

# REVIEW OF IMMIGRATION PROBLEMS

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*United States  
Congress. House  
Committee on  
the Judiciary.*

## HEARINGS

BEFORE THE

*1* SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,  
AND INTERNATIONAL LAW.

OF THE

### COMMITTEE ON THE JUDICIARY

### HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST AND SECOND SESSIONS

ON

IMMIGRATION AND NATIONALITY ACT WAIVERS, FOREIGN STUDENTS,  
CONSULAR FUNCTIONS ABROAD, AND IMMIGRATION BENEFITS TO  
ILLEGITIMATE CHILDREN

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JUNE 11, 12; DECEMBER 10, 1975; AND JULY 28, 1976

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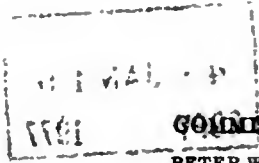
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# REVIEW OF IMMIGRATION PROBLEMS

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## Immigration and Nationality Act Waivers

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WEDNESDAY, JUNE 11, 1975

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
CITIZENSHIP, AND INTERNATIONAL LAW  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 11 a.m., in room 2141, Rayburn House Office Building, the Honorable Joshua Eilberg [chairman of the subcommittee] presiding.

Present: Representatives Eilberg, Holtzman, Russo, and Fish.

Also present: Garner J. Cline and Arthur P. Endres, Jr., counsel; Janice A. Zarro, assistant counsel; and Alexander B. Cook, associate counsel.

Mr. EILBERG. The subcommittee will now come to order. The Chair would like to make a brief statement.

Mr. Chapman, Mr. Walentynowicz, and others, would you kindly move forward to a place to which you have grown quite familiar.

The second half of this morning's hearing will be concerned with the operation of section 212(d)(3) of the Immigration and Nationality Act. As such, this portion of the hearing represents a continuation of oversight hearings which have been held to review the general administration of various provisions of the Immigration Act by the Department of State and the Department of Justice, and we will continue to hold such hearings throughout this Congress.

212(d)(3) provides a broad grant of discretionary authority to the Attorney General to waive most of the grounds of excludability set forth in section 212 for aliens who are applying for temporary admission to the United States. The waiver authority extends to every ground for exclusion except those set forth in section 212(a)(27) and section 29 relating to national welfare, safety, or security. In conferring this authority on the Attorney General, Congress clearly recognized that certain circumstances could justify the temporary admission of an inadmissible alien for the purpose of promoting international trade, furthering the national interest, or for example, to enable an alien to obtain medical care in the United States which was not available in his native country.

At the same time, Congress expressed its intent to closely monitor the implementation of this section of law under section 212(d)(6) which requires the Attorney General to submit detailed reports to the Congress on waivers which are granted for criminals and members of the Communist Party.

Over the past year, several issues have come to my attention involving the exercise of the Attorney General's discretionary au-

thority under this section of law, and I am aware of various suggestions which have been made to revise that waiver procedure and reporting requirement. I am hopeful that during today's hearings we will be able to closely review all of these matters, and I wish to assure the gentlemen present that we have received considerable correspondence and contact from our constituents and that is the reason for calling this oversight hearing.

Gentlemen, are there any prepared statements that you have to offer at this time?

**TESTIMONY OF HON. LEONARD F. CHAPMAN, JR., COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY HON. LEONARD F. WALENTYNOWICZ, ADMINISTRATOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS, DEPARTMENT OF STATE; JAMES F. GREENE, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE; SAM BERNSEN, GENERAL COUNSEL, IMMIGRATION AND NATURALIZATION SERVICE; AND JULIO ARIAS, VISA OFFICE, DEPARTMENT OF STATE**

Mr. WALENTYNOWICZ. Mr. Chairman, because of the fact that we did not know what specific areas you wanted to address with respect to this particular section, we have prepared no formal statement. We are ready of course, to respond to any and all inquiries you may have.

I would like to suggest that as you may want to discuss in detail particular cases and particular sources of information it may be preferable and in the public interests that we discuss these matters in executive session.

Mr. EILBERG. I would like to recognize Mr. Cline at this time.

Mr. CLINE. Mr. Chairman, your staff advised both witnesses that prepared statements were necessary. In addition, the staff also outlined the thrust of today's hearing.

Mr. WALENTYNOWICZ. May I briefly respond to that? I had discussions with your staff and I was told that we would receive a written request either Monday or Tuesday of this week. We received nothing like that. I would have been more than happy to have a prepared statement, had I some idea as to what to specifically respond. There were some oral discussions, which included a request for certain statistics—whatever statistics we had. I also indicated certain areas of possible interest, for example, your inquiry in reference to the denial of waiver requirements for certain individuals. I believe you sent a letter on March 26, 1975, and we are prepared to respond.

However, I think it would be helpful from the standpoint of orderly procedure if we were provided something in writing from the committee that instructed us to respond or to appear or both. I want to make it very clear to you, Mr. Chairman, and to the committee, that we are always pleased to prepare a formal written statement, when asked to do so.

Mr. EILBERG. Mr. Walentynowicz, I do not want to get into a debate with you.

Frankly, I am somewhat disappointed that you have not prepared a statement. We always do it that way, you know; we are concerned with the oversight of this section involved. I might also say that there

has been much correspondence inquiring as to why certain visas have been denied. And answers provided under your direction and, I believe, by the Immigration Service have been extremely vague and have provided absolutely no factual information.

And if your concern is over our being in executive session, it seems to me that initiative might have been displayed by you in a telephone call by you to me, and we would have been glad to do that but that is hardly a reason for not abiding by the request of our counsel. And I just wonder about what your position in this matter is. Our relations have been so good and why you just take it upon yourself to ignore a request which presumably comes from the committee.

Mr. WALENTYNOWICZ. I did not intend to ignore any such committee request, sir. With respect to executive session, I do not suggest it as an alternative to my response; I am only pointing out that there may be sensitive subject areas that would be better developed in executive session. When we are discussing broad standards, and broad policy; you may not want an executive session. I am simply suggesting that there may be times during an inquiry that it would be preferable to go into executive session, and I will try to alert you as to what areas the Department may regard as sensitive. I am certainly not using this as an excuse not to respond. And with respect to—

Mr. EILBERG. May I just interrupt. Our contacts are so substantial that it strikes me as supercilious that you would insist upon a written letter from counsel when the expressed desire for such a statement has been made.

The subcommittee will now recess to answer the quorum call and we will be back immediately. Will you gentlemen kindly wait for us?  
[A brief recess was taken.]

Mr. EILBERG. The subcommittee will come to order, and the Chair expresses again his disappointment over our apparent failure to communicate, which does not seem to be the fault of the staff of the subcommittee. I would say with respect to the Immigration Service Commissioner, it has been made quite clear to me that there was a 2-hour conference yesterday as to the subjects to be covered and the nature of the statement expected, and I just wonder whether you would care to comment on that waste of time that took place yesterday.

General CHAPMAN. I am prepared to make an informal statement.

Mr. EILBERG. I said are you prepared to make a formal statement?

General CHAPMAN. No, sir. I would like to but it is a practical impossibility for us to prepare a formal statement and work it through the Justice Department and OMB in a matter of hours, which was all the time allowed.

Mr. EILBERG. Commissioner, yesterday afternoon Mr. Greene and Mr. Leary met with our staff and raised a number of questions and gave an outline of the statement expected. Did you talk with your staff subsequent to that meeting?

General CHAPMAN. Yes, sir.

Mr. EILBERG. And evidently you decided that no statement was necessary. Is that correct, sir?

General CHAPMAN. We just decided that it was impractical to prepare and clear through the administration a formal statement in a matter of a few hours. I am fully prepared to talk to all of the subjects

that were expected and to make an informal statement. But Mr. Chairman, you must realize that a formal statement requires clearance by the Justice Department, by OMB, and by the White House, and that just cannot be done within a matter of hours, I regret to say.

Mr. EILBERG. Commissioner, does that apply in nonlegislative matters as well as legislative matters, nonlegislative matters when we are exercising our oversight? When you appear before us and you are required to make a statement, this has to be cleared all the way?

General CHAPMAN. All the way, sir. And on previous occasions we have made formal statements and they have been cleared in the way I described.

Mr. EILBERG. Well, perhaps you are right. But it would have been much simpler to save our staff's time and Mr. Greene's and Mr. Leary's time, if this objection had been raised before this morning. And we would not have taken as much time as we have this morning on it.

General CHAPMAN. I believe we can cover all of the desired grounds here on the basis I have described. I am ready to deal with all of the subjects that I believe you expect to touch on, and to begin an informal statement, which I can assure you would not be very much different from a formal one if we had had time to prepare it and clear it.

Mr. EILBERG. Is it your desire now, Mr. Walentynowicz or General Chapman, to go into executive session? Did I understand that you wanted that, or you requested that?

General CHAPMAN. Not on my part, sir.

Mr. WALENTYNOWICZ. I merely suggested Mr. Chairman, that there may be times when it would be appropriate, but I did not indicate that it was necessary right now.

Mr. EILBERG. Well, let's get specific. I will ask a question, and we will see where we are.

This member, as well as others in the Congress, in the House of Representatives, has written to the Department of State concerning the cancellation of nonimmigrant visas for certain Irish nationals who were desirous of visiting the United States. In most of these cases, they were determined to be excludable under section 212(a)(28)(F) and this information was conveyed to me in a letter from Assistant Secretary for Congressional Relations, Robert J. McCloskey, April 24.

I might say that I wrote first and did not get a detailed, factual reply. I wrote again and the second time did not get a factual reply. And so, I am very much concerned about what your position is on these matters. I wonder if you could cite the special provision of the section 212(a)(28)(F) that applied to the following individuals, Ruairi O'Bradaigh—forgive my pronunciation—Maire Drumm, Joe Cahill, Sean Keenan, and Seamus Loughan. What was the basis of making that determination?

Was it based on their past activities in Northern Ireland? What was the nature of these activities? The subcommittee would like to know about these things, Mr. Walentynowicz.

Mr. WALENTYNOWICZ. I would be more than happy to respond, sir. However, may I suggest that if we start talking about cases in detail, it may be appropriate to go into executive session. If, as the inquiry proceeds, you ask us for specific factual data which formed the basis of our conclusion, we may very well reflect unfavorably upon the applicant and touch upon sources of information which I think, in



the interests of the United States, would be better to be kept in executive session.

Mr. EILBERG. Well, my reaction would be that I have written to the Department of State twice on this subject and have not received satisfactory answers as far as details are concerned. I know nothing about the factual backgrounds of these cases, so there is no basis for me to believe that an executive session is necessary at this point.

Mr. WALENTYNOWICZ. Well, sir, I am privy with the letter that was sent to you by Ambassador McCloskey, on approximately April 25, 1975, in response to your letter of March 26, 1975. If there is another letter—

Mr. EILBERG. Well, we will take that letter. And I call to your attention and the members of the subcommittee who have not perhaps had a chance to read this letter, that we asked about all of these cases that are referred to. And in the reply of Mr. McCloskey, in not a single case does he give any factual background, and I find that insulting.

Mr. WALENTYNOWICZ. Let me assure you, sir, that it was not intended to be insulting. Ambassador McCloskey was attempting to do his job. If the letter was, in your mind, insufficient or inadequate, we will be pleased to respond again and provide whatever additional detail you wish. However, I would like to point out that there was a specific finding in the cases you mention. For example, Mr. Peter R. Brady, also known as Ruairi O'Bradaigh—and I apologize for any mispronunciation—was found ineligible to receive a visa due to the operation of 212(a)(28)(F). That I think is a particular fact. Perhaps you are looking for more facts, or for the reasoning?

Mr. EILBERG. I would like to know the factual situation in that case and in each of the other cases, Mr. Walentynowicz, and what led you to arrive at the decision that you did not grant a waiver. I do not want the authority at this point—you have given us the authority, but you have not told us one blessed thing about why you exercised your discretion.

Mr. WALENTYNOWICZ. I would like to respond. If you will bear with me for a moment, sir, before I address myself to those questions, I would like to briefly consult Mr. Arias, with respect to my previous comment about executive session.

Mr. EILBERG. Please do.

Mr. WALENTYNOWICZ. May I make a prefatory comment, sir?

Mr. EILBERG. Mr. Walentynowicz, it has been the custom, as I have observed your testimony, that your preliminary comments tend to run into 15 to 20 minutes or half an hour, and so they will not on this occasion.

Mr. WALENTYNOWICZ. Sir, you are the chairman and you may limit me in any fashion.

I only ask that you bear with me.

Mr. EILBERG. I will bear with you for a reasonable time, but not for your customary speeches, which say absolutely nothing.

Mr. WALENTYNOWICZ. Well, sir, I would think that at least if you invite me to come here and testify you would at least give me an opportunity to finish my presentation.

Mr. EILBERG. Well, you have no presentation and you have made that very clear.

Mr. WALENTYNOWICZ. I would like to address myself to the inquiry, sir, and not to any side issues.

Section 212(d)(3) of the Immigration and Nationality Act provides that the Attorney General may by waiver and after recommendation of the Secretary of State or by a consular officer, admit into the United States as a nonimmigrant an otherwise inadmissible alien. This is the discretion that is given to the Attorney General by the Immigration and Nationality Act. As I understand the law, there is no specific standard which guides that discretion. In other words, when I say specific standard, I am sure that reasonableness is an element of that discretion; however, there is no other objective set of criteria that refers to the discretion of the Attorney General.

However, a working set of criteria has been carefully developed over time. I would like to point out that the waiver is not, in fact, granted by the Secretary of State, but is the result of a working process wherein a recommendation by the Secretary of State or the consular officer is an essential precondition to the Attorney General's final decision. I make these remarks simply to give you a framework with respect to your specific inquiry.

One of the criteria that has been developed with respect to whether admission is advisable and in the best interests of the United States is an individual's involvement in certain terrorist activities. If you want to discuss the specific facts of those five cases, I urge that we go into executive session.

Mr. EILBERG. Well, I would call to your attention that if the subcommittee decides to go into executive session, we may then decide that that material that you are presenting is not in the national security.

Mr. WALENTYNOWICZ. We understand that but I also hope that you will give us the opportunity to make appropriate comments.

Mr. EILBERG. I do not think there is anything in the House rules that requires appropriate comment.

Mr. WALENTYNOWICZ. I do not say there is anything in the rules, sir.

Mr. EILBERG. You have shown us very little courtesy and I do not think you are entitled to any particular courtesy from us, so let us just keep this on a formal basis. As far as I am concerned, if that is the way you want to do business at this time we will not go into executive session, and again I ask the question.

Mr. WALENTYNOWICZ. With respect to Mr. O'Brady, sir, we have developed information from confidential sources to the effect that Mr. O'Brady is involved in the Provisional IRA activity. As a matter of fact, we also have developed information that he is a leader of the Provisional Sinn Fein, and that the purpose of his visit to the United States would be to raise funds which would in some fashion ultimately support those activities. Because it has been clearly demonstrated these organizations have involved violence and terrorism, the Department concluded that it would not be provident for us to seek a waiver, or ask the Immigration and Naturalization Service to seek of waiver of the provisions of section 212(a).

We felt that the information we developed was such that could properly lead us to the conclusion that Mr. O'Brady was in fact an individual of the type contemplated in 212(a)(28)(F). As a result of that determination, it was concluded that it would not be in the public interest of the United States to seek a waiver; and for that

reason we did not approach the Immigration and Naturalization Service in this matter.

Mr. EILBERG. Mr. Walentynowicz, what you refer to, 212(a)(28)(F), I would like to know what subsection of (F) or subsections you are referring to.

Mr. WALENTYNOWICZ. That section discusses, and I am not trying to read it for you because I know you can read, but I am just trying to explain the thinking processes, sir. The section talks about aliens who advocate or teach, or who are members of organizations which advocate or teach certain proscribed acts. There is a dual test: The person may teach or advocate, but does not necessarily have to be a member. Conversely, if he is a member of a group that advocates or teaches, although he may not necessarily advocate or teach himself, he is nevertheless disqualified. The other specific aspect of the standard is the fact that the teachings or advocacy is directed to:

(i) The overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law, or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any "officers of the Government of the United States or any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage.

Mr. EILBERG. Mr. Walentynowicz, let me interrupt you there. I think the essence of what you are saying so far is that he would have come over here to raise funds and that that is why he was denied the visa, because he belongs to this organization that would come over here and raise funds.

Now how does that tend to overthrow the Government of the United States?

Mr. WALENTYNOWICZ. It does not overthrow the Government of the United States, sir, but let us not forget the four separate categories. We are talking about sabotage. We are talking about the unlawful damage, injury or destruction of property. We are talking about the overthrow of other organized governments. We read that section to mean—and this is somewhat of an oversimplification, sir, but I am trying not to be extended in my comments—that people who advocate, teach, or support terrorism should not be admitted into the United States.

Mr. EILBERG. I yield to Ms. Holtzman.

Ms. HOLTZMAN. Mr. Chairman, I am very confused by the testimony of the witness. Item No. 2 of paragraph (F) talks about the duty, necessity, propriety of the unlawful assaulting or killing of officers of any other organized government. Terrorism is not necessarily directed against officers of an organized government.

Are you making the claim here that this gentleman or the organization with which he was connected advocated, taught, the duty, necessity, propriety of unlawfully assaulting or killing officers of another government? Is that the statement you are making?

Mr. WALENTYNOWICZ. From newspaper comments alone Ms. Holtzman, it is pretty clear that the situation in Ireland—particularly in Northern Ireland—is such that many governmental officers have been assaulted and killed. Police officers, civil officers, and so forth.

Ms. HOLTZMAN. I do not think you have answered my question. My question is, does this gentleman, or the organization he belongs to specifically advocate or teach the duty, necessity, propriety of unlawfully assaulting or killing of any officer or officers of any other

organized government because of his or their official character. That is the question. That is what the statute provides.

Mr. WALENTYNOWICZ. Yes, that is what I have tried to say. Their actions and their declarations indicate that this is what they do.

Ms. HOLTZMAN. So what you are saying is that this organization——

Mr. WALENTYNOWICZ. In our judgment.

Ms. HOLTZMAN. In your judgment, that that organization specifically advocates the unlawful assaulting or killing of officers of other organized governments, and you learned this from reading the newspapers?

Mr. WALENTYNOWICZ. No, sir. I said at least one indication was from the newspapers. We have learned it from other sources also.

Mr. EILBERG. Go on.

Mr. WALENTYNOWICZ. I am saying that their activity is of such notoriety that it appears in the press. Of course, I am not suggesting that the only place we look is newspapers. On the other hand, we do not disregard newspaper reports either.

Ms. HOLTZMAN. I must say, Mr. Walentynowicz, I am very intrigued that you keep saying "no, sir," but in any case——

Mr. WALENTYNOWICZ. All right. No, madam.

Mr. EILBERG. Go on, Mr. Walentynowicz.

Mr. WALENTYNOWICZ. The point very simply, sir, is that we have standards, and we keep these standards in mind as we evaluate what kind of activity this man is going to be involved in when he comes to the United States; what kind of activity he has been involved in while in his own country; what are his public declarations, and, what are the groups to which he belongs or professes to belong. Keeping all of these things in mind and looking to the circumstances and using the public interest criteria which I previously discussed, we feel that we were quite proper in not recommending that a waiver be issued for this man. In this instance, much of the information available to us is secret and confidential cable traffic obtained from other governments and individuals with the understanding that the sources would be protected.

Mr. EILBERG. Mr. Walentynowicz, my reaction to all that you have said is that it is all very general in nature, and that you have not answered our questions specifically.

In view of what you have said, if we go into executive session, are you prepared to give us the details of the case?

Mr. WALENTYNOWICZ. Yes, sir. We will give you whatever information we have.

Mr. EILBERG. All the facts in that case?

Mr. WALENTYNOWICZ. All the facts.

Mr. EILBERG. Unless there is objection, the subcommittee will go into executive session, and there has to be a rollcall vote on this, and I hope members of the subcommittee will agree under the circumstances.

Mr. FISH. Aye.

Mr. EILBERG. Aye.

Ms. HOLTZMAN. Aye.

Mr. EILBERG. The subcommittee will go into executive session. [Whereupon, at 12 noon, the subcommittee recessed to go immediately into executive session, and that material has been retained in the committee files.]

# REVIEW OF IMMIGRATION PROBLEMS

## Foreign Students

THURSDAY, JUNE 12, 1975

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
CITIZENSHIP, AND INTERNATIONAL LAW  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 2237, Rayburn House Office Building, the Honorable Joshua Eilberg [chairman of the subcommittee] presiding.

Present: Representatives Eilberg, Sarbanes, Dodd, Russo, Fish, and Cohen.

Also present: Garner J. Cline and Arthur P. Endres, Jr., counsel; Janice A. Zarro, assistant counsel; and Alexander B. Cook, associate counsel.

Mr. EILBERG. The subcommittee will come to order.

[The opening statement of the Honorable Joshua Eilberg follows.]

### OPENING STATEMENT OF THE HONORABLE JOSHUA EILBERG

The purpose of this hearing by the Subcommittee on Immigration, Citizenship, and International Law is to exercise its responsibility for legislative oversight regarding the administration of the immigration law as it pertains to those provisions concerning foreign students.

Most alien students are admitted to the United States under the nonimmigrant student F visa classification of the Immigration and Nationality Act, on a temporary basis, to pursue a full course of study at a school approved by the Attorney General. Other foreign students are admitted with a J visa which is a nonimmigrant exchange visitors visa which allows the alien to come to the United States under an Exchange Program for the purpose of acquiring knowledge and skills, and who are required to return to the native country to fulfill a two year returning residency commitment. The schools that the alien students attend include colleges and universities, trade and vocational, and private and public elementary and secondary schools. Many of the students who obtain visas remain in the United States more than one year.

There are a number of domestic socio-economic factors; namely the sharp rise in the cost of tuition and the rising unemployment rate which has affected the foreign student program as well as United States students seeking a college education.

In addition, the United States foreign policy goal of international educational exchange may conflict in some respect with domestic programs and priorities.

A controversial situation arose last summer when the Immigration and Naturalization Service revised its procedures for granting summer work permission to foreign students by requiring applicants to obtain permission from the INS rather than the learning institution. In the past, it had been the practice of the INS to authorize the foreign student advisers in the educational institutions to grant summer work permission to the foreign students. In a press release issued by the Department of Justice, which explained the revised procedure, Commissioner Leonard F. Chapman, Jr., our witness today, indicated the decision to withhold authority from the school officials was based on the desire to protect jobs for American youth including Vietnam veterans and minority groups. Based upon this

change in procedure I received a great deal of correspondence from universities and other interested groups concerned not only about this change, but the numerous issues related to foreign students at all educational levels in the United States.

While it is not within the jurisdiction of this Subcommittee to choose between foreign policy considerations and domestic educational policy, it is within our jurisdiction to question whether student visas are being issued to intending immigrants. We must also prevent foreign students from being brought here with false expectations and sent home unable to complete their proposed course of study. We must examine the duty and ability of consular officers to determine the financial ability, scholastic qualifications and English proficiency of prospective students who must meet this criteria before being issued a student visa.

I reiterate that the Subcommittee has been concerned with all of the problems related to foreign students including, I might add, foreign medical school graduates. The Subcommittee is not only concerned about the implementation of the foreign student provision of the Immigration and Nationality Act by the Departments of State, Justice, and Health, Education and Welfare, but compliance with the law and regulations by the various educational institutions.

Quite understandably many of my colleagues have contacted me and have expressed a concern for the difficulties encountered by foreign students, educational institutions and American students regarding the current administration of the immigration laws affecting foreign students. The Honorable George E. Brown, Jr., of California has introduced H.R. 1787 with numerous cosponsors which would permit nonimmigrant foreign students to be employed during school vacations with the permission of their educational institutions. Congressman Brown will testify this morning on this legislation.

Mr. EILBERG. Congressman Brown, please go ahead. I have not had the opportunity to read your statement. If you have any comments on the GAO report they will be welcome as well. I realize that you may not have that much time. You may want to submit a further reaction later on; that will probably be all right with the subcommittee also.

**TESTIMONY OF HON. GEORGE E. BROWN, A REPRESENTATIVE IN CONGRESS FROM THE 36TH CONGRESSIONAL DISTRICT OF THE STATE OF CALIFORNIA**

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

I first want to commend the subcommittee and the chairman for holding these hearings which recognize the critical nature of the problems facing the foreign student community as a result of recent administrative changes made and which, of course, also recognize the fact there has been to some degree a breakdown in the proper handling of the total problem of foreign students in this country.

I have been very much interested in this question. I have submitted the legislation that you refer to. I have solicited the help of the subcommittee and oversight on this matter, and I am deeply grateful that the subcommittee has moved ahead with these hearings.

I have a rather brief statement which, if the chairman will permit me, I will go ahead and read. And then I would like to make some additional comments with regard to the GAO report. I appreciate this opportunity to testify. I will direct the main part of my testimony to the effect of Commissioner Chapman's 1974 decision which changed foreign student work permit application procedures so that they had to apply directly to the Immigration Service instead of to their individual schools for work permits. The resulting effects of this decision fall into two categories, the short term and the long term.

The short-term effects are, as always, more easily demonstrated and clarified. When Mr. Chapman made his April announcement that for-

foreign students must apply directly to the Immigration Service for work permits, few of us were prepared for the resulting confusion and cases of hardship. Of the approximately 157,000 foreign students that attend our schools each year, about 20,000 apply for summer work permits. For these students, a source of additional income has often given them that slight financial edge necessary to continue an expensive university education. Their understanding of our work permit regulations was that a foreign student who was able to show changing economic circumstances after the commencement of study in the United States, resulting in economic need, can apply for a work permit.

Precedence had also shown that these permits were available for those in need. As stated in Immigration Law and Procedures, by Charles Gordon and Harry Rosenfield, "the Service, INS, has usually authorized approved schools to permit foreign students in need of funds to accept employment during the summer vacations." And so, in April of 1974, some 20,000 students were preparing to apply for summer work permits, when Mr. Chapman changed the regulations with the intention of stringently decreasing work permit allocations, no warning had been given, and many students were left with no means of earning that extra \$1,000 or \$2,000 required to help them through the rest of their education period.

Mr. EILBERG. May I interrupt just a minute, Mr. Brown. I would like to be certain that everyone is able to hear the comments being made.

Mr. BROWN. We have extra copies of the statement. I would be more than happy to provide the Commissioner with them.

Mr. EILBERG. Sorry to interrupt.

Mr. BROWN. Certain students were deported when a lack of funds was discovered, some students turned to illegal work, and a few came close to starvation from fear of disclosing their financial difficulties. It is difficult for anyone to return home to relatives and friends who are expecting so much, and have often lent their life savings to help finance their child's education, and it meant defeat. But this is exactly what happened last summer.

The long-range consequences of tightening our work permit requirements are, in my opinion, even more serious than the short-term results just stated. In 1952, Congress recognized the political need to develop a strong program of international cultural exchange by designating, in the act of 1952, that the United States had no intention of hindering aliens who wished to pursue a course of study here in this country. We had finally come to the realization that the fragile bonds of economic and military relationships had to be strengthened if another World War was to be avoided. Education and cultural exchange were chosen as possible tools to aid us in our diplomatic endeavors.

As educational exchanges proved to be a positive force in international movements toward détente, foreign students were increasingly encouraged to utilize our universities. In 1961, Congress further emphasized the need for improving international relations by passing the Mutual Educational and Cultural Exchange Act of 1961. This act enabled the U.S. Government to do all in its power to promote international cooperation for educational and cultural advancement and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and the other countries of the world.

After establishing such a defined course of support for educational exchange, which has been one of the major factors leading to the encouragement of increased foreign student enrollment in our universities, I believe that we will seriously jeopardize our relationships with all countries that cannot afford to send their students here on Government grants if we continue to support Mr. Chapman's decision to restrict work permit distribution. The less developed countries that are most greatly affected by the food crisis, the population crisis, the energy crisis, cannot spare the large sums our universities demand to educate their citizens. And so, these countries, the very ones that need educated citizens to help with the required technical assistance so necessary to develop agricultural potential, raise health standards, or employ good birth control methods, will be penalized for their lack of student funding programs.

Commissioner Chapman's restrictions of work permit allocations will not affect the rich countries, many of which already have national educational grant programs that send their best students to United States and European schools.

Those less developed countries that are affected can only react with anger and distrust to our calloused attitude in the face of their desperate need to develop a corps of national technicians that will aid them in their difficult task of economic overhaul.

In response to this situation, as I see it, I introduced H.R. 15819 in the last Congress, and a similar H.R. 1787 in this Congress. This bill simply reverses Commissioner Chapman's decisions so that the foreign student's individual schools can once again distribute the work permits where they see the greatest need. The school is better equipped for such a responsibility, because it has advisers that are familiar with the students' needs, and it has the necessary work force, something Mr. Chapman has often claimed the INS is sadly lacking.

I ask this committee to consider this bill, to consider the many outgrowths of Commissioner Chapman's decision, and to reverse his decision, so that all needy foreign students will be able to get work permits when necessary.

This country can absorb, and has absorbed, the possible 20,000 summer jobs this means, and the many cultural and political benefits we derive from this international exchange program far outweigh the relinquishment of 20,000 jobs to the foreign students.

Now, if I may just add a few more comments off the cuff, Mr. Chairman. Our office in California, as is true of most of the congressional offices in southern California, is inundated with immigration cases. I do not know of an office that does not have to maintain at least one full-time congressional office staff to handle immigration cases. The reasons for this are the fact that, as I am sure the Commissioner will testify, their offices are overloaded. They are inundated with the mass of paper work required to deal with the complexities of the immigration law.

I do not like to have to call the Regional Immigration Director to deal with a simple case of a student who should be taken care of in a half an hour at the local level but instead becomes a matter that involves probably dozens or hundreds of man-hours of the regional office. I think it is ridiculous to assume that we are going to have any improvement in the operation of the student work permit program or any other program by enhancing its complexity, by taking it away



from the school or other local agency and putting it into an Immigration and Naturalization Service office. I think what you are going to do is less production at about ten times a greater cost to the taxpayer. And I think the experience of most other congressional offices would tend to verify this.

Now, I am aware of the reports made by the GAO as to the fact that there are a number of cases which any audit will disclose where the regulations are not being perfectly enforced. There are students who are working illegally. There are students here who remain here after they should go back to their country. There are other examples of this sort—students who readjust to permanent residence as a result of the unfair advantage which they have received as students over here. These are inequities. They do not begin to compare with the problems in southern California where we have estimates that there are at least a half a million illegal aliens working now and not being taken care of by the INS. And to single out this small group of students who are here as a result of a national policy decision that is aimed at improving the condition of the world by building up, by contributing to the welfare of the countries that need the education of the students, and by helping establish détente, is the greatest misapplication of governmental resources and governmental emphasis that I can possibly imagine.

Just to dwell on that for a moment—and we will take southern California. There could be 5,000 students who might technically be in violation of some portion of the regulations and there are half a million of illegal working aliens that the INS can do nothing about. And so what does the GAO report recommend? A tightening up on the regulations, hire more people, spend more money to correct this problem, and presumably, let the other problem go. This is not my idea of the proper way for the Government to function. I think that if I were to make a recommendation on the student problem in general, it would be perhaps to strengthen the auditing provisions that exist in the INS, to spell out more specifically to the schools the kinds of regulations that we want to enforce, to make regular checks on the enforcement of these things, but to not attempt to take away the responsibility from these schools. Its only effect can be a vast increase in the expenditure of money and a far less effective process for achieving the results that are to be sought, and, I think, a total neglect of the overriding public policies which created the foreign student program to begin with. And this is the point which I think needs the greatest emphasis.

