

FINE LINE OR HARD LINE? THE TENSION BETWEEN SECURITY AND PUBLIC  
DIPLOMACY IN VISA POLICY BEFORE AND AFTER 9/11

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# FINE LINE OR HARD LINE? THE TENSION BETWEEN SECURITY AND PUBLIC DIPLOMACY IN VISA POLICY BEFORE AND AFTER 9/11

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## ABSTRACT

U.S. visa policy—the challenge of facilitating legitimate travel to the United States while keeping out travelers with harmful intent, and at the same time advancing American interests and policy priorities—is a policy problem without an easy solution, presenting both national security imperatives and public diplomacy opportunities. On the security front, the visa process needs to accurately screen out would-be terrorists and criminals as well as travelers who intend to stay permanently. On the public diplomacy front, the visa process provides the first—and in the case of visa denials, perhaps the only—time many foreigners come into contact with the U.S. government. It must therefore take advantage of this brief window to encourage a favorable and fair impression of the United States, even in cases of visa denials.

Since 9/11, as years have passed without another attack, and the United States has suffered the opportunity costs in lost tourism revenue, economic gain, and social capital of a more restrictive visa policy, the tension between security and public diplomacy as competing priorities in visa policy has grown more acute—but more muddled. This thesis seeks to understand the current state of this tension with the goal of making recommendations to manage it. First, it places this tension in historical context with an overview of security and public diplomacy issues in the Department of State’s Bureau of

Consular Affairs. Second, after providing a baseline of the visa policies in place before 9/11, it examines the changes to those policies after the attack, paying particular attention to the ultimately unsuccessful proposal to take visa adjudications out of the Department of State entirely. Next, it looks at the impact of the procedural changes, asking whether they were appropriate and worthwhile. It concludes that post-9/11 visa policy changes made sense in reaction to an unprecedented attack, but that a more balanced, risk management-focused, value-oriented strategy will be ultimately more successful in achieving *both* security and public diplomacy objectives. It recommends that policymakers focus on technical solutions in visa procedures, keep immigration policy and counterterrorism policy distinct, avoid distracting discussions about uprooting the Bureau of Consular Affairs from the Department of State, treat all stages of the visa process as public diplomacy opportunities, and stay open to innovation.

## ACKNOWLEDGEMENTS

I was inspired to write this thesis because it involves a question I confront on a daily basis as a Foreign Service officer serving a consular tour in Mexico: how to promote both national security and a public diplomacy goals with each visa adjudication. Answering this question has been a long, draw-out process. It began soon after I joined the Foreign Service and continued through nine months of training and learning Spanish, my move to Monterrey, Mexico, and eighteen months of my first assignment. Researching and writing this thesis has provided many opportunities for reflection (as well as time management), and I would first like to thank Georgetown's School of Continuing Studies and Anne Ridder for the option to continue working after I departed Washington, DC. I have benefitted greatly from my participation in the program.

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## INTRODUCTION

A *New Yorker* blogger writing in July 2012, at the height of debate over the Obama administration's health care program, referenced the social scientists Horst Rittel and Melvin Webber, who in 1973 defined what they termed "wicked problems." Wicked problems, the *New Yorker* writer paraphrased, are "messy, ill-defined, more complex than we fully grasp, and open to multiple interpretations based on one's point of view." Several domestic issues the blogger cited qualify: poverty, obesity, the location of a new highway, or—the topic du jour—how people should receive health care. Solutions to these problems, the blogger noted, are "only better or worse," with unavoidable trade-offs and unanticipated consequences, positive or negative. There are limited opportunities for trial and error but also the need for continual monitoring and adjustment. "No solution to a wicked problem is ever permanent or wholly satisfying," the blogger concluded, "which leaves every solution open to easy polemical attack."<sup>1</sup>

Visa policy, and more broadly the challenge of keeping "bad" people out, letting "good" people in, and trying to advance American interests by ensuring that even people who don't enter the United States (or their governments) don't undermine U.S. policy priorities, is one such problem. On the security front, the visa process is one step in a narrowing pyramid of security procedures; ideally, only qualified tourists, students, workers, and immigrants reach the top and enter the United States. In 2001, 7,588,778 people were issued non-immigrant visas to travel to the United States. Another 406,080

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<sup>1</sup> Atul Gawande, "Something Wicked This Way Comes," *New Yorker*, June 28, 2012, <http://www.newyorker.com/online/blogs/comment/2012/06/something-wicked-this-way-comes.html#ixzz1zFJmssIE> (accessed October 1, 2013).

received visas to immigrate.<sup>2</sup> Citizens of Visa Waiver Program countries, such as many in Western Europe, did not even need a visa to travel.<sup>3</sup> The overwhelming majority of these people either returned home or began new lives in the United States as immigrants without incident. But 9/11 demonstrated the terrible harm a few terrorists can do to individual lives, the U.S. government, and the global economy. In the months leading up to September 11, 2001, nineteen hijackers applied for twenty-three visas and obtained twenty-two.<sup>4</sup> Nineteen out of 7,588,778 is not very many, but they accomplished the worst terrorist attack on U.S. soil in history. The visa process therefore needs to accurately screen out would-be terrorists and criminals as well as travelers who intend to stay permanently.

But the visa process also presents public diplomacy opportunities. According to the Department of State's Under Secretary for Public Diplomacy and Public Affairs, the mission of U.S. public diplomacy is to "support U.S. foreign policy goals and objectives, advance national interests, and enhance national security by informing and influencing foreign publics and by expanding and strengthening the relationship between the people and Government of the United States and citizens of the rest of the world."<sup>5</sup> For many

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<sup>2</sup> U.S. Department of State, "Summary," *Report of the Visa Office 2001*, [http://www.travel.state.gov/visa/statistics/statistics\\_1476.html](http://www.travel.state.gov/visa/statistics/statistics_1476.html) (accessed October 3, 2013).

<sup>3</sup> See page twenty-two for a discussion of the Visa Waiver Program.

<sup>4</sup> Five more would-be conspirators were denied visas, and two others obtained visas but did not participate in the attack. National Commission on Terrorist Attacks Upon the United States, *9/11 and Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks Upon the United States*, by Thomas R. Eldridge, Susan Ginsburg, Walter T. Hempel II, Janice L. Kephart, and Kelly Moore, (Franklin, TN: Hillsboro Press, 2004), 2.

<sup>5</sup> U.S. Department of State, "Under Secretary for Public Diplomacy and Public Affairs," <http://www.state.gov/r/> (accessed October 3, 2013).

foreigners, a visa interview with a consular officer is the beginning of this relationship—the first time they come into contact with the U.S. government. And the opportunity to make an impression is brief: In many countries, due to the volume of applicants relative to the number of adjudicating consular officers, officers make decisions in two or three minutes, while still endeavoring to provide good customer service and encourage a favorable and fair impression of the United States, even in cases of visa denials.

After 9/11, achieving security at the expense of U.S. prosperity, foreign policy priorities, or public diplomacy goals was not seen as a wicked problem: policymakers focused on preventing another attack, whatever the cost. Though some officials raised concerns, the prevailing voices claimed no sacrifice for security was too great. Some would argue those voices were right: though al Qaeda has attempted subsequent attacks, such as Umar Farouk Abdulmutallab's attempt to detonate a bomb in his underwear on a flight to Detroit in December 2009, and inspired successful home-grown attacks, such as Nidal Hassan's shootings at Ford Hood in November 2009, an attack like 9/11 has not reoccurred. (U.S. deaths from counterterrorism operations are 2,261 and 4,474 for Afghanistan and Iraq, respectively, however.)<sup>6</sup>

But over the past ten years, the opportunity cost of lost tourism revenue, social capital, economic gain, and even scientific advancements made by foreign students who chose to study elsewhere after 9/11 has been real. As these costs have emerged and years have passed without another 9/11, the tension between security and public diplomacy in visa policy has grown more acute but more muddled. In policymakers' risk calculations,

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<sup>6</sup> *Washington Post*, "Faces of the Fallen," <http://apps.washingtonpost.com/national/fallen/> (accessed October 3, 2013).

the simmering risk of economic decline and foreign policy costs can contend with low probability, high-impact events like terrorist attacks on a more equal footing. But as with all wicked problems, balancing these risks involves solutions that neither “permanent” nor “wholly satisfying.”

This thesis will seek to understand the current state of the tension between security and public diplomacy as competing priorities in visa policy, with the goal of making recommendations on how policymakers should manage it. It will first place this tension in historical context with an overview of security and public diplomacy issues in the Department of State’s Bureau of Consular Affairs. It will then examine visa policies in place before 9/11 and the changes to those policies after the attack, paying particular attention to the ultimately unsuccessful proposal to take visa adjudications out of the Department of State entirely. It will look at the impact of these procedural changes on both security and public diplomacy to ask whether the post-9/11 changes were appropriate—and worthwhile. It finds that post-9/11 visa policy changes made sense in reaction to an unprecedented attack, but that a more balanced, risk management-focused, value-oriented strategy will be ultimately more successful in achieving *both* security and public diplomacy objectives, rather than exclusively the former. Focusing on technical solutions, keeping immigration policy and counterterrorism policy distinct, avoiding distracting discussions about uprooting Consular Affairs, treating all stages of the visa process as public diplomacy opportunities, and staying open to innovation are all important aspects of that strategy.

## CHAPTER ONE

### A BRIEF HISTORY OF CONSULAR AFFAIRS

According to the Department of State's Bureau of Consular Affairs, its mission is "to protect the lives and interests of American citizens abroad and to strengthen the security of United States borders through the vigilant adjudication of visas and passports...[contributing] significantly to the USG goal of promoting international exchange and understanding."<sup>1</sup> In other words, both security and public diplomacy are explicitly present in the mission. In practice, however, they sometimes conflict. Policies to promote public diplomacy goals sometimes increase security risks in visa and passport processes, and security measures sometimes have a negative impact on public diplomacy efforts. But this tension between security and public diplomacy in consular affairs is a relatively recent phenomenon, largely because for much of the history of the U.S. Foreign Service, both security (at least in a counterterrorism context) and public diplomacy have been somewhat tangential to the core of consular work: enforcing immigration law related to visas and serving Americans abroad. Though this core remains the same, the context of consular work has changed greatly since 9/11 altered the concept of border security to encompass not only illegal immigration but terrorism as well. This section will describe how the adaptation of the Bureau of Consular Affairs and the Foreign Service to this changing context has been constrained by the history of the State Department, the perceptions of the broader public and the Department's own officers, and the nature of consular work.

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<sup>1</sup> U.S. Department of State, "About Us," Bureau of Consular Affairs, <http://travel.state.gov/about/> (accessed October 7, 2013).

## Divided Roots

U.S. diplomacy is older than the federal government, and the U.S. Constitution included provisions for naming ambassadors, ministers, and consuls. Harry Kopp and Charles Gillespie's *Career Diplomacy: Life and Work in the U.S. Foreign Service* provides a comprehensive history, explaining how this history has shaped the current Foreign Service.<sup>2</sup> Until the passage of the Rogers Act in 1924, the Foreign Service was divided into diplomats and consuls. Diplomats were charged with state-to-state relations, usually served only one assignment, and received only token pay. Consuls were generally businessmen living in foreign countries who dealt with commercial matters and the interests of U.S. citizens abroad. Consuls were more numerous and less socially privileged, and although unpaid until 1856 they could keep the fees they charged. Under this division the pompous ambassador and the spoils-system consul became popular stereotypes. Public contempt provided the impetus for change, and civil service reforms at the end of the nineteenth century served to curb the spoils system and professionalize the services.<sup>3</sup>

At the same time, American nativism, or “intense opposition to an internal minority on the grounds of its foreign (i.e., ‘un-American’) connections” joined with changing demographic and cultural forces to produce immigration restrictions during this period, as John Higham’s broad account *Strangers in the Land: Patterns of American*

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<sup>2</sup> Harry W. Kopp and Charles A. Gillespie, *Career Diplomacy: Life and Work in the U.S. Foreign Service* (Washington, DC: Georgetown University Press, 2011), 10.

<sup>3</sup> *Ibid.*, 11-14.

*Nativism, 1860-1925* describes.<sup>4</sup> Travel documents became a component of consular affairs when Congress charged consular officers with adjudicating visas for some foreigners in 1884 and all foreigners in 1917.<sup>5</sup> In other words, there has been a national security element of consular work since the inception of the visa process, but in the context of keeping out immigrants deemed undesirable. Historical divisions in the bureaucracy served to erect a divide between the “real diplomacy” of political and economic work and the more mundane task of dealing with the general populace, both visa applicants and American citizens.

### **Popular Perceptions**

The Bureau of Consular Affairs’ concern with the general populace has made it more susceptible than other diplomatic work to the perception that consular officers are soulless bureaucrats keeping loved ones apart due to spite or incompetence. Consular officers, more than Foreign Service officers in general, have occupied a maligned role in popular culture. Ambassador Martin Herz outlines some of these characterizations in his introduction to the 1983 compilation *The Consular Dimension of Diplomacy*: In Puccini’s *Madama Butterfly*, the American consul in Japan is a party to Pinkerton’s deception of Butterfly. The titular *Honorary Consul* in Graham Greene’s novel is “well-intentioned but lazy and often drunk.” The American officials in the 1982 film *Missing* cover up an

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<sup>4</sup> John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925*, 2002 ed. (New Brunswick, New Jersey: Rutgers University Press, 2002), 4, 300.

<sup>5</sup> U.S. Department of State, “The Visa Function,” Report of the Visa Office 2001, [http://www.travel.state.gov/visa/statistics/statistics\\_1476.html](http://www.travel.state.gov/visa/statistics/statistics_1476.html), (accessed May 1, 2013).

American journalist's disappearance in Chile in 1973.<sup>6</sup> And in a section of a 1950 opera by Gian-Carlo Menotti excerpted in Herz's compilation, the consul refuses to help a woman harassed by the secret police because she cannot get the papers the consulate demands.<sup>7</sup>

More broadly, as part of the U.S. Foreign Service, consular officers also fall victim to the "American suspicion of foreigners and, by extension, of those who deal with them." Kopp and Gillespie describe the attacks on the Foreign Service during the McCarthy era, and the absence of a defense, as particularly significant in shaping the current Foreign Service culture. State was vulnerable to the anticommunist witch hunt, they note, because the Department did harbor some actual witches. But in the case of the "China hands," a group of officers who had recommended the United States reduce its support for the Nationalist government and develop a relationship with the Communists to prevent the Communists from seeking support in Moscow, the Department initially praised their work and then chose not to defend them when they were attacked.<sup>8</sup> Officers received the message that their jobs depended on in-the-box thinking and political caution, and the public received the message that the officers were so disloyal they were indefensible by their own department.

Edward Alden, in *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11*, traces this strain of belief from the McCarthy era through its

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<sup>6</sup> Martin F. Herz, "Introduction," in *The Consular Dimension of Diplomacy: A Symposium*, ed. Martin Herz (1983; repr., Lanham, MD: University Press of America, 1986), 1-2.

<sup>7</sup> Gian-Carlo Menotti, "The Consul as Heartless Bureaucrat," in Herz, *Consular Dimension*, 26-30.

<sup>8</sup> Kopp and Gillespie, *Career Diplomacy*, 10, 15-16.

dormancy in the 1980s to its resurface in the mid-1990s alongside a conservative resurgence. He cites Ann Coulter's revisionist history of the McCarthy era, titled *Treason: Liberal Treachery from the Cold War to the War on Terrorism*, which suggests "if anything, McCarthy had been too sympathetic to the State Department."<sup>9</sup> After 9/11, in criticism that will be discussed in more detail in the next section, Joel Mowbray's *Dangerous Diplomacy: How the State Department Threatens America's Security*, described the Department of State as governed by "three fundamental impulses: stability, the desire to be liked by foreign leaders, even despots and tyrants, and agreements as ends in themselves."<sup>10</sup> Others have suggested that career diplomats are not necessarily un-American, but are disloyal because they don't follow the policy wishes of the administration in power. Republican presidential candidate Rick Perry drew the ire of Foreign Service officers in November 2011 when he questioned the motivation of career diplomats. "I'm not sure our State Department serves us well," he said. "I'm talking about the career diplomats and the Secretary of State who, all too often, may not be making decisions, or giving advice to the administration that's in this country's best interest."<sup>11</sup> Mowbray echoes this sentiment, calling State "the fourth branch of government, in part because of its self-perpetuation, but also because it operates largely

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<sup>9</sup> Edward Alden, *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11* (New York: Harper Perennial, 2008), 172.

<sup>10</sup> Joel Mowbray, *Dangerous Diplomacy: How the State Department Threatens America's Security* (Washington, DC: Regnery Publishing, Inc., 2003), 91.

