the Kissimmee Fire Department over which I have no control and holding me accountable for the work of the City Fire Department; similar analogy.

A more down home reality that I thought of on my way riding in this morning is my wife always points out to me, if I have a problem in my house, an electrical problem or a plumbing problem, I call for an electrician or a plumber. I don't call for someone who's been to a Home Depot seminar or who's read a book or bought a book on home repair about how to fix the electricity and plumbing because I want an expert to do that. I want an expert who has been trained and more so I want an expert with experience in using discretion.

Security jobs, police jobs, the jobs that we're talking about involve the exercise of discretion, unsupervised discretion for the most part because that's what these jobs are about. And the only way that one can properly exercise appropriate discretion, in my view, is with experience and continuing training. In the police field, as you'll hear from other witnesses perhaps, not only are we given a considerable amount of training before we begin our years of service, but we are continually retrained like any other profession.

And, minimally, I would think that whoever is going to bear the responsibility for approving or disapproving or reviewing visas would not only have to have some very well-defined and well-reasoned and well-articulated standards. They would also have to have continual training upon which to build their experience and to build their basic knowledge upon which to exercise their discretion.

Again, I go back to the fact that this is accountability we're talking about. We don't want to have a situation, in my view, of fingerpointing. If, God forbid, we were to have another incident of some type and the investigative process were then to focus on who made a mistake, who did what, who didn't do what that caused this or allowed this to occur, I don't think any of us would want to be in a position of trying to say, well, this was the State Department or this was the Department of Homeland Security or this was that or this was this person.

I think what we're looking to do is design a system that works—that works as well as possible, that invests authority and financing and staffing with those agencies who are best-equipped, best-suited, best-trained, best-supervised to provide those services so we don't have any fingerpointing. I hope that's a situation that would never come about.

Having said those rather reflective remarks that I felt over the last day or so, I will certainly pass on to my other learned colleagues and be available to respond to any questions that the committee may have.

Mr. WELDON. Thank you very much. That was very valuable.

Officer Glantz, you're recognized for your testimony.

STATEMENT OF KEN GLANTZ, OFFICE OF HOMELAND SECURITY, ORANGE COUNTY SHERIFF'S OFFICE

Lieutenant GLANTZ. Mr. Chairman, Mr. Keller, members of the staff, thank you very much for inviting the views of the Orange County Sheriff's Office on such a vital matter.

Orange County is the most popular tourist destination in the world. Over 43 million people visit Orange County yearly. Nearly 4 million of those visitors are international tourists. In addition, we host a plethora of worldwide and world-renowned attractions. We have a vested interest in securing our borders against terrorists.

Today we are here to discuss the matter of transferring Consular Affairs from the U.S. Department of State to the new Department of Homeland Security. Basic security tenets establish that the first layer of security always begins at the perimeter and works its way to the core in layers. The embassies and consulates are our Nation's perimeter security posts and therefore represent our Nation's first line of defense against terrorism.

The fact that fifteen of the nineteen September 11th terrorists obtained visas, three of which were obtained through the Visa Express program, is significant evidence that there are gaping holes in our Nation's first line of defense.

Sound security principles must be in place to prevent terrorists from obtaining visas. We must be sure that visas are issued to tourists and not terrorists. Combined testimony given on June 26, 2002, established that under the Department of State, Consular Affairs' concern is primarily diplomatic. Security, however, is now a major concern and should be the primary concern.

This indication illustrates a bifurcated approach to the Consular Affairs' function. This combined approach is contrary to the principles of security management. There must be a logical division of work, clear lines of authority and responsibility, coordination to meet organizational goals and most importantly, unity of command. This can be accomplished by bringing the Consular Affairs' function under the direction of one agency, the Department of Homeland Security. This would improve the Bureau's security coordination and communication with other Homeland Security related agencies.

Additionally, the transfer of the Bureau of Consular Affairs to the Department of Homeland Security would be in line with the President's initiative to consolidate homeland security-related functions.

According to congressional testimony given by Wayne Merry, 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 glamorous diplomatic side of their profession.

Mr. Nikolai Wenzel likened the consular position to hazing in a college fraternity, a right of passage, not relevant to their professional aspirations. Our Nation's first line of defense is an entry level position with nothing more than a warm body filling the position.

This highly critical, high profile security function cannot be accomplished with a warm body. Just as law enforcement officers at the local, State and Federal level are screened and matched for employment, so should be the Consular officer. Additionally, there

should be career paths within the Bureau that allow for advancement while remaining in the security function.

According to testimony, in the majority of nations that do not participate in the Visa Waiver Program, applicants are only interviewed if, according to Joel Mowbray, they fail on paper first. Policies should reflect basic security principles. All information in the application packet should be verified through the interview process.

This is our Nation's first contact with the foreign visitor or terrorist. We must verify that they are who they say they are, do the proper background checks, check the watch lists, ensure that they are entering the United States for legal reasons. Interviews are the most effective initial method of verifying the information submitted on a visa application. Foreign policy must be reexamined and changed to reflect security going into programs. Programs such as Visa Express place our Nation in serious jeopardy; they must be abolished. The fact that a terrorist can obtain a visa through a Saudi Arabian travel agency is irresponsible.

Mr. Chairman, as host community of the world's most popular tourist destination, terrorism is a paramount concern. Over 4 million of our visitors are from nations other than our own. Many of them are here on visas issued by the Bureau of Consular Affairs. By transferring the Bureau of Consular Affairs to the Department of Homeland Security, we ensure that our Nation's security is our No. 1 priority. We must be sure that tourists, not terrorists, are visiting our community. Thank you.

Mr. WELDON. Thank you, Officer Glantz.

[The prepared statement of Mr. Glantz follows:]

Statement of

The Orange County Sheriff's Office, Orange County, Florida

Orange County Sheriff's Office Deputy Director of Homeland Security

Lieutenant Kenneth M. Glantz

Before

The House Governmental Reform Subcommittee on

Civil Service and Agency Organization

United States House of Representatives

Testimony of Kenneth M. Glantz "Strengthening America's Borders; transferring the Bureau of Consular Affairs to the New Department of Homeland Security".

Mr. Chairman and members of the Committee, thank you for inviting the views of the Orange County Sheriff's Office on such a vital matter. Orange County Florida is the most popular tourist destination in the World. Over 43,000,000 people visit Orange County yearly. Nearly 4,000,000 visitors are International tourists. In addition, Orange County hosts a plethora of world-renowned attractions. We have a vested interest in securing our borders against terrorists.

Today we are here to discuss the matter of transferring Consular Affairs from the U.S Department of State to the new Department of Homeland Security. Basic security tenets establish that the first layer of security always begins at the perimeter and works its way to the core in layers. The embassies and consulates are our nation's perimeter security posts and therefore represent our nation's first line of defense against terrorism. The fact that 15 of the 19 September 11th terrorists obtained visas, three of which were obtained through the "Visa Express" program, is significant evidence that there are gaping holes in our nation's first line of defense.

Sound security principles must be in place to prevent terrorists from obtaining visas. The Bureau of Consular Affairs has a tremendous security function and must take all available security measures to assure the American Public that visas are being issued to tourists, not terrorists. It is imperative that homeland security is the Bureau of Consular Affairs' number one priority and therefore, it is a logical step to move the Bureau of Consular Affairs into the Department of Homeland Security. Additionally, this transfer of the Bureau of Consular Affairs to the Department of Homeland Security would be in line with the President's initiative to consolidate all Homeland Security related functions. This would improve the Bureau's security coordination and communication with other homeland security related agencies.

Combined testimony given on June 26, 2002, establishes that under the Department of State, Consular Affairs' concern is primarily diplomatic. Security, however, is now a major concern and should be the primary concern. This indication illustrates a bifurcated approach to the Consular Affairs' function. The Administration's proposed legislation vests regulatory and policy authority over the visa process with the Secretary of Homeland Security and leaves operational control with the Secretary of State. Each has a different mission, one diplomatic and the other, the security of our homeland.

This combined approach is contrary to general principles of security management. There must be a logical division of work, clear lines of authority and responsibility, coordination to meet organizational goals and unity of command. This can be accomplished by bringing the Consular Affairs' function under the direction of one agency, the Department of Homeland Security.

In his testimony before the Civil Service Committee on June 26, 2002, Joel Mowbray said that over the past decade, agents in the field have been pressured to not only be courteous and polite to all visa applicants, but also to issue as many visas as quickly as possible. Clearly, this is a diplomatic function. Now, in order to protect our borders against terrorism, it is crucial that security policies are implemented and enforced. The field agent may be torn between satisfying diplomatic requirements of the organization for which they are working and complying with the security requirements of the Department of Homeland Security. The security aspect in all likelihood will slow down the process of issuing visas, which in turn may hinder the diplomatic function.

By bringing Consular Affairs under the roof of Homeland Security, a logical division of work can be established, clear lines of authority and responsibility will be established and there will be a coordinated effort to meet organizational goals. Most importantly, there will be a unity of command.

In order to accomplish our security objectives, Consular Affairs must be recognized as our nation's first line of defense and be recognized primarily as a homeland security function. Once this is accomplished, a method for correcting security deficiencies must be implemented.

According to congressional testimony given by Wayne Merry, a Senior Associate for the American Foreign Policy Council, "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 glamorous diplomatic side of their profession." Nikolai Wenzel testified that there is a chronic shortage of consular personnel. Due to the large visa workload, all incoming junior officers are required to spend a minimum of 12 months in a consular position. Mr. Wenzel likened the consular position to "hazing" in a college fraternity, a rite of passage not relevant to their professional aspirations. Our nation's first line of security is an entry-level position with nothing more than a warm body filling the position.

This highly critical, high profile security function cannot be accomplished by a warm body. Just as law enforcement officers at the local, state and federal level are screened and matched for

employment, so should be the Consular Agent. Personnel who have prior military investigative service, law enforcement officers with investigative backgrounds and security professionals who have investigative experience would be excellent candidates to fill these positions. Additionally, there should be career paths within the Bureau that allow for advancement while remaining in the security function.

Prior testimony has also uncovered a multitude of security breaches at the Consular level. Many of these breaches could be eliminated through the establishment and enforcement of policy, procedures and proper training. According to testimony, in the majority of nations that do not participate in the Visa Waiver Program, applicants are only interviewed if, according to Joel Mowbray, "they fail on paper first." Mr. Mowbray also indicated that the Bureau of Consular Affairs has fought to scrap the interview requirement in consulates worldwide. This is supported by the allegation that "unmotivated, and almost always under-trained and under-prepared" officers known as "visa stampers" often conduct the visa screening process. Mr. Mowbray indicated that Consular Officers receive less than five hours of training for interviews. Included in the training were five to ten mock interviews that lasted no more than three minutes.