I think we have become entangled in a bureaucratic concept here that totally neglects the needs, the overriding policy needs of this country which led to the creation of the student program. And I would like to see the subcommittee give some consideration to the nature of the problem in this light.

[The prepared statement of the Honorable George E. Brown follows:]

STATEMENT OF HON. GEORGE E. BROWN, JR., A REPRESENTATIVE IN CONGRESS  
FROM THE STATE OF CALIFORNIA

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to testify on the subject of foreign students here in the United States. I will direct the main part of my testimony to the effects of

Immigration Commissioner Chapman's 1974 decision which changed foreign student work permit application procedures so they had to apply directly to the Immigration Service, instead of to their individual schools, for work permits.

The resulting effects of this decision fall into two categories—the short term and the long term. The short term effects are, as always, more easily demonstrated and clarified. When Mr. Chapman made his April, 1974, announcement that foreign students must apply directly to the Immigration Service for work permits, few of us were prepared for the resulting confusion and cases of hardship. Of the approximately 157,000 foreign students that attend our schools each year, about 20,000 apply for summer work permits. For these students, this source of additional income has often given them that slight financial edge necessary to continue an expensive university education.

Their understanding of our work permit regulations was—that a foreign student who is able to show changing economic circumstances, after the commencement of study in the United States, resulting in economic need, can apply for a work permit. Precedence had also shown that these permits were available for those in need. As stated in "Immigration Law and Procedure", by Charles Gordon and Harry Rosenfield, "The Service (INS) has usually authorized approved schools to permit foreign students in need of funds to accept employment during the summer vacations."

And so, in April of 1974, some 20,000 students were preparing to apply for summer work permits when Mr. Chapman changed the regulations with the intention of stringently decreasing work permit allocations. No warning had been given and many students were left with no means of earning that extra \$1,000-\$2,000 required to help them through the rest of their education period. Certain students were deported when their lack of funds was discovered; some students turned to illegal work; and a few came close to starvation from fear of disclosing their financial difficulties. It is difficult for anyone to return home to relatives and friends who are expecting so much, and have often lent their life savings to help finance their child's education, and admit defeat; but this is exactly what happened last summer.

The long range consequences of tightening our work permit requirements are, in my opinion, even more serious than the short term results just stated. In 1952, Congress recognized the political need to develop a strong program of international, cultural exchange by designating, in the Act of 1952, that the United States had no intention of hindering aliens who wished to pursue a course of study here in this country. We had finally come to the realization that the fragile bonds of economic and military relationships had to be strengthened if another world war was to be avoided. Education and cultural exchange were chosen as possible tools to aid us in our diplomatic endeavors.

As educational exchanges proved to be a positive force in international movements toward détente, foreign students were increasingly encouraged to utilize our universities. In 1961, Congress further emphasized the need for improving international relations by passing the Mutual Educational and Cultural Exchange Act of 1961. This Act enabled the U.S. Government to do all in its power to promote international cooperation for educational and cultural advancement and "thus to assist in the development of friendly, sympathetic, and peaceful relations between the U.S. and the other countries of the world."

After establishing such a defined course of support for educational exchange, which has been one of the major factors leading to the encouragement of increased foreign student enrollment in our universities, I believe that we will seriously jeopardize our relationships with all countries that cannot afford to send their students here on government grants if we continue to support Mr. Chapman's decision to restrict work permit distribution. The less developed countries that are most greatly affected by the food crisis, the population crisis, and the oil crisis, cannot spare the large sums our universities demand to educate their citizens. And so, these countries, the very ones that need educated citizens to help with the required technical assistance so necessary to develop agricultural potential, raise health standards, or employ good birth control methods, will be penalized for their lack of student funding programs. Commissioner Chapman's restrictions of work permit allocations will not affect the rich countries, many of which already have national educational grant programs that send their best students to U.S. and European schools.

Those less developed countries that are affected can only react with anger and distrust to our calloused attitude in the face of their desperate need to develop a corps of national technicians that will aid them in their difficult task of economic overhaul.

In response to this situation, as I see it, I introduced H.R. 15819 in the last Congress, and a similar H.R. 1787 in this Congress. This bill simply reverses Commissioner Chapman's decision so that the foreign student's individual schools can once again distribute the work permits where they see the greatest need. The school is better equipped for such a responsibility because it has advisors that are familiar with each student's needs, and it has the necessary work force. (Something that Mr. Chapman has often claimed the INS is sadly lacking.) I ask this Committee to consider this bill, to consider the many outgrowths of Commissioner Chapman's decision, and to reverse his decision so that all needy foreign students will be able to get work permits when necessary.

This country can absorb, and has absorbed, the possible 20,000 summer jobs this means; and the many cultural and political benefits we derive from this international exchange program far outweigh the relinquishment of 20,000 jobs to the foreign students.

Mr. EILBERG. Thank you, Congressman Brown.

Mr. Brown, you spoke vehemently, and I am only going to ask a few questions about the illegal alien situation. Very little is being done about the illegal alien situation in your district. As you may know, the subcommittee has completed the hearings on the illegal alien bill H. R. 982. I wonder if you have had an opportunity to examine that bill.

Mr. BROWN. I have not in any detail. I am familiar with the considerable work that the committee has put in on this, and I appreciate the fact that you are attempting to resolve this problem.

Mr. EILBERG. We are scheduled to have our first markup session this coming Tuesday on one bill, H.R. 982. I commend it to you for reading. And, of course, do you have a position on the bill that you would care to mention to the committee at this time?

Mr. BROWN. I would prefer not to do so until I have looked in a little more detail at the bill, Mr. Chairman. I would just mention as a matter of general principle, that, in dealing with this problem, you have the alternatives, as I see, a couple of alternatives. One, of a vastly increased police effort, aimed at preventing the crossing of the border of these illegal aliens, an almost impossible task. And I can see us adding innumerable agents to the various forces seeking to prevent this, with very little success. And then, as an alternative, the possibility of establishing a system under which those persons who hire these illegal aliens may be subject to penalties which would inhibit their willingness to do so, which has not been the case up to date. And I know it has been considered as a possible thrust of the legislation on numerous occasions.

I think personally that the only way we can go to solve this problem is going to be to enact penalties which will apply to those who have hired the illegal aliens, so that it no longer is attractive to them to do so, which I think will reduce the number of people seeking to come over here illegally.

Mr. EILBERG. So what you have just discussed is incorporated in our bill. You would be for the bill that would contain such a principle?

Mr. BROWN. I would favor it such in a postscript, yes.

Mr. EILBERG. In that event, hopefully we would have a barrier which would reduce the numbers of illegal aliens that would be employed, thereby reducing the problem.

Have you had the opportunity to look at any comparison between the number of work authorizations given by the Immigration Service since the regulations were adopted and the number authorized under the previous system?

Mr. BROWN. I have had the occasion to look at the figures. I do not have in mind the precise figures right now. It is my understanding that there has been a reduction in those figures, as a result of the Commissioner's decision, and that the rate of denials has increased as a result of the decision.

Mr. EILBERG. You do not seem to be too familiar with the figures, and I would welcome, Mr. Brown, your staying or your staff members staying so that your office can get the benefit of whatever information General Chapman has been able to provide and if you wish to be included in the dialog after that we will be happy to hear from you again.

My district in Philadelphia has recently experienced perhaps the most difficult presummer season that I have witnessed in my years in Congress. It is my ninth year, and I have never had a time as difficult in terms of American students looking for jobs. It is a very bad and very tragic situation. I wonder what your experience is.

Mr. BROWN. Of course, my experience has been very similar to yours, Mr. Chairman. There is no question, in fact, that the economic situation which confronts the general population as well as the student population seeking summer work is worse than it has been anytime in my adult experience. Of course, I lived through the Depression when it was equally bad, but we have had nothing comparable since then, and I recognize the bearing of this situation on the foreign student. I can only say that, of course, the Congress is taking action and will vote, I think, has voted this week, to fund summer student employment on the basis of hundreds of thousands of jobs to help alleviate this situation. And of course, we assume that the work that the Congress is doing to help reduce the total unemployment will have a bearing on this. We have to weigh this in the light of the total impact of the foreign student employment requests and applications that are being granted, which, as you well know, are on the order of 10,000 to 20,000, and weigh this against the total situation. Admittedly, a foreign student taking a summer job will probably take it away from an American student and that the results this summer will be worse than they have been in some time.

We are legislating here, and the Congress, as you well know, has to legislate for the long time. We hope economic conditions will improve, and that our efforts to provide summer jobs for our own students will help to alleviate the bulk of that problem. Here we have an opportunity in dealing with the foreign student, to take a stand which is miniscule in comparison with the total problem of foreign student employment which can have an impact on world relations, which can have an impact on the future on our country, in terms of its ability to assist other countries of the world. And these things have to be considered.

Mr. EILBERG. Thank you.

Mr. Fish

Mr. FISH. Thank you, Mr. Chairman.

And thank you, Mr. Brown.

If I understand the situation prior to April 1974, a foreign student in one of our institutions of higher learning was able to show changed economic circumstances after the commencement of study in the United States, resulting in economic need would then apply for a work permit at the school which he is attending.

Mr. BROWN. That is precisely correct.

Mr. FISH. Now, in April of 1974, the Immigration and Naturalization Service, by regulations, provided that such application be made directly to the Immigration Service. And in your statement you say that Mr. Chapman changed the regulations with the intention of stringently decreasing work permit allocations. But I see no substantiation for this conclusion. I wonder if you would like to elaborate on that. I think it is the heart of your effort to change that regulation.

Mr. BROWN. Well, you have touched on an important point. And for me to assert what the Commissioner's intentions were is probably not fair. I put that assertion in there because that is the common attitude which has been conveyed to me by literally dozens of people working in foreign student affairs, based on their experience with the reduction in the number of work permits. They have assumed that because there was a reduction and that it was made more difficult to procure, that it must have been the intent. Now, that is not logically a necessity, and I recognize that, and I will apologize to the Commissioner if I misstated that. But that was the way in which the matter was conveyed to me, as I say, by literally dozens of individuals involved in foreign student work at universities all over this country. And that is the basis of my statement.

Mr. FISH. Well, we will get from the Commissioner his intention to issue this regulation. Hopefully, also, as the chairman indicated, that comparatively of the number of work permits that would be issued before and after the institution's regulations, because it seems to me that does show a material change, when the objections to the regulations are removed.

I just have one other question. Of the 20,000 students that normally apply for summer work permits, foreign students, do they find jobs themselves, or would they benefit from the summer youth employment program that the Congress just voted some \$450 million for?

Mr. BROWN. Well, as far as I know, they would be eligible for employment on these federally funded programs, and I am subject to correction if I am wrong here. But normally, there is a separate foreign student apparatus on each campus which has counselors who assist the students in obtaining jobs and who have a particular awareness because they are foreign student counselors, who have a particular awareness of the needs and abilities of the foreign students. And normally, the procedure is for the foreign student to go through that foreign student apparatus and find them jobs. That does not preclude his finding jobs on his own, and there are many examples of relatives or friends who go through those relatives or friends to find employment during the summer, and do so rather successfully.

We have in general—and I am sure it is not news to you—the foreign students are a high caliber of persons with initiative and ability superior to the normal in their own country, and possibly in our country, and they make extensive efforts to solve their own problems with whatever resources they can.

Gentleman, I think the best answer to your question is that most of their efforts to secure employment are directed to the foreign student counseling setup that exists on each of the campuses with which they normally work during the school year.

Mr. FISH. Finally, the GAO report you cited before us deals primarily with the issue of the fact that so many people who come to

this country as visitors, including the category that comes under students, simply disappear and constitute one of the major contributors to the illegal alien population of the United States, and in my view I think one that we can control the best in terms of better screening before.

Thank you, Mr. Chairman.

Mr. BROWN. May I comment on this in further reference to my possibly mischosen or ill-advised attribution of intention to the Commissioner.

I think the Commissioner, if he is as good as administrator as I think he is, would want to consider the GAO report and seek to tighten up his operations and his intentions in making the change in regulations, and in all probability were highly influenced by the GAO report.

I do not think that there would be any serious doubt about that but I think that what the subcommittee needs to do and what I have done is question whether or not the alternative procedures adopted by the Commission are the most effective way to address the problems brought up by the GAO report. Now I honestly do not believe that it is. I honestly and strongly do not believe that it is, and regardless of whether the intent was in recognition of the economic conditions of the country to reduce the number of foreign student employees or to tighten up on some of these situations is really immaterial.

I think that we need to address the broader policy issues here as to what is the most effective way to achieve the public aims of this country as it relates to foreign students and the proper enforcement and efficient enforcement of our regulations.

Mr. EILBERG. Mr. Brown, just to interrupt, I do not think you answered Mr. Fish's question, that report indicates that most of the people who disappear are a substantial factor in the illegal alien question.

Mr. BROWN. Mr. Chairman, not most of the foreign students, some of the foreign students disappear. Most of them go back to their countries.

Mr. EILBERG. I think the report is rather shocking in terms of the number of people that overstay in the United States.

Mr. BROWN. And who also adjust status to permanent residence. Using the student status is an unfair method of doing it. I think this is the problem.

Mr. EILBERG. Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman. Thank you, Mr. Brown, for your statement.

I have a question, where you indicate that roughly 20,000 students each year, foreign students, seek summer employment or part-time work, and I was wondering with respect to your statement about many of the students coming from countries, and I assume third-world countries, who are really not in a position to help them out.

Are you aware of any statistical breakdown of the 20,000 students who do work as to what the breakdown is in the countries that they represent?

In other words, if we had students from Iran seeking employment here, that might cast an entirely different perspective on the need of the student relative to the wealth in the country.

Mr. BROWN. I do not have those figures before me. I presume the Commissioner could supply them to some degree. It is not—you mentioned Iran. There is, of course, a substantial number of Iranian students over here. Some of them are sponsored and selected by the government, others who are antigovernment and who suffer real problems in getting along with their governments. So it is hard to make an assumption. Presumably, they are from wealthy Iranian families, but the politics of the underdeveloped world are very complicated.

Mr. COHEN. With respect to the statement concerning the number of students who were deported, do you know how many students were actually deported last year, and would you know from the statement whether they were deported for the lack of funds or whether there are other factors that may have led to their deportation?

Mr. BROWN. The GAO studies have some figures on that, Mr. Cohen, and it is a very small number, actually, that would be quoted, a very small percentage. I would have to go give you the figures.

Mr. COHEN. I just made one observation on my part that I think we are talking about foreign students' responsibility, No. 1, would fall upon the parents to see to it that their children could bear the expense of being educated in this country. The country sponsoring the students ought to bear the responsibility. And then we get into the Iranian situation and other, I suppose.

And finally, you might consider the university students as far as what scholarships and grants they have available, as to what their feeling of responsibility is, but the last resort should be to allow the students that go out, to displace students in this country, and not simply students but other people who do not have any jobs. And I was interested in your comment about the long view that this Congress has to take. Therefore, we should not jeopardize the long-term policies and objectives of this country. My own concern is, however, that unless we do something to reduce the unemployment among our own students, young people who are not students looking for work, that the fear and the anger and the frustration that is going to spread throughout this country is going to jeopardize whatever long-term goals we seek, that the short-term frustrations will endanger the long-term goals of this country.

So I think that is what this country has to be concerned with as far as this is concerned.

Mr. BROWN. I have to agree with you, Mr. Cohen. My personal view is that any program that this country adopts has to be in our own long-range self-interest and my plea is that we consider a broader perspective on what our long-range perspective well-being is than the narrow one of what the immediate economic circumstances and economic impact of, say, 20,000 foreign students each earning a thousand dollars will save. That amounts to \$2 million, does it not? Or \$20 million. In the light of this country is \$20 million worth of work engaged in by foreign students in the summer compared with the tremendous benefits that we get in assisting to educate the elite of the underdeveloped world and to help them to solve their problems.

Can you say that our country's welfare is damaged by that \$20 million compared with the benefit that we might otherwise receive? That is all that I am asking.

Mr. FISH. We just went through an exercise here in the Congress this week where one of the principal arguments for a veto was the fact that we lost 36,000 jobs in the mining field, and this was apparently—I found it not to be substantiated but highly persuasive.

Mr. BROWN. Obviously, that is important. Again, and I do not want to haggle, 20,000 summer jobs is not even comparable to 36,000 full-time jobs left in mining. It is equivalent of 2,000 on an annualized basis or something like that, or 3,000 or 4,000. It is a significant number and I ask that it be weighed in the light of our overall national perspective.

Mr. EILBERG. Mr. Russo.

Mr. RUSSO. I do not have any questions.

Mr. EILBERG. Thank you very much for your contributions, Mr. Brown.

We invite you and your staff to remain.

Mr. BROWN. I would like to remain as long as I can, Mr. Chairman, and may I say again how much I appreciate your holding this hearing. My office, perhaps more than others, has been the subject of a great national thrust of communications on the subjects because we have taken interest on it and you have helped me immeasurably and I appreciate it very much.

Thank you.

Mr. EILBERG. Mr. Chapman?

We are pleased to welcome you again this morning, Mr. Chapman, and we look forward to your statement on this very important subject.

As you know, this subcommittee initiated the GAO report which is presently before you, and I must say that I was reading it again. I am pleased with the number of things that have been instituted already and it has continued, of course, to be a very important subject.

Congressman Brown has just heard that he has been joined by some 37 other Members. It is a matter of some concern to many people in this country, so we look forward to your statement.

**TESTIMONY OF HON. LEONARD F. CHAPMAN, JR., COMMISSIONER,  
IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED  
BY JAMES GREENE, DEPUTY COMMISSIONER, AND SAM BERN-  
SEN, GENERAL COUNSEL**

Mr. CHAPMAN. Thank you, sir.

It is a pleasure to be here. I will furnish you with our views, if I may proceed with my statement—

Mr. EILBERG. Go ahead.

Mr. CHAPMAN [continuing]. Concerning nonimmigrant students in the United States. I am accompanied by Mr. James Greene, Deputy Commissioner, and Mr. Sam Bernsen, who is the General Counsel of the Service.

The law permitting foreign students to come to the United States temporarily to pursue an education has been in effect since 1924, over 50 years, and the number entering as students continues to grow. From 10,000 foreign students entering in 1950, the total has grown to 109,000 last year. This fiscal year, through March; 93,354 have already entered.



I believe this is a good provision in the law and, if administered properly, can have benefits for the United States and other nations as well. However, it is extremely important that the foreign student program is maintained as prescribed by law and in the manner and spirit which Congress intended.

The law defines the "F" student as follows:

An alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study, and who seeks to enter the United States temporarily and solely for the purpose—

And I emphasize the word "solely"—

for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States.

Mr. EILBERG. Can I just interrupt there?

Can you at this point cite the section of the Immigration and Nationality Act which allows students admitted to the United States with "F" visas to take gainful employment?

Mr. CHAPMAN. There is no such provision in the law, sir. I believe I deal with that in the next two or three paragraphs.

Mr. EILBERG. The next question that I would ask would be when was it proper for the Immigration Service initially to delegate to schools the discretion to grant permits with permission?

Mr. CHAPMAN. In my opinion, it was not proper, although I must say it has been in effect for a number of years.

I emphasize the word "solely"—to divert from my prepared statement for a moment or two, sir—as to emphasize that the effect of the law is that the student must come here solely to pursue his education. That does not imply that he can come here with the expectation and intention of working. Therefore, he has to show that he has or has available the necessary funds and other resources to carry him through the course of instruction, and the requirement is written into the visa processing requirements for foreign students applying overseas, and is certified to by the student in the form that he signs when he applies for the visa.

Accordingly, an alien seeking to enter as a student must establish that he will be able to finance the entire period of his stay and study in the United States without having to engage in employment off the campus.

There is no express provision in the law for an F-1 student to engage in employment. Nevertheless, for many years, the Service has permitted students to accept employment under special conditions which we believe to be consistent with the intent of the statute.

If a student is to be employed on campus in a job in which he will not displace a U.S. resident, INS permission is not required.

A student who seeks employment off campus must first obtain approval of an application for that purpose and submit it to the appropriate district director of the Service.

There are two situations in which off campus employment may be authorized. These are cases where the employment is required because of economic necessity arising from unforeseen circumstances following arrival in the United States, or where the employment is recommended by the school in order for the student to obtain practical training in a field related to his course of study.

An application based on economic necessity must contain the certification of a responsible school official that the employment will not interfere with the student's ability to successfully carry a full course of study. If the application is approved, the student is authorized to work part time. This means he may work up to 20 hours a week while school is in session, and full time when school is not in session. The period of employment permission in economic necessity cases is granted in increments of up to 1 year, not to exceed the period of authorized stay.

An application to accept employment for practical training must be endorsed with the recommendation of a responsible school official. Employment for practical training may be engaged in full time—

Mr. EILBERG. Mr. Chapman, may I interrupt for just a moment. Mr. Fish would like to comment.

Mr. FISH. I take it that you are describing the existing process, the current process, not the preamble 1974 procedures?

Mr. CHAPMAN. The process I am now describing for year-round employment is the same that has been in effect for a number of years, and was not changed by the April of 1974 regulation which dealt only with summer employment, only with summer employment. The requirement to apply to the Service for year-round—

Mr. FISH. Off campus?

Mr. CHAPMAN. Off campus—has been unchanged for a number of years.

Mr. FISH. Prior to April of 1974, it was necessary to get the Immigration Service approval based on the conditions enumerated, or economic necessity, for the recommendation of the school.

Mr. CHAPMAN. That is right.

Mr. FISH. Finally, in that case, is it not still the responsibility of the school to find the employment so that the Immigration Service does not become an employment agency. It is just an approving agency, for the work permit—is that correct?

Mr. CHAPMAN. We just approve the application to be authorized to work.

Mr. FISH. Thank you, Mr. Chairman.

Mr. RUSSO. Mr. Chairman, may I ask just one question to clarify something?

Mr. EILBERG. Go ahead.

Mr. RUSSO. Has the normal practice been that the INS always gives approval except for the summer employment program?

Mr. CHAPMAN. That was the case prior to April of 1974. And beginning last summer, the student must in addition apply to us for summer employment.

Mr. RUSSO. So now, under all circumstances, the student must seek permission from the INS; is that correct?

Mr. CHAPMAN. Except for on campus.

Mr. RUSSO. On campus?

Mr. CHAPMAN. Off campus, yes.

I might interject on this note, that in fiscal 1973, we approved 32,041 applications for off campus work year-round. In fiscal 1974 the figure was 38,147.

Mr. EILBERG. Do you have summer figures for 1973 and 1974?

Mr. CHAPMAN. The figures for 1974 were 19,785 applications adjudicated for summer employment only. We approved 11,042 as

having justified economic necessity. That is in 1974; that is in May, June, July, and August of 1974. We denied 8,743 of the 19,785, whose justification was insufficient.

Mr. EILBERG. Do you have 1973 figures—that is, under the prior system?

Mr. CHAPMAN. In 1973, the schools reported to us that they had approved 17,739, and we have reason to believe that they denied practically none. We think almost all, practically all were approved, and unforeseen economic necessity was not a criterion in the school review of the request.

I might also say that these numbers that I have quoted you, Mr. Chairman, are those that we know. We do not know how many thousands of students are working without permits; but we are sure that there a great many.

Mr. EILBERG. Do you have any idea how many students are illegally working during the summer months?

Mr. CHAPMAN. All kinds of illegals?

Mr. EILBERG. Students.

Mr. CHAPMAN. I do not have a figure as to how many were illegally working. I do have these figures, that in fiscal 1973, the number of students located in an illegal status was 7,107; and in fiscal 1974, the number was 8,132. That was the number of students in an illegal status, which would include not only working without permission, but overstay and other kinds of illegal status.

Mr. EILBERG. Finally, on this point, do you know how many foreign students go home each summer?

Mr. CHAPMAN. No, sir, we do not have those figures.

Mr. EILBERG. Should you not have those figures?

Mr. CHAPMAN. I am sure we could get those figures, sir.

Mr. EILBERG. I am concerned about the necessity of having these figures to satisfy our present requirement; but it would seem to me that the Immigration Service should, as a matter of course, know how many of these students are returning each summer.

Mr. CHAPMAN. We may be able to get that out of our computer. We will see if we can.

The student, of course, must check out when he leaves; and then, of course, we have to admit him when he returns. So, we may be able to pull out of the computer—many return in that status.

Mr. EILBERG. You might give us those numbers then for 1973 and 1974.

Mr. CHAPMAN. If we have them, we will give them to you, sir.

[The information referred to was not available from the Immigration and Naturalization Service.]

An application to accept employment for practical training must be endorsed with the recommendation of a responsible school official. Employment for practical training may be engaged in full time and may be authorized in increments of 6 months, not to exceed 18 months in the aggregate.

In addition to these employment policies, the Service used to have a special employment program for F-1 students. I believe that this is the program that Mr. Brown addressed. Under that program—

Mr. EILBERG. May I interrupt again? For the benefit of the members, would you just briefly define what the "F" student and the "J" student are?

Mr. BERNSEN. The "F" student comes to the United States under Section 101(a)(15)(F) of the Immigration and Nationality Act. He comes temporarily and solely for the purpose of pursuing a full course of study at a school approved by the Attorney General.

The "J" student comes to the United States under the exchange visitor program, which was enacted in 1961. Exchange programs are designated by the Secretary of State, and in the cases of students, the Secretary of State may approve exchange programs for the purpose of study. Many schools in the United States, in addition to bringing aliens here as "F" students, also have programs approved by the Secretary of State under the exchange program, and these schools also bring aliens here as exchange students.

Mr. DODD. Excuse me, Mr. Chairman, I apologize to you. Could you run it by just very quickly and explain the difference again?

I am sorry.

Mr. BERNSEN. Well, the "F" student comes under section 101(a)(15)(F) of the Immigration and Nationality Act. That is a provision that has really been in effect under earlier law for about 50 years, starting in 1924. Schools obtain approval from the Attorney General to bring students under the "F" provision of the law.

The exchange students are brought to the United States exchange programs approved by the Secretary of State, so we have schools bringing students in an "F" classification, and we also have the same schools having an approved exchange program bringing students in as exchange aliens.

By the way, there is a certain disability, as you know, which may apply to an exchange student. An exchange student may be subject to a foreign residence requirement, which means that after he goes back to his own country, he has to stay there for 2 years before he may become a permanent resident under certain circumstances. That disability does not apply to an "F" alien.

Mr. CHAPMAN. In addition to these employment policies to review, the Service used to have a special employment program for F-1 students. Under that program, INS would make an annual determination, after consultation with the Labor Department, whether to authorize school officials to permit students to accept summer work.

On April 19, 1974, the Service announced that the program under which school officials could approve individual summer employment applications would not be authorized that year. Instead, students desiring to work off campus would have to request permission directly from the Service and qualify under the criteria applicable in cases of economic necessity or practical training. Such permission could well include the summer vacation period.

The decision concerning the summer employment program was made after careful consideration. As in previous years, the Service consulted the Labor Department regarding the anticipated impact on the domestic labor market if the summer program was authorized in 1974. That Department had been advising us for several years of increases in unemployment among American youth.

In expressing its views with regard to 1974, the Labor Department emphasized that the situation had become worse and that the summer employment program would deprive young Americans of needed employment opportunities.

It was pointed out that there are never enough jobs to meet the demand, and that some million and a half of our own youth seeking work were still unable to find jobs last summer.

Upon further review of the summer employment program, the Service proposed that it be terminated permanently for the reason that the authority to regulate the conditions of admission of non-immigrant students conferred on the Attorney General should be delegated only to immigration officers and should not be exercised by school officials. Notice to that effect was published in the "Federal Register" on November 15, 1974, and interested persons were invited to submit representations. All representations received were carefully considered. Our final determination, published February 5, 1975, was that the program should be discontinued. While the great majority of the representations received were in opposition to the proposal, none responded directly to nor presented overriding arguments against the Service's reason for proposing the termination.

I wish to reiterate that discontinuance of the special summer program in no way affects an F-1 student's eligibility to obtain work permission for any period of the year. However, the decision on the request is made by INS rather than by a school official.

I believe the Service policy on student employment is fair and equitable. From September 1974, through April 1975, 19,816 students have been granted work permission by INS. This constitutes 79 percent of the 25,098 whose applications were adjudicated.

One other matter I should like to mention is that the Service has undertaken to define the statutory term "full course of study."

The definition is sorely needed in the interest of clarity and will take into account the different types of educational institutions involved. For example, in a university or a college, a student pursuing an undergraduate course will be required to take at least 12 hours of instruction per week, or its equivalent. In a vocational school, at least 20 class hours of attendance per week will be required. The proposed regulations on "full course of study" were published in the "Federal Register" on April 4, 1975.

Mr. Chairman, this concludes my prepared statement.

I hope we will be able to answer any questions that you may have.

[The prepared statement of Hon. Leonard F. Chapman, Jr., Immigration and Naturalization Service, follows:]

STATEMENT BY HON. LEONARD F. CHAPMAN, JR., COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Mr. Chairman and members of the subcommittee, it is a pleasure for me to be here to furnish you with my views concerning nonimmigrant students in the U.S. I am accompanied by Mr. James Greene, Deputy Commissioner, and Sam Bernsen, General Counsel.

The law permitting foreign students to come to the United States temporarily to pursue an education has been in effect since 1924, and the number entering as students continues to grow. From 10,000 foreign students entering in 1950, the total has grown to 109,000 last year. This fiscal year through March, 93,354 have already entered.

I believe this is a good provision in the law, and if administered properly can have benefits for the United States and other nations, as well. However, it is extremely important that the foreign student program is maintained as prescribed by law and in the manner and spirit which Congress intended.

The law defines the "F" student as follows: "An alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the

United States temporarily and solely for the purpose of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States . . . ."

Accordingly, an alien seeking to enter as a student must establish that he will be able to finance the entire period of his stay and study in the United States without having to engage in employment off the campus.

There is no express provision in the law for an F-1 student to engage in employment. Nevertheless, for many years the Service has permitted students to accept employment under special conditions which we believe to be consistent with the intent of the statute.

If a student is to be employed on campus in a job in which he will not displace a United States resident, INS permission is not required.

A student who seeks employment off campus must first obtain approval of an application for that purpose and submit it to the appropriate District Director of the Service.

There are two situations in which off campus employment may be authorized. These are cases where the employment is required because of economic necessity arising from unforeseen circumstances following arrival in the United States, or where the employment is recommended by the school in order for the student to obtain practical training in a field related to his course of study.

An application based on economic necessity must contain the certification of a responsible school official that the employment will not interfere with the student's ability to successfully carry a full course of study. If the application is approved the student is authorized to work part-time. This means he may work up to twenty hours a week while school is in session and full-time when school is not in session. The period of employment permission in economic necessity cases is granted in increments of up to one year, not to exceed the period of authorized stay.

An application to accept employment for practical training must be endorsed with the recommendation of a responsible school official. Employment for practical training may be engaged in full-time and may be authorized in increments of six months each not to exceed eighteen months in the aggregate.