<sup>11</sup> Ed O'Keefe, "Rick Perry Comments Irk Foreign Service Officers," Federal Eye, *The Washington Post*, November 10, 2011, [http://www.washingtonpost.com/blogs/federal-eye/post/rick-perry-comments-irk-foreign-service-officers/2011/11/10/gIQAOGNR9M\\_blog.html](http://www.washingtonpost.com/blogs/federal-eye/post/rick-perry-comments-irk-foreign-service-officers/2011/11/10/gIQAOGNR9M_blog.html) (accessed October 2013).

independently of the other branches.”<sup>12</sup> This suspicion of disloyalty and the lack of a domestic constituency have made the State Department an easy target for executive and congressional budget-cutters. The Iranian hostage crisis from 1979 to 1981, and more recently, the deaths of U.S. Ambassador Christopher Stevens in Libya in 2012 and of Foreign Service officer Anne Smedinghoff in Afghanistan in 2013, have highlighted the sacrifices of individual officers overseas, but the Service persists as an institution, “like the U.S. Congress,” that “rarely [enjoys] the esteem as an institution that its members have enjoyed as individuals.”<sup>13</sup>

The Department of State has been particularly sensitive about the presence of political appointees in its upper ranks, and the Bureau of Consular Affairs is no exception. Currently, about a third of ambassadorships and senior executive positions go to political appointees.<sup>14</sup> While some political appointees bring a direct line to the White House, a willingness to challenge bureaucracy, and management experience, others are inadequately prepared to inhabit the Department of State or the world of diplomacy. One example is particularly relevant in Consular Affairs. In 1998, President George H.W. Bush named Elizabeth Tamposi as assistant secretary for consular affairs. Just thirty-four years old, Tamposi came from a politically powerful New Hampshire family that supported Republican governor John Sununu, who became Bush’s chief of staff, and helped finance Bush’s 1988 primary victory in the state. Tamposi had lost the race for a

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<sup>12</sup> Mowbray, *Dangerous Diplomacy*, 90.

<sup>13</sup> Kopp and Gillespie, *Career Diplomacy*, 10.

<sup>14</sup> Nicholas Kralev, *America’s Other Army: The U.S. Foreign Service and 21<sup>st</sup> Century Diplomacy* (n.p.: CreateSpace Independent Publishing Platform, 2012), 41.

congressional seat from New Hampshire, and the consular affairs job was “her consolation prize.” Consular staff reportedly found her “almost intolerable,” but her tenure paved the way for the ascent of Ambassador Mary A. Ryan, head of the Bureau of Consular Affairs before and after 9/11. Ryan worked briefly for Tamposi before being tapped to direct the task force trying to gather information about the three thousand Americans trapped in Kuwait or Iraq during the first Gulf War. Two years later, Tamposi was fired for her involvement in “Passportgate,” when she personally searched the passport records of then-presidential candidate Bill Clinton, allegedly to look for evidence that he had sought to abandon his U.S. citizenship to avoid the Vietnam War draft. When Clinton was elected, Ryan was well-positioned to take the consular affairs job. Ryan’s impact on the Bureau will be discussed in more detail in subsequent sections.<sup>15</sup>

Beyond the perception of disloyalty and undermining influence of political appointees, the Foreign Service, by virtue of its “reliance, until well into the twentieth century, on the well-heeled and well-connected,” has struggled to move beyond “pale, male, and Yale” and reflect the diversity of American public in its ranks. As late as 1970, Foreign Service officers were ninety-five percent male and one percent African-American.<sup>16</sup> Bureaucratic hurdles—rules taking a male officer’s wife’s activities into account in his performance evaluations, in place until 1972; the requirement, until 1971, that female officers resign if they married; and the exclusion of same-sex domestic

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<sup>15</sup> Alden, *Closing of the Border*, 156-159.

<sup>16</sup> Kopp and Gillespie, *Career Diplomacy*, 23.

partners from family-member benefits until 2009—have generally lowered, partly as a result of lawsuits. The dearth of diversity is still a problem, however, especially in the senior ranks. A 2006 overhaul of the hiring process based on recommendations from the consulting firm McKinsey changed the format and reduced the time of the process but retained the stiff competition. In 2011, 20,474 people took the Foreign Service Officer Test, the written exam and first step of the process; 547 were eventually hired.<sup>17</sup> These changes have made the Foreign Service intellectually and professionally elite, but still vulnerable to the perception that it is elitist.

### **Diplomacy's Ugly Duckling**

Some of the unflattering stereotypes the Bureau of Consular Affairs continues to fight come from its own ranks, and relate to both the nature of consular work and the requirement that all Foreign Service officers perform it at the beginning of their careers. Currently, Foreign Service officers can choose to focus on consular affairs as one of the five available “cones” in the Foreign Service. Because of the demand for consular work, regardless of their cone all Foreign Service officers must complete one year of consular work within their first two tours, and most new officers spend much of their first two tours in consular affairs.<sup>18</sup> There is therefore a perception among officers who have chosen one of the other cones (political affairs, economic affairs, management, or public diplomacy) that consular work is a box they must check before they can begin their “real” careers. In a 2002 report, State Department’s Office of Inspector General found many

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<sup>17</sup> Krlev, *America's Other Army*, 34.

<sup>18</sup> Kopp and Gillespie, *Career Diplomacy*, 187.

non-consular-coned officers considered their consular tours to be a “rite of passage...to be endured and kept as short as possible.”<sup>19</sup>

Comments from senior officials indicate this perception persists throughout the Foreign Service. “I’ve always thought that having people stamp visas for two years really does turn off a lot of very smart people,” former Secretary of State Condoleezza Rice commented to Nicholas Kralev for his book *America’s Other Army: The U.S. Foreign Service and 21<sup>st</sup> Century Diplomacy*.<sup>20</sup> Larry Wilkerson, chief of staff to Secretary of State Colin Powell, told Edward Alden that consular tours were “a colossal drag on morale. We lose a lot of Foreign Service officers in those first two or three years because they can’t stand it.”<sup>21</sup>

Worse, from 1991 to 1997 junior officers entered the Foreign Service “unconed,” and only chose a cone after their first two tours, “one of the stupidest decisions that was ever made in the Foreign Service,” according to Ambassador Ryan when she was interviewed in 2003 for an oral history collection about the Foreign Service. “So you didn’t know whether they were going to end up as consular officers or not, and you didn’t know whether they would be the bane of your existence forever or the cone’s existence forever or not. Once they’d started to bring people in coned, it became easier, although

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<sup>19</sup> U.S. Department of State Office of Inspector General, *Review of Nonimmigrant Visa Issuance Policy and Procedures*, Memorandum Report ISP-I-03-26, December 2002, <http://oig.state.gov/documents/organization/16215.pdf> (accessed October 7, 2013), 12.

<sup>20</sup> Kralev, *America’s Other Army*, 136.

<sup>21</sup> Alden, *Closing of the Border*, 148.

of course in some cases people were not suited to consular work.”<sup>22</sup> For non-consular-coned officers, the argument voiced by current Assistant Secretary for Consular Affairs Janice Jacobs, that “the skills [officers] learn as consular officers are going to serve them well” because “you have to gather a lot of information, you have to know about the country you are serving in, you have to know the law...you have to be able to make quick decisions” often falls on deaf ears.<sup>23</sup>

This perception, particularly prior to 9/11, that consular work is less prestigious and important was borne out in promotion statistics, as described in David T. Jones’ 2001 article “The Under-Appreciated Consular Cone” in the *Foreign Service Journal*. In 1998, 802 of the 4530 officers in the ranks of the Foreign Service, or eighteen percent, were consular-coned. But consular officers held only twelve percent of the top three ranks of career minister, minister counselor, and counselor. By way of comparison, political officers comprised twenty-eight percent of officers and thirty-four percent of the senior jobs, and economic officers comprised twenty-one percent of the ranks but nineteen percent at the top. Consular officers held only seven of the ninety-nine top chief of mission jobs, the “ultimate Foreign Service career prize.”<sup>24</sup>

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<sup>22</sup> Mary A. Ryan, interview by Charles Stuart Kennedy, March 26, 2003, transcript, Association for Diplomatic Studies and Training Foreign Affairs Oral History Project, <http://www.adst.org/OH%20TOCs/Ryan,%20Mary%20A.toc.pdf> (accessed October 7, 2013).

<sup>23</sup> Krlev, *America's Other Army*, 137.

<sup>24</sup> David T. Jones, “The Under-Appreciated Consular Cone,” *Foreign Service Journal* (March 2001), 22.

Further, the reality is that consular work can be grueling and thankless. At busy posts consular officers interview up to 120 people a day.<sup>25</sup> Jones quoted a career consular officer noting that an officer who handled only fifty visa applicants an hour “would be considered slow.” Moreover, many consular positions are in developing countries where the prize of a U.S. visa creates a perpetual “line of frustrated, sometimes desperate, people.”<sup>26</sup> “Very often they [visa applicants] were lined up around the embassy or the consulate before you came to work in the morning, and there were hundreds of them, and many of them had slept there the night before, and it’s an overwhelming task to face that many people every day, and that’s your job,” said Ryan. “It was hard for new officers to be lied to all the time,” she also commented. “I used to tell the A-100 [entry-level] classes, they’re really not lying to you as Joe Smith or Jane Jones, they’re lying to officialdom, because officialdom is what they have to lie to in their own countries to get anything.”<sup>27</sup> “Even if you say ‘no’ nicely, some people still yell and try to spit on you,” a consular officer described. “It took me weeks not to take that personally, because I’d never had anyone speak to me that way before. Sometimes, they even threaten your life.”<sup>28</sup>

Thus limited support in the Department’s upper ranks and the challenges of the work facilitated a “sense of disrespect that most consular officers felt long before September 11... They were second class citizens in an institution—the professional

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<sup>25</sup> Krlev, *America’s Other Army*, 138.

<sup>26</sup> Jones, “Under-Appreciated Consular Cone,” 20.

<sup>27</sup> Ryan, interview.

<sup>28</sup> Krlev, *America’s Other Army*, 137.

Foreign Service—that itself felt increasingly second class because of the growing influence of political appointees in the department’s upper ranks.”<sup>29</sup> Subsequent sections will describe the impact of this sense of disrespect on the Bureau of Consular Affairs and the Foreign Service writ large.

### **Consular Defenders**

An overview of the Bureau of Consular Affairs should note that consular work does have its defenders, mostly among those who have devoted their careers to consular work and see consular affairs in a broader context. First, as Jan Melissen notes in the introduction to the 2011 compilation *Consular Affairs and Diplomacy*, consular policy decisions “add a direct human element to the mesh and conflict of foreign policy, legal, and management concerns stemming from an event or individual case”: they involve real people, not abstractions.<sup>30</sup> Second, changes in the nature of foreign policy challenges have made consular affairs more important. “For the past fifty years, the U.S. diplomatic service has been political officer-heavy, driven partly by the reality that ‘political’ events, e.g., Cold War confrontation, collapsing colonial empires, nascent nationalisms, regional wars, and arms control negotiations, were paramount,” according to Jones. “Arguably those imperatives are no longer as imperative; commercial concerns, environmental pressures, human rights violations, and movements of populations, if not displacing

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<sup>29</sup> Alden, *Closing of the Border*, 154.

<sup>30</sup> Jan Melissen and Ana Mar Fernandez, eds., *Consular Affairs and Diplomacy* (Boston/Leiden, Netherlands: Brill/Martinus Nijhoff Publishers, 2011), 7.

political issues, now argue credibly for equivalent attention.”<sup>31</sup> And as Melissen explains, “the ‘consular perspective’ has always been tied up with unfolding transnational relations instead of mere inter-state relations.”<sup>32</sup>

Further, consular issues themselves almost always have political or economic implications. As “the foreign policy bridge between the foreign individual and his government,” visas in particular offer “opportunities for ‘retail diplomacy’ and low level coercion between states,” according to Kevin Stringer, who studied six cases of visa diplomacy. “Special cases of visa issuance, changes to a nation’s visa process, or denials of visas can be used to symbolize shifts in foreign policy, express official government discontent or displeasure at other states, or as a step in conflict escalation, particularly in the economic and commercial arena.”<sup>33</sup> Former Deputy Assistant Secretary of State for Consular Affairs Robert Fritts argues that “for a number of countries, particularly in the Caribbean and Asia, access to the U.S. is the single most volatile foreign policy issue affecting both bilateral and regional relations, with implications for both political orientation and stability.” Travel controls and reciprocity agreements (such as with the

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<sup>31</sup> Jones, “Under-Appreciated Consular Cone, 24.

<sup>32</sup> Melissen and Fernandez, *Consular Affairs and Diplomacy*, 2.

<sup>33</sup> Kevin D. Stringer, “The Visa Dimension of Diplomacy,” *Discussion Papers in Diplomacy*, no. 91 (The Hague: Netherlands Institute of International Relations 'Clingendael', March 2004), [http://www.clingendael.nl/sites/default/files/20040300\\_cli\\_paper\\_dip\\_issue91.pdf](http://www.clingendael.nl/sites/default/files/20040300_cli_paper_dip_issue91.pdf) (accessed October 7, 2013): 4, 6.

Soviet Union at the time) and visa issuances or denials to controversial persons remain “an established part of U.S. diplomatic practice.”<sup>34</sup>

Thus the movement of people around the world has brought consular affairs and diplomacy closer than ever before; consular challenges are diplomatic challenges, and greater significance creates opportunities for broader successes and more catastrophic failures. Fritts noted that while “virtually every consular act of commission or omission can add or detract from a foreign policy objective, create controversy, and/or attract Congressional or public criticism . . . the bulk of decisions and actions handled well are, of course, routinely taken for granted.”<sup>35</sup> In the months before and after 9/11, consular acts of both commission and omission impacted foreign policy objectives and created both controversy and criticism. These acts were the products of specific policies and an overall organizational culture in the Bureau of Consular Affairs and the U.S. government in the 1990s, which together produced the conditions that allowed 9/11 to happen and which are the subject of the next section.

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<sup>34</sup> Robert E. Fritts, “Consular Services and Foreign Policy,” in Martin F. Herz, ed., *The Consular Dimension of Diplomacy: A Symposium*, ed. Martin Herz (1983; repr., Lanham, MD: University Press of America, 1986), 6.

<sup>35</sup> *Ibid.*, 7.

## CHAPTER TWO

### 9/11

To understand the impact of 9/11 on visa policy and the U.S. government's security architecture in general, it is important to know how the hijackers were able to defeat the architecture in place on September 10, 2001. This includes both the specific visa procedures and the broader organizational and political conditions prevailing at the time. The 9/11 Commission Staff Report *9/11 and Terrorist Travel* is a comprehensive and valuable account of how the hijackers were able to enter the United States, so this section only covers the points most relevant to the balance between security and public diplomacy at the core of this thesis. The Staff Report affords more detail.<sup>1</sup>

#### **The Visa Process**

The 9/11 hijackers were among a subset of the worldwide population required to have a visa to travel to the United States. Of the approximately five hundred million people who sought entry into the United States in the year before 9/11, one hundred and seventeen million were Mexicans using Border Crossing Cards, thirteen million were visa-exempt Canadians, and seventeen million traveled under the Visa Waiver Program (VWP). The VWP, which began in 1988 with the United Kingdom and Japan, allows citizens of certain countries whose purpose of travel is tourism or business for ninety days or less to travel without visas. The VWP included twenty-seven countries at the

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<sup>1</sup> National Commission on Terrorist Attacks Upon the United States, *9/11 and Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks Upon the United States*, by Thomas R. Eldridge, Susan Ginsburg, Walter T. Hempel II, Janice L. Kephart, and Kelly Moore, (Franklin, TN: Hillsboro Press, 2004).

time of the September 11 attacks and now includes thirty-seven.<sup>2</sup> Travelers not part of any of these groups (Mexicans, Canadians, or VWP-eligible), about eighty-six million or seventeen percent, are required to have a visa of some type.<sup>3</sup>

For those not exempted or waived, the Department of State issues two general kinds of visas: immigrant and nonimmigrant. The number of immigrant visas is limited by quotas for each country and category; people from countries with demand that exceeds the quota are on waiting lists, sometime for years. In contrast, nonimmigrant visas are limited only by the qualifications of the visa seeker and the resources of the Department of State to adjudicate them. There are several types of nonimmigrant visa categories defined by the visa holder's purpose of travel: tourism or business (B1/B2 visas), students (F visas), and temporary work (H2 visas), for example. Eighteen of the hijackers entered on B1/B2 tourist/business visas and one entered on an F student visa.<sup>4</sup> Consular officers issued visas to fifteen of the hijackers in Saudi Arabia, to two hijackers in the United Arab Emirates, and two hijackers in Germany.

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<sup>2</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 231n17; U.S. Department of State, "Visa Waiver Program (VWP)," Bureau of Consular Affairs, [http://travel.state.gov/visa/temp/without/without\\_1990.html](http://travel.state.gov/visa/temp/without/without_1990.html) (accessed October 12, 2013). The *Immigration Reform and Control Act of 1986* (Public Law 99-603, U.S. Statutes at Large 100 (1986): 3359) piloted the Visa Waiver Program. It became a permanent program in 2000 under the Visa Waiver Permanent Program Act (Public Law 106-396, U.S. Statutes at Large 114 (2000): 1637). On 9/11 the Visa Waiver Program included Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, The Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, United Kingdom, and Uruguay. The program now includes the additions of the Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, Slovakia, South Korea, and Taiwan. Argentina joined the program in 1996, but its membership was terminated in February 2002 due to unrest in the country and concerns about an increase in visa overstays, and it is not included in the 9/11 Commission's pre-9/11 count of member countries. Uruguay's membership was terminated in 2003 for similar reasons.

<sup>3</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 72.

<sup>4</sup> *Ibid.*, 73.

If the visa application is approved, consular staff print the physical visa, a piece of paper or “foil” with security features and a photograph of the applicant, and adhere it to a page of the applicant’s passport. Possession of a visa grants the holder permission to travel to the United States and present him or herself at the border for admission, but does not guarantee entry; U.S. Customs and Border Protection, the successor to the Immigration and Naturalization Service (INS) in the Department of Homeland Security, has the final say about who can enter and how long he or she can stay.<sup>5</sup> Prior to 9/11, the Departments of State and Justice shared responsibility for visa policy. While in practice State administered (and continues to administer) visa programs, by law State could issue visas only with the approval of the Attorney General. Since 9/11 and the creation of the Department of Homeland Security, that department has had authority over overall visa policy for reasons that will be discussed in the next section.