Policy should reflect that all information in the application packet be verified through the interview process. This is our nation's first contact with the foreign visitor or terrorist. We must verify that they are who they say they are, do the proper background investigation, check watch lists and ensure that they are entering the United States for legal reasons. If the applicant does not qualify or is found to be deceptive, policy and procedure must not allow for entry into the United States.

Law Enforcement Officers who are responsible for investigations, in most cases receive a minimum of 40 hours of interview and interrogation training. Interviews are the most effective initial method of verifying the information submitted on the visa application. Additionally, technology has advanced to the point where Voice Stress Analysis systems can be used both overtly, when verifying answers believed to be deceptive and covertly when completing an initial interview.

Consular Affairs personnel should receive a minimum of 40 hours of training in the area of interview and interrogation. There should also be a provision for technologically advanced truth verification equipment to be used during the interview process or after a person is determined to be deceptive.

Communication between agencies is critical in the law enforcement arena. This has been illustrated by the reported lack of communication between the FBI and CIA. It is also critical at the state and local levels. By bringing the entire function of the Bureau of Consular Affairs under the Department of Homeland Security, communication between related security functions can be facilitated.

Policy and procedure regarding Consular Affairs and the issuance of visas must take into consideration security first. Current policy must be reexamined and changed to reflect a security-oriented program. Programs such as Visa Express place our nation in serious jeopardy and must be abolished. The fact that a terrorist can obtain a visa through a Saudi Arabian travel agency is irresponsible.

From a security standpoint, the Visa Waiver Program also creates a security breach. Terrorists can immigrate to a country that participates in the Visa Waiver Program and enter the United States without going through the visa process. If such a program remains, INS must be extremely vigilant at the United States border.

Mr. Chairman, as the host community of the world's most popular tourist destination, terrorism is a paramount concern. Over 4 million of our yearly visitors are from nations other than our own. Many of them are in our country on visas issued by the Bureau of Consular Affairs. By transferring the Bureau of Consular Affairs to the Department of Homeland Security, we ensure that our nation's security is our number one priority. We must be sure that tourists, not terrorists are visiting our community.

Mr. WELDON. Mr. Hemphill, you're now recognized for your testimony.

STATEMENT OF TIM HEMPHILL, EXECUTIVE DIRECTOR, KISSIMMEE-ST. CLOUD CONVENTION AND VISITORS BUREAU

Mr. HEMPHILL. Thank you. Well, first and foremost, I'd like to thank Congressmen Weldon and Keller for seeking input on this important matter at the grassroots level where literally thousands of people's livelihoods depend on tourism on a daily basis. Almost 11,000 of Osceola County's work force is directly linked to tourism and almost fifty percent of the County's taxes are collected from tourism based sales or properties. Our schools, transportation network, local police and fire protection, social services all depend heavily on the vitality of tourism. This has never been more evident than in the recent 9 months.

The issuance of visas is not the only role of the Bureau of Consular Affairs. However, it is in that role that they serve as the gatekeepers for many of our international visits. International visitors account for nearly thirty percent of our business which virtually disappeared the days after September 11th. This sector of our market can be literally the margin of difference in success or failure and in fact many of our hotels remain in a day-to-day mode today.

The international market segment has gradually returned, but not near at the levels we had traditionally experienced and they are not expected to for quite some time. Among the impediments is the lingering uncertainty that our systems are still not what they should be and I applaud the Congressmen for demanding that all of our delivery systems be reexamined.

In the meantime, competition has crept in and if we don't act soon, it will become ever more difficult to regain our market share. And I'll take advantage of this occasion to advance the idea that the United States needs to have a national tourism office. We can no longer afford to sit on the sidelines as every country imaginable enters the market. We have so many more competitors now, it is inconceivable that we don't have a national tourism office.

In Osceola County, nearly one-third of our visitors were international pre-September 11th. Of the top twenty producing countries, citizens of nearly half of those are required to have a visa to enter the United States. Among the top ten countries needing visas are Venezuela, Mexico, Argentina, Colombia and Brazil.

Clearly, the UK and Canada far outpace other countries in visitation to this area and their citizens are not required to have a visa, but in 2001, over 100,000 visitors came from Venezuela, for example, the third largest international market. Their citizens are required to have a visa to visit the United States.

Osceola County in particular is friendly to the foreign visitors. In general, they feel very comfortable here. We have a vast array of lodging options, traditional resorts, hotels, condos, villas and short-term rentals. The particular culture of a country dictates what they are looking for and feel comfortable in. Few places offer as many options as Osceola county.

Our industry, obviously, is very sensitive to the systems that deliver our foreign visitors. We recognize the importance of making

certain that those systems are as fail-safe as possible. We cannot afford another incident. Of that, we are certain.

The initial reaction to changes proposed to a system that has been so integral to tourism is defensive. Moving from diplomacy to security in mindset initially sounds like the value of customer service would be lost. A closer examination would likely conclude that the current system for issuing visas has not necessarily been without customer service issues. You often hear of the nightmares prospective visitors convey about their experiences.

Striking a balance between homeland security and customer service will be the key. I am convinced that a system can be designed whereby the appropriate security measures are in place and we treat our prospective international visitors with the appropriate dignity and courtesy. I think we all know that some thing or things failed and we are compelled to give all the systems our utmost attention.

For the long term, we would like there to be no measurable net difference in the number of visas issued. Should it take longer? Yes. Should we be surer of the background and purpose of the trips to the United States? Absolutely. Should our image as a country that welcomes international guests be maintained in the process? Most certainly.

We all want the United States to be everyone around the world's dream vacation or holiday as it's called. In many cases, that starts with the issuance of a visa.

Again, let me thank Congressmen Weldon and Keller for sponsoring this important occasion.

Mr. WELDON. Thank you, Mr. Hemphill.

[The prepared statement of Mr. Hemphill follows:]

HOMELAND SECURITY

FIELD HEARING

Subcommittee on Civil Service, Census

And Agency Organization

Bureau of Consular Affairs

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Again, let me thank Congressmen Weldon and Keller for sponsoring this important occasion.

By/For: Tim Hemphill

July 15, 2002

Mr. WELDON. Mr. Horner, you're recognized.

STATEMENT OF MIKE HORNER, PRESIDENT OF THE KISSIMMEE/OSCEOLA COUNTY CHAMBER OF COMMERCE

Mr. HORNER. Thank you, Mr. Keller and Mr. Weldon, for giving me the opportunity to testify here this morning.

The events of September 11th had a profound impact on our entire country. I believe that no region outside of New York City and Washington, DC, was more affected by the terrorist attacks than Central Florida.

Our region is heavily dependent on tourism. After September 11th, we saw a catastrophic decrease in the amount of tourists traveling to our area. This affected not only those who work directly in the hospitality industry, but our entire business community. Many businesses failed or were forced to cut back causing thousands of citizens to lose their jobs.

It is clear the Federal Government must make every effort to keep would-be terrorists from entering the United States. The visa process is our first line of defense against those who would travel to our country to do us harm. Every step should be taken to make sure the visa process is sound and that those responsible are highly trained and motivated.

Some may argue that a thorough visa review process will create delays that would be detrimental to the tourism industry. I would argue that nothing would be more harmful to the tourism industry than another terrorist attack. I would encourage you to support an exhaustive visa approval process operated by trained professionals who keep the safety of our homeland as their top priority.

And I would like to follow suit with the officer who took issue with the Under Secretary who talked about it was an issue of resources and manpower. Though you can offer all the resources and all the manpower in the world, oftentimes, it's a matter of mission and the mission of the State Department is to ingratiate themselves in these foreign countries, to work with the folks in these foreign countries.

The mission of homeland security is to protect our country and that's very different. You can have all the resources in the world, but it depends on the culture of the organization and clearly the homeland security is the department with the appropriate mission and the appropriate culture.

I'd like to thank you for your vigilance in this matter. We are relying on leaders like you to ensure that the government is taking the steps necessary to protect our citizens and our way of life. Thank you for having me here today.

Mr. WELDON. Thank you, Mr. Horner, and I want to thank all the witnesses and we'll now begin questioning. And I yield to my colleague from Florida, Congressman Keller, to begin the questioning.

Mr. KELLER. Thank you, Mr. Chairman, and I have a question for each of you. You all pointed out some very interesting things. Mr. Klein, you were pointing out something that's been a big concern to many of us who serve on the Judiciary Committee; and that is, while the Department of Homeland Security currently is planning on giving advice and guidelines to the Secretary of State em-

ployees and the Consulars Office, they would still be Secretary of State employees so having to serve two masters, so to speak.

I think you were pointing out that if you had a situation at, let's say, the Kissimmee Police Department where one of the rank and file officers at the Kissimmee Police Department technically was under your command but I suppose if the Osceola County Sheriff's Office had the ability to hire and fire that officer and the sheriff's office had the responsibility of cutting the paycheck, he may not be as accountable to you; that we should have it streamlined so that there's only one person that you're trying to serve. Is that the gist of what you're getting at there?

Chief KLEIN. Absolutely, Congressman. As a practical matter, decisions are being made at a low level of the organization based upon whatever set of criteria and guidelines they must be using for that purpose and the Department of State. And just as a fundamental matter of human nature, if you're an employee making those decisions, who are you going to be more responsive to; the people that do your performance ratings for you, the people that approve transfers for you, the people that can make your life much easier every day that you have to work with every day when you're in a foreign place.

Just very fundamental, practical human considerations are what's going to dictate who you respond to and in what manner you respond. If you're seeking approval from your bosses so you can improve your long term posture in the organization, improve your family's consideration, those are the kinds of considerations just as human beings we're going to be taking into account when we make those decisions.

You can have all the guidelines in the world, but if those guidelines are being promulgated by someone who's thousands or hundreds of miles away and whose approval your job or salary rests is sitting in the same room with you, that's the person you're going to respond to.

Mr. KELLER. Thank you. Lt. Glantz, one of the things we are concerned about in Congress is that the entry level State Department employees who are doing these interviews only have a couple of hours in law enforcement training in terms of fraud and interview techniques. I know that you're with the Homeland Security Section of Sheriff Beary's office. Give me a contrast of what kind of training it takes for someone to get a job in your section.

Lieutenant GLANTZ. Well, in order to be a criminal investigator, most of the investigators have at least 40 hours of training and that's through different schools on interview and interrogation. Those people go on to a criminal investigation area and they also have some on-the-job training, which is considerable comparatively with the 5-hours or so that the Consular employee has.

Mr. KELLER. Thank you, Lt. Glantz.

Mr. Hemphill, you pointed out the detrimental effects that September 11th had on our tourism-based economy. I was interested in hearing that about half of the taxes that we collect here in Osceola County come from tourists. Is this also having an impact on the ability of Osceola County and local government officials to fund our schools and our roads because of the decline in sales tax revenues?