In addition to these employment policies, the Service used to have a special employment program for F-1 students. Under that program, INS would make an annual determination, after consultation with the Labor Department, whether to authorize school officials to permit students to accept summer work. On April 19, 1974 the Service announced that the program under which school officials could approve individual summer employment applications would not be authorized that year. Instead students desiring to work off campus would have to request permission directly from the Service and qualify under the criteria applicable in cases of economic necessity or practical training. Such permission could well include the summer vacation period.

The decision concerning the summer employment program was made after careful consideration. As in previous years the Service consulted the Labor Department regarding the anticipated impact on the domestic labor market if the summer program was authorized in 1974. That Department had been advising us for several years of increases in unemployment among American youth. In expressing its views with regard to 1974, the Labor Department emphasized that the situation had become worse and that the summer employment program would deprive young Americans of needed employment opportunities. It was pointed out that there are never enough jobs to meet the demand and that "some million and a half of our own youth seeking work were still unable to find jobs last summer."

Upon further review of the summer employment program the Service proposed that it be terminated permanently for the reason that the authority to regulate the conditions of admission of nonimmigrant students conferred on the Attorney General should be delegated only to immigration officers and should not be exercised by school officials. Notice to that effect was published in the Federal Register on November 15, 1974 and interested persons were invited to submit representations. All representations received were carefully considered. Our final determination published February 5, 1975 was that the program should be discontinued. While the great majority of the representations received were in opposition to the proposal, none responded directly to nor presented overriding arguments against the Service's reason for proposing the termination.

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I believe the Service policy on student employment is fair and equitable. From September, 1974 through April, 1975, 19,816 students have been granted work permission by INS. This constitutes 79 percent of the 25,098 whose applications were adjudicated.

One other matter I should like to mention is that the Service has undertaken to define the statutory term "full course of study." The definition is sorely needed in the interest of clarity and will take into account the different types of educational institutions involved. For example, in a university or college, a student pursuing an undergraduate course will be required to take at least twelve hours of instruction per week, or its equivalent. In a vocational school, at least twenty class hours of attendance per week will be required. The proposed regulations on full "course of study" were published in the Federal Register April 4, 1975.

This concludes my prepared statement. I will be happy to respond to your questions.

Mr. EILBERG. Thank you very much for your statement, General Chapman. We would like to ask you some questions.

I understand that the Department of Labor, by request of the Immigration and Naturalization Service provides an advisory opinion each year on the appropriateness of summer employment for "F" students based on the labor market in the United States.

What is the forecast for the coming summer of 1975?

Mr. GREENE. Mr. Chairman, we did not ask the Department of Labor for the projected summer figures for this year because we had no intention of authorizing the student advisers to grant that permission. We do have a projected figure, and from what we have received from the Department of Labor, the situation is going to be worse this year than it was last year. I do not have the figures with me, but we will furnish them to you for the record.

Mr. CHAPMAN. I think it is something on the order of 3 million American youths seeking employment for whom there are 1½ million possible jobs.

Mr. EILBERG. I think there is a lack of communication on the question. My question was, do you have any idea from the Labor Department how many F students might properly receive summer employment for this coming summer.

It is my impression, General, that your Department requested this information from the Department of Labor, and I was asking you what their answer to your question was?

Mr. CHAPMAN. This year——

Mr. EILBERG. For 1975.

Mr. CHAPMAN. We did not request the Labor Department for an advisory, as Mr. Greene just said, with regard to summer employment of foreign students, because we did not propose to authorize the school officials to make the decisions.

Mr. EILBERG. But for your own purposes and guidance in making the decisions yourself, it would seem to me that you would be concerned with the facts on the labor market; and if you do not ask the Labor Department, how do you arrive at true judgment? That is, whether there is a need for workers of particular kinds in different areas of the country. It seems to me that that exercise has to be performed by some agency.

Mr. CHAPMAN. We know without an official request that the situation this summer is worse than it was last summer, and the preceding summers, and therefore we are carefully adjudicating each request, and we are not approving those that do not have a bona fide reason.

Mr. EILBERG. That is, bona fide reason as far as the individual is concerned; but apparently without consideration as to the effect on the labor market. That worries me, General.

Mr. CHAPMAN. As has previously been testified, even one foreign student worker, whether or not he has economic need, has an impact on someone American who is hunting for a job.

Mr. EILBERG. You take the position, then, that every foreign student, every F student who gets a summer job is taking a job that might go to an American student. There is an American student out there that is available to take that job, is that your position?

Mr. CHAPMAN. No question about it.

Mr. EILBERG. Has the number of foreign students entering the United States with F visas in the last years increased or decreased?

Mr. CHAPMAN. It has increased, sir.

Mr. BERNSEN. There has been a general increase.

Mr. EILBERG. Mr. Bernsen, I question that. I wonder in view of the increases of the cost of a college education, whether that is in fact true. It is my impression that the numbers were increasing in the 1960's, but declining in the 1970's, and I just wanted to know what your experience was, since you have custody of the records of the actual visas.

In other words, are there less F students coming in the last couple of years, than say in the 1960's.

Mr. BERNSEN. Well, I think last year we heard that there were 109,000 F-1 students, and my recollection is that that is a new record, a new record high in the admission of F students.

Mr. EILBERG. I wonder if you would give us the figures for the last 10 years on an annual basis?

Mr. BERNSEN. We will submit that for the record.

Mr. CHAPMAN. We will provide them.

[The information referred to follows:]

Years:	<i>Students admitted as nonimmigrants</i>
1974.....	109, 197
1973.....	90, 693
1972.....	96, 568
1971.....	94, 035
1970.....	98, 197
1969.....	90, 486
1968.....	73, 303
1967.....	63, 370
1966.....	55, 716
1965.....	50, 435
1964.....	44, 952

Mr. EILBERG. What type of statistics on aliens does the Immigration Service maintain in the foreign student programs that is over and above their year of entry and the country from which the alien student enters? What records do you keep on foreign students?

Mr. BERNSEN. Each foreign student who comes into the United States has to present a certificate of eligibility issued by the school and examined by the American Consul. Through that certificate, the American Consul satisfies himself that this person is a student and is eligible for a visa.

The certificate of eligibility is surrendered to the Immigration Service. We retain in the immigration records those certificates on every student.



Mr. EILBERG. Do you continue any followup records of any kind?

Mr. BERNSEN. Well, we have the ability to followup on the student's temporary admission through a copy of his arrival-departure card, form I-94. Systemwise we have the ability, but we do not have the manpower to actually follow up on our student overstays.

Mr. EILBERG. Well, then, is my statement correct that all you have aside from the papers you have indicated is the year of entry, and the country from which the alien student arrived.

Mr. BERNSEN. Well, the certificate of eligibility gives considerably more information about the student than what you have stated.

Mr. EILBERG. All right.

So, all that you have basically is the information that appears on the certificate of eligibility?

Mr. BERNSEN. Yes; which is more extensive.

Mr. EILBERG. All right.

Mr. CHAPMAN. I have here a copy of the certificate, so I will perhaps submit it for the record.

Mr. EILBERG. Without objection, it will be made a part of the record.

[The information referred to follows:]

Name of Student—Family Name (Capital Letters)		First Name	Middle Name
Date of Birth (Mo., day, year)	Country of Birth	Country of Nationality	

## READ CAREFULLY THE INSTRUCTIONS ON PAGE 4

Name of School
School Official To Be Notified of Student's Arrival in U.S.
Address of School (Include Zip Code)

CERTIFICATE  
OF

## ELIGIBILITY

(FOR NONIMMIGRANT "F-1"  
STUDENT STATUS)

It is hereby certified as follows:

1. This certificate is being issued to the student named herein for: (Check one)

- a.  Initial attendance at this school.      b.  Continuation after a temporary absence outside the United States. His presently authorized stay, as it appears on form I-20 in his possession, expires (month, day, year) \_\_\_\_\_.
- c.  Other (specify) \_\_\_\_\_

2. The student named herein has been accepted for a full course of study in this school. (If he must appear on or before a specified date, specify that date here \_\_\_\_\_.)

His major field of study is \_\_\_\_\_, normally requiring (specify length of proposed course) \_\_\_\_\_, and he is expected to complete his studies at this institute not later than \_\_\_\_\_.

3. The school has determined by a careful evaluation of the student's qualifications that the student has sufficient scholastic preparation to enable him to undertake a full course of study.

4. (Check one and All in as appropriate.)

- a.
- 
- Proficiency in the English language is required and the school has determined that the student has the required proficiency.

Basis for determination \_\_\_\_\_

- b.
- 
- Proficiency in the English language is required. If the student lacks such proficiency, he will be:

 Enrolled in a full course of study of English in this school. Given special instruction in English, which will consist of \_\_\_\_\_

- c.
- 
- Proficiency in the English language is not required. Explain: \_\_\_\_\_

5. The present academic year cost for tuition and fees is \_\_\_\_\_, and the average academic year cost for living incidental expenses is estimated to be \_\_\_\_\_.

6. (Check one and All in as appropriate.)

- a.
- 
- The school has made the following arrangements for the student to receive an income:

 The student has been awarded a scholarship or similar grant in the sum of \$ \_\_\_\_\_ per \_\_\_\_\_ until \_\_\_\_\_. The student has been offered employment on the campus which will not displace a United States resident. The rate of pay is \$ \_\_\_\_\_ per \_\_\_\_\_. The employment will not interfere with his ability to carry successfully a full course of study. Other (explain) \_\_\_\_\_

- b.
- 
- The school has made no arrangement for the student to receive an income, but is satisfied on the basis of the evidence submitted that he has the financial ability to pursue the above course of study full time. His expenses will be met by (explain) \_\_\_\_\_.

7. This school (or if approved not in its own name, the \_\_\_\_\_ School District under which it operates or \_\_\_\_\_ School of which it is a part) was approved for attendance by nonimmigrant students by the Immigration and Naturalization Service on \_\_\_\_\_, file number \_\_\_\_\_. Such approval has not been revoked.

8. REMARKS \_\_\_\_\_

Immigration official

Signature of school official authorized by the school to issue Forms I-20A.

Title

Date of issuance: (This certificate expires 12 months after the date of issuance)

**CERTIFICATE BY NONIMMIGRANT STUDENT UNDER SECTION 101 (a) (15) (F) (I)  
OF THE IMMIGRATION AND NATIONALITY ACT**

1. I seek to enter or remain in the United States temporarily and solely for the purpose of pursuing a full course of study at the school named on page 1 of this form.

2. Please print name in full		3. My maximum anticipated stay is (Month(s) or Year(s))	
My educational objective is:			
5. I am financially able to support myself for the entire period of my stay in the United States while pursuing a full course of study. (State source and amount of support.) (Documentary evidence of means of actual support must be attached to this form.)			
6. I last attended (Name of School)		(City)	(State) (Country)
7. My major field of studies was		8. I completed such studies on (Date)	
9. The person most closely related to me who lives outside the United States is:			
(Name)	(Relationship)	(Address)	
10. The person most closely related to me who lives in the United States is: (If you have no relative in the United States, give the name of a friend.)			
(Name)	(Relationship)	(Address)	

**11. I understand the following:**

- A nonimmigrant student applying for admission to the United States for the first time after being issued an F-1 (student's) visa, will not be admitted unless he intends to attend the school specified in that visa. Therefore, if before he departs for the United States the student decides to attend some other school, he should communicate with the serving American consular office for the purpose of having such other school specified in the visa. Any other nonimmigrant student will not be admitted to the United States unless he intends to attend the school specified in the Form I-20 or Form I-54 which he presents to the immigration officer at the port of entry.
- A nonimmigrant student is not permitted to work off campus for a wage or salary or engage in business while in the United States unless permission to do so has first been granted by the Immigration and Naturalization Service. A student who requires employment (1) because of economic necessity due to unforeseen circumstances, arising after admission, or (2) to obtain practical training, may apply to the Immigration and Naturalization Service on Form I-538 for permission to accept such employment. Additional information concerning employment is set forth in Form I-538. The alien spouse or child accompanying or following to join a nonimmigrant student is not permitted to work in the United States.
- A nonimmigrant student is permitted to remain in the United States only while maintaining nonimmigrant student status, and in any event not longer than the period fixed at the time of admission (or change to student classification) unless he applies to the Immigration and Naturalization Service on Form I-538 in accordance with the instructions on that form between 15 and 30 days prior to the expiration of the period of his authorized stay and obtains an extension of his stay.
- Each year, every nonimmigrant student in the United States on the first day of January must submit by the 31st day of January a written notice of his address to the Immigration and Naturalization Service. In addition, a notice must be sent within 10 days after every change of address. Regardless of whether he moves, each nonimmigrant student is required to file written notice of his address every 3 months. Printed forms obtainable at the United States immigration office or post office should be used in making the annual address report, the change of address report, and the 3-month address report.
- At the time a nonimmigrant student departs from the United States, his temporary entry permit (Form I-94) is to be surrendered to a representative of the State Dept. or after it he leaves via a seaport or airport, to a Canadian immigration officer if he leaves across the Canadian border, or to a United States immigration officer if he leaves across the Mexican border.
- A nonimmigrant student may remain in the United States temporarily only for the purpose of pursuing a full course of study at a specified school. If, after being admitted, the student desires to transfer to another school, he must make written application on Form I-538 for permission to make such a transfer. The application must be submitted to the office of the Immigration and Naturalization Service having jurisdiction over the area in which the school from which he wishes to transfer is located. The application must be accompanied by Form I-20 completed by the school to which he wishes to transfer. He may not transfer until his application is approved. The application will be denied if the student failed to actually take a full course of study at the school he was last authorized by the Service to attend, unless he establishes that his failure to do so was due to circumstances beyond his control or was otherwise justified.
- A student who seeks to re-enter the United States as a nonimmigrant student after a temporary absence must be in possession of the following documents:
  - A valid unexpired student visa (unless exempt from visa requirements);
  - A passport valid for six months beyond the period of readmission (unless exempt from passport requirements);
  - A current copy of Form I-20 (A and B). However, only the "A" copy of Form I-20 is required in the case of a nonimmigrant student returning from temporary absence outside the United States to continue attendance at the same school which the Immigration and Naturalization Service last authorized him to attend; in such case, Form I-20A may be retained by the student and used by him for any number of reentries within twelve months from the date of issuance; the certificate on page 2 of Form I-20A need not be completed, and Form I-20B should be destroyed.
- A nonimmigrant student who does not register at the school specified in his temporary entry permit (Form I-94), or whose school attendance is terminated, or who takes less than a full course of study, or who accepts unauthorized employment, thereby fails to maintain his status and must depart from the United States immediately.

**I CERTIFY THAT THE ABOVE IS CORRECT.** I hereby agree to comply with the above and any other terms and conditions of my admission and any extension of stay. I also hereby authorize the named school and any school to which I may subsequently transfer to release to the Immigration and Naturalization Service any information requested bearing on my status as a nonimmigrant student and my places of residence in the United States.

(Signature of Student)	(City)	(State or Province)	(Country)	(Date)
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I certify that the above is correct and concur therein.

(Signature of Parent or Guardian if Student is Under 21 years of Age)	(Relationship)	(Date)
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If a nonimmigrant student in the United States has any questions concerning his immigration status, he should not hesitate to call or write to the immigration office. That office will be pleased to help the student.

NOTICE AND REPORT CONCERNING  
NONIMMIGRANT "F-1" STUDENTUNITED STATES DEPARTMENT OF JUSTICE  
Immigration and Naturalization Service

Name of Student—Family Name (Capital Letters)		First Name	Middle Name
Date of Birth (Mo., day, year)	Country of Birth	Country of Nationality	

**READ CAREFULLY THE INSTRUCTIONS ON PAGE 4**

Name of School
School Official to be Notified of Student's Arrival in U.S.
Address of School (Include Zip Code)

## PART II—NOTICE TO SCHOOL CONCERNING "F-1" STUDENT

As indicated herein, the above named student was admitted to or authorized to remain in the United States for a temporary period as a nonimmigrant student.

**PLEASE REPORT PROMPTLY TO THE IMMIGRATION OFFICE HAVING JURISDICTION OVER YOUR SCHOOL THE OCCURRENCE OF ANY OF THE CIRCUMSTANCES DESCRIBED IN PART III, BELOW.**

**FAILURE TO SUBMIT REQUIRED REPORTS MAY RESULT IN WITHDRAWAL BY THE IMMIGRATION AND NATURALIZATION SERVICE OF ITS APPROVAL OF YOUR SCHOOL FOR ATTENDANCE BY NONIMMIGRANT STUDENTS.**

For Immigration Official

## PART III—REPORT BY SCHOOL CONCERNING "F-1" STUDENT

## TO: Immigration and Naturalization Service

## 1. The student (Check one):

- (A)  Did not register personally at this school within 60 days of the date expected.
- (B)  Is carrying less than a full course of study or is attending classes to a lesser extent than normally required (explain in Remarks).
- (C)  Terminated attendance at this school before completion of the semester.

\_\_\_\_\_ (Termination date) (Give reason for termination in Remarks.)

- (D)  Terminated attendance at this school upon completion of the semester.

\_\_\_\_\_ (Termination date) (Give reason for termination in Remarks.)

\*Do not report temporary discontinuance of attendance during a visit abroad, or because of acute illness or injury. However, if student fails to resume attendance this report must be submitted. A student who, on the basis of the recommendation of your school, has been authorized to accept employment for practical training in a field related to his course of studies is considered to be in attendance at your school during the authorized period of such employment. Please be guided accordingly in submitting reports concerning students who have been permitted to engage in practical training.

2. The student's last residence address in the U.S. was: (Apt. number and/or in care of) (Number and street) (City or town) (State) (Zip Code)

## 3. The following information is furnished concerning the student's departure or planned departure from the United States:

Date of departure	Port of departure	Name of ship, airline, or transportation company
Address abroad		

Remarks:

Signature of school official	Title	Date
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### INSTRUCTIONS TO SCHOOL OFFICIALS

This certificate may be signed and issued only by an authorized school official in the United States after he has determined that the student is eligible. A false certification or improper issuance of this certificate to a student may result in revocation of the approval of your school for attendance by foreign students.

- Before issuing this certificate you may wish to arrange to have the student tested for English language proficiency. If you wish to use a test of your own selection you may have it administered abroad by any person or agency you care to designate or by an American consular officer. Alternatively, if you wish to use a test which has been furnished to American consular officers by the Department of State, you should instruct the student to arrange with the consular officer to take the Department's English language examination. The results of any test administered by the consular officer will be forwarded direct to you.  
You should not issue this certification unless you are satisfied that the student meets the language and scholastic requirements to pursue the proposed course of study at your school, and that he is able to pay his expenses (including those of any accompanying spouse and children) during his stay in the United States. A copy of the evidence submitted by the student concerning scholastic preparation and ability to pay expenses must be retained by the school for the duration of the student's attendance there.
- Complete page 1, and PART I of page 3, of this form for:
  - Every nonimmigrant student whom you accept for admission to your school and who will apply for a visa and/or admission to the United States under Section 101 (a) (15) (F) (i) of the Immigration and Nationality Act;
  - Every nonimmigrant student in the United States whom you accept for transfer to your school;
  - Every alien in the United States who applies for a change to nonimmigrant student status and has been accepted to attend your school. (An alien who has been admitted or seeks admission to the United States for permanent residence is not classifiable as a nonimmigrant student. Forms I-20A and B should not be issued to any such alien.)

Remove carbon interleaf and furnish I-20A and I-20B to the student. The Immigration and Naturalization Service, after authorizing admission (except in the case of a student returning from a temporary absence outside the United States to continue attendance at the same school), transfer, or change in status, will endorse and mail Form I-20B to the school. For procedure applicable in the case of a nonimmigrant student returning from a temporary absence outside the United States to continue attendance at the same school, see item 11g, page 2, of Form I-20A.
- A student's spouse and minor children following to join him are not eligible for admission into the United States unless they present Form I-20A from the school in which the student is enrolled, stating that he is taking a full course of study, and the form is noted by the school to indicate the date of expiration of his authorized stay in the United States as shown on the student's Form I-94. When issuing Form I-20A for the use of his spouse and minor children, the school should fill in only the block giving the name and personal data relating to the student, the block giving name and address of the school, item 7 relating to school approval, and item 8, "Remarks", showing the date of expiration of the student's stay as, "Student's authorized stay in United States expires \_\_\_\_\_." In this instance, Form I-20B and the carbon interleaf should be destroyed.  
(date)
- If the student fails to register, does not carry a full course of study, or does not attend classes as required, or if his attendance is terminated, fill in PART III of Form I-20B (page 3) and mail immediately to the office of the Immigration and Naturalization Service having jurisdiction over the area in which your school is located. (Please read PART II of Form I-20B for further instructions.)

### INSTRUCTIONS FOR NONIMMIGRANT STUDENTS

- Fill in page 2 of Form I-20A and complete and retain page 5 for your records. Do not fill in any other pages of the form.
- If you are an applicant for admission to the United States, present both I-20A and I-20B to the American consular officer at the time of your visa application (unless you are exempt from visa requirements) and to the immigration officer upon your arrival in the United States. For procedure applicable in the case of a student returning from a temporary absence outside the United States to continue attendance at the same school, see item 11g, page 2, of I-20A.
- If you are an applicant for permission to transfer to another school (or for transfer and extension of stay), mail or bring Form I-538 and both I-20A and I-20B to the office of the Immigration and Naturalization Service having jurisdiction over the area in which the school from which you wish to transfer is located, together with your temporary entry permit (Form I-94 ARRIVAL-DEPARTURE RECORD). (If your temporary entry permit is attached to your passport, the permit should be removed for this purpose.) **DO NOT SEND IN YOUR PASSPORT.**
- If you are an applicant for change to nonimmigrant student status, apply on Form I-506 and attach both I-20A and I-20B. Apply at the office of the Immigration and Naturalization Service having jurisdiction over the area in which you are temporarily residing.

Severe penalties are provided by law for knowingly and wilfully falsifying or concealing a material fact in filling out this form.

**CERTIFICATE BY NONIMMIGRANT STUDENT UNDER SECTION 101 (a) (15) (F) (i)  
OF THE IMMIGRATION AND NATIONALITY ACT**

I seek to enter or remain in the United States temporarily and solely for the purpose of pursuing a full course of study at the school named on page 1 of this form.

5. Please print name in full		3. My maximum anticipated stay is (Month/Year)	
4. My educational objective is			
5. I am financially able to support myself for the entire period of my stay in the United States while pursuing a full course of study. (State source and amount of support.) (Documentary evidence of means of actual support must be attached to this form)			
6. I last attended (Name of School)		(City)	(State) (Country)
7. My major field of studies was		8. I completed such studies on (Date)	
9. The person most closely related to me who lives outside the United States is: (Name)		(Relationship)	(Address)
10. The person most closely related to me who lives in the United States is: (If you have no relative in the United States, give the name of a friend.) (Name)		(Relationship)	(Address)

**11. I understand the following:**

- A nonimmigrant student applying for admission to the United States for the first time after being issued an F-1 (student's) visa, will not be admitted unless he intends to attend the school specified in that visa. Therefore, if before he departs for the United States the student decides to attend some other school, he should communicate with the issuing American consular office for the purpose of having such other school specified in the visa. Any other nonimmigrant student will not be admitted to the United States unless he intends to attend the school specified in the Form I-20 or Form I-34 which he presents to the immigration officer at the port of entry.
- A nonimmigrant student is not permitted to work off campus for a wage or salary or engage in business while in the United States unless permission to do so has first been granted by the Immigration and Naturalization Service. A student who requires employment (1) because of economic necessity due to unforeseen circumstances arising after admission, or (2) to obtain practical training, may apply to the Immigration and Naturalization Service on Form I-538 for permission to accept such employment. Additional information concerning employment is set forth in Form I-538. The alien spouse or child accompanying or following to join a nonimmigrant student is not permitted to work in the United States.
- A nonimmigrant student is permitted to remain in the United States only while maintaining nonimmigrant student status, and in any event not longer than the period fixed at the time of admission (or change to student classification) unless he applies to the Immigration and Naturalization Service on Form I-538 in accordance with the instructions on that form between 15 and 30 days prior to the expiration of the period of his authorized stay and obtains an extension of his stay.
- Each year, every nonimmigrant student in the United States on the first day of January must submit by the 31st day of January a written notice of his address to the Immigration and Naturalization Service. In addition, a notice must be sent within 10 days after every change of address. Regardless of whether he moves, each nonimmigrant student is required to file written notice of his address every 3 months. Printed forms obtainable at the United States immigration office or post office should be used in making the annual address report, the change of address report, and the 3-month address report.
- At the time a nonimmigrant student departs from the United States, his temporary entry permit (Form I-94) is to be surrendered to a representative of the steamship or airline, if he leaves via a seaport or airport, to a Canadian immigration officer if he leaves across the Canadian border, or to a United States immigration officer if he leaves across the Mexican border.
- A nonimmigrant student may remain in the United States temporarily only for the purpose of pursuing a full course of study at a specified school. If, after being admitted, the student desires to transfer to another school, he must make written application on Form I-538 for permission to make such a transfer. The application must be submitted to the office of the Immigration and Naturalization Service having jurisdiction over the area in which the school from which he wishes to transfer is located. The application must be accompanied by Form I-20 completed by the school to which he wishes to transfer. He may not transfer until his application is approved. The application will be denied if the student failed to actually take a full course of study at the school he was last authorized by the Service to attend, unless he establishes that his failure to do so was due to circumstances beyond his control or was otherwise justified.
- A student who seeks to re-enter the United States as a nonimmigrant student after a temporary absence must be in possession of the following documents:
  - A valid unexpired student visa (unless exempt from visa requirements);
  - A passport valid for six months beyond the period of readmission (unless exempt from passport requirements);
  - A current copy of Form I-20 (A and B). However, only the "A" copy of Form I-20 is required in the case of a nonimmigrant student returning from temporary absence outside the United States to continue attendance at the same school which the Immigration and Naturalization Service last authorized him to attend; in such case, Form I-20A may be retained by the student and used by him for any number of reentries within twelve months from the date of issuance, the certificate on page 8 of Form I-20A need not be completed, and Form I-20B should be destroyed.
- A nonimmigrant student who does not register at the school specified in his temporary entry permit (Form I-94), or whose school attendance is terminated, or who takes less than a full course of study, or who accepts unauthorized employment, thereby fails to maintain his status and must depart from the United States immediately.

I CERTIFY THAT THE ABOVE IS CORRECT. I hereby agree to comply with the above and any other terms and conditions of my admission and any extension of stay. I also hereby authorize the named school and any school to which I may subsequently transfer to release to the Immigration and Naturalization Service any information requested bearing on my status as a nonimmigrant student and my places of residence in the United States.

(Signature of Student) (City) (State or Province) (Country) (Date)

I certify that the above is correct and concur therein.

(Signature of Parent or Guardian if Student is Under 21 years of Age) (Relationship) (Date)

If any nonimmigrant student in the United States has any questions concerning his immigration status, he should not hesitate to call or write to the nearest immigration office. That office will be pleased to help the student.

**THIS PAGE IS TO BE COMPLETED AND RETAINED BY THE STUDENT FOR HIS RECORDS**

Mr. EILBERG. Mr. Chapman, how many "F" students are there in the United States at the present time?

Mr. BERNSEN. We do not have an official figure on how many "F" students are in the United States. We can only estimate that. We think that there may be a couple of hundred thousand in the United States. Of course, "F" students include not only university and college students—most of us think of university and college students, "F" students also include students at vocational schools, business schools, language schools, high schools, elementary schools.

Mr. EILBERG. Mr. Bernsen, do you really think your answer is adequate to the question that I have just asked?

I am asking your opinion.

Do you think you have given an adequate answer?

Mr. BERNSEN. As adequate as I can give it, sir.

Mr. EILBERG. That is not the point.

It seems to me, as the chairman of this committee, that you should certainly know the number of "F" students in the country. Now, I do not think this is unreasonable. Yet you beat around the bush indicating that you do not know, and it seems to me an important subject, why do you not know?

Mr. BERNSEN. I do not know whether our computer can possibly give us that information. We have not had that information. We have been trying to work up that information for years, and we simply have not had it.

Mr. EILBERG. But you act on each one of these, do you not?

Mr. BERNSEN. Yes, but your question is how many are in the United States at a given time. Students move in and they move out, and at a given time it is extremely difficult to have a definite figure.

Mr. EILBERG. Well, let us ask the further question. How many "F" students, certificates of eligibility, and valid certificates do you have on file at this moment in the entire country?

Mr. BERNSEN. We do not maintain a statistic on that particular figure.

Mr. EILBERG. I understand your particular problem very well, and that this is a subject which is not of the highest priority as far as you are concerned; however, it would seem to me that you ought to have some statistics in this area.

Mr. CHAPMAN. I agree with you, Mr. Chairman, and I wish we had the figures. We do not; we have made some pretty extensive plans to increase our computer capability and our computer programs, with the intention of getting data of this kind, and in the future, if we can implement those plans, we will have them.

Mr. EILBERG. You put out an annual report which we looked at with some interest, and seldom with enough time, but it seems to me that you cover a wide variety of subjects and that this is one of sufficient interest to warrant being included, and I would respectfully suggest to you that you consider including this in your reports.

Mr. CHAPMAN. Yes, sir.

Mr. EILBERG. Has there ever been a long-range study, either by the Departments of State or Justice, or by any group evaluating student programs on how many students do return to their own country?

Mr. CHAPMAN. Not to our knowledge. I am rather confident that none has ever been made by the Justice Department, but I just cannot state that—

Mr. EILBERG. Is there any evidence that these students that do return use the training they acquired in the United States?

Mr. CHAPMAN. I think it would follow logically that many must do so, but we have no study on the statistics to document that point. We, rather, the figures we do have show that many seek to stay here and put to use the education and training that they have gotten in the United States.

Mr. EILBERG. General, in our trying to evaluate the situation, if you were sitting here or on this committee, how would you advise us in terms of trying to evaluate these programs because this committee is responsible for the oversight and, maybe, legislation ought to be changed. We do not know the answers to these questions. How would you initiate study? What should we do, if anything?

Mr. CHAPMAN. Sir, that gets into the field of the future legislation or possible legislation, which I am somewhat handicapped in addressing this morning, as you know, Mr. Chairman. I would just say, I think, that I believe our decisions and our policy with respect to the employment of foreign students, permission for them to work are sound and equitable and proper and that the real question under the law, since we are permitting to work, only those students who can show a demonstrated, unexpected economic condition that has arisen since they have arrived in the United States. But, the basic question is whether any foreign students under the law should be permitted to work or not, other than, perhaps, for practical training.

As the chairman knows very well the law would seem to inhibit any employment of foreign students in this country since the law speaks to entering the country solely to pursue a course of instruction.

Mr. EILBERG. One further question before I yield to my colleagues. You have the GAO report before you. I know that you have gone over it extensively. Would you care to give a general response to the GAO report?

Mr. CHAPMAN. With a few minor exceptions, we fully agree with the conclusions and recommendations of the GAO report, and we have so stated in our response to the report and in those cases—in the case of those recommendations—where we have the capability, we have already implemented, or are in the process of implementing, the recommendations of the report, such as, for instance, a better definition of the full course of study and some other things, but in some of the other recommendations, such as checking at these schools to insure that they are continuing to comply with the rules and regulations with regard to foreign students, we simply do not have the manpower to do it. We are just incapable of doing it. We would like to, but we cannot.