The cost of a visa application and the duration of stay the visa authorizes are determined by reciprocal agreements between each country and the United States. Before 9/11 and generally now, these agreements “[incorporate] the most liberal provisions possible with respect to validity period and fees on the basis of reciprocity, that is, the treatment accorded by the applicant’s country to U.S. citizens.”<sup>6</sup> In 2001, citizens of Saudi Arabia could receive multiple-entry B visas valid for two years; citizens

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<sup>5</sup> “Nothing in this Act shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted [to] the United States, if, upon arrival at a port of entry in the United States, he is found to be inadmissible under this Act, or any other provision of law.” *Immigration and Nationality Act of 1952*, Public Law 82-414, § 221(h), U.S. Statutes at Large 66 (1952): 192.

<sup>6</sup> U.S. Department of State, “The Visa Function,” Report of the Visa Office 2001, [http://www.travel.state.gov/visa/statistics/statistics\\_1476.html](http://www.travel.state.gov/visa/statistics/statistics_1476.html), (accessed May 1, 2013).

of the United Arab Emirates could receive multiple-entry B visas valid for ten years; and citizens of Egypt and Lebanon could receive multiple entry B visas valid for five years.<sup>7</sup>

Title II of the Immigration and Nationality Act of 1952 (INA), as amended, outlines the visa application process, which is generally the same at every visa-issuing embassy and consulate around the world.<sup>8</sup> Applicants obtain a passport, fill out a visa application, and provide the application and a photograph to an embassy or consulate in their country. Depending on the location, prior to 9/11 applicants could submit the application in person, by mail, through a drop box at the diplomatic post, or through a travel agent. A consular officer reviews the application and adjudicates the visa, either issuing or denying it. By law, all nonimmigrant visa applicants need to appear for a personal interview with a consular officer, but the law also permits the consular officer to waive this requirement if doing so is “in the national interest.” It was Department of State policy prior to 9/11 to encourage visa interview waivers due to security and cost-control pressures discussed later in this section.<sup>9</sup> Consular officers interviewed only two of the nineteen hijackers.

In making the visa adjudication decisions, consular officers follow the INA and policy guidance in the Department of State’s Foreign Affairs Manual in a framework that, “for good reason, accords the consul little leeway,” according to U.S. Congressman Alan

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<sup>7</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 73.

<sup>8</sup> *Immigration and Nationality Act*, § 221-222.

<sup>9</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 74 and U.S. Department of State Office of Inspector General, *Review of Nonimmigrant Visa Issuance Policy and Procedures*, Memorandum Report ISP-I-03-26, December 2002, <http://oig.state.gov/documents/organization/16215.pdf> (accessed October 7, 2013), 2.

Simpson, writing in 1983 in reference to pending immigration laws. “[The consul’s] role is important because he must understand both the letter of the law and its intent, but he has no discretion to set it aside.”<sup>10</sup> Consular adjudications are not subject to judicial review.<sup>11</sup> Consular officers make their decisions on a case by case basis according to the INA and the conditions on the ground in the applicant’s country.

While the INA prohibits convicted criminals, Nazis, Communists, and even terrorists from obtaining a visa, the most common grounds for visa ineligibility is INA 214(b), which states that “every alien,” with noted exceptions, “shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status.”<sup>12</sup> This means that an applicant must prove he or she qualifies for the visa for which he or she is applying (as a tourist, student, or recipient of medical care, for example) and that he or she has sufficient ties to a residence abroad such that he or she will return home after the trip. In some cases, such as in Jeddah, Saudi Arabia from 1996 to the fall of 2000, consular officers have interpreted 214(b) to apply to applicants who raise suspicion that causes the officer to view the applicants as security concerns.<sup>13</sup> In fiscal year 2001, 214(b) accounted for

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<sup>10</sup> Alan Simpson, “Policy Implications of U.S. Consular Operations,” in *The Consular Dimension of Diplomacy: A Symposium*, ed. Martin Herz (1983; repr., Lanham, MD: University Press of America, 1986),13.

<sup>11</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 232n31.

<sup>12</sup> *Immigration and Nationality Act*, § 212, § 214(b).

<sup>13</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 122-124.

about eighty percent of all 2.2 million nonimmigrant visa denials.<sup>14</sup> Depending on the economic and political conditions of the applicant's home country, 214(b) can be a formidable barrier. Despite security concerns, in Saudi Arabia prior to 9/11, it was not.

The second most common basis for denial is section 221(g) of the INA, a refusal for lack of documentation. This section of the INA also functions as a catch-all category for applications that are incomplete or otherwise indicate to the consular officer the applicant is ineligible for the visa. For example, a consular officer refused hijacker Hani Hanjour a visa under section 221(g) when he did not attach proper documentation to his student visa. A refusal under 221(g) can be overcome. In fiscal year 2001, about six hundred thousand refusals, or about twenty percent of the total, were based on section 221(g), together with 214(b) accounting for almost all refusals. By way of comparison, the section of law providing for the refusal of visas to applicants deemed likely to participate in terrorist activities after entry accounted for eighty-three nonimmigrant visa refusals in fiscal year 2001—none of them the five September 11 terrorists who failed to obtain visas.<sup>15</sup>

The INA provides the legal framework for visa adjudications; Department of State policy and consular officer judgments determine the rest of the outcome. This thesis argues that policy has to strike a balance between security and public diplomacy, especially if public diplomacy includes a broad range of publics (Congress and the host government, for example). The balance struck before 9/11 was informed by a variety

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<sup>14</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 75.

<sup>15</sup> *Ibid.*, 75-76.

of factors: security concerns, the Department of State budget, the boom in travel to the United States, and others described below.

### **Pre-9/11 Security Priorities**

#### *Immigrants and embassies*

9/11 represented a paradigm shift in the interpretation of security in consular affairs. Before, as the Department's Office of Inspector General found in 2002, "staffing, training, and procedures were all directed at determining whether visa applicants were intending immigrants."<sup>16</sup> In Berlin, for example, where two hijackers obtained visas, consular officers generally only interviewed third country nationals (i.e., those not born in Germany) who had lived in Germany less than two years. The assumption was that German was such a difficult language to learn and a spot at a German university so difficult to acquire that a third country national would be unlikely to abandon his or her residence in Germany. In the United Arab Emirates, most applicants were considered "low-risk applicants who had lots of money, left the UAE to escape the summers, and were Western-oriented people who simply wanted to visit the U.S." Until 9/11 there had never been a terrorist attack in the United Arab Emirates or an Emirati terrorist, and consular officers there, like their peers at other posts, were not trained to look for terrorists as part of the visa application process.<sup>17</sup> Saudi Arabia was considered even less of a risk: Consular officers were advised orally when they arrived that Saudi citizens, "as a group," had overcome 214(b) of the INA. Their "virtual visa waiver status" was only

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<sup>16</sup> U.S. Department of State OIG, *Review of Nonimmigrant Visa Issuance*, 2.

<sup>17</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 113-115.

virtual because Saudi Arabia refused to reciprocate the program and allow U.S. citizens to travel to Saudi Arabia without a visa. Implicit within this designation was the assumption that Saudi citizens were not security risks—an inappropriate assumption that the Department of State should not have made, according to the 9/11 Commission.<sup>18</sup> The 9/11 Commission also noted, however, that certain consular officers in Jeddah, Saudi Arabia did express concern about extremism, and screened and sometimes denied visas to applicants who displayed indicators of extremism related to their purpose of travel or appearance.<sup>19</sup>

In any case, the focus on intending immigrants meant that prior to 9/11 the Department of State worried more about “the safety of embassies and consulates and their employees” than a visa process that could allow issuance to a potential terrorist. Particularly following the 1983 bombings of U.S. facilities in Beirut, Lebanon and the 1998 truck bombings of the U.S. embassies in Dar es Salaam, Tanzania and Nairobi, Kenya, the primary vulnerability was the congregation of enormous numbers of visa applicants at overseas diplomatic posts.<sup>20</sup>

In Saudi Arabia, Riyadh Consul General Thomas Furey took a creative approach to reduce the “unbelievable crowds” at the embassy in Riyadh and the consulate in Jeddah. Implementing one of the consular “best practices” of the time, Furey created a program that combined a “personal appearance waiver for certain classes of applicants,

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<sup>18</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 118-119.

<sup>19</sup> *9/11 and Terrorist Travel*, 121-124.

<sup>20</sup> U.S. Department of State OIG, “Review of Nonimmigrant Visa Issuance,” 2.

third-party screening by travel agencies, who would receive the applications, ‘interviews by exception,’ remote data entry, and off-site fee collections.’<sup>21</sup> Pre-screened travel agencies collected the visa applications, submitted them to the embassy in Riyadh or the consulate in Jeddah, and notified applicants if they needed to come in for an interview. Consular officers implemented Visa Express, as the program was called, beginning June 1, 2001. The program drastically decreased the number of people converging at the consular sections for interviews. On June 26, 2001, Furey provided an update to Assistant Secretary for Consular Affairs Mary Ryan:

The number of people on the street and coming through the gates should be only 15 percent of what it was last summer. The RSO [Regional Security Officer] is happy, the guard force is happy, the public loves the service (no more long lines and they can go to the travel agencies in the evening and not take time off from work), we love it (no more crowd control stress and reduced work for the FSNs [Foreign Service Nationals, i.e., local staff] and now this afternoon [we] discovered the most amazing thing—the Saudi Government loves it.<sup>22</sup>

Furey’s take on Visa Express was informed by several factors, he told the 9/11 Commission: First, he believed that if intelligence existed about terrorism threats from Saudi citizens, he would have received it (but he did not). Second, he believed that border security would ensue from automated consular systems and watch lists (which were incomplete, as this section will discuss later). And third, he did not ask consular staff for their views on the topic, which might have brought security concerns to light. Though the 9/11 Commission found that Visa Express did not increase the interview or

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<sup>21</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 126.

<sup>22</sup> *Ibid.*, 128.

approval rates of Saudi citizens, the program did “[remove] the element of surprise.”<sup>23</sup>

Four of the nineteen hijackers obtained visas through Visa Express, all in Jeddah.

### *Automating security*

Department of State security measures in place to target potential terrorist visa applicants in many ways outpaced those of the rest of the government. In 1987 the Department of State created TIPOFF, the first terrorist watchlist, and shared it with the Immigration and Naturalization Service and the U.S. Customs Service in 1991.<sup>24</sup> But the threat of terrorism had taken on greater significance in the Bureau of Consular Affairs’ radar since 1993, when Sunni Muslim extremists detonated a truck bomb in a garage under the World Trade Center in Manhattan, killing six people and injuring more than a thousand. The 9/11 Commission called the attack a “tipping point” for the Bureau of Consular Affairs. The spiritual leader of the bombers, “blind sheikh” Sheikh Omar Abdel-Rahman, had been granted a visa at the U.S. embassy in Khartoum, Sudan, a country that was harboring Al Qaeda leader Osama Bin Laden. In fact, a series of security failures permitted Rahman to obtain several visas over many years despite his presence on a watchlist maintained on microfiche at the embassy in Khartoum. In the case of his final visa application, the local employee charged with checking the microfiche for Rahman’s name did not do so because he did not think the elderly cleric

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<sup>23</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 129-130.

<sup>24</sup> Edward Alden, *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11* (New York: Harper Perennial, 2008), 161-162.

presented a risk, yet he told the consular officer adjudicating Rahman's case he had done the name check.<sup>25</sup>

As a result, Assistant Secretary for Consular Affairs Ryan made a computerized name check system at every visa issuing post a priority. The Department was aided in its efforts in 1994 by a congressional mandate that allowed the Bureau of Consular Affairs to charge and retain a visa application fee. This mandate "proved to be the equivalent of drilling an oil well in the basement of every consulate."<sup>26</sup> As Ryan remembered, "We had no real idea of what to charge, and we didn't want to gouge the applicants, but we also didn't want to undercharge, because we really needed the money." Consular Affairs arrived at "a sort of back of the envelope calculation" of twenty dollars.<sup>27</sup> (In 2001, the flat application fee the hijackers paid for a tourist visa was sixty-five dollars; it is now one hundred and sixty dollars.) The Department used the new cash cow to implement legislation requiring machine-readable visas by 1996 and to automate its name check system, with results the 9/11 Commission called "impressive."<sup>28</sup> In February 1993, eleven visa-issuing posts had to perform microfiche checks on visa applicants; by 1995, all used a fully automated name check system. "We automated the world in eighteen

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<sup>25</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 53-56; 84.

<sup>26</sup> David T. Jones, "The Under-Appreciated Consular Cone," *Foreign Service Journal* (March 2001), 22.

<sup>27</sup> Mary A. Ryan, interview by Charles Stuart Kennedy, March 26, 2003, transcript, Association for Diplomatic Studies and Training Foreign Affairs Oral History Project, <http://www.adst.org/OH%20TOCs/Ryan,%20Mary%20A.toc.pdf> (accessed October 7, 2013).

<sup>28</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 85.

months,” according to Ryan.<sup>29</sup> The Department deployed sophisticated software to check variants of Arabic names in 1998, and secure broadband links connected posts and Washington by 1997.<sup>30</sup> Analyzing the time period, Edward Alden, author of *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11*, notes, “At a time when the FBI had no internal e-mail and used paper case management files, and the INS couldn’t even hold a murderer whose details were entered into its border watch system, Ryan’s accomplishments were extraordinary.”<sup>31</sup>

Some interagency information-sharing programs were also in place, though agency stove-piping and turf-guarding hamstrung their effectiveness. After the 1993 attack, when information emerged that the Central Intelligence Agency stations in Khartoum and Cairo had information about the blind sheik that was not shared with the consular section, the Visas Viper program established regular meetings between Department of State and intelligence agencies to encourage them to share data. As Mary Ryan described, “My position at the time was I didn’t care how they gave it to us, as long as we got it and we could put it into the system. . . . and I believed they were giving us everything, only to learn some years later, of course, that they were not giving us everything.”<sup>32</sup>

By 9/11 and currently, consular officers perform a name check on each applicant through a computerized database known as the Consular Lookout and Automated

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<sup>29</sup> Ryan, interview.

<sup>30</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 85-86.

<sup>31</sup> Alden, *Closing of the Border*, 163.

<sup>32</sup> Ryan, interview.

Support System (CLASS), a requirement in place since 1995. CLASS contains derogatory information from several different law enforcement and other databases, including TIPOFF. If a name check produces a “00” hit, indicating a possibly serious terrorism-related or other ineligibility, the consular officer must obtain a security advisory opinion from the Department of State in Washington prior to issuing the visa.<sup>33</sup> By September 11, 2001, CLASS contained the sixty thousand names on the TIPOFF watchlist and about ten million other records including previous visa denials, wanted persons, and other people ineligible for a visa.<sup>34</sup> Alden notes that despite the weaknesses of the pre-9/11 security regime, the TIPOFF system worked according to plan. Ramzi bin al-Shibh, the roommate of the plot’s ringleader, Mohammed Atta, and a key planner, tried four times in 2000 to obtain a U.S. visa, but each time was rejected because his name was in TIPOFF.<sup>35</sup> The CIA knew two of the hijackers had met with al Qaeda operatives in Malaysia in January 2000 but did not watchlist them. Her confidence in the structure of the system led Ryan to tell Senator Dianne Feinstein, Democrat from California, in a hearing that “what went wrong [on 9/11] is that we had no information on [the hijackers] whatsoever from law enforcement or from intelligence” and that “it is a failure of intelligence rather than a failure of the visa system. If we had the information, we would not have issued visas to these people. We did not have the information.”<sup>36</sup>

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<sup>33</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 74.

<sup>34</sup> *Ibid.*, 82.

<sup>35</sup> Alden, *Closing of the Border*, 163-164.

<sup>36</sup> U.S. Senate Committee on the Judiciary, Subcommittee on Technology, Terrorism, and Government Information, *The Role of Technology in Preventing the Entry of Terrorists into the United States*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., October 12, 2001 (Washington, DC: U.S. Government Printing Office, 2002),

## Public Diplomacy and the Courtesy Culture in Consular Affairs

Equally if not more compelling than security concerns, however, were the diplomatic and economic concerns originating from the Department of State's "publics": would-be tourists newly flush with travel aspirations, the "smart government" budget advocates of the 1990s, and the oil-rich government and people of Saudi Arabia. These factors also influenced the pre-9/11 environment.

### *More travelers*

First, the second half of the twentieth century produced an explosion in commercial jet travel that had major implications for all border security measures. Stewart Baker, the first Assistant Secretary for Policy at the Department of Homeland Security, former General Counsel of the National Security Agency, and author of *Skating on Stilts: Why We Aren't Stopping Tomorrow's Terrorism*, argues that "a rising tide of travelers slowly overwhelmed [the] 1950-era security measures" in place—the "border checkpoints and searches, travel visas, and printed passports" that had remained essentially the same since the nineteenth century. In 1959, Boeing introduced the 707 aircraft, which cut flying time between New York and London from twelve hours to six; "in an instant, international air travel went from luxury to commonplace" and over the next several decades roughly doubled every five years.<sup>37</sup> The end of the Cold War and lifting of the Iron Curtain and an economic boom in Asia provided more fuel to the

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<http://www.gpo.gov/fdsys/pkg/CHRG-107shrg81248/pdf/CHRG-107shrg81248.pdf> (accessed October 13, 2013), 44-45, 53.