Mr. HEMPHILL. Most definitely. In fact, the budget process for the County by the County employees is underway now and this will probably be the most budget year with the most stressed resources that the County's ever experienced.

Mr. KELLER. Do you have any feeling of optimism that if we are successful on the war on terrorism in terms of tracking down these terrorists, whether either one by one and we tighten up the visa process and we do computer checks for terrorists on airlines so people feel good about flying again, that will be a positive benefit to the tourism economy here in Osceola County?

Mr. HEMPHILL. Undoubtedly. It will return to normal levels in due time, but those measures have to be enforced.

Mr. KELLER. Mr. Horner, you mentioned that one of your concerns is that kind of the mindset at Consular Affairs, Secretary of State's office is that they want to ingratiate themselves with the country that they're in. I was thinking of a situation if a diplomat is over there and he has a very prominent—let's say he's in Saudi Arabia and he's looking at a visa application for a ne'er-do-well son of a very prominent businessman, you're concerned that their inclination to kind of ingratiate themselves with these countries and their prominent leaders would lead to a decision that was more lax than, say, if an FBI interviewer was looking at the same ne'er-do-well son. Is that the gist of it?

Mr. HORNER. Exactly. They've got a political concern as opposed to a security concern.

Mr. KELLER. Thank you very much. Congressman Weldon, I will yield back the balance of my time.

Mr. WELDON. Thank you very much, Congressman Keller, for your very valuable input on this hearing. I wanted to just start off with a question for our two representatives from law enforcement. As you are aware, we had a hearing on this issue on June 26th and we took testimony from the Assistant Secretary of State who told the subcommittee that if we replaced Foreign Service officers with more security-minded personnel, we would end up with, "rent-a-cops," on the visa line and that we wouldn't want that.

What do you think of that statement? Do you want to comment on that? I certainly have some differing opinions on that, but I'd really rather hear your perspective as law enforcement officers.

Chief KLEIN. Congressman, I also have a response to that. My response obviously wouldn't be fit for the record to print. I think that's a very specious statement, a very specious argument to make. I think that if you design a program and staff a program properly and give it the appropriate mission as my colleague has identified, you'll get basically what you're looking for.

An example in the Federal service would be the most recent change with the sky marshals. There was a desire to professionalize or make the sky marshals more visible, have a much more dedicated function, security function in the air. In order to do so, the Federal department designed pretty exacting standards, pretty exacting requirements for experienced, primarily law enforcement people. They established a career path within the Federal service which would allow and which would also motivate officers who were otherwise not motivated to come into the Federal service, to come in with the understanding that they could provide service at

a certain level for a certain period of time and have the opportunity of moving perhaps into Federal law enforcement service.

I think that you get what you pay for and you get what you design. If you design a program where you're going to have airport screeners who are looking in bags and are being paid $5 an hour, that's what you're going to get frankly. That's the level of service that you'll get.

If you design a program that's intended to attract qualified, motivated, experienced, educated law enforcement personnel of which there are many throughout the country and you provide them with a career opportunity, that's exactly what you'll get; you'll get well-qualified, well-motivated, very talented, very energetic, mission-oriented security personnel; a security force that will do a good job for the country and you won't have to deal with these rent-a-cop issues that if you design otherwise, you'll get otherwise.

Mr. WELDON. Lt. Glantz, did you want to elaborate on that?

Lieutenant GLANTZ. Yes, Dr. Weldon. In Orange County, our deputies have a mission of tourist-oriented policing down in the International Drive area to the Walt Disney World area. Our deputies are trained, good policemen, have security issues forefront, work crime areas and they also are diplomatic to the tourists who are here in Orange County. It angers me to hear a statement where they call us rent-a-cops or they say that police officers won't be able to fill a mission if it's diplomatic. Police officers can be diplomatic. Like my colleague just said, you get what you pay for. And if you pay someone $5 an hour and they aren't trained, that's what you'll get. If you pay someone consummate what their job is, they will do the job for you if they have the education and the background and training and that's what you need to look for when you put a person in this position.

The FBI, the CIA, local law enforcement have brilliant people working for them. They have some of the best shining stars that you'll see and I think that's one of the important things that you need to realize; that we're not rent-a-cops and that you wouldn't be filling this position with rent-a-cops.

Mr. WELDON. Would you like to comment—as I understand it, the position of Consular Affairs' officer goes to the new recruits from the foreign service. So they graduate from college with a degree in whatever. It can be liberal arts. They take the foreign service exam. They get hired. And as I understand it, they get 2 weeks of training and a whole plethora of issues that Consular Affairs deals with which is a lot of other issues beside visa issuance.

But specifically the visa issuance, part of their training, as I understand it, is a half a day. I'd ask all the panelists to comment on this, but particularly our representatives from law enforcement. Do you feel that is adequate for a level of training considering the impact that September 11th has had on this community, not only from the business sector, but we've also heard about from tax collection and its ultimate impact that it's going to have on education, for example, our ability to fund our school system. So I just would ask for your response to that. My thinking is that it's an inadequate amount of training and another reason why we need to move this over to the Department of Homeland Security.

Lieutenant GLANTZ. Mr. Chairman, I agree with you 100 percent. As far as the degree that they have in liberal arts, I don't think that makes a difference whatsoever. However, police officers receive approximately 600 hours of training before being allowed to go on the street; 600 hours comparatively to 2 weeks or a half a day. If we move to a security-minded Consular officer, then they need to have much more training like a person who's going to become a sky marshall.

They need to go to academy. They'll need to go to some type of security academy to get the adequate training. Interview and interrogation training would be part of it. Diplomatic training would be part of it. They would have to learn to use equipment such as voice stress analysis equipment which could be used to verify the answers that are given on the applications, on the visa applications. There's a lot of training that could be put into becoming a Consular Officer and I believe you are absolutely right. Five hours is not adequate training.

Chief KLEIN. Mr. Chairman, I think for that type of a job, if part of your role was to review and approve or deny visa applications, in my sense based on my experience in law enforcement, that's not something you can hire someone who has a college degree with no background in law enforcement to come in and do as part of their duties. It just frankly is not.

To be able to make judgments about someone being a security risk, to be able to review and access documents, to be able to judge whether documents are fraudulent, to be able to look at people and make judgments as to whether they are being truthful with you, to be able to exercise discretion in a law enforcement context, are things that can't be learned in a classroom. Those are the things that require experience. Those are things that require having been, to use the phrase, "in the field," you need to be able to have a different range of skills to be able to perform that type of a function than you do to be able to perform other diplomatic functions or other functions related to education.

The issue of security is somewhat unique and people may refer to some people in the law enforcement profession as rent-a-cops, but the training and experience that you get in dealing with people in the law enforcement business is much different than you can get in any other type of educational background. And I don't think that any amount of classroom training, certainly not 4 hours, could even adequately acquaint or familiarize someone to perform that type of a function if you are serious about performing the visa function in a very serious and conscientious and mission-oriented fashion.

Mr. WELDON. Mr. Horner, did you want to add to that at all?

Mr. HORNER. I would like to say even if the State Department would upgrade their training, which I think everyone here would agree the training is inadequate, it still comes back, not to be a broken record, to mission. Even if you could provide that adequate training, what is the organization placing emphasis on? And I think that an organization that places security as their top goal would be in a better position to provide that service.

Mr. WELDON. Mr. Hemphill, could you just speculate for the record what potentially could be the impact—and I ask you, Mr.

Horner, as well—of another major attack on the United States here in Central Florida?

Mr. HEMPHILL. It would be devastating and I'm not certain that we could recover. We're all pretty confident that we're recovering from the previous one, but I'm not sure we'd be able to recover in the tourism industry from another such incident.

Mr. WELDON. You mentioned before I asked you to comment on that—you mentioned a couple of times in your testimony competition. Could you elaborate on that a little bit?

Mr. HEMPHILL. Well, in the global market now and it's happened in only a few short years, from a marketing standpoint, you can look through a travel guide now and see countries that are trying to get people to visit their countries that you never would have imagined would be in the market.

Mr. WELDON. Can you cite a few for example?

Mr. HEMPHILL. Vietnam.

Mr. WELDON. Vietnam?

Mr. HEMPHILL. Vietnam. Cuba.

Mr. WELDON. Warm climate in the winter months; is that what we're looking at here?

Mr. HEMPHILL. Yes. The competition is fierce and we can't afford any occasion to allow additional competition. We're just losing markets. I know that sounds like we're kind of getting off target in the issue of security measures, but all of these types of things allow more competition.

Mr. WELDON. I don't think it's not involved with our discussion here. If the United States were to be hit again and again by more terrorist attacks, I think you could see more and more international visitors selecting what is perceived by them to be a safer location to take their vacation.

Mr. HEMPHILL. Mr. Chairman, a good example of that currently is our UK visitors are down. Their next obvious option is Spain and once they get comfortable going to Spain, will we be able to get them back? I'm not sure we will, but that's a great example of competition.

Mr. WELDON. Do any of you have any more comments that you want to add? I just have one more question for our representatives in law enforcement. One of the arguments put forth by State Department officials is giving a visa is just one step and that they come here and they get interviewed by INS when the plane lands and they have to go through customs and immigration and it's really a two-step process.

I agree with your comments, Lt. Glantz, about placing the focus is at the perimeter. You want to comment on that at all? I personally don't see that as a valid argument to leaving them in diplomatic function. I would still prefer to move them to a security organization. The planes land and there's a lot of pressure to get the people through the lines quickly and out to the hotels. Your thoughts on that?

Lieutenant GLANTZ. Mr. Chairman, prior testimony indicated that INS receives the foreign visitors here and if they don't have a lot of luggage looking like they're going to be here for 3 or 4 months, they pass them right through at the INS station. INS, of course, could beef that up. However, I would remain to say that we

need that perimeter post to be our first line of defense and if we don't have a strong first line of defense, we're got them here to this country and we have to rely on another system. Let's take them out at the first opportunity.

Chief KLEIN. Just again as a more practical way of looking at things, the first step is always the hardest step and once people get onto our shores, we have a whole plethora of other issues that arise and local law enforcement and the INS. We are continually subjected to discussions or allegations of profiling, of grouping of certain nationalities or ethnic groups for the improper or inappropriate services. We have the ACLU who does a fine job in many areas, but there are other types of pressures and other things that are brought to bear once people hit our shores.

So I think the first step being the hardest step, the first step should be the hardest step. And once you can get past that threshold, then perhaps there's a different type of scrutiny that you can be subjected to when you're entitled to the type of things that we give our citizens on this shore. But that first step should be the hardest step.

Mr. WELDON. Just one last question to the whole panel: We were debating this issue in the Congress in committee just last Thursday. One of the arguments—and I've heard this argument over and over again put forward—is that the Consular Affairs position is the first station that diplomats go to and it's a career development issue for the diplomatic corps and if you want to have well-seasoned diplomats, you need this opening position for them to move into and that moving Consular Affairs to Homeland Security would be very disruptive to the career paths of diplomatic officers.