Mr. EILBERG. Have you finished your answer?

Mr. CHAPMAN. Yes, sir.

Mr. EILBERG. Mr. Russo.

Mr. Russo. Just to follow up your question asked previously, Mr. Chairman, I do not think we had an adequate answer. We are sitting here in a position of oversight to determine whether or not the procedures being implemented by the INS are proper, and the answer given was that the judgments on employment were sound and proper. However, we are trying to determine the statistics and data which are the basis for that statement. Basically, I feel that this has not been clarified. Saying that a decision was just improper does not solve our problem in determining the basis on which the decision was made.

Mr. CHAPMAN. First, I believe that authority given to the Attorney General under the law and delegated, in turn, to me should not be delegated any further than the officials of the Immigration Service.

Second is that no student should be permitted to occupy a job off campus in this country who cannot demonstrate a bona fide need that has arisen due to economic emergency since he entered the



country, or to obtain practical training in his field of study, since the law provided that he will enter solely to pursue an education.

Third, as a result of those two conclusions, we examine each application for employment year-round or any employment application on its merits. If it is practical training and is related to the course of study and the school recommends, then we approve. If it is based on economic necessity, then his petition must demonstrate what that necessity is, and what are the unforeseen circumstances that have arisen.

Mr. DODD. Will the gentleman yield? Mr. Chairman, I am a bit confused, as well, General. I think it is really important that we have some statistical data information. Now, you quoted some figures to us, 32,000 plus approved employment opportunities. Is that a 1973 figure? Then it was 38,000 approved. You have an idea of how many in the illegal alien status, 1973, 1974; 7,170 in 1973; 8,132 in 1974. It seems to me that the chairman asked a very important question. People, when they apply for a student visa, if they are in the F classification or the J classification should be able to give the Service a readout on how many students are in this country under those classifications.

Mr. CHAPMAN. From that country, from that particular country?

Mr. DODD. Overall. I do not understand why we do not have that statistical observation, because I think it is really important in joint to determine whether Congressman Brown's bill, the merits of that bill, based on the number of objections or acceptances, which the INS has given, or the institutions gave prior to April 1974, in terms of trying to determine if they are being dealt with fairly, and, then, of course, how that interfered with the employment and unemployment situation in this country today, vis-a-vis the amount of students, the foreign students, who are in this country in our educational institutions. I think that is absolutely essential before I can even as one Member proceed to determine how, just exactly where we are.

Mr. CHAPMAN. Well, you have asked several questions here. Let me see if I can remember them all. A number of students entering each year we know; there were 109,000 last year. The total number in the country at any one time, we do not know. It is probably on the order of 200,000, and I have already agreed that we should know, but we do not.

Mr. DODD. What would be the practical reasons for not knowing? I presume when you apply for a student visa, it is for a certain period of time, for 1 year, 2 years, 3 years, depending upon what the course of education is, or what the person has applied for, and I would think that at that point a determination of 1 year or 2 years, then that person, had they not reapplied for an extended visa, would then be in an illegal alien status.

Mr. CHAPMAN. He would, unless he leaves on time, and we just do not have good records as to who leaves this country, so that we do not know at any one time how many are still here, whether legal or illegal.

Now, if there are on the order of 200,000 here at this time from last year, we know this that of the 50,753 applications for work permits, we approved 38,147.

Mr. DODD. In 1974?

Mr. CHAPMAN. That is in 1974. That is the last year for which we have full year figures, and we denied 12,606.

Mr. EILBERG. Are those for the entire year around?

Mr. CHAPMAN. That is fiscal 1974. As I previously said in 1974 we located 8,132 in an illegal status, F-1 student in an illegal status. Now, I go on to point out with regard to both of these figures that that is the number we know; that is the number who applied to us for permission to work. We do not know how many went to work without applying for permission, and with regard to those located in an illegal status, we know how many we caught, but we do not know how many we did not catch, and it is probably a large number.

Mr. EILBERG. One question before I yield to Mr. Fish. Mr. Brown and many others have stated, properly I think, the long-range goals of our country which involves exchange of students, and we cannot disagree; on the other hand, there is an evil, which we presume to be present. Many students come from underdeveloped or developing countries, perhaps as intending immigrants, in fact, and after some training or no training, they just disappear into the general community. Now this concerns the committee. How do you react to that? What should be done about that?

Mr. CHAPMAN. I agree with Mr. Brown's two possible courses of action. One is to build a huge immigration service, and it would have to be huge—bigger than the Marine Corps.

[General laughter.]

Mr. CHAPMAN. Or, in some way, deny the job opportunity. That is why they come. Whether they are intending immigrants or students or tourists who come illegally, they come to get a job in this great country. I must say I cannot blame them very much.

With respect to the students from disadvantaged countries entering this country to pursue a course of study and then return and contribute to the advancement of their countries and the fact of the poor economic circumstances in those countries, again I would have to point to the word solely in the law. I am confident from having read the hearings that it was the full intent of Congress that that word solely be there, and that it means just what it appears to mean.

Mr. EILBERG. Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman. Perhaps, the general has given us a thought here. General, do you know what the practice is in foreign countries on American students who are accepting study in Great Britain, or France, or the Soviet Union, or elsewhere, as far as their permission to seek employment on a year-round basis, or in the summer?

Mr. CHAPMAN. I do not know, sir.

Mr. FISH. Could you provide the committee with the information?

Mr. CHAPMAN. Yes, sir, we will have to get some advice from others on that, because, of course, we have no control whatever over American citizens.

[A study prepared by the Congressional Research Service follows:]

#### AUSTRALIA

(Prepared by Robert L. Nay, Assistant Chief, American-British Law Division, Law Library of Congress, April 1974)

There are no law or published rules that specifically regulate the conduct of foreign students in Australia. The immigration officials have policy guidelines

that are used concerning the entry of students but these, according to the Australian Embassy, are restricted and unavailable for use by the general public.

#### AUSTRIA

(Prepared by George Jovanovich, Senior Legal Specialist, European Law Division, Law Library, Library of Congress, April 1974)

The educational system of Austria is governed by several law and decrees administered by the Federal Government through the Ministry of Education. Among these the most important are:

(1) the School Organization Act (Schulorganisationsgesetz) of July 25, 1962,<sup>1</sup> (available in English) pertaining to high schools and vocational schools; and

(2) the General Law Concerning University Studies (Allgemeines Hochschul-Studien-gesetz) of July 15, 1966,<sup>2</sup> (not available in English).

Both of these laws provide for the admission of students prior to registration. No distinction is made between students with respect to their citizenship, but one is made between regular students seeking a degree and special or great students seeking only credits.

Foreign students must obtain a residence permit from the police authorities. They may obtain it upon showing evidence of admission to any school, together with an indication of the length of time required for graduation from that school.

Once foreign students are admitted to a school they may be employed. Their income is not subject to any income tax<sup>3</sup> for a period of either up to 6 months or during the entire time of study, depending upon the student's country of origin.

All Austrian universities have special courses organized for foreign students. The tuition fees are modest, as described in the extracts from *The New Guide to Study Abroad* and *This Way Out* appended to this report.<sup>4</sup>

#### CANADA

(Compiled by James W. Elder, Reference Librarian, American-British Law Division, Law Library, Library of Congress, April 1974)

Foreign students are governed by the following laws and regulations in Canada:

1. An Act Respecting Immigration. Can. Rev. Stat., c. I-2, § 7 (1) (1970).

*Regulations:* Immigration Regulations, Pt. I amended, SOR/67-434, 101 Can. Gaz. Pt. II, 1350-1362 (September 13, 1967); amended by SOR/72-443, 106 Can. Gaz. 1991 (November 22, 1972); SOR/73-20, 197 Can. Gaz. Pt. II, 83-88 (January 10, 1973); and SOR/73-443, 107 Can. Gaz. Pt. II 2066 (August 22, 1973).

2. An Act to Amend the Immigration Appeal Board Act. Can. Rev. Stat., c. 27 (1970).

*Regulations:* Immigration Adjustment of Status Regulations, SOR/73-446, 197 Can. Gaz. 2067-2071 (August 3, 1973).

[From the Canada Gazette, Pt. II, vol. 101, No. 17, Sept. 13, 1967]

35. (1) Subject to this section, a student described in paragraph (f) of subsection (1) of section 7 of the Act may be allowed to enter and remain in Canada as a non-immigrant if—

(a) he complies with the requirements of the Act and these Regulations;

(b) he presents to an immigration officer an official letter of acceptance from a university or college described in that paragraph or an educational institution providing academic professional or vocational training approved by the Minister for the purposes of that paragraph; and

(c) in the opinion of an immigration officer he has sufficient financial resources to maintain himself and any dependent accompanying him during the period for which he is admitted as a student.

<sup>1</sup> *Schulorganisationsgesetz 1962. School Organization Act 1962.* Deutsch-English (Wien, Oesterreichischer Bundesverlag, 1963 or 6).

<sup>2</sup> *Schupplich-Sporn, Oesterreichisches Recht. Allgemeines Hochschul-Studien-gesetz, Item 329* (Salzburg, 1968).

<sup>3</sup> *Das Einkommenssteuer-gesetz* (Manz Edition, 1961).

<sup>4</sup> John A. Garraty, et al., *Study Abroad* 76-78, 137-138, 164-167, 231-233, 375-376 (1974); and John Coyne and Tom Hebert, *This Way Out* 319-321 (1972). See Appendices I and II.

(2) A student referred to in subsection (1) and his dependents shall not take employment in Canada without the written permission of an officer of the Department.

(3) The period during which a student referred to in subsection (1) may remain in Canada shall not exceed twelve months from the date of his entry into Canada but may be extended by an immigration officer for further periods not exceeding twelve months each if—

(a) he remains in good standing with and actual attendance at a university, college or educational institution described in paragraph (b) of subsection (1);

(b) he has observed the conditions of his entry; and

(c) he complies with the requirements of the Act and these Regulations.

(Translated by Dr. Domas Krivickas, Senior Legal Specialist, European Law Division, Law Library, Library of Congress, April 1974)

## APPENDIX II—REGISTRATION OF FOREIGN STUDENTS IN UNIVERSITIES<sup>1</sup>

The Minister of National Education,

Considering Law No. 68-978 of November 12, 1968, on the Orientation of Higher Education as Amended, and Especially Its Article 21;

Considering Decree No. 71-376 of May 13, 1971, concerning the Registration of Students in Universities and Public Establishments of a Scientific and Cultural Character Independent from Universities, and Especially Its Article 14;

Considering the Order of May 13, 1971, concerning the [Time] Limit for Registration in the year 1971-1972,

Decreets:

*Art. 1.* Students of foreign nationality [who are] candidates for the first registration of the first year of higher education in a French university must have satisfied the requirements for registration on October 31 at the latest at the beginning of the academic year. No registration may be made after that date, with the exception of a special authorization granted by the rector of the academy, on the proposal of the president of the university.

The provisions of Article 9 of the Decree of May 23, [sic] 1971, specified above, and the provisions of Article 3 of the Order of May 13, 1971, specified above, shall be applicable in all other cases to students of foreign nationality.

*Art. 2.* For the academic year of 1971-72, and in derogation from the provisions of Article 1 above, the date of October 31, specified in that Article, shall be carried over to November 30, 1971.

*Art. 3.* In conformity with the provisions of Article 21 of the Law of November 12, 1968, specified above, the universities may decide to organize an orientation course for the newly-registered students of foreign nationality when they [the universities] consider that it will be useful to check their knowledge of the French language.

After this course, the students might be requested to pursue a [further] course to improve [their] French language [either] before or during their studies.

*Art. 4.* The director in charge of universities and of establishments of higher education and research and the rectors are charged in the matters that are his concern with the execution of the present order which will be published in the *Journal officiel* of the French Republic.

Made in Paris, July 2, 1971.

OLIVIER GUICHARD.

GREAT BRITAIN

(Prepared by (Mrs.) Audrey F. Glover, Legal Specialist, American-British Law Division, Law Library, Library of Congress, April 1974)

Section 3(2) of the Immigration Act, 1971, c. 77, makes provision for the Secretary of State to lay before Parliament statements of rules, or changes in rules laid down by him, as to the practice to be followed for regulating the entry and stay in the United Kingdom of persons required by the act to have leave to enter. People requiring leave to enter the United Kingdom are those who do not have the right to live there.

<sup>1</sup> La loi d'orientation de l'enseignement supérieur, ses aménagements et ses textes d'application. Académie de Strasbourg, Chancellerie des Universités 318 (1970).

Enclosed are copies of the pertinent section of the Immigration Act, the statement of immigration rules for control on entry, and the statements of immigration rules for control on entry and after entry for Commonwealth citizens.

## IMMIGRATION RULES: CONTROL AFTER ENTRY

### *Commonwealth Citizens*

The Home Secretary has, with effect from 30th January 1973, made changes in the rules laid down by him, and contained in the statement laid before Parliament on 23rd October 1972, as to the practice to be followed in the administration of the Immigration Act 1971 for regulating the stay of persons not having the right of abode. This statement contains the rules as so changed, so far as they relate to Commonwealth citizens and British protected persons.

The powers conferred by the Act are to be exercised without regard to a person's race, colour or religion.

### PART A. VARIATION OF LEAVE TO ENTER OR REMAIN

#### *Introductory*

1. Under sections 3 and 4 of the Immigration Act 1971 an Immigration Officer, when admitting to the United Kingdom a person subject to control under that Act, may give leave to enter for a limited period and, if he does, may impose conditions restricting employment or occupation in the United Kingdom. Under section 24 of the Act it is an offence to remain beyond the time limit or to fail to comply with such a condition.

2. Under section 3 (3) of the Act a limited leave to enter or remain in the United Kingdom may be varied by extending or restricting its duration, by adding, varying or revoking conditions or by removing the time limit (whereupon any conditions attached to the leave cease to apply). The main purpose of this part of the rules is to set out, in relation to the chief categories concerned, the principles on which leave to enter or remain will, on application, be varied. In the following paragraphs "leave to enter" includes leave to remain.

#### *Rights of appeal*

3. Under section 14 of the Act a person has a right of appeal against any variation of his leave to enter or any refusal to vary it, except that there is no appeal against a variation of leave which reduces its duration, or against a refusal to extend or remove a time limit, if the Secretary of State personally decides that the departure of the person concerned from the United Kingdom would be conducive to the public good as being in the interests of national security or of the relations between the United Kingdom and any other country or for other reasons of a political nature. Where—

(a) an application for variation of leave to enter is refused, or

(b) a variation is made otherwise than on the application of the person concerned, or is less favourable than that for which he applied, notice of the decision and, if an appeal lies, of his right of appeal will be handed to the person concerned or sent to his last known address. If notice of appeal is lodged, a summary of the facts of the case on the basis of which the decision was taken will be sent to the appellate authorities and to the appellant.

#### *Students*

12. A person who satisfied the Immigration Officer that he had been accepted here for a full-time course as a student, could maintain himself during his stay, and would leave when his studies were completed, is likely to have been admitted for an initial period of up to 12 months, depending on the length of his course, with a condition restricting his freedom to take employment. If the Immigration Officer was not so satisfied, the student may have been given leave to enter for a short period, with a prohibition on employment, and advised to apply to the Home Office for a variation of his leave when he had completed his arrangements for study.

13. Applications from students or would-be students for variation of their leave will consist mainly of applications for extension of stay as a student. An extension for an appropriate period, normally up to 12 months, may be granted if the applicant produces evidence, which is verified on a check being

made, that he has enrolled for a full-time course of daytime study which meets the requirements for admission as a student; that he is giving regular attendance; and that he has adequate funds available for his maintenance and that of any dependants. When an extension is granted the student may be reminded that he will be expected to leave at the end of his studies.

14. Doctors, dentists and nurses admitted as postgraduate students will be permitted to take full-time employment which is associated with their studies. Other *bona fide* students may, with the approval of the Department of Employment, work in their free time or vacations and there is no restriction on the freedom of their wives to take employment; earnings so obtained may be taken into account in assessing the adequacy of their arrangements for maintenance. If the Immigration Officer imposed a condition prohibiting employment on someone who later establishes satisfactorily that he is engaged on a full-time course of studies, the condition may be varied to one permitting him to take approved employment. Except as mentioned in this paragraph, employment is inconsistent with student status.

### HONG KONG

(Prepared by Mya Saw Shin, Senior Legal Specialist, Far Eastern Law Division, Law Library, Library of Congress, Washington, D.C., April 1974)

The Immigration Regulations, issued under Section 59 of the Immigration Ordinance of Hong Kong, govern the entry of foreign students into the Colony. Section 2(3) of the regulations states as below:

2. (3) Permission to a person to land in Hong Kong as a student shall be subject to the following conditions of stay—

(a) that he shall become a student only at a specified school, university or other educational institution and undertake such course of study as may be approved by the Director;<sup>1</sup> and

(b) that he shall not—

- (i) take any employment, whether paid or unpaid; or
- (ii) establish or join in any business.<sup>2</sup>

### INDIA

(Compiled by Krishan S. Nehra, Legal Specialist, American-British Law Division, Law Library, Library of Congress, April 1974)

Foreign students are dealt with generally under the various orders and rules issued by the Central Government. Xerox copies of the following regulations are attached:

1. The Foreigners Order, 1948;
2. The Foreigners (Restricted Areas) Order, 1963;
3. The Registration of Foreigners Rules, 1939; and
4. The Passport (Entry into India) Rules, 1950.<sup>3</sup>

### IRAN

(Prepared by Dr. Zuhair E. Jwaideh, Chief, Near Eastern and Africa Law Division, and William W. Reese, Legal Reference Assistant, Law Library, Library of Congress, April 1974)

In Iran no special laws or regulations exist for foreign students. Foreign nationals wishing to study in Iran are subject to the Law concerning the Entry and Residence of Foreign Nationals of 1931. A close examination of the law showed that it does not contain any provisions dealing with students, their entrance or residence in Iran, but only general provisions concerning the issuance of visas. The Regulations for the Entry and Residence of Foreign Nationals of 1973 do contain sections pertinent to the residence of all foreign nationals, and these regulations have been included here. Foreign nationals wishing to study in Iran

<sup>1</sup> "Director" is defined in Section 2(1) of the Immigration Ordinance, 7 *Laws of Hong Kong* ch. 115 (rev. ed. 1972), 5, as meaning the Director of Immigration, the Deputy Director of Immigration and any assistant director of Immigration.

<sup>2</sup> Subsidiary legislation to the Immigration Ordinance, 7 *Laws of Hong Kong* ch. 115 (rev. ed.) 1972), A1.

<sup>3</sup> K. K. Singh, *Mazhar Husain's Law Relating to Foreigners, Passports and Citizenship in India* (6th ed. 1972).

will be granted a residence permit only upon the recommendation of the Ministry of Science and Higher Education.<sup>1</sup>

Any foreign national wishing to work in Iran is subject to the Foreigners Employment Regulations of 1971 which are also included.

There are no specific financial requirements for students with the exception of the general provisions of Article 2 paragraph g of the 1931 law which authorizes representatives of the Iranian Government to deny an entry to any foreign national ". . . who is not in a position to assure his own means of support in Iran through capital or a useful profession . . .".<sup>2</sup>

#### JAPAN

(Prepared by Dr. Sung Yoon Cho, Senior Legal Specialist, Far Eastern Law Division, Law Library, Library of Congress, Washington, D.C., April 1974)

In Japan, the question of foreign student programs is governed by the Immigration Control Order<sup>3</sup> and its Enforcement Regulation.<sup>4</sup> Under the above Order, an alien desiring to enter Japan is required to have the pertinent "status of residence" in advance. Thus, if a foreign student desires to study in Japan, he must apply, before his entry into Japan, to the Minister of Justice for permission for student status as set forth in Article 4 of the Order:

*Article 4.* 1. Unless otherwise provided for by the Cabinet Order, any alien (excluding a crewman) without the status of residence which comes under any one of the following items (meaning the status of the alien who is authorized to conduct activity while residing in Japan) shall not be permitted to land in Japan.

(1)-(5). [Omitted]

(6) An alien who seeks to pursue a specific branch of study or undergoing education at a certain academic or educational institution in Japan;

(7)-(16). [Omitted]

2. The period of stay for aliens coming under any items of the preceding paragraph . . . shall be prescribed within a period not exceeding three years by Ministry of Justice Ordinance.

3. Any alien who comes under paragraph 1, item (6) . . . shall, in advance to his landing Japan, apply to the Minister of Justice for the issuance of the certificate of his eligibility for the pertinent status of residence in accordance with the procedures prescribed by Ministry of Justice Ordinance.

4. In case the application under the preceding paragraph has been submitted, the Minister of Justice shall consult with the pertinent Minister in charge of the activities to be conducted by the person who has applied for the status of residence and may issue the said certificate in respect to the person under the same paragraph, only when he finds that the person in question is eligible for the status of residence claimed.

The length of stay authorized for a foreign student is one year as specified in Article 3, paragraph 1, item (3) of the Enforcement Regulation:

*Article 3.* 1. The period of stay provided for in Article 4, paragraph 2 of the Order shall be fixed . . . as follows:

(1)-(2). [Omitted]

(3) In the case of a person who comes under Article 4, paragraph 1, item (6) . . . of the Order, one year;

As long as an alien maintains the student status, his stay may be renewed each year with the permission of the Minister of Justice under Article 21 of the Order:

*Article 21.* 1. Any alien residing in Japan may, without changing his status of residence, make application for an extension of his period of stay.

2. Any alien desiring to extend his authorized period of stay pursuant to the provision of the preceding paragraph shall apply to the Minister of Justice for extension of such period in accordance with the procedures prescribed by Ministry of Justice Ordinance.

<sup>1</sup> *Iran Almanac and Book of Facts 1973*. 12th ed. Tehran, Echo of Iran, 1973. p. 318.

<sup>2</sup> *Majmūah-i Qavānin 1310*. Tehran, 1933. p. 19.

<sup>3</sup> Cabinet Order No. 319, Oct. 4, 1951. This Order came into force as law on Apr. 23, 1952 by Law No. 126, which was last amended by law No. 130, Dec. 31, 1971.

<sup>4</sup> Ministry of Foreign Affairs Ordinance No. 18, Oct. 30, 1951. This Ordinance came into force as Ministry of Justice Ordinance No. 7, Aug. 1, 1952, which was last amended by Ordinance No. 39, May 13, 1972.

3. When the application has been made under the preceding paragraph, the Minister of Justice may grant such request, only in cases where there are reasonable grounds to justify the extension of the period of stay on the strength of the document submitted by the alien.

4. When the permission under the preceding paragraph has been granted, the alien shall have the extension of the period of stay noted in his passport by the Ministry of Justice or the Immigration Inspector in accordance with the procedures prescribed by Ministry of Justice Ordinance.

Any foreign student is allowed to work with the permission of the Minister of Justice under Article 19, paragraph 2 of the Order :

*Article 19. 2.* In case an alien . . . desires to engage in an activity other than that to be properly conducted by the person under the status of residence, he shall obtain prior permission therefor from the Minister of Justice in accordance with the procedures prescribed by Ministry of Justice Ordinance.

With respect to financial and other requirements for a foreign student, Article 3, paragraph 2, item (1) of the Enforcement Regulation states :

*Article 3. 2.* Any applicant for the issuance of a certificate showing his eligibility for the status of residence under Article 4, paragraph 3 of the Order shall submit to the Minister of Justice the documents mentioned in each pertinent item in accordance with the classification of status of residence given in the following items :

(1) In the case of a person who comes under Article 4, paragraph 1, item (6) of the Order [a foreign student], two copies of the application mentioned in the Annexed Form No. 1 accompanied by three copies of each of the written admission issued by the academic research or educational institution at which the applicant seeks to pursue his research or to undergo education, or the certificate of his educational record showing his eligibility for admission or other documents equivalent to these, a document showing his ability to bear all the expenses incident to his residence in Japan, and a written guarantee given by a reliable guarantor in Japan for good behavior of the applicant, or other reference documents.

#### MEXICO

(Translated by Mr. Armando E. González, Senior Legal Specialist, Hispanic Law Division, Law Library, Library of Congress, April 1974)

General Law on Population of December 23, 1947 (*Diario Oficial*, Dec. 27, 1947).

*Art. 50.* Non-immigrant is any alien who temporarily enters the country by permission of the Ministry of the Interior :

V. As a student, for the purposes of initiating, completing, or perfecting his studies in official or private educational institutions, under annual extensions [of his admission permit] and who is duly authorized to remain in the country for the duration of his studies as well as for the additional time necessary to process and obtain the corresponding documents for this purpose, of time of up to 120 days per year.

Regulations to the General Law on Population of April 27, 1962 (*Diario Oficial*, May 3, 1962).

*Art. 73.* The admission into the country of non-immigrant aliens referred to in article 50, section V of the General Law on Population shall be subject to the following rules :

I. The petitioner must prove, to the satisfaction of the Ministry [of the Interior] that his is able to receive sufficient means for his support on a regular and periodic basis.

II. Should he be under 15 years of age, the admission petition shall be signed by whoever exercises parental authority over him, by his guardian, or by any other person under whose care and custody he shall be while residing in this country.

III. The petitioner must state the kind of studies the applicant is to undertake and the educational institution where he intends to register.

IV. The admission permit shall be cancelled in case the student drops out of his courses or if he obtains failing grades.

V. Upon requiring an annual extension [of his admission permit], the petitioner must submit proof that he is registered in the educational Insti-



tution where he was authorized to undertake his studies and that his grades allow him to take the subsequent courses, together with proof that his economic means of support still subsist.

VI. The administrators of educational institutions are under the obligation to report to the Ministry of the Interior, within 15 days, any foreign student who fails to obtain passing grades or who drops out of school.

VII. Non-immigrants referred to in this article are entitled to leave the country for up to 120 days each year. In order to return to the country, they must appear before the corresponding Mexican consulate in order to obtain confirmation of their immigration permits. Without the fulfillment of this requirement, they shall not be admitted [into the country].

VIII. [Foreign] students are forbidden to develop any kind of paid activity, except those concerning professional practice and social services related to their studies, provided they obtain the corresponding license from the Ministry of the Interior.

IX. Relatives of [foreign] students shall have the same migratory status. Their admission into the country shall be authorized solely to those related [to the student] in the first degree, provided they furnish sufficient proof thereof.

Law on Migration Taxation of December 27, 1960 (*Diario Oficial*, Dec. 30, 1960).

Art. 1. The following tax and migration fees shall be paid by non-immigrant aliens or immigrants as the case may be.

Act. 2. (As amended by Decree of Dec. 30, 1961, *Diario Oficial*, of the same date) Non-immigrants (art. 50 of the General Law on Population):

\* \* \* \* \*

(1) Those who have been granted political asylum (sect. IV) and students (sect. V) for validation of their admission permits or extension thereof . . . 50.00 pesos.

Art. 4. For changes in the migratory status:

In order to obtain immigration status change, in addition to the payment of the immigration tax, the petitioner shall pay:

(a) For change from section I (tourists) to III (visitors) or to V (students of article 50 [of the law on Population]) . . . 1,000.00 pesos.

(c) For change from section III (visitors) to V (students) of article 50 [of the Law on Population], 1,000.00 pesos.

Art. 6. In order to replace immigration papers in case they were stolen, lost, deteriorated, or unavailable for any other reason chargeable to their holders, they shall pay:

\* \* \* \* \*

Non-immigrants, 50.00 pesos.

#### THAILAND

(Prepared by Mya Saw Shin, Senior Legal Specialist, Far Eastern Law Division, Law Library, Library of Congress, Washington, D.C. April 1974)

The entry of foreign students into Thailand is governed by the Immigration Act of B.E. 2493 [1950] and the Ministerial Regulations issued thereunder in 1951, 1954, 1959, and 1972.

Section 15 of the Act excludes any alien from entry into the country if he has no means of support. According to Section 18, an alien student with means of support and with means of acquiring education within the kingdom, entering for the purpose of acquiring education at any of the educational institutions designated by the Ministry of Education for the purpose, and remaining in Thailand only for the period required for getting such education, is not deemed to be an immigrant.

Section 19 provides that a person not deemed to be an immigrant under Section 18 may be permitted by the Director General in charge of immigration or by the competent official deputized by him to remain temporarily in the kingdom subject to such conditions as may be laid down. The period of time for temporary stay in the kingdom is not to exceed, for students, thirty days. This period of time may if necessary be extended for another thirty days. However, permission for any further extension must be considered and granted by the Minister of Education.

Section 20 of the Act provides that a person who is not deemed an immigrant and who is permitted to stay under Section 19 above shall remain in the area notified to the competent official. He is to notify the police at the local police

station of any change of residence, and on taking up residence in another Changwat (Province), he must notify the police station of such Changwat within twenty-four hours from the time of arrival. When leaving Thailand, he must notify the competent official in accordance with the rule laid down in the Ministerial Regulations.

Although aliens in general are required, under Section 28 of the Act, to have with them a prescribed amount of cash at the time of entry into Thailand, aliens not deemed to be immigrants are specifically exempted from this requirement by clause (7) of Section 30.

Mr. FISH. Congressman Brown emphasized the relationship with other countries. I think it is interesting to see what their policies are. General, there are a couple of places in your prepared statement where you speak of discontinuing the special summer program. Would it not be more accurate to say that employment eligibility for the special summer programs is now in termination by the Service?

Mr. CHAPMAN. Both are correct, sir. The so-called special summer service was one in which we authorized the student advisers to authorize a foreign student to work during the summer. That is the program we have canceled, with the net result then that the student must apply to us.

Mr. FISH. I do not understand why you canceled because it is going on; in 1974 you approved 11,042 applications for summer employment.

Mr. CHAPMAN. What we canceled was the delegation authority to the student adviser.

Mr. FISH. I see.

Mr. CHAPMAN. In the summer, I believe I had previously given the figures, last summer we authorized 11,042 out of 19,785.

Mr. FISH. Would you tell us would foreign students in the summer of 1975 be eligible for any of the over 800,000 federally funded youth employment jobs that the House acted on this past week and that will assuredly be law very shortly?

Mr. CHAPMAN. I do not know.

Mr. FISH. I would like to explore the basis for the decision in April of 1974. The chairman has raised the question of the deviation from the norm of the public service and not consulting the Labor Department this year, I am going to turn it around slightly and ask you, General, What is the authority of Immigration Service to give consideration to domestic labor market conditions in the first place?

[Pause].

Mr. BERNSSEN. The summer program, was initiated about 20 years ago, and it was not done on the basis of any statutory authority, it was done on the basis of consultation with the Labor Department. It was done administratively, and a criteria was adopted which was much less stringent than the criteria of economic necessity arising due to unforeseen circumstances. Under the summer program, a student could work if he just needed to supplement his funds, his available funds, so he could have a little more money around to help him pay his expenses. It was not done—

Mr. FISH. Who determined the criteria at the time?

Mr. BERNSSEN. I imagine it must have been determined by the Commissioner of Immigration at that time and in consultation with the Labor Department.

Mr. FISH. And this criteria that was changed in April 1974 became far more stringent, as you indicated?