<sup>37</sup> Stewart Baker, *Skating on Stilts: Why We Aren't Stopping Tomorrow's Terrorism* (Stanford, California: Hoover Institution Press, 2010), 13.

increase in travel. In Baker's words, "millions of empowered travelers were eroding a system of border security that had existed for decades....Technology—cheap commercial jet travel—made the attacks possible. In fact, it made attacks like September 11 more or less inevitable."<sup>38</sup>

In reaction to the increase in travel, by the 1980s the United States and other governments had begun to "vie with each other to dismantle ... border security measures."<sup>39</sup> According to Alden, Congress contributed bipartisan pressure to keep people moving. "Democrats wanted an open door for refugees and a generous policy of family reunification. Republicans wanted a steady supply of foreign workers to keep the chamber of commerce happy. Both favored more foreign students for the universities, more skilled workers for Silicon Valley, more tourists to fill the hotels, and more wealthy Arabs paying full fare for treatments at U.S. hospitals."<sup>40</sup> This meant ending individual traveler inspections by U.S. Customs (travelers with nothing to declare could pass through a Green Lane) and removing what Baker calls the "single most important restraint on foreign visitors entering the United States—the visa" by creating the Visa Waiver Program, discussed above.<sup>41</sup>

### *Doing more with less*

The Visa Waiver Program attracted government administrators because it

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<sup>38</sup> Baker, *Skating on Stilts*, 16, 12.

<sup>39</sup> *Ibid.*, 14.

<sup>40</sup> Alden, *Closing of the Border*, 164-165.

<sup>41</sup> Baker, *Skating on Stilts*, 14.

alleviated some of the visa processing workload that accompanied the boom in travel. The enormous increase in traveler demand was unmatched with an increase in resources to process them. The 1990s brought an effort to increase efficiency in government, particularly after the Republican congressional sweep in 1994. Vice President Al Gore championed a National Partnership for Reinventing Government task force, which sought to apply business management concepts to government. Government departments were supposed to designate one or more “reinvention laboratories,” and the Bureau of Consular Affairs received that designation in April 1993.<sup>42</sup>

Despite efficiency efforts and the addition of countries to the Visa Waiver Program, from 1993 to 2001, nonimmigrant visa adjudications grew from seven million a year to more than ten million a year. The demand for U.S. passports doubled to more than seven million a year. At the same time, budget cuts greatly decreased recruiting of new junior officers, who make up much of the adjudicating ranks.<sup>43</sup> By 2001 just six hundred consular officials were processing more than ten million visa applications each year.<sup>44</sup> Lamenting “The Under-Appreciated Consular Cone,” retired Foreign Service officer David T. Jones said, “When floods of illegal immigrants were making a mockery of any attempt to maintain credible standards, consular officers who thought that they were the thin red, white, and blue line regulating legitimate entry to the U.S. often concluded that their best efforts were futile. In the face of these pressures, officers were

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<sup>42</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 87.

<sup>43</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 87 and Alden, *Closing of the Border*, 160.

<sup>44</sup> Alden, *Closing of the Border*, 148.

told to ‘manage better;’ their response was, ‘There is no blood left in these stones.’<sup>45</sup> As Ryan told the 9/11 Commission, “The slogan was to do more with less, to the point that we were doing everything with nothing.”<sup>46</sup>

The *Consular Best Practices Handbook*, a series of forty cables sent to posts from 1997 to 2000, was the Department’s answer to the conflicting priorities. The *Handbook* laid out three key goals for every consular manager: high quality decision making, more efficient processes, and improved customer service. In doing so, however, the *Handbook* acknowledged that the first two goals—efficient processing and high-quality decisions—“express a basic conflict in our traditional approach to visa processing. Quality decisions can make the process less efficient, and, in the context of declining staff, posts have been forced to choose efficiency over quality.” Further, the *Handbook* noted that “Although much of our approach to visa work can be streamlined, the most pertinent example of a part of the process that can be cut back successfully is the nonimmigrant visa interview. This doesn’t mean that interviews should be shorter; it means that interviews should be fewer.”<sup>47</sup> The Visa Express policy in Saudi Arabia was a direct outcome of the *Handbook*’s mandate.

### *Special Saudi Arabia*

Even for the pre-9/11 customer service-minded Department, Saudi Arabia was a special case. A consular officer serving in Saudi Arabia told the 9/11 Commission staff

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<sup>45</sup> Jones, “Under-Appreciated Consular Cone,” 21.

<sup>46</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 79.

<sup>47</sup> *Ibid.*, 88-89.

that “our mission in Saudi Arabia [was] to be as accommodating as we possibly could.” Wyche Fowler, a former Democratic senator from Georgia appointed by former President Clinton as ambassador to Saudi Arabia in 1996, ordered a consular officer to grant a visa to a Saudi diplomat’s servant despite the diplomat’s refusal to provide evidence that the diplomat would pay minimum wage, as required by U.S. law. Fowler also fired the consul general in Riyadh because the consul general insisted that all servants of the royal family come in for visa interviews.<sup>48</sup> As Mary Ryan’s aide at the time Dianne Andruch described, “Prior to 9/11, we were under a lot of pressure to have people processed for visas in an expeditious manner. The basic attitude was that these countries were our friends and the United States should do everything possible to facilitate travel. Make it easier on them. Let them come and be students and businesspeople and boost the economy. That was what Mary Ryan was trying to do and that’s what she was under pressure to do—until something happened and then everyone ran away from that position.”<sup>49</sup>

The 9/11 Commission Report chronicles specifically the paths the hijackers took to obtain visas. And once equipped with visas, they used them to enter the United States. Questioning Ryan in a hearing after the attacks, Senator Feinstein was direct: “What, in your view went wrong in the issuance of valid visas that permitted thirteen terrorists to legally enter the United States, or do you view their entry as acceptable risk?”<sup>50</sup> Ryan’s

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<sup>48</sup> National Commission on Terrorist Attacks, *9/11 and Terrorist Travel*, 116-117.

<sup>49</sup> Alden, *Closing of the Border*, 165.

<sup>50</sup> U.S. Senate Committee, *Role of Technology*, 44.

answer, and the ensuing changes in the security architecture of the United States, would completely shift the balance between security and public diplomacy in place in consular affairs before 9/11. The next section describes this shift.

## CHAPTER THREE

### THE RESPONSE

It is difficult to overstate the impact of 9/11 on the U.S. government. In 2010, the Washington Post found that at least 263 organizations were created or reorganized as a response to 9/11.<sup>1</sup> This includes a new Department of Homeland Security (DHS), which currently employs more than 240,000 federal workers.<sup>2</sup> And alongside the reorganization and enormous reappropriation of resources, 9/11 produced a reorientation in mission and priorities at a level not seen since the National Security Act of 1947 created the Department of Defense, the National Security Council, and the Central Intelligence Agency.<sup>3</sup> These changes began with the effort within the first few weeks after the attack to figure out what happened—and assign blame.

The findings were initially diverse. As terrorist plots go, 9/11 was complicated. It involved 19 hijackers from different countries, centralized training, communication, travel documents and travel, border crossings, and extended periods of time in the United States, producing vulnerabilities to exposure at almost every stage. Other discussions of this time explore these aspects more fully: See, for example, Edward Alden's *The Closing of the American Border*, Stewart Baker's *Skating on Stilts*, and the 9/11

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<sup>1</sup> Dana Priest and William M. Arkin, "Top Secret America," *Washington Post*, July 19, 2010, <http://projects.washingtonpost.com/top-secret-america/articles/a-hidden-world-growing-beyond-control/print/> (accessed September 16, 2013).

<sup>2</sup> U.S. Department of Homeland Security, "About DHS," <http://www.dhs.gov/about-dhs> (accessed August 10, 2013).

<sup>3</sup> U.S. Department of State Office of the Historian, "National Security Act of 1947," <http://history.state.gov/milestones/1945-1952/NationalSecurityAct> (accessed October 12, 2013).

Commission Staff Report cited in previous sections.<sup>4</sup> This section focuses specifically on the bureaucratic, procedural, and congressional response to real and perceived vulnerabilities in the visa process.

### **Law Enforcement’s Spit on the Sidewalk Strategy**

Immediately following 9/11, agencies commenced a flurry of activity to learn about the hijackers and any other impending attacks from terrorists who might already be in the United States. In a memo on September 17, 2001, Attorney General John Ashcroft instructed the Federal Bureau of Investigation (FBI) and other federal law enforcement to use “every available law enforcement tool” to arrest persons who “participate in, or lend support to, terrorist activities.”<sup>5</sup> The most expedient and powerful law enforcement tool available turned out to be the use of federal immigration law to detain aliens suspected of ties to terrorism. Using immigration law allowed federal officials to detain aliens without the legal barriers that protect U.S. citizens. The effort became known as the “spit on the sidewalk” strategy after Attorney General John Ashcroft compared it to Robert F. Kennedy’s effort against organized crime.<sup>6</sup> As Ashcroft related in his account of the 9/11

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<sup>4</sup> Edward Alden, *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11* (New York: Harper Perennial, 2008); Stewart Baker, *Skating on Stilts: Why We Aren’t Stopping Tomorrow’s Terrorism* (Stanford, California: Hoover Institution Press, 2010); National Commission on Terrorist Attacks Upon the United States, *9/11 and Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks Upon the United States*, by Thomas R. Eldridge, Susan Ginsburg, Walter T. Hempel II, Janice L. Kephart, and Kelly Moore, (Franklin, TN: Hillsboro Press, 2004).

<sup>5</sup> U.S. Department of Justice Office of the Inspector General, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks*, April 2003, <http://www.justice.gov/oig/special/0306/full.pdf> (accessed August 11, 2013), 1.

<sup>6</sup> Alden, *Closing of the American Border*, 9; U.S. Department of Justice OIG, *September 11 Detainees*, 12.

response, “if a terrorism suspect committed a legal infraction at all, regardless of how minor, we would apprehend and charge him.” This would create “noise in the system” that would hopefully disrupt plans for another attack and buy time to create a stronger anti-terrorism framework.<sup>7</sup> Ashcroft made the policy explicit in a speech to the U.S. Conference of Mayors on October 25, 2001: “Let the terrorists among us be warned: If you overstay your visa—even by one day—we will arrest you. If you violate a local law, you will be put in jail and kept in custody as long as possible.”<sup>8</sup>

The strategy produced arrests. Under the FBI’s investigation (named PENTTBOM, an acronym for Pentagon/Twin Towers Bombing Investigation) and with the aid of one thousand Immigration and Naturalization Service (INS) agents, by November 2001 law enforcement personnel had detained more than one thousand two hundred people. The Department of Justice Office of Inspector General, which investigated the treatment of detainees arrested after 9/11, found that many were released after questioning and not charged, but many others were arrested and detained for violating federal immigration law. The twenty-four aliens already in INS custody on September 11, 2001 and the other 738 aliens arrested between September 11 and August 6, 2002 as a result of the PENTTBOM investigation were placed on what became known as an “INS Custody List” because the FBI assessed they may have had “a connection to

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<sup>7</sup> Alden, *Closing of the Border*, 81, quoting Josh Ashcroft, *Never Again: Securing America and Restoring Justice* (New York: Hachette Book Group, 2006), 124.

<sup>8</sup> U.S. Department of Justice OIG, *September 11 Detainees*, 12.

the September 11 attacks or terrorism in general, or because the FBI was unable, at least initially, to determine whether they were connected to terrorism.”<sup>9</sup>

### **State’s Information-Sharing Blame Game**

While the FBI and other law enforcement agencies were making an enormous and extraordinary effort, at the Department of State most visa procedures went largely unchanged, at least initially. The Bureau of Consular Affairs turned the hijackers’ visa records over to the FBI. But when asked about the immediate reaction to 9/11 at State, Assistant Secretary for Consular Affairs Mary Ryan replied, “We told them [consular sections] to keep all the NIV applications [usually shredded after a year]; we told them to review their procedures. We didn’t tell them to change their procedures, because I didn’t think there was really anything wrong with the procedures.”<sup>10</sup> Alden quotes another senior Consular Affairs officer who argued that “there’s absolutely no way that any highly educated, experienced consular officer would have denied those visas in light of the known facts. They didn’t break the pattern in any way. There is nothing that set them apart from legitimate, qualified travelers.” According to State, the issuance of visas to the hijackers under the circumstances was an “unavoidable tragedy.”<sup>11</sup>

Instead, in congressional hearings and private assessments, State Department officials pointed to systems that wouldn’t talk to each other and law enforcement and

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<sup>9</sup> U.S. Department of Justice OIG, *September 11 Detainees*, 1.

<sup>10</sup> Mary A. Ryan, interview by Charles Stuart Kennedy, March 26, 2003, transcript, Association for Diplomatic Studies and Training Foreign Affairs Oral History Project, <http://www.adst.org/OH%20TOCs/Ryan,%20Mary%20A.toc.pdf> (accessed October 7, 2013).

<sup>11</sup> Alden, *Closing of the Border*, 104.

intelligence failures to provide State with information as the reasons the hijackers obtained visas. In a Senate hearing on October 12, 2001, Ryan stressed that “we are only as good as the information that goes into the system. If we have no information on the aliens from other agencies, then the name check system is not as good as it could be.” If Mohammed Atta was issued a visa in May 2000, Ryan asked, “When did we know that he had met with Osama bin Laden operatives? And if it were known before we issued a visa, why didn't we know?” Prompted to answer her own question by Senator Feinstein, she made a claim that some said sealed her fate as the only government official to lose her job as a result of 9/11: “Either it is a colossal intelligence failure ... or there was information that was not shared with us who are the outer ring of border of security.”<sup>12</sup> Ryan’s principal deputy George Lannon, who was present at the hearing, later remembered, “I knew we were doomed after that, that the intelligence and the FBI guys were going to come after us. I saw the handwriting on the wall.”<sup>13</sup>

At the hearing, at least, Ryan’s co-panelists voiced the same message about the importance of information sharing. Glenn Fine, the Department of Justice Inspector General, explained that “the effective implementation and management of technology is critical to helping prevent terrorists from entering this country” and urged the INS and the FBI to “ensure that their databases share information both with each other and with other

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<sup>12</sup> U.S. Senate Committee on the Judiciary, Subcommittee on Technology, Terrorism, and Government Information, *The Role of Technology in Preventing the Entry of Terrorists into the United States*, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., October 12, 2001 (Washington, DC: U.S. Government Printing Office, 2002), <http://www.gpo.gov/fdsys/pkg/CHRG-107shrg81248/pdf/CHRG-107shrg81248.pdf> (accessed October 13, 2013), 45.

<sup>13</sup> Alden, *Closing of the Border*, 151.

Government agencies.” James Ziglar, Commissioner of the INS, also backed Ryan’s point of view. “I couldn’t endorse more what Mary Ryan just said about intelligence information being available,” he said. “It doesn’t matter how much capacity you have got if the information that you need in the system is not there. What I saw before September 11 was a bunch of agencies with a bunch of territorial prerogatives that wouldn’t share information. . . . And after September 11, I see something happening that should have happened a long time ago, and that is that we are working together, and that is very positive. We can solve the technology problems. We need the personnel, we need the money, but we can fix it.”<sup>14</sup>

Privately, Mary Ryan believed that the failure to pass information onto State was not due to negligence or bureaucratic red tape but instead a more ominous motive. Her comments in her oral history in 2003 are worth quoting in detail:

I, certainly, placed all my confidence in our automated system, our CLASS system, believing right up until the time that George Tenet [Director of Central Intelligence for the Central Intelligence Agency (CIA)] himself told us, that they had had some information about some of them. . . . I believed we were getting everything that anybody had on anyone who shouldn’t get a visa. . . . What I knew, what I fortunately knew almost immediately, when there was so much information in the newspapers and the media about these men, was that some part of our government had information on them that was not given to us. . . . Because how else would you know who would have done this? How would you know who did it? And I actually thought that perhaps it was an FBI agent on planes following them. But then I thought, ‘Well, no, they probably would be at the destination points to pick them up to follow them.’ And what I believe, still, to my dying day, is that we were not told about the ones they knew about, because they wanted them in the country, because they wanted to follow them, because they wanted to build a case. . . . I mean, I have no proof of that, and the FBI will deny that, and the CIA will deny it, but that’s what I believe based on my experience. . . .

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<sup>14</sup> U.S. Senate Committee, *Role of Technology*, 50.

I will always believe that, because the FBI, as usual, overestimated its ability to protect the country.<sup>15</sup>

Senator Feinstein was not convinced by the arguments she heard. At the end of the hearing, when Ryan asked her not to call 9/11 “a failure of the visa system,” Senator Feinstein refused to agree: “It is a failure of the system. You know, I hear one agency blame another and it is very upsetting to me. We don't have a system that works.”<sup>16</sup>

### **Arguments for Change**

Even after the October 2001 hearing, however, it was unclear what the consequences of the hijacker visa issuances would be for State. Accounts differ as to whether or not the FBI ever proposed a six-month moratorium on all visa issuances. But the compromise reached called for detailed background checks on visa applicants from terrorist threat source countries. In November, State imposed an automatic twenty-day hold on visa applications from a list of two dozen countries, all with significant Muslim populations. Devising the list involved heated negotiations between the agencies. Later, State created Visas Condor, a program that required diplomatic posts to delay processing of visas for most male applicants from the listed countries until the FBI and CIA could screen the applications but allowed posts to issue the visas after thirty days if no derogatory information was returned. By April 2002 the Condor backlog was eight

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<sup>15</sup> Ryan, interview.