Would you like to comment on that at all?

Mr. HORNER. I would just say that in Central Florida alone, we had tens of thousands, hundreds of thousands of folks' career path disrupted with that September 11th attack, not to mention D.C. and New York City. There's got to be an alternative—an alternate first step for these junior diplomats to go through besides the issuance of visas.

Mr. HEMPHILL. Chairman, I think in this particular discussion or in all discussions related to homeland security, I think diplomacy is the sacred cow. I think certainly it is in the diplomatic corps and the State Department and all those departments feel like it's a sacred cow and I don't envision that whatever it might affect in terms of career paths, it shouldn't be changed or couldn't be changed. I really think that everything should be on the table and every system should be examined and this is one very important argument.

Lieutenant GLANTZ. If the Consular position was to be moved over to the Homeland Security Department, I'm sure there'd be an alternative and that is a career path for the people who come who want to be diplomats. If it is moved over, it would be very important for the career path within the Bureau to offer advancement and remain in a security function.

Chief KLEIN. I've got the same type of reaction to that statement that I had to the Under Secretary's response that this is merely an issue about space or personnel or people. If the issue is security, if the issue is national security, I believe that's what the issue is as the President has said, then issues of career paths or issues of

who moves from which job or what job are incidental when you're looking at security. There are ways to work around this and I think people need to take a hard look at what the President wants us to do and wants the Office of Homeland Security to do. If security is what they are supposed to be doing, than there are ways to deal with career path issues and bureaucracies.

Mr. WELDON. Well, I want to thank all of our witnesses in the first panel. Thank you for taking the time out from your schedules to be here. It was extremely valuable testimony and it will be very, very useful for us as we continue to debate this very important issue. The House hopes to pass their final version of the bill out before we recess for the August recess, which we'll be recessing at the end of July. And then when we return, hopefully we take up the final version of the bill and the goal is to have this new Department of Homeland Security created by the anniversary of September 11th if possible. It's a very big issue and we may not be able to get that done, but your testimony is a valuable input in the process. Thank you again for being here.

We will now recess for 5 minutes while we call up the second panel.

[Recess.]

Mr. WELDON. The committee's hearing will now resume. I apologize to our witnesses for keeping you waiting. Certainly we appreciate you being here as well. An important component in understanding the issuance of visas is to hear from those who have actually served on the visa lines in the State Department. We have two excellent witnesses today and I thank them for taking time out of their busy schedules to travel to Kissimmee to join us this morning.

First we will hear from John J. Tkacik. Did I pronounce your name correctly, sir?

Mr. THACIK. Yes.

Mr. WELDON. Research Fellow for China, Taiwan and Mongolia, Asian Studies Center and The Heritage Foundation and a former 23-year State Department employee. Then we will hear from Carl C. Risch and your name is pronounced correctly, also?

Mr. RISCH. Yes, sir.

Mr. WELDON. Mr. Risch is currently an attorney, practices law in Pennsylvania, I believe, but importantly is a former Foreign Service officer in the State Department and I believe also has some firsthand experience of Consular Affairs.

Gentlemen, if you could both please stand, raise your right hand.

[Witness sworn.]

Mr. WELDON. Let the record show that the witnesses responded in the affirmative. Mr. Tkacik, you're recognized for your opening statement.

STATEMENT OF JOHN J. TKACIK, JR., RESEARCH FELLOW, ASIAN STUDIES CENTER, THE HERITAGE FOUNDATION

Mr. THACIK. Chairman Weldon, thank you very much for inviting me to testify today on the proposed legislation which gives the new Department of Homeland Security exclusive authority over the visa function.

Before I begin, let me say that the opinions I give here today are entirely my own and should not be construed as representing any official stance of the Heritage Foundation. Although I am a research fellow for China policy at the Heritage Foundation in Washington, DC, I have considerable experience in visa and immigration issues. I served for 23 years in the Department of State, including 2 years as Supervisory Consular Officer at Peking at the U.S. Embassy in China and 3 years as the Chief of the visa Section at the American Consulate General in Hong Kong which at the time was the third largest visa issuing post in the world.

I also spent several years as Chief of China Analysis in the State Department's Bureau of Intelligence and Research and I think appropriately to this hearing from 1986 to 1988, I was the chief of Junior Officer Training which is the A–100 course at the Foreign Service Institute.

First, let me say that there appears to be universal agreement in the administration that the U.S. consuls abroad who adjudicate visa applications by foreign visitors and hopeful immigrants are within the first line of America's defense against global terror networks. I think in recognition of this, the administration's proposed legislation creating the Department of Homeland Security removes the visa function from the State Department and places it in DHS. But I note that in the wording of the administration's proposed legislation, it says that the DHS secretary, "shall have exclusive authority through the Secretary of State," to issue visas and administer and enforce visa laws.

Now, this seems inconsistent to have exclusive authority through another secretary, cabinet secretary, but I think there are logical ways to work this out and I think the key to this is to move the State Department's Office of Visa Services known as the Visa Office or VO into the new DHS.

Now, having been in the Foreign Service for 23, 24 years, I understand that the State Department does want its own consuls overseas to continue performing visa functions. For years, local sensibilities and U.S. Ambassadors' concerns for unsightly visa lines and strict enforcement of visa denials have encouraged the visa function overseas to be managed more as a service and not as a screen. It's a matter of priorities.

While visa consuls should be Foreign Service officers within the Department of State, I believe, at the very least, the U.S. Government's preeminent office controlling visa policy and operations, State's visa office, must reside where the Congress places the authority for those functions; in the Department of Homeland Security.

And if the Department of Homeland Security is to be accountable for its authority, then it should have its own officers overseas to monitor and supervise these operations. And I think this is called for in the administration's bill. I think to do otherwise, the reorganization of the DHS will just be business as usual and only the names on the door will change. Foreign Service officers will continue to man the visa offices under the guidance and oversight of the DHS. And that's the way it should be.

Now, the DHS must assume total control over visa policies and support services. An important provision of the Bush administra-

tion's proposed Homeland Security Act of 2002 is the placement of the country's border and transportation security responsibilities within DHS including the transfer of the immigration service to the new department. Section 403 of the proposed legislation transfers, "control," over the issuance and denial of visas to enter the United States to the DHS, "while preserving the Secretary of State's traditional authority to deny visas to aliens based upon foreign policy interests of the United States."

Now, this appears to be the rationale for trying to keep the visa function within the State Department which is to say the Secretary of State has this traditional authority, but I will note that this traditional authority which is embodied in Section 212(a)(3)(c) of the Immigration and Nationality Act is used very rarely. The last year that we have statistics which is 1999, it was not used at all in that year. So I don't think that you can justify moving any part of the visa function into—keeping any part of the visa function in the State Department under this ground of reasoning, much less all of the visa authority.

I think in the interest of time, I'm going to skip to why there must be a visa attache at the U.S. Embassies. I think State Department officers still can perform the bulk of visa functions overseas as has been earlier mentioned. It is considered part of the training program for junior officers and I, having been the chief of Junior Service Training for 2 years, understand that. But I think simply put, without formal onsite monitoring of the visa lines by DHS, there is no control of accountability. I think if DHS is to control the issuance and denials of visas, DHS must have a supervisory attache commission, of course, as a U.S. consul or vice consul assigned to each embassy and each visa issuing consulate to provide oversight, continuous monitoring and training and indoctrination on visas. The DHS attache also must have statutory authority to overrule a visa officer's issuances or refusals on at least homeland security grounds.

And I see that in the amendment to the Burton Substitute offered by Mr. Lantos and Ms. Ros-Lehtinen, H.R. 5005, there doesn't seem to be the authority to refuse visa applications and develop programs of training of Consular officers as part of that. And in addition, the proposed legislation that came out of the subcommittee markup on Thursday night, I believe it was, also calls for the review of any or all such applications prior to their adjudication either on the initiative of the employee of the Department of Homeland Security or upon request of the Consular officer. I think this makes absolute sense and I think at the very least, this is essential to the effective functioning of the Department of Homeland Security in the visa process.

Now, if the DHS attache overseas is to provide a value added, then he or she should have full access to all the DHS data bases; and by this, I mean all domestic and foreign data bases, including U.S. national crime indices, and that access should be at a secure site at the embassy or consulate.

In many cases where visa sections overseas are located in an unsecure venue physically distant from the embassy, this would mean that the DHS officer should have two offices. A DHS section abroad in an embassy would also involve an increase in the staff, as few

as one per visa issuing post, but as many as five in large posts. This may in fact involve as many as 300 additional DHS employees overseas.

However, the actual visa issuance at embassies and consulates abroad could and I think should continue to be handled by Foreign Service officers. In the longer term, the DHS visa office, once presuming it is moved into the—the visa office is moved into DHS, will be responsible for developing training programs for junior State Department Foreign Service officers as they go out to an embassy. And the DHS visa office will be required to develop this specialized software to monitor the visa issuance.

Ideally, DHS should supervise and fund the program at the State Department's Foreign Service Institute which would indoctrinate FSOs in terrorism profiling, terrorism organizations and operations and terrorism documentation in addition to the existing visa course. The program would be a part of the State Department's FSI's Consular Course and must be developed in conjunction with the Central Intelligence Agency, the Federal Bureau of Investigation and the Department of State's own coordinator for counterterrorism.

I think in the transition period as DHS begins to assume control for visa policies, the State Department Consular section chiefs in American embassies abroad must be brought back to the United States for a period of training and indoctrination on homeland security in a program designed to sharpen visa supervision and oversight until DHS attaches can be assigned.

Now, separately in the longer term, DHS must develop Management Information System software to monitor visa issuances overseas. This software would be developed by the visa office to interface with its existing automated visa issuance systems which are already in place. AVLOS and CLOK, the automated visa lookout system and the classified lookout book are indices—these indices as well have to be integrated into the automated visa issuance systems and these separate data bases will enable the DHS attache at post to review visa officer processing of applications as well as to give him or her access to visa data bases for investigation and intelligence purposes.

Improvements in computer hardware memory, clock speeds as well as broadband data transmission rates also permit the retention of all visa applications in a centralized DHS data base. To depart from my prepared testimony, I should note that at present, issued visas, records of issued visas I believe are dumped after 1 year. As a result, a year after a visa is issued, you can't go back and check what happened to that visa.

I think finally in more advanced countries, the use of data-mining software can speed local background checks for visa issuance. With a minimum of intrusiveness, such techniques could quickly identify visa applicants who have not established themselves in their communities and hence fit a threat profile. Nonetheless, speed of visa issuances should not be the top priority in a wartime environment and a reasonable period should be built into the visa process to ensure that reliable name-checks are made.