Mr. BERNSEN. Well, it was not criteria that changed, sir; it was that the summer employment program was terminated, that is, this program by which school officials—

Mr. CHAPMAN. Let me go back here some. The program was not terminated, the summer work only.

Mr. FISH. But, the criteria that the General Counsel just mentioned for the summer program was a very loose one; it was not the economic necessity. That surely is not the case today.

Mr. CHAPMAN. That is quite right, sir.

Mr. FISH. That has been changed?

Mr. CHAPMAN. Yes. Economic necessity year around that has arisen since the student entered the country solely to pursue a course of instruction.

Mr. FISH. Did you determine that? Who determined that criteria?

Mr. BERNSEN. The economic necessity criteria?

Mr. FISH. The criteria that the general just enunciated.

Mr. CHAPMAN. The Immigration Service did a number of years ago.

Mr. FISH. There is no legislative authority for any summer program, is that correct?

Mr. BERNSEN. There is no express legislative authority, no, sir.

Mr. FISH. Is there any for the off-campus, year-round program?

Mr. CHAPMAN. No, sir. There is no legislative authority.

Mr. BERNSEN. No, sir.

Mr. CHAPMAN. I go back to that word "solely."

Mr. EILBERG. The criteria, again, General, what kind of changes or circumstances do you consider? Do you consider an increase in tuition? The cost-of-living index? What kind of emergency?

Mr. CHAPMAN. Yes, sir; inflation, tuition increases, if the father has gone bankrupt; conditions in his home country; perhaps, inflation has gone out of control; there has been economic disaster. Perhaps, the country has prohibited the sending of funds out of the country for economic reasons.

Mr. FISH. So, in answer to my question, What is the authority of the Service to give consideration to domestic labor market conditions is simply that this program is run by the Immigration Service and they set such criteria as they please. Is that correct?

Mr. BERNSEN. Yes, it was adopted administratively. There is no express statutory provision.

Mr. FISH. In the press release you issued, Commissioner, on April 19, 1974, you indicated the reason for the change was a finding that the colleges were not adhering to the standards, particularly that concerned change in natural circumstances. This was the reason, the basic reason, for the change in April?

Mr. CHAPMAN. Economic, the economic emergency standard was not being applied.

Mr. FISH. How did you find out that the colleges were not adhering to this standard?

Mr. CHAPMAN. By reports from our district directors and various other sources, primarily.

Mr. FISH. If this was a matter that college personnel handled themselves, how would the district director know? Did he go in and go through the files, the applications of colleges to base his judgment?

Mr. CHAPMAN. I do not know. In fact, we have no record of, we have no knowledge of how many were declined or rejected.

Mr. FISH. Well, I grant you that it is a circumstance to consider if the colleges did not deny anybody, but you took an authority away from the colleges and terminated the program that existed, set up a new procedure, and your reason for doing so was that the colleges were not adhering to the standards and guidelines in conducting some of the program, and I am not sure the committee understands how you arrived at that judgment when we were considering, perhaps, several thousand colleges.

Mr. CHAPMAN. We extrapolated from numerous individual cases to arrive at that general conclusion and decided that it would be better for the Service to make the decision, and that is the change we made.

Mr. FISH. The district directors did then take a sampling of students who were given summer jobs, college mechanisms—

Mr. CHAPMAN. They knew individual cases of that kind.

Mr. FISH [continuing]. Look at their backgrounds of financial conditions and decided that the colleges would not, were not following the guidelines of the program?

Mr. CHAPMAN. In many cases.

Mr. FISH. If I could take a moment later, Mr. Chairman, I was interested in the issue of accreditation of colleges as described in F-1, and I wonder how does the Service fulfill those responsibilities in the recognized place of study as listed in the statute?

Mr. BERNSEN. The school which seeks to be approved for attendance by nonimmigrant students has to submit a petition to the Immigration Service, giving considerable data as to the school, its finances, its curriculum, its instruction, courses and so forth. All that material, and any other pertinent evidence are then transmitted to the Office of Education. Under the statute, the Attorney General is required to consult with the Office of Education on whether a school is a bona fide educational institution. After we receive the advice of the Office of Education that the school is a bona fide educational institution, and if the school promises to make the required statutory reports, we approve the school.

Mr. FISH. Thank you.

Mr. EILBERG. Mr. Dodd.

Mr. DODD. Thank you, Mr. Chairman; I will try and be brief.

Mr. DODD. I would like to followup on a question by Mr. Fish including statistics that schools prior to your April 1974 decision, 17,739 schools had approved job applications particularly in summer relief programs. Was that particularly the summer programs?

Mr. CHAPMAN. That was the summer program.

Mr. DODD. But you do not have any statistics on the number that were denied?

Mr. CHAPMAN. That is true.

Mr. DODD. The figures you quoted earlier you approved around 38,000 in 1974, fiscal year 1974 and denied 12,607. Do you have a breakdown of those that applied? I presume that figure would be just for summer jobs because the same, or is that for total?

Mr. CHAPMAN. These are the year-round approvals.

Mr. DODD. Do you have a breakdown on figures as for those people who applied for the summer jobs as a result of changed regulation on April 1974?

Mr. CHAPMAN. Yes, sir. The number who applied was 19,785.

Mr. DODD. And how many were denied?

Mr. CHAPMAN. 8,743, and the number approved was 11,042. That was last summer, May, June, July, and August.

Mr. DODD. You do not have any idea of how many applied in the schools in the previous year, the 17,000 figure, the total applications for schools?

Mr. CHAPMAN. We do not know how many were denied so we do not know the total. The number that were approved was the 17,739.

Mr. DODD. Could you try and get that figure for us? I think that would be particularly important in terms of trying to evaluate whether or not the schools are adequately performing their function. [Pause.]

We received one figure, and I do not know why we cannot get the other one.

Mr. CHAPMAN. Well, the figure of 17,739 comes from the many individual schools for that summer period. They did not report how many they denied, I do not know whether it would be feasible to query all those schools whether they kept any records as to how many that applied were denied.

Mr. DODD. Mr. Chairman, I make the request that that information is important, and that we get that information. I think it would be important in determining how successful the schools have been with this program. Because really what we are trying to do is evaluate whether the INS is more capable than the schools are in terms of deciding who should have.

Mr. CHAPMAN. Well, I think the approximate figures give some indication in that the previous summer we know that 17,739 were approved. Whereas the summer that we made the decisions only 11,042 were approved.

Mr. DODD. May I ask you how large a staff is on INS that deals with this specific issue; in other words, the reviewing staff of the application?

Mr. CHAPMAN. This is done by the adjudicators in our 32 districts in the country and we give it priority during the close of the school year on students who are applying, particularly for summer work.

Mr. DODD. In other words, if a decision is made at the district level to deny an application can a student then apply or appeal that decision?

Mr. CHAPMAN. No, sir.

The district director's decision is final.

Mr. DODD. I would just like to ask you one more question, kind of a broad question, general with regard to a policy and that is how do you or does the INS view the status of foreign students in this country with regard to working? Do you feel this is something that this country should make available to foreign students who come here ostensibly to seek an education but for whatever reason and need, to work to supplement their incomes. Do you think the kind of thing that this country ought to be doing to provide or to make available; that jobs for these students is kind of an overview look. But, I would like to know what the position of the service is in regard to that in terms of foreign students in this country.

Mr. CHAPMAN. In the case of economic necessity, as we have already described, we do believe they should be authorized to do work.

Now, as to the larger question, should foreign students in general be authorized to work in this country, I would say no.

I believe that the students should come to study. There are many ways of getting funds to pursue a course of study. Of course there are grants, fellowships, or aid to education projects of all kinds. I do not believe that an alien student should support his course of education in this country by working in this country. And I would oppose that except in the special circumstances I referred to.

Mr. DODD. Thank you, Mr. Chairman.

Mr. EILBERG. Now, Mr. Russo has several questions.

Mr. RUSSO. I have no intention of asking any questions, Mr. Chairman, and I just want to make a short comment. I simply want to say that I appreciate the program, I like the foreign student program, I like the program under the F-1. But I also think that the General is right in his observation that we are making certain conditions, we are allowing students to come here to take advantage of our program. The statute is clear, the statute indicates that they must have their own financial assistance and I think that he is just abiding by the law.

If there are any changes that have to be made I think we have to make them. I appreciate his coming here and I do have some questions and I will submit them to you later for your answers. I appreciate your coming.

Mr. EILBERG. Mr. Russo, I do apologize to you.

Mr. RUSSO. That is all right, Mr. Chairman. When you are last in seniority on all committees, you sort of get used to it.

Mr. EILBERG. Thank you very much, gentlemen.

[Whereupon, at 12:05 p.m., the subcommittee adjourned, subject to the call of the Chair.]

STATEMENT BY THE HONORABLE TOM RAILSBACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

### THE NEED TO APPROVE THE FOREIGN STUDENTS BILL

Mr. Chairman, Members of the Subcommittee, I very much appreciate this opportunity to submit my views in support of H.R. 1787, the Foreign Students Bill which you are currently considering. As you may know, I have sponsored this legislation with my colleague George Brown of California, and H.R. 1787 is very similar to a bill I introduced in the last Congress. I therefore urge this Subcommittee to give the legislation every consideration.

Foreign students enrolled in American colleges and universities can and do significantly enrich American life. The presence of nonimmigrant foreign students strengthens academic programs and enlivens cultural activities. And, at the completion of their educations, these students return to their homelands with a greater understanding and appreciation of our country.

As you are all undoubtedly aware, for a foreign student to obtain a student visa, he must be coming to the United States solely for the purpose of pursuing a full course of study. Such a student must demonstrate that he will receive adequate financial support throughout his stay. Unfortunately, however, unforeseen circumstances arising after the student enters the United States may force him to seek additional funds. Increased tuition, the effects of inflation, or the devaluation of foreign currency may cause such a financial emergency. Because foreign students are ineligible for many grant or loan programs, employment during the school year or during vacation periods may be crucial if a student is to complete his education.

A foreign student may apply to the Immigration and Naturalization Service (INS) for permission to accept part-time employment during the school year. In addition, a financially hardpressed foreign student used to be able to apply to his college or university for permission to accept employment during summer vaca-

tions. Last year, however, INS announced that school officials would not be authorized to issue work permits to foreign students during the summer of 1974, and that the students would have to apply directly to INS. The number of work permits granted by INS in 1974 was substantially smaller—about one-third less—than the number of permits that had been granted by school officials in 1973. And, I have heard from numerous school officials that these cutbacks have adversely affected many foreign students.

In February of this year, the policy of allowing school officials to issue work permits was permanently discontinued. INS cited the need to protect employment opportunities for American youths as one reason for the discontinuance. I certainly do not mean to minimize our country's own domestic, economic problems; but, if the small number of jobs held by foreign students were made available to young Americans, the unemployment problem would not be significantly reduced. But the loss of jobs for foreign students will have significant impacts upon international educational interchanges.

Personally, I believe that school officials can do a better job of identifying those foreign students who have genuine unanticipated financial needs than can a government agency, unacquainted with the student or his college or university. It is for that reason our bill, H.R. 1787, permits—upon approval by the student's school—any nonimmigrant foreign student to be employed during a regularly scheduled school vacation or any school term during which the student is not enrolled. I believe that our doors should be kept open, not only to the world's wealthy students, but to students from developing countries and to middle-class students from around the world as well.

In conclusion, Mr. Chairman, Members of the Subcommittee, I would hope that you will approve, H.R. 1787, the Foreign Students Bill, without delay. Thank you very much for your time and consideration.





# REVIEW OF IMMIGRATION PROBLEMS

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## Consular Functions Abroad

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WEDNESDAY, DECEMBER 10, 1975

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
CITIZENSHIP, AND INTERNATIONAL LAW  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:31 a.m., in room 2141, Rayburn House Office Building, the Honorable Joshua Eilberg [chairman of the subcommittee] presiding.

Present: Representatives Eilberg, Holtzman, Dodd, and Fish.

Also present: Garner J. Cline and Arthur P. Endres, Jr., counsel; Janice A. Zarro, assistant counsel; and Alexander B. Cook, associate counsel.

Mr. EILBERG. The subcommittee will come to order.

Today's hearing represents the first in a series of oversight hearings which will be held by this subcommittee to review the consular function of the Department of State.

In addition, we will examine in detail the role of the Bureau of Security and Consular Affairs in administering the provisions of the Immigration and Nationality Act.

In this regard, I wish to state that I believe the consular function to be an extremely important—though often forgotten—phase of the U.S. Foreign Service for a variety of reasons. First of all, an alien's interview with a vice consul who is processing his application for an immigrant or nonimmigrant visa is usually that alien's initial contact with Americans and one which no doubt leaves lasting impressions. Second, to Americans abroad, the consular officer is often the only contact that individual has with his government. Finally, it is my understanding that a significant percentage of the Department of State's resources and personnel are involved in work associated with consular affairs.

On a more personal note and for the record, I would like to state that consular officers have been of great assistance to me, and I am sure to my colleagues, in our travels abroad, and I certainly appreciate the information and cooperation which they have provided over the years.

Consequently, I find it very difficult to understand why such a low priority has been attached to consular operations by most ambassadors, by regional bureaus, and by the Department itself. I should add that in recent months I have noted some improvement in the Department's

attitude toward, and interest in, the consular function, and I am hopeful that this trend will continue in the years ahead.

The primary objective of this hearing is to determine whether the Immigration and Nationality Act is being properly implemented by the Department of State and whether sufficient resources are being allocated for that purpose.

In the past I have been particularly concerned that the consular program has consistently lacked proper direction, and in my judgment there is an urgent need to improve consular operations around the world.

This problem becomes more acute as increasing numbers of persons seek to visit the United States. As a result of increased travel to the United States, enormous, and often unreasonable, demands are made upon consular officers. Efforts must be made to insure that these heavy workloads do not adversely affect the morale of consular officers or reduce the quality of visa processing.

In this regard, I was surprised to learn that an INS-funded study recently estimated that approximately 3 million of the illegal aliens residing in the United States are from countries other than Mexico. This problem could be alleviated to a great extent if consular officers were able to conduct more thorough investigations of questionable nonimmigrant visa applicants and if there were greater utilization of computer technology by both the Departments of Justice and State.

Hopefully all of these issues will be discussed during the course of our oversight hearings and I would now like to welcome the Deputy Undersecretary of State for Management, Lawrence S. Eagleburger.

We are very pleased that the administration has sent over such a high-level representative to help enlighten us here this morning. We apologize to you, Mr. Eagleburger, for beginning late, and I understand that the two minority members are at a meeting which is of some importance and are expected to be here shortly.

Please proceed.

**TESTIMONY OF HON. LAWRENCE S. EAGLEBURGER, DEPUTY UNDERSECRETARY FOR MANAGEMENT, DEPARTMENT OF STATE, ACCOMPANIED BY LEONARD F. WALENTYNOWICZ, ADMINISTRATOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS; RONALD K. SOMERVILLE, EXECUTIVE DIRECTOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS; AND LOREN E. LAWRENCE, DEPUTY ADMINISTRATOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS**

Mr. EAGLEBURGER. Thank you, Mr. Chairman.

Perhaps I should begin by introducing the gentlemen who are here with me. On my far right, where he normally is, is Mr. Walentynowicz, the Administrator of the Bureau of Security and Consular Affairs; next to him is Mr. Somerville, who is the Executive Director of the Bureau; and on my left is Mr. Lawrence, who is the Deputy Administrator of the Bureau.

Mr. Chairman, members of the subcommittee, I appreciate this opportunity to discuss State Department consular operations with you.

Although it is usually the political and economic aspects of our foreign policy that capture attention, it is the consular function, and

those in the Department and the Foreign Service who perform consular work, that most influence the attitudes of Americans toward the State Department, as you have yourself pointed out.

In the early days of our Republic, consular affairs were the primary duty of American diplomats overseas. Since then our world responsibilities have drastically changed our order of priorities. Today, for example, only 22 percent of our personnel resources are devoted to consular operations. Nonetheless, consular work is of great importance, and the Department of State recognizes this fact.

Although statistics are never the most gripping of topics, I know this committee is interested in facts, so let me briefly review the most salient ones with you.

Consular operations encompass three functions: first, visa issuance; second, passport and citizenship; and third, special consular services. Although passport requests have declined since fiscal year 1972, workload demands in all three categories have increased in volume or complexity in recent years.

The Department has sought to meet these increasing demands both through management reforms and increased allocation of resources to consular work. During the 5-year period from fiscal year 1972 through fiscal year 1976, the Department has requested, and Congress has provided, some 305 additional positions with a first year cost of \$3,394,100 to meet our increased consular workloads at foreign service posts.

While many consular officers at smaller foreign service posts must perform several or all consular functions, the majority of our consular personnel are primarily engaged in visa work. Under the Immigration and Nationality Act, as amended, foreign service personnel holding consular commissions are responsible for granting or refusing both immigrant and nonimmigrant visas to aliens seeking entry into the United States. This responsibility is of great importance, both in terms of our national interests and our allocation of resources to it.

In fiscal year 1975, for example, approximately 313,000 immigrant and 3,400,000 nonimmigrant visas were issued, at a cost of some 300 man-years of consular officer time.

In recent years visa work has become more difficult as a result of two developments: first, because of the rapidly expanding and highly seasonal number of nonimmigrant visa applications; and second, because of the increasing prevalence of fraudulent practices and documents.

Let me turn now to citizenship and passport for a moment. Approximately 85 man-years of American consular officer time were employed in providing citizenship and passport services overseas in fiscal year 1975. Our officers have had to deal with citizenship claims, and have been called upon to provide various types of passport services to American citizens abroad, such as issuing passports and registering births. This citizenship and passport functions overseas has, over the years, been relatively stable in terms of resource requirements.

Finally, approximately 140 man-years of consular officer time were devoted to special consular services overseas in fiscal year 1975. This includes such diverse types of assistance as helping American citizens in need, trying to find missing citizens, and administering various types of Federal benefits programs for beneficiaries residing abroad.

The demands upon our special consular services have grown steadily, commensurate with the increased overseas travel and residence of

American citizens. In the past decade, in particular, there has been a substantial increase in travel by younger Americans. At the same time, foreign governments have tightened their enforcement of drug laws; as a consequence, there has been a dramatic increase in the number of American citizens requiring protection of services. As of November 1975, for example, some 1,700 American citizens were being held in foreign jails on drug related charges.

Let me turn now to the question of the staffing of our overseas consular positions. Frankly, Mr. Chairman, the Department has long faced a difficult problem in deciding how to divide its personnel resources between our diplomatic requirements and our consular responsibilities. By the late 1960's, we had come to recognize that the combined effects of inadequate recruitment in previous years, increasing personnel attrition, and a growing workload threatened to make it impossible for us to fulfill our consular responsibilities.

As a result, the Department began recruiting young FSO candidates specifically for careers in consular work. Since 1969, using normal foreign service examining techniques, we have been able to close the gap between personnel needs and availabilities. In June 1968, the Department had a shortfall of some 70 consular officers. In September of this year, that gap had been reduced to 10, despite the fact that our total requirements for consular officers had grown by almost 100 positions over the same period of time.

Thus, emphasis on the cone system for recruiting consular officers was, in the main, a successful method for reducing the substantial shortage we experienced in the late 1960's. But, the cone system carried with it other disadvantages—disadvantages which have led the Department, within the last year, to move to modify the system. I will be glad to discuss these modifications, and the reasons for them, with you if you wish.

Mr. EILBERG. Mr. Eagleburger, may I interrupt at this point? I think it would be very appropriate here if you would briefly describe the operation of the cone system.

Mr. EAGLEBURGER. Right, sir.

The cone system essentially is divided into four categories: consular, economic and commercial, political, and administrative. The purpose of the cone system was specifically to recruit and promote within each of these career ladders. The effect was that administrative officers would compete with administrative officers for promotion and generally for assignment; the same for the other three cones. That is the general concept.

Mr. EILBERG. Thank you.

Mr. EAGLEBURGER. The current modest shortage of consular personnel is aggravated by the fact that one-third of our people are, in any given year, moving from one post to another, with an inevitable loss of productive time. Moreover, an increasing number of consular personnel are assigned to nonconsular work, or to various types of training such as area and language study, or to university and senior training.

There are now, for example, some 62 consular officers in Washington assigned to training or to nonconsular assignments outside SCA. The resultant staffing shortfall is met by utilizing officers from other functional specialties who are available for normal tours of assignment, or temporary duty, in a consular section.

Despite these burdens, the Department strongly believes that it is important not only to continue, but to increase the number of out-of-function assignments for consular officers. We take this view because our objective is a foreign service capable of performing well in a variety of jobs. We believe this to be in the national interest, and, in the long run, the best interests of the individual Foreign Service officer.

We want no second-class citizens in the Foreign Service. Everyone should have an opportunity to develop a sufficiently broad background so that, if he has the capability and desire, he can some day rise to the highest ranks of responsibility of the service.

Promotion opportunities are obviously related to position requirements. Here we have a problem insofar as consular officers are concerned, and there is no sense in trying to ignore that fact. This subcommittee was advised in 1973 that the Foreign Service had a major reclassification study underway that would result in the equitable adjustment of position levels in the Service. While the classification study did produce a 15-percent increase in the FSO-5 level of consular positions—thereby raising by one class the normal working level for consular positions in the field—it also resulted in significant decreases in the number of FSO-4, 3, and 2 positions in all four Foreign Service disciplines—consular, administrative, economic, and political.

Mr. EILBERG. May I interrupt again to request confirmation for the concept that the FSO-7 is the lowest level, and as one approaches 6, 5, 4, 3, 2, and 1, these represent higher levels within the system.

Is that correct?

Mr. EAGLEBURGER. Mr. Chairman, that is correct, except that the lowest level is 8.

Mr. EILBERG. Eight.

All right.

Mr. EAGLEBURGER. Consular positions, on the average, continue to be classified the lowest of all core disciplines in the Foreign Service. There is no easy answer to this problem, and all I can assure you of at this moment is that we will continue to give it our attention. I am hopeful that out-of-cone assignments for consular officers will improve their promotion potential and career opportunities, and mitigate the effects of a grade classification structure that is inherently disadvantageous to consular officers.

Mr. Chairman, the Department, through the use of the consular package budget technique, has been able to develop a data base that has enabled us to justify to the Congress our need for increased consular positions. Because of the support of this subcommittee, and our improved ability to defend our case, the Congress provided 62 consular positions in fiscal year 1974, 87 in fiscal year 1975, and 74 in fiscal year 1976.

Mr. EILBERG. May I interrupt once again to just ask you briefly to describe the consular package budget technique?

Mr. EAGLEBURGER. Essentially, Mr. Chairman, the consular package budget technique is a process whereby the Bureau of Security and Consular Affairs goes out to each embassy and consulate, asks for estimates of their present workload and projected workload, tries to determine from that process the need for additional consular officers over the course of the next budget cycle. Those, then, are put together, looked

at, and conceptually approached by the Bureau of Security and Consular Affairs itself which then, on the basis of the statistics derived from the field, recommends to me or to whomever is in my job, an additional X number of positions to meet these projected needs. These, then, are examined by us, and in every case except the last year they have been forwarded to the Office of Management and Budget and eventually the Congress for approval.

In preparing the State Department's fiscal year 1977 budget request for presentation to the OMB and the President, the Bureau of Security and Consular Affairs recommended to me that we request 68 new consular positions for fiscal year 1977. That request, based on workload analysis and projections of increased demand abroad, was a legitimate one. I have no doubt that the Department will need some 60 to 70 new consular positions during the 1977 fiscal year. Nevertheless, I disapproved SCA's recommendation; I went further—I disapproved every recommendation sent to me from any bureau in the Department if it called for a request to the Congress for an increase in S and E positions—that is salaries and expenses positions. This decision on my part was discussed at length with Secretary Kissinger, who wholeheartedly supported what I had done.

Mr. Chairman, I decided that the Department was not going to request any positions from the Congress for fiscal year 1977 for one simple reason: it is time we in the Department took a very hard look at what we now use our resources for, and how we can make more effective use of the resources we already possess. I do not believe, to put it bluntly, that the Department needs to request additional positions from the Congress for consular work, or for any other requirements that were identified as we prepared our fiscal year 1977 budget. I am convinced that, if we are ruthless in our examination of what the Department now does, and the resources it uses to do that job, we can draw the 68 positions SCA has requested from existing resources.

Thus, for fiscal year 1977, I intend to fill the need for additional consular positions, as well as other new position needs, by reprogramming within the Department and the Foreign Service.

It will be a difficult and painful task. But in a time of expanding budgets, economic recession, and a Presidential undertaking to hold down Federal expenditures, we owe it to the American people, the Congress, and ourselves to examine whether we are doing the very best we can with the resources at hand. And in the process of this examination, I suspect that we will find that there are some things we now do that we need not do at all, and other activities that are, at best, of marginal utility. And when we are done, I hope that the Department of State will be a more effective instrument for the conduct of the Nation's foreign affairs than it was before we began.

Mr. Chairman, that concludes my prepared statement.

I would like to add one additional thought, if I may, which has come to me in the process of preparing myself for this hearing. I think it will come as no surprise to the members of your subcommittee that on occasion the Department of State's relationships with some members of some committees of the Congress have not always been the most felicitous.

I want to say, however, that in preparing for this hearing today it became very clear to me that in the case of this subcommittee a num-

ber of very useful and productive things have been done by the Department of State that would not have been done if you had not been here, and I mean that very sincerely and not as an effort to ingratiate myself. It is clear that the hearings in 1973 pointed out to the Department some places where we had been at fault. It is clear that the whole consular package concept is largely a result of the interaction between this committee and the Department, and it is a process that I hope will continue, and I hope this hearing today is the beginning of that process.

I would like to offer that if you want to go on with these hearings in detail after I have appeared today, I would be glad, for example, to make sure that the Director General of the Foreign Service comes up here and discusses in far more detail than I can what we are trying to do in the personnel field, that she goes into detail with you on that. I would be glad to send anybody else up that you should want to have, Mr. Walentynowicz or anyone else.

I would like to see these hearings pursued because they have been useful to us and there has been no question about that.

[The prepared statement of the Honorable Lawrence S. Eagleburger, Deputy Under Secretary for Management, Department of State, follows:]

**STATEMENT OF THE HONORABLE LAWRENCE S. EAGLEBURGER, DEPUTY UNDER SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF STATE**

Mr. Chairman, members of the subcommittee, I appreciate this opportunity to discuss State Department consular operations with you.

Although it is usually the political and economic aspects of our foreign policy that capture attention, it is the consular function, and those in the Department and the Foreign Service who perform consular work, that most influence the attitudes of Americans toward the State Department. In the early days of our Republic consular affairs were the primary duty of American diplomats overseas. Since then our world responsibilities have drastically changed our order of priorities. Today, for example, only twenty-two percent of our personnel resources are devoted to consular operations. Nonetheless, consular work is of great importance, and the Department of State recognizes this fact.

Although statistics are never the most gripping of topics, I know this Committee is interested in facts, so let me briefly review the most salient ones with you.

Consular operations encompass three functions: (1) visa issuance; (2) passport and citizenship; and (3) special consular services. Although passport requests have declined since fiscal year 1972, workload demands in all three categories have increased in volume or complexity in recent years. The Department has sought to meet these increasing demands both through management reforms and increased allocation of resources to consular work. During the five-year period from fiscal year 1972 through fiscal year 1976, the Department has requested, and Congress has provided, some 305 additional positions with a first year cost of \$3,894,100 to meet our increased consular workloads at foreign service posts.

**Visa issuance**

While many consular officers at smaller foreign service posts must perform several or all consular functions, the majority of our consular personnel are primarily engaged in visa work. Under the Immigration and Nationality Act, as amended, foreign service personnel holding consular commissions are responsible for granting or refusing both immigrant and nonimmigrant visas to aliens seeking entry into the United States. This responsibility is of great importance, both in terms of our national interests and our allocation of resources to it. In fiscal year 1975, for example, approximately 313,000 immigrant and 3,400,000 nonimmigrant visas were issued, at a cost of some 300 man-years of consular officer time.

In recent years visa work has become more difficult as a result of two developments: First, because of the rapidly expanding and highly seasonal num-

ber of nonimmigrant visa applications; and second, because of the increasing prevalence of fraudulent practices and documents.

#### *Citizenship and passport*

Approximately 85 man-years of American consular officer time were employed in providing citizenship and passport services overseas in fiscal year 1975. Our officers have had to deal with citizenship claims, and have been called upon to provide various types of passport services to American citizens abroad—such as issuing passports and registering births. This citizenship and passport function overseas has, over the years, been relatively stable in terms of resource requirements.

#### *Special consular services*

Finally, approximately 140 man-years of consular officer time were devoted to special consular services overseas in fiscal year 1975. This includes such diverse types of assistance as helping American citizens in need, trying to find missing citizens, and administering various types of Federal benefits programs for beneficiaries residing abroad.

The demands upon our special consular services have grown steadily, commensurate with the increased overseas travel and residence of American citizens. In the past decade, in particular, there has been a substantial increase in travel by younger Americans. At the same time, foreign governments have tightened their enforcement of drug laws; as a consequence there has been a dramatic increase in the number of American citizens requiring protection services. As of November 1975, for example, some 1,700 American citizens were being held in foreign jails on drug related charges.

#### *Staffing of consular positions*

Let me now turn to the question of the staffing of our overseas consular positions. Frankly, Mr. Chairman, the Department has long faced a difficult problem in deciding how to divide its personnel resources between our diplomatic requirements and our consular responsibilities. By the late 1960's we had come to recognize that the combined effects of inadequate recruitment in previous years, increasing personnel attrition, and a growing workload threatened to make it impossible for us to fulfill our consular responsibilities. As a result, the Department began recruiting young FSO candidates specifically for careers in consular work. Since 1969, using normal foreign service examining techniques, we have been able to close the gap between personnel needs and availabilities.

In June 1968 the Department had a shortfall of some 70 consular officers. In September of this year, that gap had been reduced to 10, despite the fact that our total requirements for consular officers had grown by almost 100 positions over the same period of time. Thus, emphasis on the cone system for recruiting consular officers was, in the main, a successful method for reducing the substantial shortage we experienced in the late 1960's. But, the cone system carried with it other disadvantages—disadvantages that have led the Department, within the last year, to move to modify the system. I will be glad to discuss these modifications, and the reasons for them, with you if you wish.

The current modest shortage of consular personnel is aggravated by the fact that one-third of our people are, in any given year, moving from one post to another, with an inevitable loss of productive time. Moreover, an increasing number of consular personnel are assigned to non-consular work, or to various types of training such as area and language study, or to university and senior training. There are now, for example, some 62 consular officers in Washington assigned to training or to non-consular assignments outside SCA. The resultant staffing shortfall is met by utilizing officers from other functional specialties who are available for normal tours of assignment, or temporary duty, in a consular section.

Despite these burdens, the Department strongly believes that it is important not only to continue, but to increase the number of out-of-function assignments for consular officers. We take this view because our objective is a foreign service capable of performing well in a variety of jobs. We believe this to be in the national interest, and, in the long run, the best interests of the individual foreign service officer. We want no second-class citizens in the foreign service. Everyone should have an opportunity to develop a sufficiently broad background so that—if he has the capability and desire—he can some day rise to the highest ranks and responsibilities of the service.