<sup>16</sup> U.S. Senate Committee, *Role of Technology*, 53.

thousand names, and in July 2002 State and the FBI agreed to drop the thirty-day deadline and halt visa processing until the FBI and CIA could catch up.<sup>17</sup>

Despite these efforts, at a fundamental level the FBI and other law enforcement and intelligence agencies were reading from a new sheet of music, while the State Department was largely playing the same pre-9/11 tune. “At State, there was a lot of throwing up their hands and saying, ‘How are we supposed to stop this?’” said a senior Justice Department official.<sup>18</sup> The Department of State’s own Office of Inspector General gave a damning assessment of the Department’s progress in a December 2002 report:

The post-September 11 era should have witnessed immediate and dramatic changes in CA’s [Consular Affairs’] direction of the visa process. This has not happened. A fundamental readjustment by Department leadership regarding visa issuance and denial has not taken place. The Department still does not fully appreciate the consular function as part of a coordinated national effort to manage border security and implement the INA, both to prevent the travel of those who might present risks to the United States and its citizens and also to facilitate legitimate travel.<sup>19</sup>

Critics of the Department of State had already seized the opportunity. Journalist Joel Mowbray, mentioned in previous sections as a vocal critic of the State Department, led the charge, making it his apparent mission to destroy Ryan’s career and the State Department’s visa responsibility. He focused in particular on the Visa Express program in Saudi Arabia and the Department’s handling of it after 9/11. Noting that the program

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<sup>17</sup> Alden, *Closing of the Border*, 104-106.

<sup>18</sup> *Ibid.*, 104.

<sup>19</sup> U.S. Department of State Office of Inspector General, *Review of Nonimmigrant Visa Issuance Policy and Procedures*, Memorandum Report ISP-I-03-26, December 2002, <http://oig.state.gov/documents/organization/16215.pdf> (accessed October 7, 2013), 18.

had facilitated the entry of three of the terrorists, who were not interviewed by consular officers, Mowbray cited a source who said top State officials were trying to diminish reports about U.S. Ambassador to Saudi Arabia Robert Jordan's request to shut down the Visa Express program because State was "still trying to save Visa Express" and even "expand [it] to other countries." Mowbray's first story on Visa Express appeared in the online version of *National Review* on June 14, 2002. According to his 2003 book *Dangerous Diplomacy: How the State Department Threatens America's Security*, the story "caught traction quickly" because Visa Express was still operational nine months after 9/11: "There were no reforms, no changes to a program that had let in three of the September 11 terrorists and continued to be a gaping loophole in United States border security."<sup>20</sup> The Department quickly dropped the name Visa Express and eventually the program, but bungled the response, making it seem like a cover-up. As Mary Ryan's deputy Lannon told Alden, after a similar story on Visa Express that appeared in December 2001 received little attention, "we thought we'd put out that fire."<sup>21</sup>

Mowbray kept the fire burning publicly, but he also distorted the truth, according to Ryan and other State officials. "Mowbray went with this story that we didn't check anything, that we didn't want to hurt the Saudis' feelings so that every Saudi was believed to be a 'good bet,' just all sorts of very, very inaccurate allegations made by him, with no regard whatsoever to the truth," according to Ryan. "He never asked to talk to me or anybody in the visa office, that I know of, who could have set him straight on

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<sup>20</sup> Joel Mowbray, *Dangerous Diplomacy: How the State Department Threatens America's Security* (Washington, DC: Regnery Publishing, Inc., 2003), 3-5.

<sup>21</sup> Alden, *Closing of the Border*, 174.

this very disgruntled and very unsuccessful and very unhappy person in the [B]ureau [of Consular Affairs], having nothing to do with visas,” who was the confidential inside source substantiating Mowbray’s claims.<sup>22</sup>

The facts aside, Mowbray’s claims were rooted in his more basic argument that Foreign Service officers are unsuited to make decisions that have a law enforcement impact because they lack the appropriate security mindset. “The State Department doesn’t believe in black and white, which raises the question of how State can help us win the War on Terror when it refuses to engage on a battlefield of right and wrong, of morality,” he charges in *Dangerous Diplomacy*. “Foggy Bottom [the neighborhood where State’s headquarters is located] officials face a dilemma: How can you work in good faith with some of the worst people alive, people with the blood of millions on their hands? Worse yet, how can you do favors for those very same people? Either as an occupational hazard, or because they joined State with these beliefs, Foggy Bottom officials are typically infected with extreme moral relativism.”<sup>23</sup>

Criticism from Mowbray and others with similar views, together with the Department’s lackluster response, left the door open for a complete overhaul of the visa process, to include taking the adjudication responsibility away from the Department of State and giving it to the new Department of Homeland Security, which would bring together pieces of other agencies with a homeland security mission. In early June 2002, just before Mowbray’s *National Review* piece came out, Ryan’s deputy Lannon and a

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<sup>22</sup> Ryan, interview.

<sup>23</sup> Mowbray, *Dangerous Diplomacy*, 104, 232-233.

State Department attorney viewed a draft of the White House proposal for the bureaucratic shuffling, which included a plan to transfer complete authority over visa policy to the new department.<sup>24</sup>

A month later, at a July 26 hearing entitled “Should Consular Affairs be Transferred to the New Department of Homeland Security?” congressional members of the Committee on Government Reform and their invited panelists laid out the arguments for and against the move. Chairman David Weldon, a Republican from Florida, felt the White House’s proposal did not go far enough, as it only transferred authority for visa policy to DHS and not the entire consular service:

Homeland security starts abroad and nothing is more important than who gets approved for a visa. The issuance of a visa can no longer be thought of as a mere diplomatic function. It is now a national security issue and our embassies and consulates must put security first. ... Visa issuance should not be about speed and service with a smile. Visa processing should not be an entry-level job, as it is currently in the State Department. ... When criticized, some organizations hunker down and others conduct a searching self-examination. ... My sense is that the State Department is in hunker-down mode and not making a serious effort at self-examination, but rather protecting sacred turf.<sup>25</sup>

Representative Constance Morella, Republican from Maryland, also questioned how consular officers could be both security enforcers and diplomats. “There is a real conflict of interest that confronts the State Department officials in that they are tasked with both the administration of the law and very different diplomatic responsibilities.

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<sup>24</sup> Alden, *Closing of the Border*, 175.

<sup>25</sup> House Committee on Government Reform, Subcommittee on Civil Service, Census, and Agency Organization, *Homeland Security: Should Consular Affairs Be Transferred to the New Department of Homeland Security?* 107<sup>th</sup> Congress, 2<sup>nd</sup> sess., July 26, 2002 (Washington, DC: U.S. Government Printing Office, 2003), <http://www.gpo.gov/fdsys/pkg/CHRG-107hhr86826/pdf/CHRG-107hhr86826.pdf> (accessed October 13, 2013), 1-3.

They don't often go hand in hand ... It is likely that the screening process required by the law is subverted to the exigency of public relation."<sup>26</sup>

Both Weldon and Morella had sympathetic witnesses at the hearing. Nikolai Wenzel from the Atlas Economic Research Council, himself a former Foreign Service officer who served a consular tour in Mexico City, also described a conflict of interest. "Diplomacy entails dialogue, cooperation, compromise, and public relations," he argued, while "conscientious administration of the law, on the other hand, entails adherence to the rule of law and intolerance of that is illegal behavior, even if that is unpopular or might conflict with other diplomatic priorities. ... We thus see an emphasis within the State Department on numbers and issuances to avoid the embarrassment of long lines outside of consulates or too many refusals."<sup>27</sup> Mowbray himself, also a witness at the hearing, outlined the argument he had made in his article and would make in his book. "Visa Express is a symptom of deeply rooted problems in the Bureau, which is charged with the unique and conflicting pair of goals: to provide public diplomacy on the front lines and to screen out potential terrorists before they reach our shores." He assessed that Consular Affairs had done "an excellent job of the former," but "a very poor job because it has come at the expense of the latter and our border security." Because the "two basic reasons someone's application fails" are that "the person is poor, or the person's name appears on a watch list" and al Qaeda sleeper operatives are upper middle class with no criminal records, he said, "current policies at Consular Affairs severely hamper our

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<sup>26</sup> House Committee, *Should Consular Affairs Be Transferred?* 8.

<sup>27</sup> *Ibid.*, 39.

efforts to keep Al Qaeda operatives from obtaining legal visas.” Further, he argued, while Bureau of Consular Affairs officials, in their defense of Visa Express, “have been fond of noting” that twelve of the fifteen Saudi Arabian hijackers were in fact interviewed, that fact “shows not that interviews don’t work, but that interviews designed by consular affairs don’t work,” with “woeful training” at the “root of the problem.”<sup>28</sup>

In State’s defense, one of the Department representatives, Under Secretary for Management Grant Green, Jr. reiterated the same points Mary Ryan had outlined in her testimony the previous October. The problem was not that law enforcement officers were not interviewing visa applicants, but rather that no one—consular officer or law enforcement professional—has a fighting chance at recognizing a terrorist in a short interview:

Why did we not recognize who [the terrorists] were and what they planned to do? Why did we not refuse visas or subsequent entry when they arrived? There was no way, without prior identification of these people as terrorists through either law enforcement or intelligence channels and the conveyance of that knowledge to our consular offices abroad. ... I would almost say, I don’t care who you have sitting across looking through the window at the applicant, unless there is information in the database, it is very difficult, if not impossible, just by asking questions to determine what their ultimate motive may be.<sup>29</sup>

Green also explained that Visa Express was not an interview substitute, describing it as “a small number of carefully vetted travel agents that do nothing more than hand out forms and collect the completed forms for transmittal to an embassy ... like you or I going to the Post Office to get our tax forms. ... What was done with Visa Express was merely to provide an easier way to distribute these forms so that we didn’t have

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<sup>28</sup> House Committee, *Should Consular Affairs Be Transferred?* 48-49.

<sup>29</sup> *Ibid.*, 9, 17.

thousands and thousands of people lining up at the embassies, and the consulates that had to be dealt with. It enabled us to focus our limited resources on really evaluating the greatest security risks.” When questioned about why consular officers did not interview all applicants, even after 9/11, he returned to the Bureau’s historic refrain: “I would love to interview everyone, but very frankly, it is a resource issue. It is a people issue. It is a space issue.”<sup>30</sup>

Green’s other argument concerned the feasibility of creating a permanent consular corps. If you restrict the mobility of a consular corps, he warned, “what you are going to get is rent-a-cop ... whether you can keep folks happy in an environment where they can’t rotate around the consular operation and even into the political and economic cone and they can’t come back to Washington to do different things, I don’t think you can keep them happy on the visa line for a very long time, unless you pay them a lot of money.” Further, a separate DHS consular corps raised the issue of duplication because at some posts the visa function only occupies part of the day; the rest of the time people are doing other consular functions or other embassy functions.<sup>31</sup>

Paul Light, vice president and director of governmental studies at the Brookings Institution, raised a separate issue: the awkward bureaucratic arrangement of giving one Department authority over a program another Department runs. “I am not sure it is workable. I am not sure it is legal. I am certainly puzzled as to whether it is doable, to have a Secretary of one Department able to order changes in regulation in through the

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<sup>30</sup> House Committee, *Should Consular Affairs Be Transferred?* 16-17.

<sup>31</sup> *Ibid.*, 17-24.

Secretary of another Department is unusual at best ... What if the secretary of state refuses to issue the secretary of homeland security's order, for example?" E. Wayne Merry, senior associate at American Foreign Policy Council, pointed out that if Congress did not also confer the budgetary and staffing authority of the consular corps to DHS along with visa authority, "the Congress will simply replicate the current system in which immigration policy is in Justice, but visa issuance is conducted by State" and "in reality, these officers in the field inevitably will respond to the priorities which come down their own chain of command."<sup>32</sup>

The hearing closed without consensus or conclusions, but with a tone of reform on the horizon. In his closing statement, citing the hijackers who had "gone through the process at Consular Affairs," Congressman Weldon warned that "the Congress has the responsibility to look very, very closely at Consular Affairs."<sup>33</sup>

### **The Outcome**

Eventually, the Department of Homeland Security did get visa authority—but without the consular corps. Rebuffed in his initial protest about the transfer to White House Chief of Staff Andy Card, Secretary of State Colin Powell went directly to the first Homeland Security secretary, Tom Ridge. According to Powell, in a later interview, their meeting kept visas in the State Department. "I said, 'Tom, here's what I think you ought to do. I'll give you the policy—you determine who you want to come into the country and not come in the country. It's homeland security policy, not foreign policy.

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<sup>32</sup> House Committee, *Should Consular Affairs Be Transferred?* 26.

<sup>33</sup> *Ibid.*, 33.

But I have a complete system that works ... I'm telling you, the last thing you need on top of everything else you're getting is an international organization with 290 places that are integral part of the embassies that belong to the State Department."<sup>34</sup> But according to Ryan's deputy Lannon, the visa function was never really in jeopardy. Lannon pointed out that the White House proposal did not call for stripping the Bureau of Consular Affairs completely out of State, and that DHS really just wanted the policy authority. He was dismissive of the meeting between the two principals and its outcome: "It was one old soldier to another old soldier [both Powell and Ridge had served in Vietnam] saying 'You're not going to shoot me in the ankle here, are you, Tommy boy?' He [Powell] got nothing."<sup>35</sup>

The White House plan with the Department of Homeland Security setting policy and the Department of State adjudicating visas, with Powell and Ridge's agreement, was introduced by Representative Dick Armey in the House. After committee markup, the bill clarified that the Secretary of Homeland Security would issue visa regulations and assign staff to consular posts to provide advice and review and to conduct investigations, and that visa decisions by consular officers would retain their nonreviewability. During floor debate, Representative Weldon introduced an amendment to move the consular function to DHS, but it was defeated by a vote of 118 to 309. The Senate version allowed the Secretary of Homeland Security to delegate the authority to issue regulations on visas to the Secretary of State. The final House version kept this provision as well as the

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<sup>34</sup> Alden, *Closing of the Border*, 177.

<sup>35</sup> *Ibid.*

original language mentioned, and the President signed the legislation on November 25, 2002.<sup>36</sup> Per a subsequent memorandum of understanding between the two departments, “the Secretary of Homeland Security will establish visa policy, review implementation of that policy, and provide additional direction ... while respecting the prerogatives of the Secretary of State to lead and manage the consular corps and its functions, to manage the visa process, and to execute the foreign policy of the United States. The Secretary of Homeland Security will rely upon the expertise of the Department of State with respect to foreign policy, and the Secretary of State will respect the expertise of the Department of Homeland Security concerning threats to American Security.”<sup>37</sup>

So State retained the consular corps, albeit with a new policy authority and a new Visas Condor program that created the diplomatic and public headaches that will be discussed in the next section. And there was another casualty, too. In *The Closing of the American Border*, Edward Alden titles the chapter on the Department of State “The Scapegoat,” and the particular scapegoat was Mary Ryan. Powell remembered later, “We all loved Mary, she was really beloved by the consular officers, but she was starting to cause me difficulties with the Hill. She really was not flexible enough and responding flexibly enough to the political and bureaucratic demands of the post-9/11 period.

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<sup>36</sup> Ruth Ellen Wasem, *Visa Policy: The Roles of the Departments of State and Homeland Security*, Congressional Research Service Report for Congress, March 4, 2004, <http://trac.syr.edu/immigration/library/P50.pdf> (accessed August 12, 2013), 9-11.

<sup>37</sup> U.S. Department of State and Department of Homeland Security, *Memorandum of Understanding between the Secretaries of State and Homeland Security Concerning the Implementation of Section 428 of the Homeland Security Act of 2002*, September 29, 2003 (Washington, DC: U.S. Government Printing Office, 2003), <http://www.gpo.gov/fdsys/pkg/CDOC-108hdoc131/pdf/CDOC-108hdoc131.pdf> (accessed October 13, 2013).

Changes were necessary and we had to be a little more contrite about what we were doing in order to save it.<sup>38</sup>

As Ryan explained, “They were all great supporters until the articles just got so many and human pride became so great. I mean, they could have told me to go right away, and they didn’t. And to be very honest, since this is all history, I was trying to decide in my own mind whether to go or to stay” not because of the hijacker visas, but “because of the way that we were treating people in the Middle East,” including “people we believed were issuable, people who came in to renew their expiring 10-year visa.” Ryan had offered to resign before, but Grant Green, the undersecretary for management, finally requested she leave. She resigned on July 8, at the time the longest-serving diplomat at the Department of State after thirty-six years of service, nine of them as assistant secretary for consular affairs.<sup>39</sup> At a small ceremony Powell presented her with the Distinguished Service Award for her career, but many State officers, particularly in the consular corps, felt betrayed. Describing Powell’s remarks, Ryan’s deputy Lannon said “His presentation was, basically, ‘Well, old Mary’s decided to hang it up’ as opposed to ‘We’ve thrown her off the sled to get the wolves off us,’ which is what it was.” Powell, for his part, also felt betrayed. “Whether they liked it or not, it was necessary to do in order to save the consular corps. And I always have a little bitterness that I had to get that kind of abuse when in fact I kept the consular corps from going to

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<sup>38</sup> Alden, *Closing of the Border*, 177-178.