So let me sum up. The visa function should be to the new DHS. Section 403 of the administration's proposed Homeland Security

Act of 2002 recognized that effective homeland defense requires that the new Department of Homeland Security should control the visa function and that the Secretary of Homeland Security shall have exclusive authority to issue or refuse visas. I agree with that.

Second, the DHS must have a meaningful presence overseas. Control and authority are empty words unless the Visa Office, now under the Department of State, is transferred to the new DHS and unless the DHS officers overseas have some effective supervisory authority over visa issuances abroad. And again, as I say, I'm happy to see that seems to be in the existing markup.

Third, Consular officers should continue to perform visa functions overseas. This does not require that all or even most visa officers overseas must be DHS employees. Both DHS and State will benefit if the bulk of the overseas visa function is conducted by State Department Foreign Service officers.

Fourth, the DHS should have direct monitoring authority of overseas visa operations via the DHS attaches at all visa posts, and this includes most embassies, and those attaches must have consular commissions.

And finally, the DHS Visa Office will and must take the responsibility of training, indoctrinating and equipping visa officers abroad and ensuring that they or their supervisors have access to the relevant intelligence and name-check data bases needed to screen alien visa applicants effectively.

That concludes my prepared presentation. I'm happy to answer any questions.

Mr. WELDON. Thank you very much.

[The prepared statement of Mr. Tkacik follows:]

Why the "Visa Office" should be in the Department of Homeland Security

By John Tkacik

There is universal agreement in the administration that the U.S. consuls abroad who adjudicate visa applications by foreign visitors and hopeful immigrants are within the first line of America's defenses against global terror networks. Therefore, the Administration's proposed legislation creating the Department of Homeland Security (DHS) removes the visa function from the State Department and places it in DHS. The Administration's proposed legislation says that "the [DHS] Secretary shall have exclusive authority, through the Secretary of State," to issue visas and administer and enforce visa laws. This seems inconsistent but there are logical ways to work this out. The State Department understandably wants its own consuls overseas to continue performing visa functions. But for years, local sensibilities and US ambassadors' concerns for unsightly visa lines and strict enforcement of visa denials have encouraged the visa function overseas to be managed as a "service", not a "screen." While visa consuls should continue to be foreign service officers within the State Department, at the very least, State's Visa Office should be incorporated into DHS, and DHS should probably have its own officers overseas to monitor and supervise visa operations -- as is called for in the administration's bill. Otherwise, the "reorganization" of the DHS will just be "business as usual" and only the names on the doors will change. The visa office, approving and researching of visas, should be under the Department of Homeland Security. The Foreign Service officers would continue to man the visa offices under the guidance and oversight of the DHS.

The Dhs must assume total control over visa policies and support services

An important provision of the Bush Administration's proposed "Homeland Security Act of 2002" is the placement of the country's border and transportation security responsibilities within the new DHS (including the transfer of the Immigration and Naturalization Service to the new department). Section 403 of the proposed HSA also transfers "control" over the issuance and denial of visas to enter the United States to the DHS, "while preserving the Secretary of State's traditional authority to deny visas to aliens based upon the foreign policy interests of the United States." Section 403 would expressly authorize the Secretary of Homeland Security to "delegate his authority" under this section to the Department of State, and provides that the Secretary of Homeland Security will exercise his authority through the Secretary of State. However, the Act would not alter the employment status of diplomatic or consular officers processing visas abroad, who will remain employees of the Department of State. Apparently, this means that nothing is supposed to change.

But if the DHS is to be effective in strengthening the nation's control over who does and does not get visas to enter the United States, the DHS must assume total control over visa policies and support services. This need only preserve the existing separate statutory authority of the Secretary of State to deny visas to applicants based on foreign policy considerations under section 212(a)(3)(c) of the Immigration and Nationality Act. This, in itself, hardly justifies keeping any part of the visa function, much less all of it, within State. Clearly, the Secretary of Homeland Security will not exercise any control -- much less full control -- over the visa function unless the State Department's Visa Office is moved into DHS.

background: How the present system came into being

After the Second World War, the State Department's visa function was under the Administrator of the

Bureau of Security and Consular Affairs (SCA) which comprised both the Department's security and consular functions. During the 1950s-1960s, SCA managed its visa functions with a high degree of security consciousness particularly as it related to identifying potential espionage agents as well as foreign visa applicants who had been members of a communist party or its affiliates. Also in the 1960s and early 70s, visa fraud was rampant, and the State Department devoted new resources to investigations and fraud detection and prevention.

Into the 1970s and 80s, however, "security" was formally separated from the consular bureau, and the mission of visa officers at embassies overseas shifted away from security concerns and toward facilitating travel. While visa officers continued to enforce provisions of immigration law which excluded certain classes of aliens, far more attention was devoted to "managing" the visa process which processed over four million tourist visa applications and nearly a million immigrant visas annually. This meant that a high priority was placed on ensuring the smooth flow of interviews, handling of visa application forms, systematizing name-checks, issuing visas while maintaining the integrity of the physical visa impressions and/or serial-numbered paper visas.

In some cases, strict scrutiny of visa applications was a low priority, while streamlining the workflow was paramount. Similarly, in the State Department's Visa Office, the stress was on management skills, computerization, service-oriented processing. There are disturbing indications, for example, that for many years at the American Embassy in Riyadh, Saudi Arabia, political rather than consular or security concerns dictated that Saudi nationals be presumed eligible for nonimmigrant visas. Moreover, U.S. visa policy toward Saudi Arabia is not strictly reciprocal. For example, Saudi nationals can obtain multiple entry U.S. tourist visas valid for 12 months while Saudi Arabia does not issue "tourist" visas to anyone for any validity. Moreover, American businessmen cannot travel to Saudi Arabia without an individual invitation from a registered Saudi firm and a specific approval notification from the Saudi Foreign Ministry. Given the political concerns that encumber U.S. ties with Saudi Arabia, the imposition of strict visa reciprocity would be difficult for the embassy in Riyadh to implement, while a visa regime "controlled" by the DHS would be under less pressure.

Placement of "control" over the issuance and denial of visas to enter the United States to the DHS requires that the State Department's Visa Office be relocated to the new department. Even with this transfer, the Secretary of State may still preserve his/her "traditional authority to deny visas to aliens based upon the foreign policy interests of the United States", an authority that, in any case, affects only a small handful -- if any -- of the millions of visa cases each year.

This is not to say that the Visa Office or foreign service officers are unsuited to a homeland defense mission. Since the early 1970s, the State Department has devoted considerable resources to visa fraud detection, investigation and prevention. In this regard, it is useful to note that State Department visa fraud investigators are notably less constrained than U.S. domestic law enforcement investigators in that there is no "rights" issue. That is, the obtention of a visa is not a "right" but a privilege. U.S. federal courts have consistently sustained a doctrine of consular nonreviewability. When a consular officer denies a visa application, there is no judicial review. As such, State Department visa fraud investigators abroad function more as intelligence collectors who may seek and use whatever information they gather in making their decisions, rather than as law enforcement officers who need to pay painstaking attention to rules of evidence.

What is the Visa Office?

The Office of Visa Services within the State Department's Bureau of Consular Affairs is known as the "Visa Office." In addition to making all visa policy and guidance for consular officers overseas, Department of State regulations list as its second most important function

> . . . b. The administration, in time of war or national emergency, in conjunction with the Immigration and Naturalization Service (INS), such additional restrictions and prohibitions as may be required to control the entry and departure of aliens.

The Visa Office (VO) also provides *all* legal guidance ("advisory opinions"), which are binding on consuls in both individual cases as well as broad applications of immigration law. VO's "Coordination Division" also provides equally binding "security advisory opinions" which relate to individual foreign visa applicants whose potential entry into the United States could adversely affect national security. The Coordination Division's task is to ensure that visa cases of national security significance are fully coordinated among U.S. diplomatic missions abroad and the appropriate Washington, D.C. agencies, including the intelligence community, the Immigration and Naturalization Service (INS), as well as other offices in the State Department and the White House.

The most important tool used by the Visa Office to manage its national security function is the Consular Lookout and Support System (CLASS), the Department's name-checking system which alerts visa officers abroad to ineligible applicants. The CLASS system comprises the Automated Visa Lookout System (AVLOS) and the Consolidated Visa Lookout Book (CLOK) through which the names of over two hundred thousand visa applicants are checked each week. These name-check indices apparently do not have a data interface with any other US government lookout system or criminal data base.

The Visa Office also supervises and trains US consuls and foreign national employees in visa fraud investigations and liaises with the Immigration and Naturalization Service on investigations in the United States. In addition, the Visa Office controls the distribution of quota numbers for new immigrants, handles congressional and public inquiries into individual visa cases.

the visa office at the DHS is the first line of defense

A Visa Office within the new DHS must be more committed to tightening, improving and more broadly utilizing the visa function to meet the exigencies of homeland security. The visa vetting process, from the initial interview, through computerized name checks, confidential background checks, and the day-to-day sharing of databases with intelligence agencies, must become the new Visa Office's top priority. Customer service and assuaging local sensibilities about long visa lines, while important, cannot be allowed to eclipse the Visa Office's homeland security responsibilities. But such guidance is more likely to come from a Visa Office which is no longer within the State Department.

That said, it does not seem necessary to transfer, lock-stock-and-barrel, the entire overseas visa function or the foreign service officers (FSOs) who now staff it to the Department of Homeland Security. History has shown that the foreign service abroad has been eager, willing and able to embrace new priorities and duties, as witnessed by their effective assumption of visa fraud investigations in earlier decades.

Foreign service officers must continue to man the visa lines

Nor would it necessarily be cost-effective for either DHS or State. The State Department has legitimate concerns that it could lose a pool of junior officers to another agency if the probationary officers who conduct visa interviews abroad are transferred to the Department of Homeland Security. Visa service has been a traditional "first tour" assignment for all junior FSO's. The Foreign Service is divided into five specialties (called "cones"); consular, economic, administrative, political and public diplomacy. A first tour of duty as a visa officer overseas has been the traditional way an FSO is trained in a local language, familiarized with foreign political structures and social institutions, and acclimatized to a working environment with local national staff. At present, there are very few probationary-level foreign service assignments outside the visa function where junior FSO's can gain the kind of in-country training

that visa work provides. While four-fifths of junior officers then leave the visa line in onward assignments, the one fifth who are to be career "consular cone" remain as the management cadre for the consular function which includes a range of protection and welfare services for U.S. citizens abroad as well as visas.

The loss of the visa function would require the State Department to recruit more officers to maintain a pool for its own long-term senior personnel development needs. Most probably, this would mean far larger staffs at Embassies to accommodate increased numbers of junior FSO's in other sections, in addition to the new DHS consular officers.