Promotion opportunities are obviously related to position requirements. Here we have a problem in-so-far as consular officers are concerned, and there is no



sense in trying to ignore that fact. This Subcommittee was advised in 1973 that the foreign service had a major reclassification study under way that would result in the equitable adjustment of position levels in the service. While the classification study did produce a 15% increase in the FSO-5 level of consular positions—thereby raising by one class the normal working level for consular positions in the field—it also resulted in significant decreases in the number of FSO-4, 3 and 2 positions in all four foreign service disciplines—consular, administrative, economic and political. Consular positions, on the average, continue to be classified the lowest of all core disciplines in the foreign service. There is no easy answer to this problem, and all I can assure you of at this moment is that we will continue to give it our attention. I am hopeful that out-of-cone assignments for consular officers will improve their promotion potential and career opportunities, and mitigate the effects of a grade classification structure that is inherently disadvantageous to consular officers.

Mr. Chairman, the Department, through the use of the consular package budget technique, has been able to develop a data base that has enabled us to justify to the Congress our need for increased consular positions. Because of the support of this Subcommittee, and our improved ability to defend our case, the Congress provided 62 consular positions in fiscal year 1974, 87 in fiscal year 1975, and 74 in fiscal year 1976.

In preparing the State Department's fiscal year 1977 budget request for presentation to the OMB and the President, the Bureau of Security and Consular Affairs recommended to me that we request 68 new consular positions for fiscal year 1977. That request, based on workload analysis and projections of increased demand abroad, was a legitimate one. I have no doubt that the Department will need some 60 to 70 new consular positions during the 1977 fiscal year. Nevertheless, I disapproved SCA's recommendation; I went farther—I disapproved every recommendation sent to me from any bureau if it called for a request to the Congress for an increase in S and E positions. This decision on my part was discussed at length with Secretary Kissinger, who wholeheartedly supported what I had done.

Mr. Chairman, I decided that the Department was not going to request any positions from the Congress for fiscal year 1977 for one simple reason: it is time we took a very hard look at what we now use our resources for, and how we can make more effective use of the resources we already possess. I do not believe, to put it bluntly, that the Department needs to request additional positions from the Congress for consular work, or for any of the other requirements that were identified as we prepared our fiscal year 1977 budget. I am convinced that, if we are ruthless in our examination of what the Department now does, and the resources it uses to do that job, we can draw the 68 positions SCA has requested from existing resources. Thus, for fiscal year 1977 I intend to fill the need for additional consular positions—as well as other new position needs—by reprogramming within the Department and the Foreign Service. It will be a difficult and painful task.

But in a time of expanding budgets, economic recession, and a Presidential undertaking to hold down federal expenditures we owe it to the American people, the Congress, and ourselves to examine whether we are doing the very best we can with the resources at hand. And in the process of this examination, I suspect that we will find that there are some things we now do that we need not do at all, and other activities that are, at best, of marginal utility. And when we are done, I hope that the Department of State will be a more effective instrument for the conduct of the nation's foreign affairs than it was before we began.

Mr. EILBERG. We have to go over and vote in a moment, but I want to thank you on behalf of the subcommittee for your remarks. We hope to take you up on your offer and look forward to working closely with you in order to achieve better results.

The subcommittee will just recess for a few minutes.

[A brief recess was taken.]

Mr. EILBERG. The subcommittee will resume.

Mr. Secretary, a subject has been troubling me for some time and it is becoming one of the things that we remain very interested in, the matter of Nazi war criminals. As you may know, I have been continually urging the Department of State to assist the Immigration and

Naturalization Service in every possible manner with regard to the investigation of alleged Nazi war criminals residing in the United States.

During a recent trip to the Soviet Union by this subcommittee the Soviet officials offered their complete cooperation in our investigation, including allowing us to interview Soviet citizens or permitting their travel to the United States for the purpose of testifying in denaturalization or deportation proceedings. Of course, this was not at the highest levels; but we received these offers from highly placed officials; and yet, the State Department has not formally approached the Soviet Government on this matter.

Can you tell the subcommittee whether the Department of State intends to go to the Soviet Union in the near future to seek their assistance in obtaining eyewitness statements from individuals residing in the Soviet Union?

I am also aware of the fact that we do not recognize the Soviet annexation of the Baltic States, and this may present some problems in obtaining statements from the individuals who may reside in those States.

Can you elaborate on this particular issue, recognizing that there are special problems as far as the captive states are concerned?

Mr. EAGLEBURGER. Yes; Mr. Chairman.

I am aware of the entire problem. I went into it in some detail before I came up here. I think, as you know, we now have before us some 55 cases. I think you are also aware that we have just received from the Federal Republic—well, not just, but several weeks ago received from the Federal Republic of Germany some additional information which is now being translated and which I am told will be completed by the end of this week. We will have analyzed by the end of next week all of those documents, at which point we will be able to make a decision on whether we will go to the Soviet Union on the cases we have received and have before us. I cannot at this point, Mr. Chairman, say with any absolute certainty that we will go to the Soviet Union. I can say that on the basis of the examination of documents received from the Federal Republic we will be able to make a determination on whether we can go to the Soviet Union and on which cases we should go.

I think you know, and I need not elaborate, our concern on the issue of due process. I know this has been discussed with you before and you share the concern. As to the issue of whether there is a way around the problem of U.S. nonrecognition of Soviet control over and annexation of the Baltic States, frankly I would prefer, unless Mr. Walentynowicz has a view, to hold off on an answer to that until I have talked to the lawyers. I frankly do not know what the legal implications of that are.

Mr. EILBERG. Can you suggest to the subcommittee why such a decision must await your analysis of information submitted by the West German Government, if, as we believe to be the case, there are identifiable witnesses in the Soviet Union. Why must we wait to see what the German reports are and then base our decision on the information in these reports?

Mr. EAGLEBURGER. In essence, the answer to that question, Mr. Chairman, is our concern that we are fairly clear in our own mind that there is substantial evidence that Mr. X is, in fact, I do not want to say

guilty, but that there is a substantial case which ought to be pursued, as against a fishing expedition.

Again, it is the issue of due process, and that is our concern at this point. We want to make sure that we have in hand evidence which indicates to us that there is a legitimate case which ought to be pursued.

Mr. EILBERG. If you are provided with names of potential witnesses within the Soviet Union or their occupied territories, how can you assume that the witness is credible or not until you see that witness?

Mr. EAGLEBURGER. That is a perfectly legitimate question, sir. We cannot. I have to reverse the process again. The question in our minds, at least at first, must be is there a prima facie case that deserves further pursuit on the basis of the evidence that we have before us. This does not rule out that at some point we will go to the Soviets and ask them to provide witnesses, even on cases that we ourselves do not believe provide substantial evidence of possible wrongdoing.

We want to start, however, with the cases where we do have substantial evidence before we move into this more nebulous category where we are told there are witnesses.

I want to make one thing clear, Mr. Chairman, if I may. I know there is concern with this subcommittee in terms of our delay. I looked into this myself. I have been concerned myself about the delays. I must say, however, on the basis of discussing this with all of the people that are involved, I have myself come to an independent judgment, recognizing the concerns of this committee, recognizing the legitimate concerns of this committee, that we must be terribly careful in terms of assuring due process.

I know you share that view. It may mean that we take longer than it would be preferred by some that we take. But, as we build our cases, we want to be very certain that we have protected the rights of American citizens.

Mr. EILBERG. Mr. Secretary, I must question the position of the Department, however, as to its desire or intentions of giving expeditious treatment of the subject. Approximately 2 months ago we had a meeting with Mr. Walentynowicz's deputy, I believe, and other officials from his bureau, and some of the officials from the Immigration and Naturalization Service. You were told at that time that there were some 200 pages of German transcript available and that they would be here within a week or 10 days. I have since learned that a stenographer was assigned but was unable to complete the task when she became pregnant and no replacement was provided. I find this absolutely deplorable and inconsistent with any idea of your expeditious handling of this matter.

Mr. EAGLEBURGER. Mr. Chairman, I am not familiar with this particular case.

Mr. EILBERG. One of your colleagues nods in recognition.

Mr. EAGLEBURGER. I will not debate the point. I am prepared to accept it. I also will tell you that in examination of this process I found out that we are taking, in my view, an inordinate amount of time in translating the most recent documents that we have received. I can assure you that since I learned that fact the situation has changed and it will be completed this weekend, by the end of this week, or I will know the reason why.

I accept the point. Mr. Walentynowicz knows more about the specific case you are talking about.

Mr. WALENTYNOWICZ. I can add this, sir. I am also concerned about the speed in which this matter is being handled. I have expressed my concern repeatedly, and one factor, I think, that must be allowed for is that much of the material that we have received from the German government is confidential. As a result, the decision was made not to just simply contract out the translation of this material, but to use in-house people who are quite capable.

Mr. EILBERG. Mr. Walentynowicz, if you would like to have the assistance of a reporter who has security clearance of the highest kind and is familiar with the German language from the House of Representatives, we would be delighted to provide one for you. I should think it would not be necessary to do this with the State Department, but I make this offer at this time.

Mr. EAGLEBURGER. Mr. Chairman?

Mr. EILBERG. Yes?

Mr. EAGLEBURGER. Mr. Chairman, let me just conclude with this point, that it will not happen again.

Mr. EILBERG. Thank you, sir. I believe you mean it.

Mr. Dodd?

Mr. DODD. Thank you, Mr. Chairman.

Thank you, Mr. Secretary for appearing.

I have a few questions based on your statement here. On page 4, you refer to the problems you are having in the various consulates with the fraudulent practices and documents that you get. I am sure you are quite aware that this Committee has been concerned with this matter. The full Committee has marked up a bill dealing with illegal aliens, and we have information that a substantial number of the people who are in this country on illegal status have come in on the nonimmigrant visa as tourists and so forth, and then have stayed. In fact, their numbers are astronomical.

I am wondering if you can enlighten us as to what some of these fraudulent practices are, what sort of documents you are getting, and what the consular service is doing to try to screen out these people who do come and stay. What is the relationship between consulates in the various countries where we are able to trace these people in terms of trying to get a hold of them?

Mr. EAGLEBURGER. If I may, Congressman, I would like to ask Mr. Lawrence to respond to that. He knows much more of the details than I.

Mr. LAWRENCE. Congressman Dodd, the fraud in the nonimmigrant area centers around that individual's particular qualification for the type of visa he is seeking. It occurs not so often in NIV cases, but more frequently with respect to his relationship to someone here in the United States. The prime test, or one of the first tests that we attempt to establish in the issuance of a nonimmigrant visa is the alien's intent to return to his place of abode. We do that by trying to reach a judgment as to whether, frankly, he has more in country A to bring him back than to cause him to remain in the United States. To establish this point we look at literally any type of documentation or evidential material that he wishes to present. This can range from a tax state-

ment to a bank statement to statements of employment, professional status, et cetera.

I think one of the major problems that we have had in this particular area in the last decade or so has been the very dramatic switch in the areas of demand for visas. A decade ago, the bulk of our business was coming from Europe. Today, the bulk of our business is coming from the Caribbean basin in Latin America and Asia; from countries that are in various stages of development, that have in common incredible population growths, unsophisticated infrastructure development, et cetera. As such, the demand to leave the country to go anywhere—and primarily to the United States—is very great. These people are frequently stimulated to obtain very sophisticated counterfeit documentation to demonstrate that they are architects or doctors or that they have a large bank account, or that they have a good career in that country—all in order to convince the consular officer.

Mr. DODD. I am interested in knowing the consular officer's duty in this area. I recognize that it may not always be that simple if a person were, in fact, to say that I am a certified architect in the Dominican Republic or that I have  $x$  amount of pesos in the Dominican banks, how much further than the specific documentation does the consular officer go to verify the veracity of such statements?

Mr. LAWRENCE. This will vary. That is one of the elements that forces us to address the question of demand and time and resource. In our posts where we have high fraud incidence rates, we have the assistance of investigating units with some frequency.

Mr. DODD. Do you get any assistance from host countries?

Mr. LAWRENCE. Generally speaking, assistance from host countries is spotty. It will vary with the country. I have recently been assigned to a country where, very frankly, I could buy any kind of documentation from the street or from officials within the Government. This is true in many of these countries. The only way I believe—and this is a personal opinion—to really check into this type of documentation is to literally go out, ring doorbells, and ask questions. We have that facility to a limited basis in some posts. But in most posts, what our officer is left with is examining as closely as he can in the very short amount of time the documentation in front him, questioning the applicant closely in a concentrated period of time, and reaching a judgment.

Mr. DODD. OK.

Now, once we have determined that you have extended a visitor's visa, a tourist visa for 1 month, or 4 months, or 6 months, or whatever, is there any kind of a circular file, or whatever, that would indicate that  $x$  person should be back in the Dominican Republic or should have left the United States at a particular point? And is there a flagging system wherein then a check would be instituted in this country to determine whether or not that person is still here or whether or not they have returned?

Mr. LAWRENCE. At this state of the art, there is not. That is exactly one of a series of programs that we have been working on jointly with the Justice Department's Immigration and Naturalization Service—a method of knowing how many people are here, who is due to leave, and who has left. We do not have that facility at this point.

Mr. WALENTYNOWICZ. There is an attempt by the INS to do that. There is a formal retrieval system, but it is inadequate in terms of the present demands and relatively inefficient. When a person comes in under an NIV, he is supposed to fill a card out and turn it in as he departs. I do not recall the exact number of the form—it's I-94? Unfortunately, it just is not sufficient for what we are trying to do, and one of the things that we are proposing in conjunction with INS is an automated visa control system that will give us a very effective monitoring system. That is what you are asking us to do, to monitor those people who come in, to make sure that they honor the visas, and if they do not honor them, to see to it that they are removed. But that is only part of the problem.

Mr. DODD. I am not suggesting a monitoring system. I do not mean a tracking system to keep an eye on them on when they are here.

Mr. WALENTYNOWICZ. No, I am not talking about monitoring in the sense of "big brother." I am simply talking about monitoring in terms of a computerized entry system and exit, that is, when person  $x$  comes into the United States under a visitor's visa that is due to expire in 6 months and now, 6 months later, he has not turned in the visa or he has not been cleared for departure. These facts would be kicked out and the INS could make a decision as to what to do.

In essence, a very limited kind of monitoring. Incidentally, we are more than happy to give you more detailed lists of fraud, both in the IV and NIV category. As a matter of fact, what we can do is offer this to the committee as a separate exhibit. (See p. 79 for procedure followed by visa officers in identifying fraudulent visa applications.)

Mr. EILBERG. Mr. Fish.

Mr. FISH. Thank you, Mr. Chairman. Mr. Secretary, I extend my welcome to you. Let us pursue Mr. Dodd's line of inquiry. It seems to me that the responsibility, after the visitor is in the United States and has received an extension, and his whereabouts is really the responsibility of that of the Immigration Service rather than that of the State Department. But what concerns me, as it does Mr. Dodd, is at the very beginning of the stage, the issuance of the nonimmigrant visa, whereas the testimony we have received, I believe from General Chapman, was that 600,000 visitors a year—he loses about 10 percent of the 6 million which is 600,000—disappear at some point or overstay.

I can understand that very expert fraudulent documents would be available, but nevertheless it is my recollection that this is a responsibility of the Foreign Service personnel in the field to make a judgment as to whether or not that person is a bona fide immigrant or nonimmigrant, and it is the assumption that anybody applying for a visa is an immigrant unless they prove to the Consular Office's satisfaction that he is a visitor. So I do not know whether it is so important that the documents are fraudulent documents because there need not be any documents. That is just a fact to be considered, is it not, by the officer in the issuance of the visa.

I do not really expect an answer. I just want to point that out because I know in previous testimony pressure from the Department of Commerce was alluded to, that this was a good time for people to travel. We want to encourage travel to the United States. Well, I just would hope that if you do feel these kinds of pressures that you allow us to be supportive of you and the Administrator here to

bring a counterpressure to help us in meeting this problem of illegal aliens.

Mr. EAGLEBURGER. May I make a point here?

Mr. FISH. Sure.

Mr. EAGLEBURGER. I agree with what you said. I would go further and I will say it before I am asked specifically, I do not think there is any doubt that the fact that the consular officers in many posts are overworked, that that has something to do with the number of people that slip through. We are trying to take some steps now in the assignment of consular officers under the consular package to this problem, particularly recognizing that there are some places where, particularly when people are overworked, this tends to heighten the problem.

I have also asked Mr. Walentynowicz, in the development of future consular packages, to pay particular attention to this as an element in the development of those packages so that we can begin to face the problem. I am prepared to admit that it is clear, that at least in some of these cases it is the fact that we do not have enough consular people, given the workload that they have to face.

Mr. FISH. As regard to consular personnel, I believe in your opening statement you refer to it as the lowest classification in the Foreign Service, and am I to understand that there is an element of rigidity that you go into the consular service and the chances are that you will stay most of your career in that service?

Mr. EAGLEBURGER. I am glad you asked that question.

There are a number of factors, and let me talk about the cone system for just a moment, if I may, because it is very relevant to this. I happen to believe, and I know this is not a view that is universally shared, that in fact were we to continue with the cone system as it had existed, we would perpetuate a disequilibrium between consular officers and other officers.

This June Secretary Kissinger gave a speech in which he laid out a number of changes he wanted made in the Department and in the Foreign Service. He had earlier taken a step which removed the cone system for the senior levels. That is the FSO-3 and above. This latest step was to, in fact, remove specific recruiting by cone so that as we recruit from the bottom up, there will be a general examination which all Foreign Service applicants will take. It will try to give us some sense of the particular applicant's abilities across the four functional fields, not just the one.

It used to be that if you were going to come in as a consular officer, you took a consular examination; for administrative officers, an administration exam, and so forth. The basic point the Secretary has been concerned about in the 2 years he has been in the Department is that what the Department needs at senior levels—and it is a terrible word, but it is the best word I can come up with to describe it—is synthesizers, people who have enough experience across the range of Foreign Service functions that they can put things together for the senior policy level officers to make their judgments.

Now, it is his feeling that the cone system, as it was used, as it has developed, too much kept people in their narrow category and did not give them enough experiences in political work, economic work, and consular work. As a result, as Foreign Service officers moved up the career ladder—partly because of the cone system and partly be-

cause of the folklore of the Department, that political officers are the thinkers, and everybody else does something else—it was clear that too many people at the senior levels were coming from the political and economic cones. It was also clear that if the structure was kept as rigid as the cone system was keeping it, it reduced, rather than raised, the opportunity for consular officers and administrative officers to reach the high levels of the Foreign Service because they had not had sufficient experience outside their cone.

So what the Secretary has done now is say, we will recruit young Foreign Service officers across the board. We will not recruit them for any particular cone. There is another point to this. How can you ask a 25-year-old who does not know the Department of State and does not know what working in the Foreign Service is like to make his career choice before he has entered the Foreign Service, and how can you ask the Department to make the judgment that this man ought to be an administrative officer for the rest of his career until they have seen how he performs?

So, we have eliminated the cone system at the junior level 8, 7 and 6; 5 and 4 and 3 will maintain a cone system so that they can get their general development in a specific field in that intermediate period.

I misspoke when I said earlier we had eliminated the cones for FSO-3's. We have eliminated them for 2's and 1's, the most senior levels.

They will, hopefully, in the early years get broad experience in a number of fields. Then, after knowing something about how the Foreign Service functions, the Department knowing something about them, we will make a joint decision as to what cone they proceed through in their middle years, their middle grades.

At the time they reach the FSO-3 level and we begin to look for the policy level, for the people who are supposed to be the synthesizers, hopefully we will have had a breadth of experience and will be able to identify more clearly who they ought to be.

Mr. FISU. Well, Mr. Secretary, I would just like to say I am delighted to hear what you have just said. I could not agree more that nobody should be asked to make a career choice the day he enters the Department. There should be this mobility within all the various aspects, political, administrative, and consular.

I would also like to point out that the American tourist, the person that he is likely to see in the field, is the consular officer, and this is an important fact to the person who complains to us about how he was treated at the American mission at home, is generally talking about the person he runs into, the consular person.

In addition, we frequently have a situation where your consular general will be the officer in charge of the consulate general, and I cannot imagine a man being put in charge there who had not had at least one or two tours of duty as a visa officer. So, if I understand you, it is the balance between the experience and all the disciplines and against the structure or stagnation of staying in one.

There is one final word—I do not want to take up any more time—but I would like to suggest that our missions abroad, particularly the embassies, are open on Saturdays and Sundays for business in the sense that they have somebody who can answer the phone. I have had the experience of where the American citizen was arrested in the



foreign country and their wife telephones the Embassy, and she was told it was Sunday, and she remarked quite correctly, that the police in that country worked on Sunday, and it was not until I personally got in the act Monday noon and called the State Department that we got an answer in an hour. I just thought that was unfortunate but since this lady had made more than one call and had just gotten no place because no one was around of authority or the willingness to go to the police station and that kind of thing.

And this should not happen.

Mr. EAGLEBURGER. Mr. Fish, let me just say that you do not need to give me the name now. I would like to know what embassy that was. That is totally against regulations. Any embassy or consulate is supposed to have a duty officer on weekends if there is no one else there, and that is unacceptable conduct, and I would like to know where it happened.

Mr. FISH. Thank you. Thank you, Mr. Chairman.

Mr. EILBERG. Mr. Eagleburger, we are planning to go until 1 o'clock. I hope that is convenient for you. We have a great deal of material. I understand, that you have kindly offered to come back at some future time. I just want to give you some idea of what our plans are.

Ms. Holtzman.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

I am very pleased, Mr. Eagleburger, that you are here to discuss some of the serious problems affecting the performance of the consular officers.

I must say that what concerns me very much is that the figures that I saw several months ago indicated that, for example, in New York City about 60 percent of the aliens apprehended for being here illegally were persons who had overstayed visitor's visas, which indicates that the tightening of the consular practices is something that is extremely important with respect to properly dealing with the illegal alien problem in New York City.

What troubles me is that I see you mentioned in your testimony really in one sentence, granted it is a sentence of six lines, in one sentence this problem. I am sure you feel it is a serious problem, and I feel it is an extremely serious problem, and I thought we could have gotten some detailed facts from you as to how you are handling at present the problem of fraudulent applications for visitor's visas, how you are handling the problem that Congressman Dodd raised about overstays and the tickler system, or whatever you want to call it, and what your plans are to improve it concretely, not vague statements.

I must say that I am very disappointed with respect to that, and I think it would have been a much more fruitful hearing if we could have had this information to begin with, so that we could ask questions, not designed to get facts, but to understand what the policies are because this is an area that I am personally very concerned about, and I know that other Representatives in the New York area are very concerned about.

This is a problem that directly affects the illegal alien problem in New York City, and I would hope we could get some additional information, concrete information about what you are doing, what the scope of the problem is, and what you are doing to correct it.

Before I ask you some specific questions with respect to that, there was a reference on page 9 to the fact that everyone should have an opportunity to develop sufficiently broad background, and you refer to "he." Can you give me some information about the number of women that you have in the Foreign Service in the consular offices and give me some statistics as to not only this year, but last year, and any plans that you have with respect to hiring additional women?

Mr. EAGLEBURGER. I will have to supply the statistical information for the record. I do not have it with me. I can talk a bit about—I cannot be specific on the statistics. I do not have them with me, and I would be glad to supply those for the record.

Ms. HOLTZMAN. I would appreciate it.

[The information requested follows:]

WOMEN SERVING IN FOREIGN SERVICE POSITIONS

Level	CM	1	2	3 (FS1)	4 (FS2)	5 (FS3)	6 (FS4)	7 (FS5)	8 (FS6)	9 (FS7-10)	Total
<b>September 1974:</b>											
FA <sup>1</sup>		1	1								2
FO <sup>2</sup>	1	6	6	32	50	90	33	32	21		271
FR <sup>3</sup>		2	12	14	32	51	65	62	16		254
FS <sup>4</sup>				8	21	66	147	238	375	712	1,567
RU <sup>5</sup>			1	9	8	7	1	2			28
Total	1	9	20	63	111	214	246	334	412	712	2,122
<b>September 1975:</b>											
FA <sup>1</sup>		1	1								
FO <sup>2</sup>	1	7	6	32	52	98	44	39	22		301
FR <sup>3</sup>		3	10	18	48	66	95	85	21		346
FS <sup>4</sup>				7	19	69	142	232	335	728	1,532
RU <sup>5</sup>			1	9	8	9	3	1			31
Total	1	11	18	66	127	242	284	357	378	728	2,212

<sup>1</sup> Foreign assistance officer.

<sup>2</sup> Foreign Service officer.

<sup>3</sup> Foreign Service reserve officer.

<sup>4</sup> Foreign Service staff.

<sup>5</sup> Foreign Service reserve officer, unlimited.

WOMEN HAVING PRIMARY CONSULAR SKILL CODES SERVING IN FOREIGN SERVICE POSITIONS

Level	CM	1	2	3 (FS1)	4 (FS2)	5 (FS3)	6 (FS4)	7 (FS5)	8 (FS6)	9 (FS7-10)	Total
<b>September 1974:</b>											
FO <sup>1</sup>		3	3	4	11	36	14	14	9		93
FR <sup>2</sup>			1		1	9	15	21	3		50
FS <sup>3</sup>				2	3	11	16	16	1		49
Total		2	4	6	15	56	45	51	13		192
<b>September 1975:</b>											
FO <sup>1</sup>		2	2	5	12	44	19	18	11		113
FR <sup>2</sup>			1		2	12	22	21	3		61
FS <sup>3</sup>					5	13	17	11			46
Total		2	3	5	19	69	58	50	14		220

<sup>1</sup> Foreign Service officer.

<sup>2</sup> Foreign Service reserve officer.

<sup>3</sup> Foreign Service staff.

Mr. EAGLEBURGER. The use of the word "he" is a mistake. The Director General of the Foreign Service at the moment is Ambassador Laise, whom you may or may not know. She and, in fact, the Department are very conscious of the broad sweep of our minority problem

in the Department of State and of the problem of women in senior positions in the Department. I have to emphasize our problem is far worse in terms of minorities than for women, and is something we are seeking to correct.

We are, in fact, I personally think, in better shape—though not where we should be in terms of women brought into the Foreign Service, and now beginning to move up into senior positions, though we are not anywhere near where we should be. There is no question that the Foreign Service and the Department of State are now paying a price for a long attitude of lily-white WASPism. We have undertaken some special programs to try to correct that process, including some lateral entry programs in the middle of the Foreign Service career ladder. It will be a long time before we have really adequately corrected it.

I think one place where we have begun to make substantial progress, both in terms of minorities and women, is in broadening substantially the number of people who are coming in through the examination process at the bottom, but that is going to take a long time before they percolate to the top.

For example, just one example, we signed an agreement with the American Foreign Service Association some months ago for a special program to bring 20 minorities and women into the Foreign Service into the middle levels; 10 women a year, 10 minorities. I will be frank with you, the agreement was made over some substantial objections from the career people, themselves, who see this as a blockage of their opportunities for promotion. Thus far the program—it has not been in operation long enough to be able to give you any firm judgments—but I think it is fairly clear in terms of the number of applicants that we have had and the quality of the applicants that we will very easily, be able to meet the quota of 20 each year. This is a 5-year program; now that is not enough, and I know it is not enough. We have to balance that problem off against the fact that we are also dealing with a career service.

We also have to balance that problem off against our concern that when we bring people in, they are able to compete with the people who have come in through the normal career service because we do no one any justice if we bring them in and they do not get promoted. So we have to be careful to be sure that we are high in our standards.

As I say, we have just started this program; it is very clear, at least in the first 8 months of operation, that we are getting very, very good candidates. I think the program will work.

Ms. HOLTZMAN. I appreciate your answer, and I would very much like to see the statistics.

Mr. EAGLEBURGER. We will get them for you.

Ms. HOLTZMAN. And some additional details.

Mr. EILBERG. Mr. Secretary, it has been suggested on several occasions that the Department of State or the Bureau of Security and Consular Affairs should be reorganized in order to give higher priority to the consular affairs program.

One suggested reorganization would place program responsibility in an Under Secretary for Consular Affairs similar to the Under Secretaries of the other functional services of the Foreign Service, that is,

Under Secretary for Political Affairs, Under Secretary for Economic Affairs.

How do you react to this suggestion?

Mr. EAGLEBURGER. Mr. Chairman, I would like to think about it a bit more, but let me tell you the concerns, and they run in two directions.

I react myself rather negatively to any proposal to create a further hierarchy on what we call the seventh floor of the Department of State. We already have Under Secretaries and Deputy Under Secretaries falling all over each other. That is an exaggeration, and Henry Kissinger will fire me, but, nevertheless, there is a problem, and you can build a topheavy organization.

The issue really, I think, has to be judged on the basis of, frankly, whether the Deputy Under Secretary for Management, as the situation now stands, gives the Administrator of the Bureau of Security and Consular Affairs sufficient access to get his needs addressed on the seventh floor, and whether, in fact, the Deputy Under Secretary has sufficient access to the Secretary of State to make those needs known when they have to be.

I can see an argument that says institutionally you have to give adequate weight in terms of the senior levels of the Department to the various functional processes within the Department. I can see that argument. I can only counterpose against it at this point my prejudice that the issue is far more in terms of people than it is in terms of some institutional structure, and that the critical issue is access to the Secretary of State if you need it, and that that is not necessarily solved by creating another senior level job in the Department.

Mr. EILBERG. In your opinion, is there a need for any increase in staff at the bureau level in SCA and would such an increase enable the Administrator to provide better direction for the consular affairs program?

Mr. EAGLEBURGER. I think the general answer to that is that Mr. Walentynowicz has made it very clear to me that there is a need for more personnel. We have just allocated three more positions to the Bureau. I am not sure how many positions are needed. I am sure it is more than three. I think the basic answer to your question is yes, they need more people. How many, I cannot at this point say.

Mr. EILBERG. Additional recommendations have been made that the Bureau of Security and Consular Affairs should be reorganized or restructured in order to enable the Bureau to exert greater control and provide more guidance to its constituent offices, Passport Office, Visa Office, and the Special Consular Services. What is your opinion of this recommendation?

Mr. EAGLEBURGER. Frankly, I am familiar with the recommendation. I am not, myself, prepared to make a judgment. I think, frankly, the Bureau runs reasonably well, but let me ask Mr. Walentynowicz for his view on this.

Mr. WALENTYNOWICZ. Well this issue has a number of facets to it one of which is, of course, the Bureau's or the image identity and its appearance of importance. If the Bureau is to run efficiently and carry out its statutory function, it is very important that the other parts of the State Department respect that identity and work in close cooperation and coordination with SCA.

I am very, very pleased about Mr. Eagleburger's remarks and also his cooperative attitude in making sure that the consular function has the same importance—not more importance—as any other function of the State Department.

Now, with respect to reorganization of the constituent offices of SCA, I think the present day in which we are organized is quite efficient. I am not a believer of always trying to improve things simply by reorganization. I think we are structurally sound. There is always the problem of people and the interaction of personalities, and sometimes this causes impediments to the efficient operation of the office. But, I feel that these things can be overcome, given a period of time.

Mr. EAGLEBURGER. Mr. Chairman, let me just make one point. My general view is that senior level management should not, by and large, be telling subordinate organizations how to organize themselves. They have to make those judgments basically themselves, and my job then has to be to make sure that if they are not doing the jobs that they are supposed to be doing, to point that out to them in the most forceful terms. But how they organize themselves, I think ought to be a decision left to the men most closely involved with the problem.