<sup>39</sup> Joe Holley, “Mary Ryan, 65; Embattled Consular Chief,” *Washington Post*, April 29, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/04/28/AR2006042802001.html> (accessed October 13, 2013).

the DHS.” In a consolation gesture, he did replace Ryan with her deputy, close friend, and another career Foreign Service officer, Maura Harty.<sup>40</sup>

Ryan remained unapologetic for her leadership of the Bureau. “The allegation was made that I created a culture of courtesy around the world, as if this was something reprehensible. . . . I wouldn’t have called it a culture of courtesy necessarily, but that’s fine with me, because I did do that. And I am proud of that, because I don’t think anybody should be demeaned in the process of trying to come to our country. They’re complimenting us by applying, really.”<sup>41</sup> Ryan died on April 25, 2006. Her friend and protégé Johnny Young remarked, “It was an incredible funeral. If the terrorists had come they would have wiped out half the diplomatic corps.”<sup>42</sup>

Ryan’s departure from the Department symbolized the movement against any “courtesy culture” that may have existed prior to 9/11 in the post-9/11 response, and the new premium on security at any cost. The next section will explore the impact of this response in the years since the attacks.

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<sup>40</sup> Alden, *Closing of the Border*, 180.

<sup>41</sup> Ryan, interview.

<sup>42</sup> Alden, *Closing of the Border*, 181.

## CHAPTER FOUR

### THE IMPACT

As noted in the last section, 9/11 brought forth enormous changes in the U.S. government's structure and posture toward foreign visitors. This section describes the impact of 9/11 on the government's tolerance for security risk, on the legislative and administrative framework for visa processing, on the applicant and traveler experience, on overall travel to the United States, on the travel industry and the U.S. economy, on U.S. image abroad, on consular work, and on the million-dollar question after the implementation of all of these changes—whether they worked to make us more secure.

#### **On Risk Tolerance**

In the first place, the government's perception of risk entirely changed, producing a new risk-averse, security-focused lens through which policymakers and administrators would view all future policy. Edward Alden, in his account *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11*, notes that while President George W. Bush and other top officials insisted they wanted to avoid using too broad a brush in keeping people out, “the way Bush defined the post-9/11 war on terrorism—as a global struggle for survival with a foe he deemed as menacing as Nazi Germany or the nuclear-armed Soviet Union—made a nuanced and proportionate response all but impossible.” This perception of the enemy did not “mesh easily” with the president's

own views on migration prior to the attacks, but Alden argues that “there is no evidence in any of his public statements that he has ever grappled with the contradiction.”<sup>1</sup>

The application of this new lens came from the top but permeated all levels of government. Alden quotes General Bruce Lawlor, who led the U.S. Army’s counterterrorism defense preparations before helping with the White House 9/11 response: “It’s always a question of how much security is enough. ... You had to make a risk-based assessment. Everybody said that, but when you asked them to do it, their tolerance for risk was zero.” Other officials echoed this point: “No one wanted to be hauled before Congress or another national commission after the next attack and be forced to explain why he hadn’t done absolutely everything in his power to prevent it from happening. No one was going to get punished for saying no to a foreigner, but the penalties for saying yes could be enormous.”<sup>2</sup>

The new policy priority, according to the Migration Policy Institute’s 2005 comprehensive comparison of the visa process before and after 9/11, *Secure Borders, Open Doors: Visa Procedures in the Post-September 11 Era*, was developing a process that “virtually eliminated security risks from those traveling to the United States.” The government also needed to do this “a public way” to “reassure the U.S. public that the government was taking all necessary steps to protect the homeland *and* to send a message to would-be terrorists that the United States was prepared and capable of stopping them

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<sup>1</sup> Edward Alden, *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11* (New York: Harper Perennial, 2008), 8-9.

<sup>2</sup> Alden, *Closing of the Border*, 9-10.

from entering through the ‘front door.’”<sup>3</sup> Thus “almost overnight, security—of identities, of visas, of documents of all types—became the only lens through which to evaluate the programs and processes that allow people to gain access to the United States.” For at least the next two years other core principles such as liberty or openness took a backseat to “a posture of zero tolerance for any ambiguity that might have security implications.” By the report’s 2005 writing only a “gradual reintroduction of a sense of balance, proportion, and flexibility” had begun to take effect.<sup>4</sup>

### **On Visa and Traveler Processing**

The previous section outlines some of the changes to visa processing. The Visas Condor program delayed processing for most male applicants from certain countries to allow for Federal Bureau of Investigation (FBI) and Central Intelligence Agency (CIA) screening, and the FBI enlisted the border authorities of the Immigration and Naturalization Service to detain hundreds of people on immigration violations, including visa overstays. In addition, while the basic legislative framework, visa classes, requirement of a petition in some cases, and visible components of the visa process remained substantively the same, the “administrative elements of the process,” such as interview requirements, security checks, registration programs, and biometric identifiers, “changed substantially.”<sup>5</sup> In reaction to the attack, the new security regime implemented

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<sup>3</sup> Stephen Yale-Loehr, Demetrios G. Papadimitriou, and Betsy Cooper, *Secure Borders, Open Doors: Visa Procedures in the Post-September 11 Era*, Migration Policy Institute, 2005, [http://www.migrationpolicy.org/pubs/visa\\_report.pdf](http://www.migrationpolicy.org/pubs/visa_report.pdf) (accessed September 16, 2013), 9.

<sup>4</sup> Yale-Loehr, *Secure Borders, Open Doors*, 2.

<sup>5</sup> *Ibid.*, v-vi.

some new innovations to address “previously underappreciated vulnerabilities” and expedited other changes already in the pipeline.<sup>6</sup> These reforms resulted more from the new security focus throughout government, and not from the Department of Homeland Security’s new oversight role in visa policy. Instead, the new department interpreted its statutory responsibility relatively narrowly. The Migration Policy Institute report quotes a senior government official who noted that while initially the new department had a “grandiose” vision of how to reform the visa process, it became more realistic as it encountered its “institutional inefficiencies as a new agency.”<sup>7</sup>

Several laws passed after and in response to 9/11 included changes to visa processes. Only the aspects of the laws that relate to visa processing are summarized.

The *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act*, signed October 26, 2001, amended the *Immigration and Nationality Act of 1952* to provide the State Department with access to the National Crime Information Center’s Wanted Persons data for the purpose of screening visa applicants; directed the Attorney General and Secretary of State to develop a “technology standard” for identifying visa and admissions applicants across different agency systems; broadened the scope of foreigners ineligible for admission or deportable due to terrorist activities; authorized the Secretary of State, on a reciprocal basis, to share criminal- and terrorist-related visa lookout information with foreign governments; and directed the Secretary of State to “review how consular

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<sup>6</sup> Yale-Loehr, *Secure Borders, Open Doors*, 1-2.

<sup>7</sup> *Ibid.*, 48-52.

officers issue visas to determine if consular shopping is a problem.” It also authorized additional funding for a student visitor information system, first legislatively mandated in 1996, and required national compliance with the system by January 30, 2003.<sup>8</sup> To carry out the legislation, the new Department of Homeland Security developed the Student and Exchange Visitor Information System. Known as SEVIS and still in use, the program requires schools and programs hosting international students to report information about student enrollment and class attendance, including if the student drops below a full course load or graduates early.

The *Enhanced Border Security and Visa Entry Reform Act* (EBSVERA), signed May 14, 2002, accelerated the implementation of foreign student and entry-exit tracking systems, mandated the transfer of visa data to immigration inspectors at ports of entry; heightened visa application scrutiny of nationals from state sponsors of terrorism;<sup>9</sup> required the use of machine-readable, tamper-resistant entry and exit documents with photos and fingerprints by October 26, 2004; extended the deadline for Visa Waiver Program machine-readable, biometric indicator passports to October 26, 2004;<sup>10</sup> required Visa Waiver Program countries to report stolen blank passports; compelled commercial

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<sup>8</sup> *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001*, Public Law 107-56, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., October 26, 2001, U.S. Statutes at Large 115 (2001): 272.

<sup>9</sup> Countries currently on the State Department’s list of state sponsors of terrorism are Cuba, Iran, Sudan, and Syria. Iraq was removed from the list in 2003, Libya was removed in 2006, and North Korea was removed in 2008.

<sup>10</sup> As noted in Chapter 3, the Visa Waiver Program (VWP) permits citizens of approved countries with certain types of approved, limited-duration travel to travel to the United States without a visa. The program began in 1988 and became a permanent program in 2000 with twenty-seven member countries.

vessels and flights to the United States to provide identity data about incoming passengers; and expanded training for visa adjudicating consular officers.<sup>11</sup>

The *Homeland Security Act of 2002*, signed November 25, 2002, established the Department of Homeland Security (DHS), eliminating the Immigration and Naturalization Service and dividing its functions into the Bureau of Citizenship and Immigration Services and the Bureau of Border Security (later itself split into Customs and Border Protection and Immigration and Customs Enforcement (ICE). It also granted DHS the “authority” to handle the following responsibilities, though it did not require the new department to do so: 1) assigning DHS employees to Saudi Arabia to review visa applications; 2) developing homeland security training programs for consular officers; 3) ensuring DHS employees and consular officers have appropriate training in languages, interview techniques, and fraud detection; 4) designing performance standards for consular officers; 5) studying the role of foreign nationals in visa adjudications; and 6) assigning DHS employees to visa-issuing posts.<sup>12</sup> The new department later designated ICE to handle these programs. ICE then established an Office of International Affairs and gave it responsibility for implementing what became known as the Visa Security Program.

The *Intelligence Reform and Terrorism Prevention Act of 2004*, signed December 17, 2004, implemented some of the 9/11 Commission’s recommendations. It expanded

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<sup>11</sup> *Enhanced Border Security and Visa Entry Reform Act (EBSVERA) Act of 2002*, Public Law 107-173, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 14, 2002, U.S. Statutes at Large 116 (2002): 543.

<sup>12</sup> *Homeland Security Act of 2002*, Public Law 107-296, 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., November 25, 2002, U.S. Statutes at Large 116 (2002): 2135.

visa interviews to all people aged fourteen to seventy-nine unless otherwise waived, made a visa revocation a deportable offense, and gave the Department of State authority to hire one hundred and fifty more consular officers through fiscal year 2009.<sup>13</sup>

An additional piece of legislation later implemented other 9/11 Commission recommendations. The *Implementing Recommendations of the 9/11 Commission Act of 2007*, signed August 3, 2007, called for DHS to enhance the security of the Visa Waiver Program by 1) creating an electronic system for travel authorization designed to determine the eligibility of program country applicants to travel to the United States in advance, 2) requiring member countries to enter into agreements to share information with the United States on security threat from their citizens, and 3) expanding reporting requirements for member countries to include to all lost and stolen passport data.<sup>14</sup>

Substantively, these laws resulted in several changes for applicants and travelers. After January 11, 2002, all male visa applicants aged sixteen to forty-five and some female applicants were required to fill out an additional form, the DS-157 Supplemental Nonimmigrant Visa Application. The form solicited a comprehensive travel history and information about the applicant's military, charitable, educational, and work history.<sup>15</sup> As of 2010, applicants fill out the detailed DS-160 online visa application, which replaced the DS-157 and other paper forms.

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<sup>13</sup> *Intelligence Reform and Terrorism Prevention Act of 2004*, Public Law 108-458, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., December 17, 2004, U.S. Statutes at Large 118 (2004): 3638.

<sup>14</sup> *Implementing Recommendations of the 9/11 Commission Act of 2007*, Public Law 110-53, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., August 3, 2007, U.S. Statutes at Large 121 (2007): 266.

<sup>15</sup> Yale-Loehr, *Secure Borders, Open Doors*, 16.

On May 21, 2003, the Department instructed consular officers to perform face-to-face interviews for all visa applicants. The new regime exempted only diplomats, certain international organization workers, and applicants under age fourteen or over age seventy-nine.<sup>16</sup> The Intelligence Reform and Terrorism Prevention Act of 2004 codified the new interview policy into law, as noted above.

Though not apparent to the applicants themselves, unless they experienced delays stemming from Security Advisory Opinions posts had to send back to Washington, the security screening of applicants through technical systems became more robust. Beginning in 2003, for example, the FBI-administered Terrorist Screening Center (TSC) consolidated various terrorist watch lists into a single database whose data is pushed out at the unclassified level to the State Department's Consular Lookout and Security System (CLASS).<sup>17</sup>

For petition-based visas, the petition process remained largely the same, but the petitions processed by U.S. Citizen and Immigration Services were denied more frequently and administrative appeals took longer.<sup>18</sup>

Once they arrived in the United States, visa holders encountered new delays and tracking programs. The Justice Department's National Security Entry-Exit Registration System (NSEERS), implemented on October 1, 2002, required male immigrants from twenty-five countries to submit biometric data, have interviews with immigration

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<sup>16</sup> Yale-Loehr, *Secure Borders, Open Doors*, 17.

<sup>17</sup> *Ibid.*, 91-92.

<sup>18</sup> *Ibid.*, 16.

officers, and re-register annually. Over 177,000 people registered in NSEERS from the program's inception until September 30, 2003, nearly half at ports of entry. Two thousand registrants were detained, including 143 criminals. The more comprehensive United States Visitor and Immigration Status Indicator Technology (US-VISIT) program, replacing NSEERS in 2004, requires all nonimmigrants to submit a machine-readable travel document as well as biometric data at their visa interviews, at ports of entry, and when exiting the United States, though exit tracking has been delayed due to technical problems.<sup>19</sup> NSEERS, US-VISIT, and other registration and tracking programs are not directly related to the visa process, but they still have an impact on the perceptions of visa applicants about the United States. Many applicants do not necessarily distinguish between their experiences with different U.S. government agencies, whether at U.S. diplomatic posts at the visa application stage, at the border when applying for entry, or when registering or adjusting their status in the United States. For the purposes of public diplomacy, every encounter matters.

### **On Students**

Given that hijacker Hani Hanjour entered the United States three times on a student visa, pilot Mohammed Atta successfully changed his status from tourist to student in July 2001 (though he should not have been able to do so), and the INS mailed student change of status approvals for Atta and another pilot six months *after* the attack, the

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<sup>19</sup> Marc R. Rosenblum, *U.S. Immigration Policy since 9/11: Understanding the Stalemate over Comprehensive Immigration Reform* (Washington, DC: Migration Policy Institute and Woodrow Wilson International Center for Scholars, August 2011), <http://www.migrationpolicy.org/pubs/RMSG-post-9-11policy.pdf> (accessed September 16, 2013), 5; Yale-Loehr, *Secure Borders, Open Doors*, 19.

student visa program was especially ripe for post-9/11 reform.<sup>20</sup> After 9/11 the State Department began applying more scrutiny to students and professionals through Security Advisory Opinions required by the Visas Mantis program, which is designed to address nonproliferation and sensitive technology transfer concerns. This extra scrutiny lengthened the Mantis process considerably. Based on a sample of Visas Mantis Security Advisory Opinions for science students and scholars sent between April and June 2003, the Government Accountability Office found the security check took an average of sixty-seven days. At posts the GAO visited in China, India, and Russia in September 2003, many Visas Mantis cases had been pending for sixty days or more.<sup>21</sup>

The delays prompted considerable outcry from educational institutions and associations. For example, in a letter to Secretary of State Colin Powell, a group of educational institutions complained that “current policies are hampering the ability of the world’s best and brightest international students, scholars, and researchers to study and work.” The letter specifically criticized visa decision delays, restrictions on Mantis-cleared visa holders in exiting and reentering the United States, and broader interview requirements, which they feared would divert consular resources away from student visas and towards other visa applicants.<sup>22</sup> In response to the outcry, in 2004 several State

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<sup>20</sup> Yale-Loehr, *Secure Borders, Open Doors*, 171.

<sup>21</sup> U.S. Government Accountability Office, *Border Security: Improvements Needed to Reduce Time Taken to Adjudicate Visas for Science Students and Scholars*, GAO-04-371, February 25, 2004, <http://www.gao.gov/new.items/d04371.pdf> (accessed September 16, 2013), 2.

<sup>22</sup> Nils Hasselmo, David Ward, C. Peter Magrath, Debra Stewart to Colin Powell, June 17, 2003, <http://www.aau.edu/homeland/PowellLtr.pdf> (accessed September 16, 2013).

cables instructed posts to facilitate business and student visas.<sup>23</sup> By November 2004, the average Mantis processing time was about fifteen days and the number of Mantis cases pending in Washington for more than sixty days had declined dramatically.<sup>24</sup> In many cases, however, the damage was done, and the United States had irrevocably lost its preeminence in the market for foreign students.

### On Travelers

These legislative and administrative changes outlined above combined to unravel the procedures the Department of State's Bureau of Consular Affairs and other agencies had implemented to make visa processing more efficient and less burdensome to travelers and Consular Affairs' limited resources. But while the Migration Policy Institute assessed that the outcome of a nonimmigrant visa application "probably varies much less [in 2005] that it did before September 11," in the words of Stewart Baker, an early Department of Homeland Security official and author of *Skating on Stilts: Why We Aren't Stopping Tomorrow's Terrorism*, "U.S. visa processing had returned in many ways to the 1950s."<sup>25</sup>

Though anecdotal, the impact on individual people and families caught up in the new web of security procedures was magnified by the internet and other news reports.

Edward Alden structures part of *The Closing of the American Border* on the stories of

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<sup>23</sup> Yale-Loehr, *Secure Border, Open Doors*, 17, 156-160.

<sup>24</sup> U.S. Government Accountability Office, *Border Security: Streamlined Visas Mantis Program Has Lowered Burden on Foreign Science Students and Scholars, but Further Refinements Needed*, GAO-05-198, February 2005, <http://www.gao.gov/assets/250/245374.pdf> (accessed October 14, 2013), 1-3.