There must be a dhs attache at the embassy

State Department officers should, therefore, continue to perform the bulk of the visa function overseas. Nonetheless, there can be no substitute for DHS officers at post overseeing the visa function. Simply put, without formal on-site monitoring of the visa lines by DHS, there is no control or accountability. If DHS is to "control" the issuance and denials of visas, DHS must have a supervisory attaché, commissioned as a U.S. consul or vice consul assigned to all embassies and visa-issuing consulates to provide oversight, continuous monitoring and training and indoctrination on visa issues. The DHS attaché also must have statutory authority to overrule visa officer issuances/ refusals, at least on homeland security grounds.

If the DHS attaché is to provide a "value-added" then, s/he should have full access to all DHS databases (both domestic and foreign, including U.S. national crime indices) at a secure site in the embassy or consulate. In many cases, where the visa section is located at an unsecure venue physically distant from the embassy, it would mean that the DHS officer would have two offices. A DHS section abroad would also involve an increase in the staff of an Embassy -- as few as one but as many as five -- perhaps as many as 300 DHS employees overseas. However, the actual visa issuance at the embassies and consulates abroad could -- and should -- continue to be handled by State Department FSO's.

dhs assumes responsibility for conducting training and oversight

In the longer-term, the DHS Visa Office will be responsible for developing training programs for junior FSOs as they go out to an embassy as well as specialized software to monitor visa issuance. Ideally, DHS should supervise and fund a program at the State Department's Foreign Service Institute (FSI) that would indoctrinate FSOs in terrorism profiling, organization/ operations, and documentation. The program would be a part of the State Department FSI "Consular Course" and must be developed in conjunction with the Central Intelligence Agency, the Federal Bureau of Investigation, and the Department of State's own Coordinator for Counter-terrorism. (In the transition period as DHS begins to assume control of visa policies, the State Department consular section chiefs at American embassies should be brought back to the US for a period of training on Homeland Security in a program designed to sharpen visa supervision and oversight until DHS attaches can be assigned.)

take advantafe of intelligence fusion to ensure rapid and complete checks

Separately, DHS must develop Management Information System (MIS) software to monitor visa issuances overseas. This software would be developed by the Visa Office to interface with the existing automated visa issuance systems.

AVLOS and CLOK indices as well as the automated visa issuance systems and enable a DHS representative *at post* to review visa officer processing of applications as well as access visa databases

for investigation and intelligence purposes. Improvements in computer hardware memory and clock speeds may also permit the retention of all visa applications in a centralized DHS database. Changes in visa application forms would also make them machine-readable and provide broader information than is currently available in the AVLOS / CLOK systems.

Finally, in more advanced countries, the use of "data-mining" software can speed local background checks for visa issuance. With a minimum of intrusiveness, such techniques could quickly identify visa applicants who have not established themselves in their communities and hence fit a threat profile. Nonetheless, speed of visa issuances should not be a top priority in a wartime environment and a reasonable period should be built into the visa process to ensure that reliable name-checks are made.

Conclusion

The visa function should go to the new DHS. Section 403 of the Administration's proposed "Homeland Security Act of 2002" recognized that effective "homeland defense" requires that the new Department of Homeland Defense should "control" the visa function, and that the Secretary of Homeland Security shall have "exclusive authority" to issue or refuse visas.

DHS must have a meaningful presence overseas. "Control" and "authority" are empty words unless the Visa Office, now under the Department of State, is transferred to the new DHS, and unless DHS officers overseas have supervisory authority over visa issuances abroad.

Consular offices will continue to perform the visa function. This does not require that all -- or even most -- visa officers abroad must be DHS employees. Both DHS and State benefit if the bulk of the overseas visa function be conducted by State Department Foreign Service Officers.

DHS should also have a direct monitoring authority of overseas visa operations via DHS attaches at all visa-posts (and most embassies), and those attaches must have consular commissions.

The DHS Visa Office must take the responsibility of training, indoctrinating and equipping visa officers abroad, and ensuring that they or their supervisors have access to the relevant intelligence and name-check databases needed to screen alien visa applicants effectively.

*John J. Tkacik is Research Fellow for China, Taiwan, and Mongolia in the Asian Studies Center at The Heritage Foundation, he served in the Department of State for **TK** years and taught basic foreign service courses*

Mr. WELDON. Mr. Risch, you're now recognized for your testimony.

STATEMENT OF CARL C. RISCH, ATTORNEY

Mr. RISCH. Thank you, Mr. Chairman, for allowing me to come and testify on such an important issue. My name is Carl Risch and I'm a former Foreign Service officer of the U.S. Department of State having served from 1999 until 2002. From 2000 until 2002, I served as Vice Consul at the Consulate General in Amsterdam, the Netherlands, where I managed the Nonimmigrant Visa Unit for 15 months, including on September 11, 2001.

During my tenure as Unit Chief, I adjudicated approximately 25,000 visa applications. I resigned in May 2002 even though I received top evaluations and a challenging onward assignment. While I longed to return to my private law practice, I was also discouraged by the State Department's lack of dedication to the effective enforcement of the immigration laws of the United States. I took my job very seriously. The State Department did not.

Unlike other witnesses you've seen, I never served in a so-called visa mill. In fact, I experienced the best the State Department has to offer; a tour in a first class, Western European city and at a post with no staffing problems and a high visa issuance rate.

The fact that even I was terrified by State's incompetence and apathy toward law enforcement proves just how far this problem has progressed. I urge the Congress to support the transfer of the visa issuing function from State's Bureau of Consular Affairs to the new Department of Homeland Security, a department that will be committed to the rule of law and the national security of the United States.

During my tour in Amsterdam, I observed two primary institutional problems with the way the State administers visas. First, State routinely sacrifices the rule of law in order to further its diplomatic goals and ignores the impact this may have on national security. Second, State considers visa adjudication to be a right of passage of all Foreign Service officers, even the vast majority who are disinterested in consular service.

The State Department is by definition a diplomatic institution. Our officers at posts abroad work hard to improve America's image overseas. Adjudicating visa applications, however, has nothing to do with diplomacy. Immigration law like environmental regulations and the tax code is a complex, specialized set of rules which allows foreign nationals to apply for permission to travel to the United States. The proper administration of these laws requires strict adherence to the rule of law even when decisions are unpopular.

State's diplomatic function has proven too inconsistent with this law enforcement function for it to be trusted with this responsibility. The result has been a visa policy whereby the rule of law is repeatedly sacrificed to please host country officials and important contacts in reckless disregard of the impact on national security.

Just one example: While serving in Amsterdam, I interviewed a Tanzanian who wanted to visit the United States. He had only been in Holland for a few days as a visitor. He could not articulate a single reason for wanting to visit the United States or even give

a specific geographic destination for his trip. He had no evidence of employment or other ties to Tanzania or any other country.

I refused his application for failure to prove his qualifications for a visit to visit the United States. Less than an hour later, a high-ranking official called me into his office. Apparently, a local VIP had called to report that he was disappointed to hear that his neighbor's safari jeep driver from Tanzania had been denied a visa.

After the State official apologized to the neighbor for any inconvenience this man caused, I was then directed to issue the visa. The fact that the applicant did not qualify for a visa under any reasonable interpretation of the Immigration and Nationality Act did not seem to bother the official. The only thing that mattered was the diplomatic mission. Only an agency committed to law enforcement and not diplomacy should be trusted with enforcing the laws as intended by Congress.

State's record on visa worsens when one views its staffing policy. Simply put, State views visa adjudication as garbage work to be delegated to the lowest ranking, least experienced officers. Poorly trained, unenthusiastic officers are sent by the hundreds every year to be our first line of defense at visa issuing posts abroad.

Although virtually all FSOs must spend some time adjudicating visas, only a minority are actually interested in the work. The rest suffer through it with the knowledge that the rest of their careers will be spent elsewhere. It is no wonder that State cannot competently administer the visa function when it intentionally staffs its Consular sections with people who desperately do not want to be there.

Visa work should be done by people who are interested in a law enforcement career, although State behaves as if no one ever wants to spend their careers adjudicating visas abroad. This is simply not true. I found visa work to be an exciting and important job where I could use all my skills as an attorney to implement and enforce the laws of the United States. I know I'm not alone.

I urge the Congress to support the transfer of the visa issuing function to the new Department of Homeland Security where visa sections will likely be staffed with dedicated and enthusiastic law enforcement officers committed to the national security of the United States. Thank you.

[The prepared statement of Mr. Risch follows:]

OPENING STATEMENT OF CARL C. RISCH

HOUSE SUBCOMMITTEE ON CIVIL SERVICE, CENSUS, AND

AGENCY ORGANIZATION

JULY 15, 2002

KISSIMMEE, FLORIDA

My name is Carl C. Risch, and I am a former Foreign Service Officer with the U.S. Department of State having served from 1999 until 2002. From 2000 until 2002, I served as Vice Consul at the Consulate General in Amsterdam, the Netherlands, where I managed the Nonimmigrant Visa Unit for 15 months, including on September 11, 2001. During my tenure as Unit Chief, I adjudicated approximately 25,000 visa applications. I resigned in May 2002 even though I received top evaluations and a challenging onward assignment. While I longed to return to my private law practice, I was also discouraged by the State Department=s lack of dedication to the effective enforcement of the immigration laws of the United States. I took my job very seriously -- the State Department did not.

Unlike other witnesses you have seen, I never served in a so-called Avisa mill.@ In fact, I experienced the best State has to offer -- a tour in a first class, Western European city, and at a post with no staffing problems and a high visa issuance rate. The fact that even I was terrified by State=s incompetence and apathy towards law enforcement proves just how far this problem has progressed. I urge the Congress to support the transfer of the visa issuing function from State=s Bureau of Consular Affairs to the new Department of Homeland Security, a Department that will be committed to the rule of law and the national security of the United States.

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The State Department is by definition a diplomatic institution. Our officers at posts abroad work hard to improve America=s image overseas. Adjudicating visa applications, however, has nothing to do with diplomacy. Immigration law, like environmental regulations and the tax code, is a complex, specialized set of rules which allows foreign nationals to apply for permission to travel to the United States. The proper administration of these laws requires strict adherence to the rule of law, even when decisions are unpopular. State=s diplomatic function has proven too inconsistent with this law enforcement function for it to be trusted with this responsibility. The result has been a visa policy whereby the rule of law is

repeatedly sacrificed to please host country officials and important contacts in reckless disregard of the impact on national security.