Mr. EILBERG. Mr. Dodd.

Mr. DODD. Thank you, Mr. Chairman. I would like to ask, Mr. Chairman, unanimous consent to request that the specific documentation or reports that you may or may not have at this point, if you do not have them, I would like to have them submitted, outlining specifically exactly what the interphase is between INS and the State Department and any proposals, concrete or general, that you may have with regard to the issue that I raised, and which was brought up again by Ms. Holtzman with regard to the problem of the nonimmigrant visas.

Mr. WALENTYNOWICZ. May I just make a brief response to this? We would be more than happy on another occasion to address your concerns as well as those of Congresswoman Holtzman. It was our understanding that the primary purpose of this hearing was oversight and not necessarily a detailed response with respect to the visa problem or the illegal alien problem. You see, with respect to the alien problem we are thinking in broader terms than just illegal aliens, the challenge is to devise procedures to control the movement of people into the United States, both temporarily and permanently, and not just to control illegal movement.

Mr. DODD. Concerning visas and the treatment of nonimmigrant entries into the country, certainly this is the direct stage at which the consular officers deal with this problem in terms of oversight.

This is a massive concern to the American public in terms of the problems with illegal entries. Therefore, I raise the question, I am not trying to sandbag you by bringing up a subject that you did not think was going to be brought up. But I cannot believe that you would not imagine that this would be of major concern to this committee, given the fact that we are also responsible for the legislation dealing with it.

Mr. EAGLEBURGER. Mr. Dodd, we will be glad to provide for the record everything that you have asked for. We will be glad to provide for the record or proceed to discuss this morning the subjects that Ms. Holtzman raised.

If we were not prepared to discuss those subjects in some detail, whether or not they are in the opening statement, we should not be here at all.

Mr. DODD. OK, fine, thank you.

The other question I wanted to get to and I wanted to first of all say that the State Department has been tremendously cooperative in the initial stages, but I would be interested in your comments.

Mr. EAGLEBURGER. Watch out where you get to the final stages.

Mr. DODD. Yes; I know. You noticed I entered in a caveat, I said in the initial stages. I am encouraged by your comments with regard to the number of women and minorities and I had the very same question Ms. Holtzman did.

An area that does concern me deeply however, is that dealing with the handicapped in regard to the consular service. There is, as I understand it, a prohibition within the State Department regulations in terms of hiring consular officers, for instance, who are blind. I do not know whether that extends to other disabilities dealing with paraplegics or people who are deaf and so forth, but it seems to me that when you talk about on page 9, second class citizens, that certainly in this country, second class citizens is a proper description for those people who do suffer from some sort of disability.

I would be interested in knowing what your thoughts are, I know the State Department has told that they are rethinking this issue with regard to hiring handicapped people who would otherwise qualify to the examination process and so forth to serve as good officers, Foreign Service officers.

And I would be interested to know if you could enlighten me any further as to the thinking of the State Department with regard to that issue, particularly in the area of consular officers.

Mr. EAGLEBURGER. Mr. Dodd, one of the normal State Department answers, and unfortunately I have to give it to you today, is that the question is under study. I do not, frankly, know where we will come out.

We have paid much more attention, to be honest with you to the issue of minorities and women than we have to this other problem of the handicapped. We have now begun to realize that it is problem. We are looking into it.

I would also be less than honest if I did not say that there are obvious institutional problems created particularly when you are sending people abroad, as they relate to some forms of handicap, one of which is clearly the question of the blind. We are studying that now. I cannot guarantee you what our answer will be, I can only say we are looking at it with as sympathetic an eye as we can. And once we have completed the study and I have had a chance to look over it myself and talk to the Secretary about it, I would be glad to come down and talk to you about it.

Mr. DODD. I appreciate that. I have a number of acquaintances who are Foreign Service officers and one of the issues that is raised quite repeatedly is the period of time of service in a particular locale.

What is the general tenure in a particular post, generally?

Mr. EAGLEBURGER. It depends very much on whether it is a hardship post or not. But the general rule is, let's just say in the average Foreign Service post, it would be 4 years, 2 years, home leave, and back for 2, or 3 years, home leave and another post. In general I would say it is probably a 3-to-4 year assignment.

Mr. DODD. One of the issues raised with regard to the tenure, is that it usually takes a new person in a particular post, roughly 9 months

to a year to get acclimated, set up, and familiar enough with the situation to become an effective officer. Then, I am told, and I do not know how true this is, that in the last 6 months or so or more of your service you are beginning to process out with a new person coming in.

In effect, what they are suggesting, the people I have talked to anyway, is that you get a year and a half, maybe, of good time out of someone in a post.

I recognize, and I think it would be a great mistake to extend the tenure of service for a 10-year period. I think you would have a problem there with someone losing their effectiveness in maintaining their objectivity. But, I am wondering if possibly, you know, a 5 or 6 year term in that area could give someone the opportunity to really become an effective operator in an area. Particularly, we are talking, say, about the illegal entry problem, getting to know the players in a country, getting to know the systems, as to where the problems do lie, the false documentation, and so forth.

I get the feeling that 1½ or 2 years, I may be off in saying it takes 6 months, or 9 months or 1 year to get acclimated, but it just seems to me that you eventually get a person in a position where they really can be an effective consular officer in the country, and then they are switched, pulled out and put some other place.

I wonder if any thought has been given to extending that period of time to allow for just what I am talking about without going beyond the period of time that a person or their effectiveness is apt to fall off.

Mr. EAGLEBURGER. A great deal of thought has been given to it. Not just now, but for many years. First, there is no question that it takes at least 6 months really to begin to learn, and in some cases a lot longer.

It depends, to some degree for instance on the difficulty of the language, but it certainly takes a period of time, 6 months to 1 year to get to know your country. It is also true that in the last 6 months, you are thinking more about where you are going than where you are, there is no question about this.

I would suspect that the people you have talked to have been assigned to London, Paris and Bonn rather than some hardship post.

Mr. DODD. Not at all. I will not tell you where they are from, but I will tell you that they are in generally hardship posts, people who feel that they could be a lot more effective there too, if they had a longer tenure in a given post.

Mr. EAGLEBURGER. There is, nevertheless, I think, a concern, particularly where the hardship is a health hardship, that you cannot keep people too long. Our problem is that when you have to consider that our assignment process is worldwide available, and you have country X where we think it is not wise, normally, to keep them more than 2 or 3 years, and then you have some country where this is not a problem, and you can keep them, say, for 6 years, it becomes very difficult to run a personnel system when you have those competing demands; unless what you do is keep people circulating, one group within the area of countries where hardship is no problem, you know, London, Paris, Bonn, whatever, and you have another set of people who are circulating in hardship posts.

Now, I do not dispute the point. I would only argue that there are people and more than that, there are medical reasons, in some cases for

not wanting to keep people in a post too long. And you have a competing set of demands.

Having said that, my own personal view is that 4 years ought to be the minimum. I do not think we will ever achieve that, but 4 years ought to be the minimum assignment in any post.

Mr. DODD. But I suspect that, I feel you have a lot more dedicated people than you feel you have.

The people that I have run into have lived in some pretty rough spots and they have wanted to stay in them because they felt they really were doing a job. And they got moved out.

But, for whatever that is worth, anyway. thank you, Mr. Chairman.

Mr. EILBERG. Thank you.

Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Maybe if we can get to some of the specifics respecting the problem of fraudulent practices—

Mr. EILBERG. Will the gentlelady yield for a moment?

Ms. HOLTZMAN. Surely.

Mr. EILBERG. I would just like to observe that we are indeed fortunate to have Secretary Eagleburger with us. And I would hope that we would draw from his expertise at the management level as much as we can.

It is not often that we have someone of his stature in management level with us.

Please go ahead.

Ms. HOLTZMAN. You mentioned first the increasing prevalence of fraudulent practice in documents. Do you have any statistics on this?

Mr. LAWRENCE. No, we do not have statistics on this. I pause because that is a very hard question to answer.

Ms. HOLTZMAN. Well, just tell me, do you have any figures to prove that it is increasing as opposed to decreasing?

Mr. LAWRENCE. Well, I think we have figures that would prove that trend, yes. We have refusal rates going up in the nonimmigrant area on our side. On the INS side we have more and more illegals being discovered, and working in a specific post, you begin to understand that fraudulent practices are on the upswing on the basis of the kind of documentation. You see that, more or less, the profile of the type of people who are increasing in numbers in terms of seeking visas—this type of thing. But, quantifying it specifically, as your question came, the answer is no.

Ms. HOLTZMAN. Okay. What steps do you take with respect to the consular officers who are issuing visas in terms of monitoring the judgment that they exercise?

For example, is there any feedback in terms of the number of—let us just assume there is one consular officer who has exercised bad judgment and issued visitors' visas, for example, to people, a large number of people who were picked up in New York City as illegally overstaying their visa? Does that information come to you in some fashion, so that you can deal with this consular officer, or do you have any way of learning from the mistakes that people have made?

Mr. LAWRENCE. We have feedback devices and there are a number of them. First of all, we measure performance, by what we call our efficiency report in which a supervisor is examining the work on a continuing basis of the people that are assigned to him.



Two, we have a continuing dialog with people in the Immigration Service who frequently will spot trends at a specific port of entry that we may not have spotted.

Three, in countries where fraud is on the increase, you have a literal jungle of allegation and counter-allegation that develop. It is hard to describe. In one of my recent posts, you would start out with a couple of thousand people every morning in your waiting room. You knew that before you said a single word, that probably 85 percent of those people in front of you would be questionable. In that kind of an environment, you begin to develop allegations from the community that this officer is too tough, this officer is simple. We had an incident a number of years ago in Hong Kong.

Ms. HOLTZMAN. I am not talking about allegations from the community, I am talking about when a particular consular officer has issued many visas in which the result has been that the person has overstayed. Do you find this information out and does this go back into your management practices so you can say this consular officer ought to be talked to and shown the results of his work.

That was the question.

Mr. LAWRENCE. The point I was trying to get to was that in the composite of all of these things, you begin to identify posts where this is a problem, or within posts officers where this is a problem. And then you can deal with it as a management problem.

Ms. HOLTZMAN. I am not sure I have that answer. And I see Mr. Eagleburger shaking his head. Is there a way of identifying mistakes—mistakes in judgment or other kinds of mistakes—by a particular officer?

Mr. EAGLEBURGER. As I understand it, there is a review process which includes an office in Security and Consular Affairs which is seized with this problem.

Let me see if Mr. Walentynowicz can describe it more accurately.

Mr. WALENTYNOWICZ. In answer to your question, Congresswoman Holtzman, if you are asking whether we have a system whereby we precisely identify each and every "illegal" alien that became illegal because the visa was improperly issued, the answer is no.

But there are various mechanisms where we get data regarding the problem of a particular officer not doing his job as effectively as he should. Let me give you an example—we do monitor the visa refusal rates and also the number of visas issued. These things are reported back to the Department.

Ms. HOLTZMAN. The visa refusal rates do not tell you whether increases may result from an increase in applications.

Mr. WALENTYNOWICZ. That is one factor, but we also monitor visas granted. In other words, we have given instructions to the posts abroad, particularly the supervisors and to the people at the visa office to monitor and examine the visas that were issued to see whether or not there are any poor practices.

We have upon a number of occasions found out that a particular visa officer has been, for want of a better word, perhaps too liberal and is not tight in his judgment; and we have cautioned those visa officers to tighten up on their judgment.

So, in answer to your question, yes, there is a system. It may not be as precise as the question you put here. In other words we do not take a particular alien that has been picked up by INS and say that

his visa was issued by officer X and therefore go back to officer X. We do not do that.

Ms. HOLTZMAN. You do not have any system that can tell who the visa officer was who issued a visa to a person who overstayed his—

Mr. WALENTYNOWICZ. Yes, we can identify it. But we have not collected it.

Ms. HOLTZMAN. Do you compile that information?

Mr. WALENTYNOWICZ. No.

Mr. EAOLEBURGER. Ms. Holtzman, I have checked now, in my briefing book. Let me read to you:

There are no procedures for determining the number of non-immigrants who return abroad and the Immigration and Naturalization Service does not notify the posts of overstays. The Service does however notify the non-immigrant visa issuing post concerning an alien whose case falls within the following categories. And INS has, or intends to take action with respect to such alien. The categories are as follows: nonimmigrant visas cancelled by the Immigration and Naturalization Service if the alien was excluded at the point of entry, that is notified back to the post. A nonimmigrant visa cancelled by INS since the alien withdrew his application at the port of entry. A non-immigrant visa cancelled by INS because deportation proceedings have been initiated. A non-immigrant visa cancelled by INS and the alien has been permitted to depart voluntarily.

And, finally—

a nonimmigrant visa cancelled by INS because it has revoked the order permitting the alien concerned to enter the United States on the basis of a waiver given earlier, under Section 212(d)3 of the Act.

A basic point is, in answer to your question, it seems there are no procedures for determining the number of nonimmigrants that return abroad.

And the Immigration and Naturalization Service does not notify the posts of overstays. It does notify the post in that series of events where the INS has canceled the visa for one reason or other.

Ms. HOLTZMAN. Yes; but even in those instances, I would hope that that information is used in a way so that you can improve the issuance of other visas.

Mr. EAOLEBURGER. I cannot guarantee that in every case when it comes back to the post it is brought to the attention of the particular officer. But if it is not, it should be. And that is the purpose for the notification.

Mr. WALENTYNOWICZ. Can I just simply add this example answer to your question. There was a post from which certain planeloads of people came into a port of entry. They were found by INS to be illegal and they were stopped. Now, we took that information and data from INS and we brought that particular visa officer back here for further consultation, training, advice, et cetera. We are taking action. Whenever we see such a situation the officer involved is advised of his responsibility and is helped to perform his job better.

Ms. HOLTZMAN. I know. My point, Mr. Walentynowicz, is to make sure that you see that situation when it occurs.

Mr. WALENTYNOWICZ. We are very vigilant about that.

Ms. HOLTZMAN. Mr. Chairman, I just wonder if we could get some further information, perhaps at a later time, about the procedures involved in handling these particular visa applications, how much time is spent on them, whether, for example, there are any file of phone

calls to banks, employers, with respect to documentation, so that we can get some clear understanding of the method by which these visas are handled and what you intend to do?

Mr. EAGLEBURGER. Let me undertake to supply that for the record.

Mr. EILBERG. Would you do that? And I would hope to be directing questions to the Secretary regarding management problems. Perhaps some of these could be discussed at some other hearing. But we appreciate your offer to supply the details.

[The information referred to follows:]

#### PROCEDURES FOLLOWED BY VISA OFFICERS IN IDENTIFYING FRAUDULENT VISA APPLICATIONS

Nonimmigrant visa applications are processed by a consular officer on a first-come, first-served basis. Nonimmigrant visa applications involving fraud are, of course, interspersed with bona fide nonimmigrant visa applications. At posts where fraud is known to be a problem, a high percentage of applicants are interviewed personally by the consular officer:

In cases where the consular officer is able to determine immediately at the time of the visa interview that an aspect of fraud is involved in the application, the alien's visa is refused on a spot under an appropriate provision of the Immigration and Nationality Act. In cases where there is some doubt as to the veracity of some documents or statement, the consular employee may attempt to verify it on the spot through a phone call to a bank, employer, government official, or other reference. When such an immediate verification is impossible or unsatisfactory because of fraud or the source of the document, action on the application may be deferred, and it may be referred to a fraud investigating unit if one exists, or personally investigated by the consular officer at a later time if his workload permits.

Unfortunately such time and facilities do not exist at most posts and thus the consular officer must first and foremost rely on close scrutiny of the documentation at hand plus careful questioning of the applicant during a brief period of time to reach a judgment. Time spent on such applications vary from two or three minutes to an hour or more, depending upon the circumstances.

In attempting to identify fraudulent visa applications, the consular officer may rely on several resources including institutional memory in the form of precedent files or past examples of fraudulent practices at the post. However, the officer's judgment, knowledge of the local scene, experience and intuition are his most important resources. The officer's degree of success in identifying an apparent fraudulent or otherwise mala fide nonimmigrant visa applicant is also, of course, related to the time available to consider the applications.

Nonimmigrant visas refused because of a fraudulent application can be statistically identified if the applicant is refused under Section 212(a)(19) of the Immigration and Nationality Act, which provides that a visa shall not be issued to "any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact." However, because of the obvious difficulty in establishing fraud as a certainty without an often impractical, long investigation, an applicant suspected of fraud is often merely refused under Section 214(b) of the Immigration and Nationality Act as an alien who has failed to overcome the presumption that he is an intending immigrant. As this Section is also used for many refusals not involving fraud of any kind there are no accurate statistical figures which would reflect the specific incidence of fraud at a particular post.

The consular officer may be alerted to misrepresentation and possible fraudulent documents by many factors, but most often by inconsistent information. For example, a laborer hoping to enter the U.S. on a tourist visa to seek employment depicting himself as a bank teller is likely to raise suspicion by his personal appearance, his manner, limited vocabulary and limited ability to write. Documents are screened for obvious inaccuracies of detail ranging from the most obvious, such as misspellings in letterheads, to the more subtle, such as inappropriate format or a poorly forged signature. Additionally, supervisory consular officers monitor the work of visa issuing officers by reviewing a sampling of issued cases as well as refused cases. Such supervisory review of completed cases is helpful both in ensuring the uniform application of criteria

as well as in identifying possible fraud patterns not initially detected by the consular officer. The need for vigilance and techniques for detecting and dealing successfully with visa fraud are emphasized in the Department's consular training programs, at regional consular conferences, in the Department's Foreign Service Inspection Program and in individual bureau consultations with consular officers when they are in Washington. In the event potentially serious lapses in the quality of visa adjudication are detected, experts from the Visa Office may be dispatched for on-site assistance or the responsible field officer may be brought to Washington for in depth consultations.

If a visa is mistakenly issued to a mala fide non-immigrant, the issuing post has access to feedback from the Immigration and Naturalization Service that helps evaluate the effectiveness of the officer's decisions. The posts are informed when a visa has been cancelled in the United States and when nonimmigrant visa holders apply for permanent residence on the basis of claimed changes in factual circumstances or intent.

INS also distributes to all of our consular posts copies of its Consolidated Intelligence Summary, a weekly summary of information on detected visa fraud, imposters, alien smuggling, surreptitious entry and so forth, by country of origin of the alien concerned. Finally, INS cooperates with the Department in its efforts to monitor visa issuance patterns and procedures by notifying the Visa Office and Foreign Service posts of any unusual trends or numbers of mala fide nonimmigrants from a given post or area that might indicate visa fraud or improper adjudication.

Statistical information on overstays from individual countries is not available from the Service at present. It is anticipated that such information will become available upon implementation of the alien control project currently under development by INS and the Visa Office. That type of information will enable the Department to systematically evaluate the effectiveness of individual visa issuing officers.

Mr. EILBERG. Over the years there have been numerous suggestions that the functions of consular officers and immigration offices should be consolidated. Since it represents an unnecessary and costly duplication of efforts, these critics would place both functions in a single agency which would then be responsible for adjudicating these applications as well as determining admissibility at ports of entry.

What is your reaction to this proposal?

Mr. EAGLEBURGER. Well, Mr. Chairman, I suppose the simplest answer to that is since it would affect some 700 Foreign Service officers I do not like it very much. But let me be more specific.

Again, I think there are arguments on both sides. My basic argument would be severalfold. One—and this is a problem for the Department of State, not just a problem with INS—there is—and I would again be foolish to deny it—a problem of appropriate State Department control over U.S. representatives abroad.

We have a serious problem. It is one we are constantly battling with and it is one that the Congress has on more than one occasion reminded us that we must be responsible for, and that is the State Department needs to be responsible for the conduct of U.S. foreign relations in country X. I am inclined to think that you would create an additional problem by taking the consular function out of the Department, co-locating it with or combining it with INS, and having a semi-independent organization representing those functions abroad. That is the first point.

Second, I am inclined to think that the system works better, though it may work anywhere near as well as we would like, because you have kind of a doublecheck system.

That doublecheck system is perhaps improved by the fact that the doublechecks are performed by two different agencies. So my basic judgment, and it is not something I have thought long and hard about,

and I would like to think about it some more, would be that it would be unwise to pursue that proposal.

Mr. EILBERG. Alternatively it has been suggested that we separate the consular function from the other functions of the Foreign Service and we establish a consular service. Furthermore it has been suggested that there be established an independent passport service. What is your opinion of these ideas and to what extent have they been discussed in the Department of State?

You may wish to disagree with these concepts since they are based on the idea that consular work is demeaning and beneath the dignity of the Foreign Service.

Mr. EAGLEBURGER. The proposals have been discussed within the Department off and on on a number of occasions and I suspect the passport office at least, would support the proposal. Again, I think there are a whole range of reasons why I am fairly clearly opposed to that.

No. 1, I would argue, sir, that if you create a separate consular service we are doing exactly what I was talking about earlier when I said you are in fact creating a second-class status. There would be clearly a limit to how far they could rise in their chosen field, point one.

Point 2—I would argue that any good consular officer anywhere abroad is not performing simply a consular function. He has the job of representing the United States abroad. As you have pointed out, he is the person that is seen by more Americans than anybody else. He also can pick up political information which ought to be passed into the political section, economic information, too.

His task is more than only stamping a visa. It is a part of the Foreign Service process in that post, and I think you begin, if you create a separate consular service, you begin to set them aside and I think that is probably bad in the long run for the quality of the people you would have in the consular service. It is certainly bad for the total picture of how the United States represents itself abroad.

As to the Passport Office, again, my own view is that the passport and the issuance of a passport is clearly a part of the process of the conduct of foreign relations. I frankly think the Passport Office works rather well under the umbrella of the State Department and see no real reason to change it. Though, as I say, I think there would be others who would disagree with that.

Mr. EILBERG. In your statement you stated that we want no second-class citizens in the Foreign Service. Is it reasonable to conclude that consular officers are now in fact second-class citizens in the Foreign Service?

Mr. EAGLEBURGER. Mr. Chairman, the answer to that is frankly I do not know. Let me tell you why.

In 1971 we proceeded with a worldwide reclassification study which was to take a look at each Foreign Service position, whether it was classified too high or too low. That study took 3 years. As I indicate in my statement, it meant that when they were through the average grade for a consular officer was raised to FSO-5, though it is also true that that is one grade below the average for the other three ones.

In that sense I think it is clear there is a second class citizenship of a sort, but it is also clear to me from a management point of view

that on the basis of a classification study done worldwide, drawing on civil service staff and advice and using the best techniques we could find in the process of classification, these experts told the management of the Department that although consular officers were generally on the average graded too low, that all they should be raised was one grade.

It also—and we have a major problem with this—we have grade creep and that same classification study reduced a number of the senior level positions not just in the consular cone, but throughout the Foreign Service.

So from the management point of view, in terms of tools that I have available, I am told by the experts that the situation is now correct. However, there is also no question that in terms of the performance of the Department of State on an adequate classification of jobs and an institutional method of recognizing that the content of a job will change and sometimes suddenly, we have been delinquent.

The Director General of the Foreign Service has very recently substantially upgraded the office of classification within the personnel system in the Department, put new people into it with the intention to try to develop now a classification office which will take an ongoing look at all classification problems and at the classification of positions across the board.

Mr. Walentynowicz has made a rather eloquent argument to me that in fact the classification process did not take sufficient cognizance of, for example, the growing responsibilities of consular officers in protection and welfare cases, where they have to deal with senior level officials in country X off and on, on a personal basis and therefore the classification system decisions that were made do not represent true reality.

I have told Mr. Walentynowicz that since we have now established a more effective classification office in personnel, what he must do is make his case, put it down as carefully as he can, go to the classification office and I promise that he will get a hearing as soon as he moves to the classification office.

I would hope, in other words, that we have now—that we are now at least in the process of putting together a system where people who are expert in the classification of jobs will be available to look at jobs immediately. It is not something that we have to invent a classification study every 5 years in order to accommodate. In fact the demands change on people; and those changes need to be recognized where they occur.

Mr. EILBERG. Mr. Dodd?

Mr. DODD. Thank you, Mr. Chairman.

I was wondering, Mr. Secretary, with regard to the hiring of consular officers, what is the examination process? Is it the straight Foreign Service officer exam, that all applicants take the straight one; is that it?

Mr. EAUBLEBURGER. If we are now talking about people who come into the Foreign Service through the examination process, this year will be the first time since 1969. I think, that we have shifted back to a general Foreign Service exam which all people will take. Over the course of the years, from 1969 until the present, the Foreign Service exam would have a part that was given to everybody and then there

would be a part of the exam that was aimed specifically at those who were going to come into the consular service or the administrative service, or the political or economic cones.

This year we are shifting back to a general examination which will be given to everybody. It will have parts in it which everybody has to answer which will try to give us some sense of where the person's expertise lies. But nevertheless everybody has to take the same exam.

Mr. DODD. What about language training?

Mr. EAGLEBURGER. Language training?

Mr. DODD. Assuming that you have a person who has been accepted and has in turn accepted the position and is about to be sent to Latin America or some other place and does not have any prior language experience, what is the language training? I would think that would be so vitally important.

Mr. EAGLEBURGER. We have—if someone could dig me up the statistics here—we have a number of positions abroad which are designated as language positions and it is as of October 1975—there were 1,146 language designated positions worldwide. Of these, 282 were consular designated. In other words, they were supposed to have the language before they went to that position; 213 or 76 percent of these 282 consular positions were staffed by officers having the language proficiency for the job.

Mr. DODD. What is the FS rating when you consider proficiency?

Mr. EAGLEBURGER. It is S-2, R-2, if you know what that means.

Mr. DODD. OK, yes, I do.

Mr. EAGLEBURGER. The fact of the matter is we would like to provide—and I think we have done a good deal better on this than we did in the past—we would like to be in a position to provide language training to everybody who goes to a particular post. That frankly is beyond our resources.

Mr. DODD. I can appreciate that.

It seems to me though, boy, you really have a problem here.

Mr. EAGLEBURGER. No question about it.

Mr. DODD. You are getting a consular officer who is—again—going back to that initial point—you are trying to screen people and so forth who are sitting there speaking pidgin Spanish or pidgin French to someone and they are at a complete disadvantage.

Mr. EAGLEBURGER. There is no question about that. When you reach a situation like that then you obviously have to get somebody else who sits there with you and translates the questions back and forth. That is not a good thing.

What we have tried to do since our resources are not adequate to train everybody in every language every time he goes to a different post, we have set up these language designated positions where we have decided that it is critical that the man have the language in order to perform the job. As I say, we hit about 75 percent in the consular service in meeting that demand on language-designated positions. It is obviously our hope that we will be able to reach 100 percent, but that will take some time. There is no question in my own experience in the Foreign Service that you are so much better off when you have the language.

I personally have spent 10 months learning Serbo-Croatian and it is an experience I would not want to go through again. But it makes a

tremendous difference when you are in that country. There is no question about that. It is also very expensive.

Mr. DODD. I appreciate that.

Can you assure this committee that there are adequate transferable resources in the Department, not only to meet the non-immigrant-visa workload, but to meet the recent increases in the demand for consular services, particularly providing assistance to Americans in residence abroad?

You mentioned the 1,700. I would like an answer to the first part, and second, what do we do—what generally happens when an American is arrested overseas? What involvement does the consular officer take with regard to an arrested American on a drug charge or any other charge?

Mr. EAGLEBURGER. I missed the first part of the question. Can I assure that what?

Mr. DODD. That your resources, your transferrable resources within the Department would be able to handle not only the non-immigrant-visa workload, but as you would appear, and I do not know whether statistically this would be borne out, but that with the number of young people going overseas more and with the more stringent drug laws that we have, or that they have overseas, that we may be seeing an increase in the number of incarcerations overseas and as that load increases in various posts with the non-immigrant-visa status, whether or not you are going to be able to transfer your resources from a management standpoint to deal with these two increasing problems, at the same time adhering to your last statement that you do not see or you do not feel you need to ask for additional personnel.

Mr. EAGLEBURGER. Let me answer this question and then ask Mr. Lawrence to talk about how we handle an arrest, that is, someone arrested and what we do.

The answer to your question if we are talking about the long term, do we have sufficient resources to meet the need; the answer is no. My decision for the fiscal year 1977 budget was based simply on the conviction—and I think it has been substantiated since then by the examination we have proceeded to go through—that there are sufficient resources in the Department of State to meet the demands which are foreseen for fiscal year 1977, where the consular package requested 68 positions.

I can get those 68 positions out of existing resources. I cannot—given everything I can see now over the course of the next 5 years as to the demands on the need for increased consular positions abroad—I could not possibly meet those within the resources of the Department for the next 5 years. I know very well I can meet them for fiscal year 1977, perhaps even for fiscal year 1978. We will have to examine that as we go along.

In that sense I am convinced the Department of State has sufficient resources to meet that need. I am convinced we are doing things we did not need to do at all and that it is time we took a very careful look at that.

One of the ways we do it is by saying we are not going to ask the Congress for any more positions, so that everybody has to sweat to find them from within the resources we now have. And it is amazing under those circumstances how many jobs you will find around the



Department that people say, "Well, we do not need that one anymore. We need him for something else." You begin to get the answers.

So, in terms of the immediate future, I am convinced we can meet it with our own resources. As to the longer term, there is no question the demand is going to be far too high and we will have to come back to the Congress for more positions.

Mr. DODD. My time is up but when we come back—you tantalize me with that question of things we do not need to be doing.

Mr. EILBERG. Since it is my time at this point, Mr. Secretary, I will pick up with that.

Mr. EAGLEBURGER. You want to know what it is we do we do not need to do?

Mr. EILBERG. Not only that, but how are you going to do it.

Mr. EAGLEBURGER. As to the first part of that question, Mr. Chairman, it reminds me of a story of someone who said in effect to his boss, if you do not know what is wrong with me I am not going to tell you.

[General laughter.]

Mr. EAGLEBURGER. I cannot honestly at this point give you any very specific examples of things we are doing that we do not need to do. What I am convinced of and what the process of the examination has already proved to me since we decided we were not going to ask for any more positions, is that this is one way to force managers, the assistant secretary for whatever bureau, to take a very hard look at what it is he is now doing and make some judgments on what it is that he is doing that is of marginal utility.

The second thing is that it forces the Department as a whole to take a look at things that are being done in two or three places and that can really be handled in one place. The process has now progressed sufficiently so that I am confident we are going to find all of the positions we need, not only for the consular package, but for all of the legitimate requests of the other bureaus. How we do it is more or less as follows.

One of the decisions the Secretary made in this June speech was that he would establish a priorities policy group of which I am the chairman, which has on it the Assistant Secretary for Administration, the Inspector General, the Director General of the Foreign Service, the Counselor of the Department, the head of the Policy Planning staff in the Department.

The purpose is to establish a group at the seventh floor level which tries to bring the substance of policy and the allocation of resources together. The Department's problem for years has been that policy is made at one level and resource allocation is made at another and never the twain—I should not say never the twain meet, obviously they do—but they have not met sufficiently.