<sup>25</sup> Yale-Loehr, *Secure Borders, Open Doors*, 11; Stewart Baker, *Skating on Stilts: Why We Aren't Stopping Tomorrow's Terrorism* (Stanford, California: Hoover Institution Press, 2010), 153.

people who became inadvertent casualties of an overreaching new framework. Consider the case of Pakistani pediatric heart doctor Faiz Bhora, who had served as chief resident at George Washington University Hospital and was offered a faculty position at UCLA Medical Center. To take the job, because most foreign doctors come to the United States on a training visa, after which they must return home to prevent “brain drain” of their home countries, he needed to return to Pakistan to apply for an O visa for individuals of “extraordinary ability.” Though told by an immigration lawyer the process might take two months, nine months later, in the spring of 2002, he was still waiting for a decision. Sudanese tropical disease specialist Dia Elnaiem, who planned to take up a research job at the University of California, Davis, went to Brazil for a five-day conference. He followed instructions to obtain a stamp on his visa at the U.S. Consulate in Rio de Janeiro but was then barred from returning to the United States pending a security review that lasted until he contacted Senator Dianne Feinstein’s office over six months later. At that point, his lab samples had died, and he estimated that the six months he spent in Brazil set his research back by two to three years.<sup>26</sup> Convoluted situations whereby a traveler’s visa expiration (determined by the Department of State) was different from his or her authorized length of stay (determined by U.S. Customs and Border Protection) or length of petition (determined by U.S. Citizen and Immigration Services) produced opportunities for the FBI’s detention and intelligence collection effort after 9/11, and many people with no connection to terrorism or restricted technologies were caught up in the sweep—detained in the United States or stuck abroad.

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<sup>26</sup> Alden, *Closing of the Border*, 1-8.

## On the Volume of Travel to the United States

Extrapolating beyond individual stories, some statistics also paint a stark picture of the impact of 9/11 on travel. Following the terrorist attacks, applications for visas declined from a high of over 10.4 million in fiscal year 2001 to a low of approximately seven million in 2003.<sup>27</sup> The number of issuances—successful applications—dropped thirty-six percent from nearly 7.6 million in fiscal year 2001 to 4.9 million in fiscal year 2003. In fiscal year 2004, issuances increased, but only to just over five million—still one third lower than the number of issuances in fiscal year 2001. Moreover, certain countries experienced larger than average drops. Saudi Arabian nationals received 14,126 nonimmigrant visas in fiscal year 2002, compared to 60,508 in fiscal year 2000, a seventy-seven percent difference. Nonimmigrant visa issuances dropped over fifty percent in Syria, Kuwait, Pakistan, and Qatar, and over eighty-two percent in the United Arab Emirates. The Migration Policy Institute cites two reasons: a lower number of applications from those countries, “as Muslims perceived they were no longer welcome as visitors,” and a higher refusal rate.<sup>28</sup>

On the surface, however, it is difficult to determine how much the 9/11 attacks themselves impacted international travel, and how much the U.S. government’s security-focused changes to visa processing, or perceptions of those changes, prolonged the impact of the attacks on travel. A few academic studies have attempted to isolate the

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<sup>27</sup> U.S. Government Accountability Office, *Border Security: Long-term Strategy Needed to Keep Pace with Increasing Demand for Visas*, GAO-07-847, July 2007, <http://www.gao.gov/assets/270/263799.pdf> (accessed September 16, 2013), 9.

<sup>28</sup> Yale-Loehr, *Secure Borders, Open Doors*, 21-23.

impact of visa processing by exploiting the difference between visa waiver and visa required countries. In one study, Brent Neiman and Phillip Swagel compared Visa Waiver Program (VWP) and non-Visa Waiver Program countries in terms of nonimmigrant arrivals to the United States. They found that non-VWP arrivals were not significantly less numerous than VWP arrivals, and therefore, that security changes did not impact travel from non-VWP travel significantly more than VWP travel. Further, they noted that collective data on both VWP and non-VWP travel appeared to show a general recovery after 2003, and that by 2007, total arrivals had almost reached their pre-9/11 levels. According to their study, then, new security restrictions did *not* have a significant impact on the level of travel to the United States.<sup>29</sup>

But a subsequent study, by Derekh Cornwell and Bryan Roberts, discounts these results for two main reasons.<sup>30</sup> First, the Neiman-Swagel study ended with data from May 2003, but as noted above, State and other agencies did not implement many new security programs and requirements until 2003 and later. While the immediate drop in travel to the United States after 9/11 could be due to concerns about another terrorist attack or the safety of air travel, security protocols that affected travelers' visa wait times or border experience (or their perceptions of them) may not have come into play until after this initial shock wore off. The short-term results therefore do not reflect the impact

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<sup>29</sup> Brent Neiman and Phillip Swagel, "The Impact of Post-9/11 Visa Policies on Travel to the United States," *Journal of International Economics* 78, no. 1 (June 2009): 86-99, <http://www.sciencedirect.com/science/article/pii/S0022199609000166> (accessed August 29, 2013).

<sup>30</sup> Derekh Cornwell and Bryan Roberts, "The 9/11 Terrorist Attack and Overseas Travel to the United States: Initial Impacts and Longer-Run Recovery," U.S. Department of Homeland Security Office of Immigration Statistics, Policy Directorate, Working Paper, March 2010, [http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ni\\_911\\_wp.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ni_911_wp.pdf) (accessed August 29, 2013).

of post-9/11 security procedures on travel. Second, unclear in the total recovery data is whether the security programs had a disproportionate effect on non-VWP programs or not. In other words, if non-VWP arrivals recovered more slowly than VWP arrivals, that would indicate a delayed response to new visa-related procedures.

Cornwell and Roberts address these discrepancies to assess whether VWP status became more important in the post-9/11 period by 1) using data from 1981 through 2007 and 2) by modeling the recovery of arrivals during this longer post-9/11 period for both VWP and non-VWP countries, controlling for other variables. They looked at nonimmigrant arrivals on B (tourist or business) visas and VWP arrivals from sixty-nine countries, excluding Canada and Mexico.

They found that while by 2006, VWP arrivals were not significantly different from their pre-2002 (pre-9/11) average, non-VWP arrivals remained consistently *below* their pre-2002 average between 2002 and 2007. In other words, VWP arrivals returned to their pre-9/11 level more quickly than did non-VWP arrivals. More concretely, the authors calculated the expected level of arrivals for both sets of countries based on their recovery model for each year after 2002 when compared to a pre-2002 baseline. Immediately after 9/11, VWP program arrivals were thirteen percent below the pre-2002 baseline, and non-VWP program arrivals were fourteen percent below the pre-2002 baseline, a negligible difference. By 2007, however, VWP arrivals had rebounded to only two percent of the pre-2002 baseline. Non-VWP arrivals had not yet made a significant recovery; they were still ten percent lower than the pre-2002 baseline, a statistically significant difference. While Cornwell and Roberts acknowledge that the

recovery gap could be due to some other factor, such as systemic change in the relative preference of VWP and non-VWP travelers for travel to the United States, based on their rigorous study it is more likely that post-9/11 security procedures, or popular perceptions about those procedures, are the explanation.

### **On the Tourism Industry and the U.S. Economy**

In addition, according to many economists, a recovery in the tourism context means not just getting back to the level of activity when a catastrophic event occurred, but rather achieving the level of activity that would have been present if the event had not occurred. In other words, during a catch-up period, both tourist arrivals and travel expenditures must grow at a faster rate than the historical growth trend.<sup>31</sup>

On this front, according to the U.S. travel industry, the United States is well behind where it should be. The amalgamation of individual horror stories, visa delays, and the overall international perception of “America’s burdensome visa process” have combined to create a negative economic impact the U.S. Travel Association calls “enormous.” On their website, which uses the URL [www.smartervisapolicy.org](http://www.smartervisapolicy.org), the Association argues that even as world travel grew by more than sixty million travelers between 2000 and 2010, the U.S. share of the market remained essentially flat. During this “lost decade” of tourism, the U.S. economy “squandered” an opportunity to gain 606 billion dollars in total spending from seventy-eight million additional visitors, enough to support 467,000 more jobs annually.” Recapturing a seventeen percent share of overseas

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<sup>31</sup> Carl Bonham, Christopher Edmonds, and James Mak, “The Impact of 9/11 and Other Terrible Global Events on Tourism in the United States and Hawaii,” *Journal of Travel Research* 45, no. 1 (August 2006): 100, <http://jtr.sagepub.com/content/45/1/99> (accessed October 14, 2013).

travel, however—the U.S. share in 2000—would boost American exports by a cumulative 390 billion dollars over ten years. As the United States’ largest industry export, according to the Association, international travel comprised eight percent of U.S. domestic exports of goods and services in 2010 and nearly one-fourth of services exports. International long-haul travel (from countries other than Mexico and Canada) is the most lucrative area of the industry, with each overseas visitor spending an average of four thousand dollars at hotels, restaurants, retail and other businesses.<sup>32</sup> And these coveted long-haul travelers feel the pinch of visa policies, according to travel industry data. A U.S. Travel Association survey of five hundred travelers each from Brazil, China and India in September 2010 found that ninety-four percent of Brazilian travelers and eighty percent of Chinese and Indian travelers said they found it “somewhat difficult,” “very difficult” or “nearly impossible” to travel to the United States.<sup>33</sup>

### **On the U.S. Image Abroad**

Further, missed travel opportunities may have public diplomacy costs as well. The Pew Global Attitudes Project has found that those who have visited the United States and interacted with Americans consistently feel more positive about the United States than those who have not visited. The U.S. image also tends to be more positive among people who have friends or relatives in the U.S. whom they regularly call, write to, or visit. In the thirty-two countries where there are a sufficient number of cases to analyze,

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<sup>32</sup> U.S. Travel Association, *Ready for Takeoff: A Plan to Create 1.3 Million U.S. Jobs by Welcoming Millions of International Travelers*, 2011, <http://www.smartervisapolicy.org/site/documents/VisaReport.pdf> (accessed September 16, 2013), 8.

<sup>33</sup> *Ibid.*, 21.

people with friends or relatives in the United States are generally more likely to have a favorable opinion of the country than those who do not have personal connections in the United States.<sup>34</sup> These personal connections would have been particularly important in the post-9/11 period, when the wars in Afghanistan and Iraq presented further challenges to the effort to win over worldwide popular opinion to advance U.S. interests. In 2005, Pew found that the United States was still “broadly disliked” in most countries surveyed, and “the opinion of the American people is not as positive as it once was,” with “the magnitude of America’s image problem ... such that even popular U.S. policies,” such a democracy promotion in the Middle East and U.S. for tsunami victims in Asia, “[had] done little to repair it.”<sup>35</sup>

### **On Security**

But these missed public diplomacy and economic opportunities might not matter, or matter as much, if the visa policies that produced them prevented another terrorist attack. Many government agencies, congressional committees, and other commentators have grappled with the question of “are we safer?” as a result of security-related policy changes after 9/11. Results are mixed, and difficult to quantify because 1) much relevant information is classified and 2) it is impossible to know which attacks would have

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<sup>34</sup> Pew Global Attitudes Project, *Global Unease with Major World Powers*, June 27, 2007, <http://www.pewglobal.org/files/pdf/2007%20Pew%20Global%20Attitudes%20Report%20-%20June%2027.pdf> (accessed September 16, 2013), 18. Pew also noted this tendency in 2002. See Pew Global Attitudes Project, *What the World Thinks in 2002*, December 4, 2002, <http://www.pewglobal.org/files/2002/12/2002-Report-Final-Updated.pdf> (accessed September 16, 2013), 56.

<sup>35</sup> Pew Global Attitudes Project, *American Character Gets Mixed Reviews, U.S. Image Up Slightly, But Still Negative*, June 23, 2005, <http://www.pewglobal.org/files/2005/06/Pew-Global-Report1-6-23-05-final-with-Morocco-note-and-topline.pdf> (accessed October 14, 2013), 1.

succeeded if not for intelligence or law enforcement action or procedural deterrents. The Migration Policy Institute cites an “appropriately placed government official” who claimed the Visas Condor program had not prevented a single person from traveling to the United States, although 130,000 applicants were processed through the program from its beginning until April 2004. And despite the broad requirement for visa interviews, the State Department’s Office of the Inspector General found that “because of the limitations on the NIV [nonimmigrant visa] interview, even with better training for the interviewers and more time for thorough questioning, there is no guarantee that terrorists will be identified” and “the visa interview is not a substitute for good intelligence information,” Mary Ryan’s argument all along.<sup>36</sup>

The nature of post-9/11 attack attempts, however, does provide some evidence for a security impact. The attack attempts that initially followed 9/11 took advantage of the vulnerabilities of the Visa Waiver Program, not the visa issuance process, suggesting that new visa screening procedures either stopped would-be terrorists or provided a deterrent. John Mueller compiled a list of fifty-two terrorism case studies outlined by his students at Ohio State University, and three are worth mentioning given their al Qaeda connection, advanced planning or execution stage, and use of visa waiver or visaed travelers.<sup>37</sup>

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<sup>36</sup> U.S. Department of State Office of Inspector General, *Review of Nonimmigrant Visa Issuance Policy and Procedures*, Memorandum Report ISP-I-03-26, December 2002, <http://oig.state.gov/documents/organization/16215.pdf> (accessed October 7, 2013), 6.

<sup>37</sup> John Mueller, ed., *Terrorism Since 9/11: The American Cases* (Columbus, OH: The Educational Publisher, February 2013), <http://politicalscience.osu.edu/faculty/jmueller/SINCE.pdf> (accessed September 16, 2013).

First, on December 22, 2001, British citizen Richard Reid, who had converted to Islam while in prison and spent two years in al Qaeda training camps, attempted to detonate a bomb hidden in his shoe while on board American Airlines flight 93 from Paris to Miami. Passengers and flight attendants subdued Reid before he could successfully light the bomb's fuse. Second, on August 9, 2006, twenty-four British citizens of Pakistani descent were arrested in connection with a conspiracy to blow up transatlantic flights departing from London's Heathrow airport to the United States and Canada with liquid chemical bombs smuggled on board. Though investigators later confirmed ideological and logistical links between the operatives and al Qaeda, Mueller's analysis indicates the operatives had no real chance of pulling it off given close surveillance on them by British, American, and Pakistani authorities. Of the twenty-four arrested, only eight went to trial. Citing these two plots as examples because they both employed British citizens who did not need a visa to travel to the United States, Baker calls the Visa Waiver Program "Al Qaeda's Frequent Traveler Program."<sup>38</sup>

A later attack provides a better test of the security of the visa program. On December 25, 2009, on Northwest flight 253 from Amsterdam to Detroit, Nigerian citizen Umar Farouk Abdulmutallab attempted to detonate an explosive sewn into his underwear. Abdulmutallab hailed from a wealthy Nigerian family and attended college in London, but during a visit to Yemen in 2009, dropped out of contact with his parents and was recruited by Al Qaeda in the Arabian Peninsula. After the incident, Secretary of Homeland Security Janet Napolitano was widely panned for saying that "once the

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<sup>38</sup> Baker, *Skating on Stilts*, 153.

incident occurred, the system worked,” a “reasonably unexceptionable observation” according to Mueller, except that the system failed to keep the bomber from boarding the plane in the first place. The attempted attack highlighted many of the vulnerabilities still present in the screening process: The United Kingdom’s MI5 did not share their investigation information with American authorities, and the U.S. Embassy in London issued Abdulmutallab a two-year visa. When Abdulmutallab told his father he was “never coming back,” the father informed the U.S. Embassy in Nigeria about his son’s radical views and presence in Yemen; although consular and CIA officers interviewed the father they did not revoke the son’s visa, possibly because of an error in searching for Abdulmutallab’s name in other databases. Some reports indicate intelligence officials requested that State not revoke the visa because of a broader terrorism investigation, but they did not make the connection between Abdulmutallab and a reporting stream about a Nigerian operative. Following the interview with Abdulmutallab’s father, information on Abdulmutallab was added to the Terrorist Identities Data Mart, a database of terrorism suspects, but not to the more selective Terrorist Screening Data Base (TSDB) or the TSA’s No-fly list. The latter would have prevented him from getting on a plane.<sup>39</sup> U.S. Customs and Border Protection planned to interview Abdulmutallab when he landed, but that was too late.

As a result of the attempt, nominating agencies began adding many more people to watch lists. In January 2010 and again in March 2010, the Department of State revoked hundreds of visas of individuals determined to be a possible threat to the United

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<sup>39</sup> Baker, *Skating on Stilts*, 188.

States, largely those individuals were added to the TSDB or moved to the No Fly or Selectee lists. The total number of visas State revoked during 2010 was more than double the number revoked on terrorism-related grounds during 2009, and State denied about 55 percent more nonimmigrant visas based on terrorism-related grounds during 2010 than it did during 2009.<sup>40</sup> In other words, if by 2009 the post-9/11 visa security regime had achieved a more finely-tuned balance between stopping terrorists and facilitating legitimate visa applicants, the Christmas Day attack attempt highlighted other vulnerabilities in the process and swung the pendulum back again. In Congressional testimony after the attack, Director of National Intelligence Dennis Blair summed up the new (or rather, renewal) of the security mindset:

The pressure on No Fly Lists, as you know, for several years before 2008 had been to make them smaller. My cousin has a name on it and gets hassled every time. And you can tell as you read through the guidance given to analysts that they were expected to cast a very fishy eye on the inclusion of lots more names, and the pressure was in the other direction... We have certainly changed that attitude, and we have to maintain that over a course of not just six years but of twelve years and until this campaign finally ends.<sup>41</sup>

### **On the Foreign Service**

Finally, the post-9/11 period has also had an impact on the Foreign Service and its officers. Several reports find consular officers have become more cautious. Since January 11, 2002, the Department has required consular section chiefs to spot-check

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<sup>40</sup> U.S. Government Accountability Office, *Terrorist Watchlist: Routinely Assessing Impacts of Agency Actions since the December 25, 2009, Attempted Attack Could Help Inform Future Efforts*, GAO-12-476, May 2012, <http://gao.gov/assets/600/591312.pdf> (accessed September 28, 2013).