For example, while serving in Amsterdam, I interviewed a Tanzanian who wanted to visit the U.S. He had only been in Holland for a few days as a visitor, he could not articulate a reason for wanting to visit the United States or even a specific geographic destination, and had no evidence of employment or other ties to Tanzania or any other country. I refused his application for failure to prove his qualifications. Less than an hour later, a high ranking official called me into his office. Apparently, a local VIP had called to report that he was disappointed to hear that his neighbor=s safari jeep driver had been denied a visa. After the State official apologized to the neighbor for any inconvenience, I was directed to issue the visa. The fact that the applicant did not qualify for a visa under any reasonable interpretation of the Immigration and Nationality Act did not seem to bother the official. The only thing that mattered was the diplomatic mission. Only an agency committed to law enforcement, and not diplomacy, should be trusted with enforcing the laws as intended by Congress.

State=s record on visas worsens when one views its staffing policy. Simply put, State views visa adjudication as Agarbage work@ to be delegated to the lowest ranking, least experienced officers. Poorly trained, unenthusiastic officers are sent by the hundreds every year to be our first line of defense at visa issuing posts abroad. Although virtually all FSOs must spend some time adjudicating visas, only a minority are actually interested in the work. The rest suffer through it with the knowledge that the rest of their careers will be spent elsewhere. It is no wonder that State cannot competently administer the visa function when it intentionally staffs its consular sections with people who desperately do not want to be there.

Visa work should be done by people who are interested in a law enforcement career. Although State behaves as if no one would ever want to spend their careers adjudicating visas abroad, this is simply not true. I found visa work to be an exciting and important job where I could use all my skills as an attorney to implement and enforce the laws of the United States. I know I am not alone. I urge the Congress to support the transfer of the visa issuing function to the new Department of Homeland Security, where visa sections will likely be staffed with dedicated and enthusiastic law enforcement officers committed to the national security of the United States.

BIOGRAPHIC DATA FOR CARL C. RISCH

Carl C. Risch is an attorney and former foreign service officer now living in Carlisle, Pennsylvania. Born March 10, 1970, in Bloomsburg, Pennsylvania, he was graduated from Bloomsburg University *summa cum laude* in 1992 and the Dickinson School of Law *magna cum laude* in 1995. He worked as a litigation associate at Kirkpatrick & Lockhart LLP from 1995 until 1997. In 1997, Mr. Risch joined his

present law firm, Martson Deardorff Williams & Otto in Carlisle, Pennsylvania, as an associate specializing in corporate law, business transactions, and land use and development. From 1998 until 1999, he served as an assistant adjunct professor of business law at Franklin & Marshall College in Lancaster, Pennsylvania, where he taught contracts and business organizations.

In 1999, Mr. Risch took a leave of absence from his law practice to accept an appointment to the United States Foreign Service. Following a year of training in Washington, D.C., Mr. Risch and his wife, Wendy, were assigned to the U.S. Consulate General in Amsterdam, the Netherlands. While in Holland, Mr. Risch managed the Nonimmigrant Visa Unit for 15 months, worked for 3 months at the U.S. Embassy in The Hague, and managed the American Citizen Services Unit in Amsterdam for 7 months. In May 2002, Mr. Risch resigned from federal service and rejoined his law firm in Carlisle.

Mr. WELDON. I want to thank both of you for your testimony. It was extremely valuable. I'd like you both to comment on this question: Under the administration's bill and various proposals supported by some Members of Congress, the Homeland Security Secretary is given responsibility for overseeing the visa function but he must exercise it through the Secretary of State. You were spelling that out very, very, clearly.

For example, the Secretary of Homeland Security cannot even issue regulations for visas on his own. The Secretary of State must issue the regulations for him as I understand the interpretation of the President's proposal. The Secretary of State will have direct operational control over the work force responsible for implementing those regulations.

I have several concerns about this fragmented approach. First, from a pure managerial perspective, it makes no sense to give responsibility for any function to one person and then in the same breath tell him that he is solely dependent on a co-equal cabinet officer whom—and he can't be fired. Discipline or reward will actually be carried out by the other function. I'm also concerned that leaving operational control of the work force with the Secretary of State undercuts the Secretary of Homeland Security's authority.

Put simply, our Foreign Service officers working in the Visa Office grow to be more responsive to the person who can fire, discipline or reward them versus someone who can't. Finally, it also seems to me that this fragmented approach will mean that no one can really be held accountable.

Any comment on this?

Mr. TKACIK. Well, I'm just looking at the White House's analysis of the Homeland Security Act of 2002 which is available on the White House red page and Section 403, all it says is that the section transfers to the Secretary of Homeland Security control over the issuance and denial of visas to enter the United States while preserving the traditional authority to deny visas to aliens based on foreign policy interests. That's the Secretary of State's traditional authority.

I don't see where the administration's bill wants everything to be done by the Secretary of State in the name of the Secretary of Homeland Security. The section expressly authorizes the Secretary of Homeland Security to delegate his authority under the section. It doesn't say what authority or even all authority or any authority.

Mr. WELDON. If I can interrupt you for a second. I think you touched on the operative language in your opening statement, Mr. Tkacik. You said exclusive authority through the Secretary of State is in the language and that's on page 16, I believe, of the act as proposed by the President. So as I see it, you know, this would be like me holding this hearing and all of these people who worked for me not working for me. I would tell them I want to have a hearing, I want to have it in Kissimmee, but if they missed their flights, they don't invite the right witnesses, I have no control over them. I can't fire them or I can't discipline them or reprimand them.

Mr. TKACIK. Well, the way I interpret that is that it says exclusive authority to the Secretary of State. I interpret that as being

the Secretary of Homeland Security can issue the regulations but they go through the Secretary of State to the visa officers on the line. And as I read the subcommittee's markup, that makes much more—it's consistent and I think it makes sense.

Mr. WELDON. Well, I wanted to get at that issue. The original amendment did not have that language and we had a debate and I was very engaged in that debate. The critical issue—the language that they originally proposed was the language that came through the judiciary committee and through the Committee on International Relations which essentially put personnel in these offices but gave them no teeth whatsoever.

And we reached a middle ground in this language in that we put some language in there that gives the Secretary of Homeland Security the ability to deny a visa. And to me, that's the only way—if you want to move—I would like to move the entire function over for the very reasons that you expressed, Mr. Risch. If we cannot succeed in doing that as we move this legislation through the process and ultimately get it signed into law, minimally we need to give the Secretary of Homeland Security the ability to deny a visa. Otherwise, all of the personnel that DHS puts in the visa offices, they will be toothless. And can you comment on that at all? Do you agree with that?

Mr. RISCH. I agree 100 percent. It doesn't make any sense to keep any of it in the State unless, like you said, the Department of Homeland Security would have the ability to specify or to control, for lack of a better term, the visa issuance made by the Department of State. But I would see that as a progress, see that it's working so that the State Department has the entire facility. Each part of the embassy works part of the State Department, but also the Department of Defense has an office, DEA has an office depending on what country you're in. I just perceive the Visa Office to be Department of Homeland Security office, working completely independently from the Secretary of State or at least control the visa issuance function in some way.

Mr. WELDON. You know, that's a good point because one of the issues that the State Department keeps raising is Consular Affairs does so many other things other than visa issuance. For example, if an American citizen has a legal or a health problem or should actually pass away overseas, Consular Affairs is very engaged in those kind of things. So would it be possible to leave Consular Affairs with State but place the visa issuance office within Homeland Security?

Mr. RISCH. Absolutely, and I believe that's the way Consular Affairs runs now is we settle functions very distinctly. In fact, my supervisors in Amsterdam, many never worked in the visa office. In fact, my direct supervisor barely ruled on any visas at all because he spent his entire career working in references and services. So the State Department and Bureau of Consular Affairs in fact does separate these things out and I would say that American citizen services, passports overseas, things of that nature should remain with the State Department, but certainly not visa issuance.

Mr. WELDON. The language that ultimately passed the committee was a mere compromise, but I was not happy with it. I voted against it. I have a related concern about that language in that it's

definitely an improvement, but the visa issuance officers are still going to be employed by the Secretary of State. Therefore, if they do not put security first, there will be no way to discipline them whatsoever in this compromise proposal. So I am very concerned that if you don't actually put the people who are issuing the visas under the Department of Homeland Security, we are going to continue to have a problem. Do you agree with that?

Mr. TKACIK. Well, it doesn't necessarily have to be a problem. I think that what you're looking at in a systems analysis sense is you're looking at the issuance of visas to people that shouldn't have them, especially to people who fit a terrorist profile. The way to exert the Secretary of Homeland Security's authority and guidance is to interpose what you have here and again, as I say, in Section B, I guess it's 104—it doesn't say here. Anyway, it basically says it gives the Secretary of Homeland Security the following function: To review any and all such applications, visa applications, prior to their adjudication. This has to mean that you have to have somebody at the post who goes through every visa application and is sort of a watchdog, a monitor.

I served at the American Consulate General in Hong Kong for 3 years. At that time in 1985—1983 to 1986, it was the third largest visa issuing post in the world. I personally as the Chief of the Visa Section went through every nonimmigrant visa application that was issued at the end of each day. You'd get anywhere from 500 to 2,000 visa applications a day, both issuances and refusals. And from that, I could monitor which officers were lax, which officers were too strict, which officers were not paying attention to the documentation, where there was a lack of complete consideration of all the information was even on the application itself.

Now, that was primarily a management tool. It was sort of a mid-course correction. It was not designed really to intercede and intervene in the visa process. However, it could be. It could be extended. There would be a day's wait for a visa and somebody would go through a little bit more carefully but have the authority to deny the visa; say no, no, this visa should not have been issued or this visa has to go back. We have to have this person come back for another interview.

In Hong Kong, we also had a five-person visa fraud unit, staffed by a professional Consular officer, FSO–3 rank which is like 05 or 04 rank in the military, rank without a major in the military and four local national visa fraud investigators. In many cases, if I had a question, I could go right down the hall, give it to them and say can you call this telephone number? Can you go tomorrow down to the office and check where this office is? This looks funny to me.

In those days, I will admit this is 20 years ago, we were not looking at terrorism. We were looking for a lot of other things that I can't perhaps go into right now, but I was very satisfied at the time that the visa officers, the Consular officers, especially the fraud officers, had internalized the mission that we'd set them out to do. The major mission was to prevent visa fraud. The second mission involved other things that perhaps we could talk about later if you're interested in an informal setting.

I think it's workable. Foreign Service officers are brought into the State Department through a very rigorous examination system.

You're getting the best and the brightest. And let me also sort of correct for the record, at least, to the best of my knowledge, their visa training in the State Department's Bureau of Foreign Service Institute in their so-called Conja and Rosalyn course, their training does involve 2 weeks of visa training including at least one full day where they're actually pretending to be visa officers and/or pretending to be visa applicants trying to circumvent the system.

That's just a small part of it. In addition to that, all of the visa officers go through a 2-day session with the visa fraud prevention unit of the Vice Office and, again, I think they're well-indoctrinated in sort of the mission of preventing visa fraud. I don't see that it's an attitudinal mission. I do resent that people say, oh, these people don't want to be there and they really don't like it. I think if you tell a Foreign Service officer this is his job, he will do it. He just needs the right guidance.

Now, at the very end, let me say that I did listen to Secretary Powell's testimony in front of Chairman Berger, I believe it was, on Thursday, Wednesday or Thursday, and he was asked—Secretary Powell and I'm sure you'll correct me if the record is a little bit fuzzy in my mind—but he was asked what would you expect the Secretary of Homeland Security to tell those officers overseas and you go tell them? And Secretary Powell I think was very candid by saying, well, if it's a guidance thing, it's a matter of priorities and he would expect the Secretary of Homeland Security to give the kind of homeland security-oriented guidance that perhaps the State Department wasn't giving them. I think that's a very candid, frank and accurate look at it.

It's for this reason that I think that Homeland Security has to be integrally involved in the visa process, but it doesn't mean that you have to throw the baby out with the bath water and that you have to throw a very talented, bright, intelligent and with the proper guidance, very well motivated Consular Affairs officer with it.

Sorry about that. I rambling on. I apologize.

Mr. WELDON. Well, I don't doubt that many of the Consular officers working in the visa section, particularly now today after September 11th are capable and concerned about protecting homeland security. The issue that I'm concerned about is I believe the war on terrorism has the potential to go on for decades. I have a fear at this time that this could be very much like a cold war that goes on for decades and that our children and maybe our grandchildren will be engaged in this battle in the years ahead. And so that the decisions that we're making now have very, very profound implications for our ability to function in that arena.

The decisions that were made by the Kennedy administration after World War II were extremely valuable to the establishment of the National Security Council. The consolidating of all of the defense functions under the Secretary of Defense were very, very valuable as we moved into the cold war. We're talking about moving INS into Homeland Security. We're talking about moving the Coast Guard. We're talking about moving animal and plant food inspection service, all these different agencies, 160,000 and personnel, but as I see it, this is sort of a glaring omission on the part of the administration.

Now, what we've been engaging in in the Congress is all the hair-splitting about what should come over and why it should stay outside. Well, when you step back and compare that with all the other things you really know, there's an inherent lack of knowledge. And I think Mr. Risch's recommendation that if you're not going to move all of Consular Affairs over, and I agree, a lot of the stuff Consular officers do is not homeland security-related issues, but you can say ditto about the State Department—or the Coast Guard.

Mr. TKACIK. Customs.

Mr. WELDON. Customs. I was frankly shocked that the President would bring Customs over. But he was so dedicated that he was doing this. I'm interested in your recommendation. If you're not going to move Consular Affairs, is it feasible to move the visa issuance office so that the personnel ultimately signing off on these visas every day work for the Secretary of Homeland Security? Because I am very upset about this issue of accountability. The Lantos/Ros-Lehtinen language was a definite improvement and is a definite step in the right direction. It gives the authority to deny a visa to the Secretary of Homeland Security.

Let me tell you one of the reasons why I'm very upset about that. I got a letter here from Under Secretary or Deputy Secretary Richard Armitage. The Justice Department created a Foreign Terrorist Tracking Task Force. You've probably seen this letter and they recommended a bunch of people be denied visas. So the Attorney General sets up this task force at the direction of the President and they identified a bunch of people that shouldn't be allowed in, but they let them in anyway. And they cite all these laws and you got to change the laws supposedly, but what he fails to mention is that the decision is not appealable in a U.S. court. Am I correct in saying that? You can deny a visa and the people who have their visas denied have no course of action so whatever. So to me, this letter as rationalization is terrible and it speaks loud and clear that the Department of State is not capable because of their mission model and their responsibility of properly protecting us from the terrorist threat as our critical parameter.

Did you want to comment on that at all or add to that?

Mr. RISCH. I agree. When I try to explain this to people, I try to say the visa function is sort of like the stepchild that nobody wants but is the beneficiary of a large trust. No one wants to spend time with the child. Maybe find him some clothes, some food or something like that, but because of his check that comes every month, you got to keep him around and that's what it seems like it is with visas.

The State Department isn't interested in doing it responsibly, doing what needs to be done to enforce the laws of the United States. It manipulates the visa function for its own diplomatic goals which has a point, but the fact that it generates so much revenue for the State Department seems to be the reason why they're so interested in holding onto it. The way it treats the function, it's just viewed as something that must be done. You'd think they would be anxious to get rid of this function, but curiously they're not. So it seems it comes down to money.

Mr. TKACIK. I'm not sure how much money it means.

Mr. WELDON. You've got $500 million a year.

Mr. TKACIK. I don't think any of it goes to the State Department.

Mr. WELDON. It all goes to the State Department and it generates over $600 million of revenue. It's all contained within the State Department.

Mr. TKACIK. But that's part of the State Department's budget. It goes back to the general fund of the Treasury and then it's reprogrammed.

Mr. WELDON. I don't know exactly how the cash is handled, but unlike some fees that are collected that go into general revenue and disappear, these funds are contained within the State's operating budget. And I don't know if it just doesn't pass through the general Treasury and comes back in, but it is a huge issue for the State Department. If the visa function is moved out of the State Department, then any State resources that are used for visa processing will have to be compensated for in their budgeting.

But, you know, that's not the big issue here and we can take care of the money issues. That's what the Congress's responsibility is. I can understand State's concern about the money. But we can fix that. We've got the budgeting under control.

Mr. TKACIK. The State Department—I remember Secretary of State Schultz saying the State Department doesn't have a dime or a dollar that's not given to it by the Congress. I dare say if it does stay in there, that it's the Congress that lets it.

Mr. WELDON. Oh, yeah, of course.

Mr. TKACIK. But I will agree that visas, especially—particularly now that the visas are not a question of rights. You don't have a right to a U.S. nonimmigrant visa with the possible exception of a foreign diplomat going to the U.N. This is to say U.S. Federal Courts have consistently sustained the doctrine of Consular reviewability. When a Consular officer denies a visa application, there is no judicial remedy. It's interesting to me that Deputy Secretary Armitage would say, "it is not enough for another government agency to recommend that a visa be denied because that agency objects to the applicant's entry."

My reading of the law in this case is if you have any reason to believe under Section 212(a)(3)(c), that an alien is a threat or a problem, the Consular officer can turn it down and there's no judicial review for that. It does disturb me that the State Department despite a request from another agency regarding—I take it in this case, it would be a terrorist issue—would still insist on issuing a visa.

I think that does make your case very well that responsibility and authority for issuing and denying visas must be given to the Department of Homeland Security and that all such visa applications should be reviewed prior to their adjudications. To me, that language requires that the Department of Homeland Security have a presence overseas and that the Department of Homeland Security have control of the Visa Office which is the visa policy function.

Mr. WELDON. Actually, my staff just produced me a section of the U.S. Code and it looks like 8 U.S. Code, Section 1182. A Consular officer or the Attorney General knows or has reasonable facts he

believes is engaged in or is likely to engage after entry into any terrorist activity, they can deny.

Mr. TKACIK. Yes.

Mr. WELDON. So I thought Secretary Armitage's letter to me was a smoking gun showing that the State Department should have this authority taken away from it and it needs to be moved to the Department of Homeland Security when an official at a high level like him would send a letter saying even though you, Mr. Attorney General, have designated these people as potential terrorists, we're still going to let them in. If this doesn't make the case, I don't know what does.

So I want to thank both of our witnesses for your testimony. Is there anything you want to add for the record before we adjourn the hearing?

Mr. RISCH. I want to add two things, some factual issues. The first is about the training that was partly clarified. Consular officers when I worked in the process and I believe it's unchanged go through 5 weeks of training. Two weeks are dedicated to nonimmigrant visas, which is what we're talking about today and one full day is spent interviewing. I think that's where the belief is that only half a day or a day is spent on interviewing techniques, but the rest of it is spent learning the law concerning visa adjudication.

We have immigrant visas, green cards moving permanent to America and then 3 weeks on American citizens passports, Americans dying overseas, that sort of thing. Another issue was the preservation of visa records. Visa issuance records are not destroyed after 1 year. Sometimes the paper documents are shredded. After September 11th, that happened at all posts. But currently, all visas back 7 or 8 years are preserved chronologically and we now have access to them so one can go back to see who and how that visa was issued.

Mr. TKACIK. I've been out of it for a while. The two things that I would want to raise are, one, that the Consular Affairs function in consuls from the fifties through the sixties did have a very rigid security mission. In those days, it was a cold war mission and I do remember my first post in 1971 to 1973.

Mr. WELDON. You talking about the cold war.

Mr. TKACIK. Cold war. I'm sorry. One of our major tasks was the monitoring of the members of the Communist party and potential espionage. The consuls historically have had a security issue and I think they historically could have another one in the future. And then the second point I would make, at the risk of sounding self-contradictory, I'm trying to think of what Consular functions do not relate to homeland security. Passport function, I think that relates to homeland security. Protection of Americans overseas, especially pulling together the American citizen warning system overseas, I think that has a fairly clear homeland security component. Judicial assistance, interrogatories, depositions, I think you could say that's part of it.

So all things being equal, I don't see that you couldn't take the entire Consular service and put it in Homeland Security. My point is I don't see that it's workable in the present situation, but at the very least, you need the visa office in Homeland Security.

Mr. WELDON. When both of you went through your training, were you told that the visa issuance process was our first line of defense? I realize when you went through many years ago, there was a cold war. You went through right before that. Was it presented in the context of keeping bad guys out of the country?

Mr. RISCH. No. It was presented more as we were keeping illegal immigrants out of the country. That was the thrust of all of our training. The bad guy/terrorist part of the training didn't really exist. It wasn't taken out of the hands of consul officers even after September 11th where our name-check system would reveal to us whether or not someone had a name or birthday that was suspect. And at that point they would meet with them and turn the information over to the State Department and ask how to proceed. We were never trained at all.

Mr. WELDON. So you were there after September 11th?

Mr. RISCH. Yes, sir.

Mr. WELDON. And you'd get an applicant and there would be a name-check and the computer said it was suspect, you would never be provided any information about the details of that; you would just forward it on to your supervisor?

Mr. RISCH. I would then draft a telegram and ask for more information about that individual.

Mr. WELDON. Did they provide you with information?

Mr. RISCH. Sometimes they did if they weren't classified.

Mr. WELDON. You just made another case why visa issuance should be with the Department of Homeland Security. I think that officers on the front line should have access to all of that information, including classified information, to help—to better enable them to make a denial for a suspicious person.

I want to thank both of you. It's been very, very informative to have this discussion. 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. Witnesses may also submit written testimony during this period.

The panel is excused with the committee's great thanks and appreciation for your time. The hearing is now adjourned.

[Whereupon, at 11:15 a.m., the subcommittee was adjourned.]

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