<sup>41</sup> Senate Committee on Homeland Security and Governmental Affairs, *Intelligence Reform: The Lessons and Implications of the Christmas Day Attack—Part 1*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., January 20, 2010 (Washington, DC: Government Printing Office, 2010) <http://www.gpo.gov/fdsys/pkg/CHRG-111shrg56838/pdf/CHRG-111shrg56838.pdf> (accessed October 14, 2013), 13-14.

approved nonimmigrant visa applications, instead of exclusively denials.<sup>42</sup> In addition, Department monitoring through the Bureau of Consular Affairs's Vulnerability Assessment Unit and Fraud Prevention Programs Office to analyze trends in refusal rates and possible fraud patterns of fraud has increased significantly.<sup>43</sup> 9/11 made visa issuance more important from a security standpoint, with much greater risks—though if the travel industry and the opinion pollsters are correct, also with great potential returns. The next section offers conclusions about the balance between these risks and returns, and offers recommendations for managing them.

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<sup>42</sup> Yale-Loehr, *Secure Borders, Open Doors*, 144.

<sup>43</sup> U.S. Department of State and Broadcasting Board of Governors Office of Inspector General, *Report of Inspection: Nonimmigrant Visa Adjudication: Standards for Refusing Applicants*, ISP-CA-05-58, March 2005, <http://oig.state.gov/documents/organization/126337.pdf> (accessed September 16, 2013), 17.

## CONCLUSION AND RECOMMENDATIONS

The preceding sections have described how the history and culture of Consular Affairs at the Department of State influenced the balance between the public diplomacy and security facets of its mission before 9/11, how this balance changed in response to the attack, and the impact of this new balance on the security, economy, and public image of the United States—as well as the Foreign Service. Before 9/11, the Bureau of Consular Affairs' customer service culture, feeling of inferiority within the Foreign Service, and budgetary pressure to do more with less, combined with U.S. government agency information stovepiping and expanding worldwide jet travel, created a system in which an attack like 9/11 was possible. Department of State developments in automation and technology that increased security sometimes seemed to come in spite of, rather than in response to, U.S. policy priorities. 9/11 was therefore a complete shock to the system.

After a brief period of reflection and inertia within the State Department, a new government-wide security paradigm emerged: when in doubt, keep them out. No major successful attacks followed, though visa-carrying “underwear bomber” Umar Farouk Abdulmutallab demonstrated persistent vulnerabilities in the new security approach on Christmas Day, 2009. But tradeoffs had to be made. The positive trend of pre-9/11 travel to the United States, positive opinion of the United States soured, and industries that relied on foreigners to spend money felt the chilling effect of the new procedures. Was the new system more secure? Yes. Was it more closed, more suspicious, less “American”? Yes.

This is why, as stated in the introduction, visa issuance is a “wicked problem.”<sup>1</sup> On April 21, 2004, former Secretary of State Colin Powell defined the goal of the U.S. visa process as “Secure Borders, Open Doors.” In an op-Ed in the *Wall Street Journal*, he described both priorities: “We want to preserve and even expand the benefits of openness, but we also need to be uncompromising on protecting America's security.”<sup>2</sup>

An effective visa policy, then, must somehow balance these two sets of priorities while also taking into account the myriad other policies and goals related to visas. For example, an open visa policy framed with public diplomacy goals in mind accomplishes the following:

- 1) It exposes foreigners to U.S. society and institutions, increasing understanding and support for U.S. interests for those who visit and those with whom they interact when they return home.
- 2) It communicates the idea that the United States welcomes everyone, regardless of country of origin, ethnicity, or race.
- 3) It furthers economic goals of bringing foreign workers to U.S. companies who need them and making the United States a destination for business and tourism.
- 4) It furthers humanitarian and social goals of reuniting families and offering refuge to those seeking asylum from persecution.
- 5) It offers an opportunity to further foreign policy goals by sending a message about the state of bilateral relationships (see, for example, the difference between visa issuance in Saudi Arabia before and 9/11).

A visa policy focused on security, on the other hand, quite simply, protects Americans and American interests.

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<sup>1</sup> Atul Gawande, “Something Wicked This Way Comes,” *New Yorker*, June 28, 2012, <http://www.newyorker.com/online/blogs/comment/2012/06/something-wicked-this-way-comes.html#ixzz1zFJmssIE> (accessed October 1, 2013).

<sup>2</sup> Colin L. Powell, “Secure Borders, Open Doors,” *The Wall Street Journal*, April 21, 2004, <http://2001-2009.state.gov/secretary/former/powell/remarks/31634.htm> (accessed October 1, 2013).

Immediately after 9/11, these two sets of policy priorities were in conflict. Now, the tension is less visible, although challenges remain. The travel industry continues to claim that current visa policy is depriving the United States of millions of visitors and millions of dollars. Recapturing the United States' historic share of overseas travel would create up to an additional 1.3 million U.S. jobs by 2020 compared with 2010, according to travel industry data, and visa wait times of over one hundred days in fast-growing markets like Brazil and China put the United States at a disadvantage compared to its competitors.<sup>3</sup> Immigration lawyers and arts performers still criticize the visa procedures for creating insurmountable barriers, causing performers, particularly large ensembles, to cancel tours and avoid the United States.<sup>4</sup> Universities are also looking for ways to avoid the visa issue for their foreign students. In January 2014, in a first for an elite institution, the Georgia Institute of Technology plans to offer an online master's degree in computer science, which the university hopes could attract up to ten thousand students a year, many from outside the United States. "Online, there's no visa problem," explained Zvi Galil, the dean of the university's College of Computing.<sup>5</sup>

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<sup>3</sup> U.S. Travel Association, *Ready for Takeoff: A Plan to Create 1.3 Million U.S. Jobs by Welcoming Millions of International Travelers*, 2011, <http://www.smartervisapolicy.org/site/documents/VisaReport.pdf> (accessed September 16, 2013), 1.

<sup>4</sup> See, for example, Larry Rohter, "U.S. Visa Rules Deprive Stages of Performers," *New York Times*, April 11, 2012, [http://www.nytimes.com/2012/04/11/arts/us-visa-rules-frustrate-foreign-performers.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/04/11/arts/us-visa-rules-frustrate-foreign-performers.html?pagewanted=all&_r=0) (accessed October 1, 2013).

<sup>5</sup> Tamar Lewin, "Master's Degree Is New Frontier of Study Online," *New York Times*, August 17, 2013, <http://www.nytimes.com/2013/08/18/education/masters-degree-is-new-frontier-of-study-online.html> (accessed September 28, 2013).

But at the same time, progress has been and is being made in efforts to fine-tune screening procedures so they hit their target and pass by legitimate travelers. The following recommendations would continue this progress.

First, the Department of State should focus on technical solutions to the greatest extent possible. Increasing the interoperability and data sharing between the State Department's Consular Lookout and Support System (CLASS) and other U.S. government databases of known or suspected terrorists, criminals, and others the United States wants to keep out is one of the critical ways to make sure the wrong people don't get caught up in the system. For example, more and better data at the front end of the system eliminates unnecessary Security Advisory Opinions, cutting down on the interagency process workload as well as the delay for the applicant. When the Bureau of Consular Affairs was given the authority to charge a visa application fee, it automated the applicant name checking system around the world in eighteen months, greatly increasing the security of the process. Steps to strengthen the security of the process, such as machine-readable passports and visas and better data integrity in CLASS, can also improve the service side. While the U.S. government is not known for being at the technological frontier, this is an area where investment pays enormous dividends. State and other government agencies should prioritize these technical solutions.

Second, U.S. policies should focus on "securing the border" in ways that make the most sense and have the most impact—and not treat counterterrorism and immigration enforcement as the same thing. In *The Closing of the American Border*, Edward Alden details the ways the United States has used immigration enforcement to "shore up the

country against further terrorist attacks” because it 1) requires no new legislation, 2) is easy to measure, and 3) sells easily from a political standpoint. A countering argument offers that weak immigration offers a vulnerability terrorists can exploit. But as Alden argues, “enforcing immigration laws does not catch terrorists; it catches immigration violators.”<sup>6</sup> Some future terrorists may be both, but intelligence gathering and equally important, intelligence sharing, should be the main tools in counterterrorism. Other policy efforts, while they may be worthwhile in their own right, may be ineffective and even distracting or dangerous if policymakers focus on them as a panacea to the detriment of other programs, actual or proposed. Though not a visa function, an entry and exit data system, which federal law has required since 1996 but which has yet to be implemented, is one example. Five of the nineteen hijackers overstayed visas. Current estimates put the total number of unauthorized immigrants at 11.7 million people, a significant percentage of whom overstayed their legally issued visas.<sup>7</sup> Further, as of June 2013, DHS has been unable to verify the departure of 1 million travelers with arrival records.<sup>8</sup> Making sure people depart the United States is valid policy goal, but not an efficient way to catch terrorists.

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<sup>6</sup> Edward Alden, *The Closing of the American Border: Terrorism, Immigration, and Security Since 9/11* (New York: Harper Perennial, 2008), 292-293.

<sup>7</sup> Jeffrey S. Passel, D’Vera Cohn, and Ana Gonzalez-Barrera, *Population Decline of Unauthorized Immigrants Stalls, May Have Reversed*, Pew Research Center, September 23, 2013, <http://www.pewhispanic.org/files/2013/09/Unauthorized-Sept-2013-FINAL.pdf> (accessed October 1, 2013).

<sup>8</sup> U.S. Government Accountability Office, *Overstay Enforcement: Additional Actions Needed to Assess DHS’s Data and Improve Planning for a Biometric Air Exit Program*, GAO-13-683, July 2013, <http://www.gao.gov/assets/660/656316.pdf> (accessed September 28, 2013).

Third, the Bureau of Consular Affairs should stay where it is, in the Department of State. Arguments about moving Consular Affairs to DHS persist ten years after the debate.<sup>9</sup> This is still not a feasible plan. In addition to the original arguments when the debate first surfaced in the 9/11 aftermath about language skills, integration into the Foreign Service promotion process, and other logistics, it is currently unclear if Immigration and Customs Enforcement is equipped to handle the advisory role in visa security in its mandate through the Visa Security Program (VSP). In 2011, the Government Accountability Office found that “the limited guidance regarding interactions between State officials and VSP agents...has led to tensions between the VSP agents and State officials at some posts.” Nor had VSP posts, which included only 11 of the top twenty high-risk posts for fraud concerns, developed standard operating procedures for VSP operations.<sup>10</sup> This is not a criticism of ICE or any DHS agency, but rather an argument for specialization where appropriate. The Bureau of Consular Affairs has handled visa adjudication for decades. Demonstrated vulnerabilities exist in the system, but reinventing the wheel is not likely to produce a better wheel. Instead, both DHS and State should focus in increasing their communication, coordination at overseas posts, and systems interoperability.

Fourth, the Department of State should view every aspect of the visa process as a public diplomacy opportunity and focus on customer service where possible. In most

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<sup>9</sup> James Hernandez, “Visa Diplomacy vs. Visa Security,” *Homeland Security Affairs* 9, Article 5 (June 2013), <http://www.hsaj.org/?article=9.1.5> (accessed October 1, 2013).

<sup>10</sup> U.S. Government Accountability Office, *Border Security: DHS’s Visa Security Program Needs to Improve Performance Evaluation and Better Address Visa Risk Worldwide*, GAO-11-315, March 2011, <http://gao.gov/assets/320/317405.pdf> (accessed September 28, 2013).

cases, there is no reason to expect this will have a negative impact on security. The Department of State's New York Passport Agency was recently highlighted as "The Most Efficient Office in the World," achieving its efficiency because it has enough autonomy to adapt to customers' needs.<sup>11</sup> Though with many more constraints, including applicant volume, outdated buildings and infrastructure, and security concerns, overseas posts also enjoy, or should enjoy, the autonomy to be creative. The Department's Office of Inspector General noted this opportunity in a report on Mission China: "Three quarters of a million Chinese come to Mission China's consular sections each year," where they wait in crowds or stand out in the elements. Since "Chinese who travel—especially those who travel for business or studies—are important to American economic success and the future of the U.S.-China bilateral relationship," Mission China should use "these key individuals' undivided attention for several hours" as "public diplomacy targets of opportunity."<sup>12</sup> The U.S. travel industry seized on this point for its own set of recommendations on increasing the United States' share of overseas travel.<sup>13</sup> The "Welcome: Portraits of America" project, a video and photo series created by Walt Disney Parks and Resorts in 2007 with the Departments of State and Homeland Security

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<sup>11</sup> Ray Fisman and Tim Sullivan, "Is the Most Efficient Office in the World Run by the United States Government?!" Slate.com, July 31, 2013, [http://www.slate.com/articles/business/the\\_dismal\\_science/2013/07/renewing\\_your\\_passport\\_visit\\_the\\_incredibly\\_efficient\\_new\\_york\\_city\\_passport.2.html](http://www.slate.com/articles/business/the_dismal_science/2013/07/renewing_your_passport_visit_the_incredibly_efficient_new_york_city_passport.2.html) (accessed October 1, 2013).

<sup>12</sup> U.S. Department of State and Broadcasting Board of Governors Office of Inspector General, *Report of Inspection: Embassy Beijing, China, and Constituent Posts*, ISP-I-10-79A, September 2010, <http://oig.state.gov/documents/organization/149567.pdf> (accessed October 1, 2013).

<sup>13</sup> *Ready for Takeoff*, 26.

for use in airport arrival concourses and inspection areas and embassy and consulate waiting rooms, is one example.<sup>14</sup>

Fifth, other opportunities for innovation exist within the visa process, even as its basic form survived 9/11 generally intact, albeit with the changes outlined in the last section. Ruth Ginsburg, author of *Securing Human Mobility in the Age of Risk: New Challenges for Travel, Migration, and Borders*, promotes the idea of a three-tiered system of 1) visa-required countries, 2) visa-free travel with the Electronic System for Travel Authorization currently in use, and 3) a new tier of countries with which the US has no visa-free travel agreement but some of whose citizens could travel visa-free under a registered traveler program, along the lines of DHS trusted traveler programs like Global Entry.<sup>15</sup> Innovations like this would not be vulnerability-free, but they could fit into a risk management approach that uses resources more effectively and efficiently. Future policymakers should keep an open mind.

Returning to the theme of wicked problems, the *New Yorker* blogger also cited the economist Albert O. Hirschman's work on opposition to social advances. Hirschman found that arguments in opposition to change took three forms: perversity, futility, and jeopardy. The blogger's words are as follows:

The perversity thesis is that the change will not just fail but make the problem worse. The futility thesis is that the change can't make a meaningful difference, and therefore won't be worth the effort. . . . The jeopardy thesis is that the change

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<sup>14</sup> Monica Perin, "Disney makes welcome video for Bush Airport," *Houston Business Journal*, October 22, 2007, <http://www.bizjournals.com/houston/stories/2007/10/22/daily10.html> (accessed October 20, 2013)

<sup>15</sup> Ruth Ginsburg, *Securing Human Mobility in the Age of Risk: New Challenges for Travel, Migration, and Borders*, Washington, DC: Migration Policy Institute, April 2010, 220.

will impose unacceptable costs upon society—that what we lose will be far more precious than what we gain.<sup>16</sup>

All of these arguments could be made about visa policy after 9/11 related to the tension between security and public diplomacy. According to the first argument, adding more security procedures, on the one hand, or focusing on public diplomacy, on the other, could make us more secure, or advance our global interests—or either could make things worse. Does interviewing all applicants, for example, create “white noise” that makes it harder for consular officers to spot the true threats, as the Migration Policy Institute argues?<sup>17</sup> And according to the second argument, any effort on either the security or public diplomacy front could end up being futile if a terrorist finds a way to successfully execute an attack anyway. But the jeopardy argument, that change will impose unacceptable costs, is the most serious in its consequences if, in adding more security, we lose an essential commitment to human rights that attracts visitors and immigrants to the United States in the first place or if, in striving to be open, we put U.S. citizens at risk.

But there is a middle ground, a difficult yet worthwhile balance that looks to core values of human dignity and fairness for direction. As former Assistant Secretary of Consular Affairs Mary Ryan explained, “There was no reason for any person who applied for a visa to visit the United States or to come to the United States for any purpose to be

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<sup>16</sup> Atul Gawande, “Something Wicked.”

<sup>17</sup> Stephen Yale-Loehr, Demetrios G. Papadimitriou, and Betsy Cooper, *Secure Borders, Open Doors: Visa Procedures in the Post-September 11 Era*, Migration Policy Institute, 2005, [http://www.migrationpolicy.org/pubs/visa\\_report.pdf](http://www.migrationpolicy.org/pubs/visa_report.pdf) (accessed September 16, 2013), 37.

demeaned in the process.”<sup>18</sup> The tension between security and the openness that facilitates good public diplomacy means there will always be tradeoffs between the two. As long as one never entirely eclipses the other, it is possible to achieve both.

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<sup>18</sup> Mary A. Ryan, interview by Charles Stuart Kennedy, March 26, 2003, transcript, Association for Diplomatic Studies and Training Foreign Affairs Oral History Project, <http://www.adst.org/OH%20TOCs/Ryan,%20Mary%20A.toc.pdf> (accessed October 7, 2013).

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