We have asked the head of the Policy Planning staff in the Department of State and the Counselor of the Department, both of whom are substantive officers, to sit on that board so that we can try to bring together the issue of what are the policies that we are going to be following next year or the next 5 years, and how do we now have to begin to adjust our resources, recognizing that a year from now we are going to have a problem.

An example—the oil crisis. There is no question that the demands on the Department in terms of positions in the Department to handle the international oil issue have grown tremendously since the boycott.

Now, you have got to begin, you have to force from the seventh floor some conceptual approach as to how it is the Department of State is going to handle the oil problem for the next 5 years. Otherwise you are going to have five bureaus all saying we have problems with oil and we want 16 people to handle it. And what you have is no conceptual approach from the top.

This priorities policy group was deliberately established to try to come to grips with those problems and as well to try to force each of the Assistant Secretaries to come before this group, defend his requests for new positions, and in fact defend them against rather difficult questions of why do you need to do that, somebody else is already doing it or what can you give up in order to do that job?

That is the process and it is a back and forth process. It comes to focus during the budget cycle. But it ought not stop there or start there. It ought to start as soon as we finish the fiscal year 1977 budget. We have already begun the process for the fiscal year 1978 budget. It is a continuing process and it is one where we have to ask questions, get answers and go back and forth.

Mr. EILBERG. Going to a couple of other areas for a few minutes; on November 12th I wrote to Secretary Kissinger requesting his personal involvement in urging Soviet officials to grant exit visas to a large number of Soviet relatives of U.S. citizens for permanent residence, particularly those whose names were listed on the exit visa representation list presented this summer to the Soviets by Ambassador Stoessel. You know of the concern of this subcommittee on this subject.

Are you in a position to inform the subcommittee whether Secretary Kissinger intends to raise this matter with Soviet officials in the near future?

Mr. EAGLEBURGER. The Secretary has determined that at an appropriate opportunity in the near future he will personally reaffirm to the Soviet Government his continuing interest in the issue of family reunification in the context of the exit visa representation list which Ambassador Stoessel presented on August 18.

[A letter addressed to the Honorable Joshua Eilberg from assistant secretary for Congressional Relations Department of State follows:]

DEPARTMENT OF STATE,  
Washington, D.O., December 8, 1975.

Hon. JOSHUA EILBERG,  
*Chairman, Subcommittee on Immigration Citizenship and International Law,  
House of Representatives*

DEAR MR. CHAIRMAN: The Secretary has asked me to thank you for your letter of November 12, and inform you that at an appropriate opportunity in the near future he will personally reaffirm to the Soviet Government his continuing interest in the issue of family reunification and the Exit Visa Representation List which Ambassador Stoessel presented on August 18.

Of the 641 individuals in 249 family units on the List, the Soviets have granted exit permission to date to 37 individuals in 12 family units.

Thank you for informing us of your interest in this aspect of our family reunification effort.

Sincerely,

ROBERT J. McCLOSKEY,  
*Assistant Secretary for Congressional Relations.*

Mr. EILBERG. In your statement you refer to the 1,700 citizens being held in foreign jails under various drug charges. Congressman Dodd also referred to that subject. I am aware that a substantial number of Americans are currently incarcerated in Mexico and this has been a matter of serious congressional concern.

It is my understanding that several Department officials have recently returned from Mexico after reviewing the situation there. Can you bring the subcommittee up to date as to the current situation and can you tell us whether our consular responsibilities with regard to these arrested Americans are being satisfactorily performed?

Mr. EAGLEBURGER. Yes, Mr. Chairman, strangely enough I have two of the gentlemen with me right now and I will ask Mr. Walentynowicz in 1 moment to describe to you their recent trip.

Let me only say—and I would rather be elliptical about this obviously in an open session—that as to the issue of Americans held in Mexican jails, I just wanted to inform this committee that the Secretary himself has taken a personal interest in it and—he has become involved in the issue. I would rather not, in open session, describe what he has done. But I just want you to know he is himself involved in the issue and has taken some actions on it and perhaps informally after the session we can go into that a little bit more.

Mr. Walentynowicz?

Mr. WALENTYNOWICZ. Yes.

In response to your question, Mr. Chairman, I can report to you that the level of our protective services in Mexico, particularly at the working level—the consular contact with the prisons—has, in my mind, in Mexico, improved dramatically and I think that our level of performance is quite satisfactory.

This is not to say, however, that we do not have problems. We have problems there because, as a result of the drug interdiction program, because of the program, there has been an increasing number of Americans arrested in various countries. One of the things which I discovered upon my recent trip in Mexico is the fact that in some of these countries—and I make mention of Mexico—their penal institutions may not be equipped to take increasingly large amounts of people. As a matter of fact, it would appear that in some instances their jails are overcrowded simply as a result of the increase of their own population. In other words, they have population growth, and increase and then when you add the fact that you have a larger number of Americans traveling, you have a number of problems resulting from it.

I can report to you that from our contacts with the Mexican Government we feel that we are in a position to work on these problems together and we have to have some forthcoming results in fairly rapid fashion. I find that many of the so-called abuses or allegations of abuse are not only directed to Americans but have a general application.

Mr. EILBERG. Mr. Walentynowicz, finally before I yield to Mr. Dodd, I am sure that all the Members of Congress are very interested in the subject we are now discussing. I would appreciate it very much if you would please keep us informed on the subject so that we might enlighten all of our colleagues as to what the situation may be. Would you do that?

Mr. WALENTYNOWICZ. I would be more than happy.

May I just simply add that this is a subject of inquiry by another congressional committee and we are reporting to that committee also.

Mr. EILBERG. Thank you.

Mr. Dodd?

Mr. DODD. Thank you, Mr. Chairman.

On the question I raised about language training, it occurred to me as I was sitting here as to whether or not the consular service with the limited number of people that you do have, that do receive an extensive language training; are they placed in priority positions where you have inordinate amount of applications for United States visas?

Mr. EAGLEBURGER. I am told, yes. But if you give me a moment I will see.

Here is a two-page listing of where consular officers are in terms of their language skills and I think I could supply this for the record. But the basic answer to your question is we try. But again, given the shortage that I must admit we still have in terms of language skills, we do not always succeed. But, yes, we try to put them at the places where they are most likely to be needed.

LANGUAGE SKILLS OF CONSULAR OFFICERS (AS OF OCT. 14, 1975)

Language	Number of consular cone FSO's having tested language skill	Number of consular cone FSO's with tested 2+ or higher speaking skill
Afrikaans.....	2	2
Amharic.....	1	1
Arabic.....	12	10
Bulgarian.....	4	4
Burmese.....	1	1
Cambodian.....	2	2
Chinese (Mandarin).....	12	7
Czech.....	4	3
Danish.....	8	6
Dutch.....	17	16
Finnish.....	4	3
French.....	248	166
German.....	154	112
Greek.....	11	5
Hebrew.....	2	1
Hindi.....	5	3
Hungarian.....	5	5
Japanese.....	11	7
Indonesian.....	7	3
Italian.....	81	54
Korean.....	5	2
Nepali.....	3	2
Norwegian.....	9	8
Persian (Iranian).....	12	9
Polish.....	13	9
Portuguese.....	45	34
Spanish.....	296	234
Romanian.....	3	2
Russian.....	31	15
Serbo-Croatian.....	13	13
Swahili.....	2	1
Swedish.....	9	8
Thai.....	6	4
Turkish.....	7	4
Urdu.....	4	3
Vietnamese (Saigon).....	17	15

Mr. DODD. It was suggested at previous oversight hearings by this committee that in those areas where there is an inordinate amount of activity during peak periods of the year, I would imagine, say, in Europe for instance, that there be temporary people placed in various consulates in order to handle that. Is that done?

Mr. EAGLEBURGER. It is done but I do not think sufficiently. And that is a result of a series of factors, the most important of which is—I would have to say we simply do not have the bodies. We try to do it.

For example, in Mexico City it is clear that during peak periods we just do not make it. We are examining the problem now to see what

can be done. Let me give you the sorts of problems that we run into. The Mexican case is one that is fresh in my mind.

The suggestion has been made—well, if you cannot get enough people—and we are sending some now—but if you cannot get enough people during these peak periods why do we not ask secretaries to fill in or in fact ask foreign service wives to fill in. Now, Mr. Walenty-nowicz has made it abundantly clear to me the problem with this. It is again suggesting that consular work can be done by people who are not trained for consular work. He is quite right.

So the issue becomes one of having, if you will, a pool of consular qualified officers that you can shift around the world during these peak periods and I would be less than honest if I did not say we do not meet that need by any means. We are trying but we are not there.

Mr. DODD. My last point is more of an observation of mine and I would be interested in any comments you may have on it.

Having lived overseas myself for some period of time, I was so intrigued by the fact that our American community in the countries that I did live in or visited, that there seems to be sort of a barrio kind of concept where you end up with the American community living in very close quarters, in many instances, divorced from the culture in which they are deeply involved.

And I am wondering if there is a changing policy in the State Department with regard to this practice, where we make an effort through whatever mechanism is available, through compensation or whatnot, to encourage, to strongly encourage our consular people and our embassy people do not try and live in these circumstances where they are next door in certain sections of a city where they seem to congregate. Do you understand what I am talking about?

Mr. EAGLEBURGER. Oh, yes, yes.

Mr. DODD. I wonder if there is a changing policy with regard to that. I found that in many instances there was one where many of these people did not have language experience and had never learned it over 2, 3 years: and second, that there were many instances—they were unaware of what was going on politically or culturally within the country that they were living in and they had worn a beaten path between their home and the consulate and had very little observation or feeling about what was going on in the area.

I am wondering if that is a changing policy and what specifically is being done, if so.

Mr. EAGLEBURGER. Congressman Dodd, the policy for some years—and we are talking policy for a moment—has been that we want Foreign Service officers out and around in the community. We do not like the barrio environment. It is a policy that is on occasion more violated than followed. There is no question about that. There are some substantive reasons and I will get to them in a moment.

It depends very much on the attitude of the ambassador in the given country. The State Department can say this is the policy but unless the ambassador is sitting there everyday, pounding it into his staff, the tendency, the natural tendency is that people, particularly where there is a language problem, will congregate, particularly where it is a hardship post, particularly, you know, where it is hard living.

Now, there are some very substantive reasons for this problem, in addition, in certain cases. For example, and let me give you my own experience in Belgrade, No. 1—and I was there 10 years ago. But it

has not changed substantially. There is, in the first place, a domestic housing shortage of substantial proportions. In the second place, early on—and this has happened in a number of places throughout the world—the Department of State built an apartment building right next to the Embassy in Belgrade and most of the employees in the Embassy live in that apartment building.

It was built in the first place for the good and sufficient reason that there simply was not housing available in Belgrade. But once you have built that, once you have made that investment, even if the housing situation changes in Belgrade, what are you going to do with it? It is an investment of substantial amounts of U.S. Government funds. You cannot leave it empty, and pay to put some American employee off in a house somewhere.

It is the same in Bonn—where after the war we built this huge complex because there was a housing problem and because we had this huge number of Americans in Bonn; and I could name you any number of similar places around the world where you have this sort of development.

Once you have made the investment, despite the fact that there is no question that in terms of the efficiency of your operation and in terms of people learning something about the country in which they live, we tend for monetary reasons to have to continue to use those facilities.

There is also no question in my mind that the younger Foreign Service officers we are getting these days are far more adventurous than some of the older ones and that they like to get out and they want to get out and around. I would argue that even in cases such as Belgrade, if the Ambassador is intent on forcing his people to get out, to make them take trips around the country, you can ameliorate it to a great degree.

But I would not argue with you. It is a problem, there is no question about it.

Mr. DODD. Have there been memoranda to the effect that this would be a strongly suggested policy where feasible and possible?

Mr. EAGLEBURGER. No; I think the answer since the Secretary has been in—I cannot think of anything. It is something I will take under immediate advisement.

Mr. DODD. Thank you.

I just want to make one last comment, Mr. Chairman, that it has been awfully nice here this morning—I am a very junior member of this committee—to be able to have such an involvement in the subcommittee level. It is delightful.

Mr. EAGLEBURGER. May I make one other point on this?

Mr. DODD. I have to remind you of the seniority system around here.  
[General laughter.]

Mr. EAGLEBURGER. We have another problem in some countries which I should have mentioned. It is the growing terrorism problem. For instance, Beirut is an example where if you are spread out all over the community the opportunities for kidnaping and so forth are substantially greater. Now this is not something that we worry about in every single post, but there is no question that this is becoming an increasing problem for us and runs in the opposite direction in some countries, from the natural desire to try to get people out and around.

Mr. DODD. Thank you, Mr. Secretary and thank you, Mr. Chairman.

Mr. EILBERG. One other question here.

Mr. SECRETARY, during our last oversight hearing we discussed the need for the temporary assignment of consular officers and other officers to certain posts which are experiencing a heavy nonimmigrant visa workload, for example, during summer months. This becomes a particular problem in a post which already has a shortage of consular officers and often complicates the vacation schedule in consular sections. Such a problem does not exist with respect to foreign service officers in other cones where there are not peak man times. What recommendations can you make to the subcommittee which will serve to alleviate some of these problems, and more importantly, to insure that the quality of work does not suffer?

Mr. EAGLEBURGER. I would like to ask Mr. Lawrence to talk about that in a moment, Mr. Chairman.

Let me say, and I tried to indicate it earlier, as to recommendations I want to come back to this committee a little later with some further thoughts on it. I am not sure. Well, I am sure at this point I do not have an answer to this problem. I do not think we are doing well enough in terms of meeting those peak needs. I said that earlier. I think we are doing better than we have done.

Now, I do not know whether the answer is to try to create some sort of pool. It is an issue we are now studying and I cannot give you any very clear answer at this point except we are not doing it as well as we should.

With that—Mr. Lawrence?

Mr. LAWRENCE. I really cannot add anything except that this past summer, Mr. Chairman, we have had this problem. It became quite acute in Mexico City. There the management of the embassy experimented quite successfully, I think, with drawing down people from other activities in the Embassy, other sections of the Embassy who had had consular experience at some previous point in their life or had at least had consular training and moved them in temporarily to help out. That was only possible because of the size of the Embassy in Mexico City where you have a resident pool that you can call on, and it was only done at the expense of doing other things. It is not a good solution.

Mr. WALENTYNOWICZ. May I just add one other thing?

There is another significant factor in these visa workload demands that you are talking about. This factor is timing. Many times these increased workloads take place in the summer which is also the peak time for the movement of the consular officer from one post to another. Mr. Eagleburger is giving great consideration to the spacing out of this movement so that less of it takes place during the summer peak periods.

Mr. EAGLEBURGER. If I might, Mr. Chairman, on that last point, I know that our time has about run out but we have a problem, and I did not realize how major a problem until I got into my present job. We have a major problem in the Foreign Service in what is called the man in motion. We have—the specific figure has eluded me—but it is almost one-third of our people who are either going somewhere or coming from somewhere and they are not in the job. It is a normal part of our problem, namely that we move people around. But so our resources, though they may look as though they are  $x$ , it is  $x$  minus

whatever number of people there are who are now in motion to somewhere else. Part of the problem clearly is that we have over the years tended to make most of our transfers during the summer; school is out, these sorts of things. It is something that we are looking at very hard right now to see if we cannot begin to space out those transfers and that would take care of part of the problem.

It also creates some substantial morale problems that we will have to sort through.

Mr. EILBERG. Mr. Secretary, Mr. Dodd said that he found this experience today delightful, that is the opportunity to engage in discussion with you.

I would like to say that I think you displayed great frankness and I must say that unfortunately I have not always felt this way about witnesses from the State Department. I do appreciate your obvious candor and the cooperation you have shown us. I think we have had a very fruitful morning.

Thank you very much.

Mr. EAGLEBROGER. Thank you, Mr. Chairman. It has really been a pleasure to be here. I meant what I said. I would hope that the Department would cooperate totally in continuing this process. What your committee has done to us and for us has been more than useful. It has made us make some changes and it has forced some changes on us. I would like to see this process continue.

Mr. EILBERG. Mr. Secretary, what we would like to do for the present is send you some questions that we have not been able to get to today and then arrange to have you come back at some later time.

[See Appendix for additional questions.]

Mr. EAGLEBURGER. Sure, I would be glad to.

Mr. EILBERG. Thank you very much.

The subcommittee is adjourned.

[Whereupon, at 1:09 p.m., the subcommittee adjourned subject to the call of the Chair.]

[Additional questions follow:]



DEPARTMENT OF STATE,  
Washington, D.C., November 6, 1975.

Hon. JOSHUA EILBERG,  
*Chairman, Subcommittee on Immigration, Citizenship, and International Law,  
Committee on the Judiciary, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: You will recall that I wrote you on September 8 concerning your letter to the Secretary in which you advised the Department of the Subcommittee's intent to pursue its oversight responsibilities.

In your letter you requested detailed information in several areas of specific concern to the Subcommittee. Among these was an update of appropriate questions and answers that appear in Appendix 4 in the hearings entitled "Review of the Administration of the Immigration and Nationality Act." Enclosed in question and answer form is the information you requested in narrative as well as a complete recapitulation of the 57 questions and answers contained in Appendix 4 so as to permit you to determine what questions you may wish to pursue further.

We greatly appreciate the opportunity to inform the Subcommittee of actions taken by the Department since 1973 to support and supervise the performance of statutory consular operations. Consular work is receiving a very high priority in the obtention and distribution of personnel resources in the Department and it will continue to do so in the future.

We hope the enclosed information will be helpful to the Subcommittee in its oversight responsibility. We value the Subcommittee's support of our consular operations and would be pleased to go into greater detail on any of the material should you so desire. Please let me know if I can be of further assistance.

Sincerely,

ROBERT J. McCLOSKEY,  
*Assistant Secretary for Congressional Relations.*

Enclosure: Responses to Questions.

*Question.* What actions have been taken to implement the recommendations made by the Inspector General?

Answer. As the Subcommittee is aware, the Office of the Inspector General regularly schedules periodic on-site reviews of operations at all Foreign Service posts and all domestic operations of the Department of State. These reviews are carried out by a small cadre of senior officers, which for the first time, now includes a fully qualified and experienced senior consular case officer and the Inspector General is seeking out one or more additional consular case officers for assignment to the staff. Until the Inspector General obtains sufficient numbers of consular officers on regular assignment, SCA, in close coordination with the geographic bureaus, will continue to make available to S/IG on a TDY basis for specific inspections consular officers otherwise assigned to key consular positions. An example of this procedure was the recently concluded inspection of posts in Mexico, which because of the magnitude and complexity of consular operations in that country, required the TDY assignment of the Chief of Field Operations of the Visa Office as well as the senior consular officer regularly assigned to the Inspector General's office.

The Bureau of Security and Consular Affairs works closely with the Inspectors in respect to matters affecting or affected by consular operations. Within a given inspection cycle, this begins with participation in general substantive briefings of all assembled inspectors by the Administrator and other senior officers of the Bureau. Subsequently, specific briefings by the Administrator and appropriate officers in the three constituent offices of SCA are scheduled for each inspection team. These consultations focus on particular concerns related to consular operations at the specific posts to be inspected by each of the several inspection teams and are supplemented by "fact sheets" on each post detailing any problem areas of concern to the Bureau. Immediately upon return to Washington, the inspection team provides an informal recap of its findings to SCA, thereby providing SCA the opportunity to initiate any urgently needed corrective

actions on an immediate basis in advance of the issuance of the formal inspection report. Subsequently, upon issuance of the formal report, SCA, in coordination with the posts, geographic bureaus, and other areas of the Department as appropriate, finalizes corrective action initiated as a result of the earlier informal debriefings.

The constituent offices of SCA participate fully in this entire process and we believe that it results in an appropriate, mutually beneficial, productive and objective relationship between the Bureau of Security and Consular Affairs and the Inspector General of the Foreign Service. The Department and/or the Bureau of Security and Consular Affairs would be pleased to provide to the Subcommittee information concerning the status of implementation of any recommendations made by the Foreign Service Inspectors which may be of specific concern to it.

*Question.* What is the status of proposals to modify the cone system?

*Answer.* Proposals to modify the cone system were aimed at correcting the arbitrary rigidities that had beset the concept since its implementation. Those deficiencies were specifically identified as (1) inflexibility in the assignment process, (2) overemphasis on functional expertise as the basis for promotion, and (3) intake of lesser qualified candidates through the functional self-selection type written examination.

In the first instance consular officers found it difficult to receive excursion assignments in other cones and to serve in jobs with an interfunctional mix of responsibilities. The promotion process disadvantaged officers who had received a variety of assignments and tended to militate against the broad range of experience required for senior level program direction responsibility. Consular officers tended to benefit even less from that system. In the intake process many applicants took the consular examination unaware of its implications, and were frequently people seeking what they perceived to be the easiest route into the Foreign Service Officer Corps. (The latter was in fact not true.) Nevertheless, because of the above factors, dissatisfaction with cone labels resulted, particularly at the junior levels.

The Department has had two objectives in mind in its modification to the cone system. One is to correct the problem described above and the second is to maintain a system which provides the mid-career functional expertise that the Service needs. Consequently, rather than completely negate the cone concept we have made some modifications to deal with the troublesome aspects.

We have emphasized out-of-cone tours at the mid-career level, and as indicated elsewhere, have provided more language and other types of training opportunities to consular officers. To encourage a mixed pattern of assignments, to qualify officers for program direction jobs, we have reserved a portion of mid-career promotions for officers with interfunctional experience. In fact this practice has not disadvantaged consular officers, because we ensure that our consular functional requirements are met. As a result of the more flexible assignment process greater numbers of consular officers should also begin to receive a bigger share of the interfunctional promotions.

Starting this year we have changed the examination process to test all applicants in all four cone areas to ensure that we get the best candidates in each functional field, and thereby avoid missing the best qualified candidates in a particular area for reasons irrelevant to their real aptitudes and qualifications. We will not assign a cone label to officers upon entry, but will defer that decision until both the Department and the individual decide upon the most appropriate mid-career area of specialization. We are now implementing these changes, and we expect that they, rather than a strict conal system, will facilitate attainment of the goals mentioned in the 1973 report and reaffirmed by the Secretary this year.

*Question.* What efforts have been made to elevate grades of consular officers and improve career opportunities in this phase of the Foreign Service?

*Answer.* The consular function is an important and indeed an essential element in the spectrum of responsibilities exercised by the Department of State and the Foreign Service. We are constantly seeking ways to improve and promote the development of officers specializing in consular work and of other functional groups required by the Service. Our efforts over the past several years to upgrade the consular function have centered in the area of career development, with increased training for such officers and increased opportunities for broadening assignments which will better qualify officers in the consular field for future program direction responsibilities.

In the area of training, in addition to courses related to consular affairs, officers in the consular field are selected for advanced career training (e.g.,

Senior Seminar, National Defense University, Sloan Fellowship at Stanford). At least two mid-career officers in the consular field are assigned annually to graduate-level management programs at the Maxwell School, Syracuse University. In addition, this past year consular officers have been accepted in mid-career courses in other specialties—such as the FSI intensive university-level economics course—in order to qualify for out-of-cone assignments and thus increase their future prospects for senior positions. Consular officers now account for 10 percent of the students in the economics course and we expect that this number will remain constant or increase.

Language training is another important aspect of career development. The Department has increased language training for officers in the consular field. Currently, 54 percent of all consular officer positions abroad are language designated positions, a relatively high ratio compared to other conal groups.

Although language training normally is tied directly to onward assignments to language designated positions, this year we have succeeded in placing three consular officers in hard language training without a specific onward assignment to a language designated position. This unusual move is designed to provide area specialization for these officers which will qualify them for future program responsibilities outside the consular specialty.

We are convinced that this broadened training program will strengthen the capabilities, performance and career opportunities for officers in the consular cone.

An important aspect of the career development of officers is exposure to a broad spectrum of Foreign Service experience through out-of-cone assignments. The current record for consular officers is impressive. Of the 96 FSO consular officers now serving in the Department, 51 are in non-consular positions. In addition, there are 7 consular officers on detail to other agencies.

The issue of whether special efforts should be undertaken to elevate the grades of consular officers—both by increasing the grade level of consular positions and increasing the number of consular promotions—raises serious questions concerning the integrity of our position classification system and our promotion system. Both systems must be designed to meet the overall needs of the Service and to assure equity in the treatment of officers of all functional categories.

The level of consular positions overseas is determined on the basis of job classification surveys which are intended to provide a balanced job level structure world-wide. These surveys take into consideration not only job levels for similar consular responsibilities at other posts but also job levels for other types of work (i.e., political, economic and administrative) in the same post and worldwide. On the basis of evidence of substantial upward grade creep over the years, an extensive survey of the content and levels of all jobs in the Foreign Service was recently concluded. The world-wide classification survey, implemented on June 30, 1974, resulted in the general downgrading of positions in all functional areas. It was conducted using standard methods, and with reference to Civil Service Commission classification standards. Even so, it resulted in what we believe is an improved relative standing for many consular positions. Specifically, the study resulted in a 14.8 percent increase of positions at the FSO-5 level, raising by one class the accepted journeyman level for field consular work.

Promotion opportunities for all intermediate-level officers of the Service are arrived at by comparing positions, by functional specialty and class, with employees, also by functional specialty and class. The difference between the two, taking into consideration also other factors (i.e., expected attrition, funds, needs of the Service), equals opportunities. Promotion opportunities for officers in the consular field, therefore, are as fairly allocated as those for officers in the other functions. The fact that officers are reviewed and promoted on a functional basis at classes 3, 4 and 5 assures the Department of a sufficient number of officers in each function to fill vacancies at the next higher level. Thus, promotional opportunities increase as the Department's needs increase. To go beyond this jeopardizes a promotion system that is based both on merit and need. (For reasons explained in the answer to Question 7, promotions in the senior grades are non-functional.)

For these reasons, the Department's approach to upgrading the consular career has focused on programs which strengthen the career development of consular officers through skills improvement and broader work experience. Over time such improvements will be reflected in a greater number of assignments of officers in the consular field to more senior, program direction positions and improved prospect for non-functional promotions.

**Question:** In commenting on a recent GAO report "Need to Reduce Public Expenditures for Newly Arrived Immigrants and Correct Inequity in Current Immigration Law" the Department of State noted: "The Department also plans to work for the establishment and funding of additional consular officer positions in order to more realistically meet the manpower needs of immigrant visa processing. Developments of the supervising consular officer review procedure which was initiated by an instruction to all consular offices abroad on November 5, 1974 is also contemplated. Such procedures will provide for systematic and periodic review by supervising consular officers of all immigrant visas issued as well as refused."

Would you please summarize for the Subcommittee the status of these efforts to obtain additional consular positions and to improve the supervision of consular officers.

**Answer:** As noted in the updated answer to question number 45 of Appendix 4, 20 new American and 67 new Foreign Service local consular positions were established in fiscal year 1975 as a result of increased appropriations for this purpose. Thirty additional American and forty-four additional Foreign Service local consular positions are contained in the fiscal year 1976 appropriation. The Bureau of Security and Consular Affairs, in close consultation with Foreign Service posts and the geographic bureaus, has recommended further substantial position increases in fiscal year 1977 to meet priority consular workloads.

While because of severe budget stringencies, the Department has determined to ask for no new S&E positions in its fiscal year 1977 budget request, it is fully appreciative of the requirement for adequate staffing to meet its statutory responsibilities in the consular field. In light of this decision, and in order to better align priority programs with existing personnel resources, the Department has initiated a rigorous review of all programs with the objective of identifying lower priority activities which can provide a source from which positions may be obtained for reprogramming to higher priority work. Additional consular positions is certainly a high priority requirement and we expect through reprogramming to be able to meet most, if not all, of the consular staffing requirements identified by the Bureau of Security and Consular Affairs in the fiscal year 1977 Consular Package.

With specific regard to the staffing of our posts in Mexico, which was the area of primary focus in the cited GAO report, the Department has since April of 1975 alone established 10 new American and 12 new Foreign Service local consular positions. We would anticipate that an additional 8 FSL positions will soon be established at posts in Mexico from increases included in the fiscal year 1976 appropriation, bringing the total consular position increases for those posts to 10 American and 20 FSL's this year.

We have taken numerous steps to improve the supervision of consular officers, particularly in the consideration of visa applications. For example, we have instructed all visa issuing posts to establish a review procedure for visa approvals as well as refusals. We closely monitor the visa work of individual posts through closer maintenance of post files and provide detailed written briefs for foreign service inspectors. We also encourage all consular officers to consult closely with SCA and the Visa Office before reporting to posts of assignment and when on home leave. Finally, we have established two positions in the Visa Office for the specific purposes of monitoring and helping to resolve visa problems through personal visits to posts experiencing temporary difficulty in coping with visa workloads.

**Question 1.** What is presently the number of career consular officers? How does this figure compare with other phases of the Foreign Service?

**Answer.** As of June 30, 1975 there were 668 career consular officers, i.e., officer level personnel of all categories (FSO, FSR, FSSO) with "consular" as their primary skill in the Foreign Service. These figures pertain only to officer level personnel in the Foreign Service available for service on a worldwide basis. They do not include those Foreign Service Reserve Officers, Foreign Service Staff Officers and Civil Service Officers not available for service outside the continental United States. For a breakdown by category (FSO, FSR, et cetera) see answer to Question 8. These officers represent 10 percent of the total 6,675 officer level personnel in the Foreign Service.

**Question 2.** How often do those choosing consular work as their specialty change their minds after being involved in this type of work for a period of time?

**Answer.** The cone system has been modified over the years and is now less rigid. Present policy, for instance, does not require officers to opt for a particular

cone until they reach the mid-career level. In accordance with this modified policy, competition for promotion at the beginning levels is interfunctional rather than cone oriented and junior officers are assigned to and are encouraged to pursue assignment to a variety of positions, crossing cone lines. Because "excursion tours" (i.e., out-of-cone assignments) are encouraged, today's junior officers need not take formal re-coning action to qualify for such assignment and a change of cone is thus rarely requested. (Only one junior officer, in fact, has asked to be re-coned since July 1, 1973.) The record for excursion tours in the early years shows that of the 305 junior officers who chose the consular track when they entered the Foreign Service, 32 are serving in non-consular and combined function positions today. These officers remain consular cone officers and return to consular work at the end of the out-of-cone assignment.

Some 45 officers at the mid-career level (and one junior officer) have "re-coned" in the last 2½ years. Only three consular officers have changed to other tracks, although the cone gained 14 officers from other areas during the same period of time.

The record by cone shows :

Cone	Gain	Loss
Administrative.....	4	7
Consular.....	14	3
Economic/commercial.....	18	7
Political.....	10	29

The records on out-of-cone assignments for mid-career and senior level officers have also been reviewed, and the trend for "excursion tours" also continues at these upper levels. Of the 98 consular officers at present assigned within the United States, 34 are serving in the Bureau of Security and Consular Affairs and 51 are serving in non-consular positions elsewhere in the Department and on detail to other government agencies; 11 are in long term training programs.

The policy of rotating junior officers within consular sections at posts overseas continues. The plan permits officers to gain working experience in all phases of consular operations. Workload permitting, many posts also make efforts to rotate junior officers through all the sections of the mission for their broader familiarity with all Service functions.

**Question 3.** What percentage of Foreign Service Officers are presently engaged in consular work?

Answer. Of the 3,478 Foreign Service Officers (FSO's), 15 percent are engaged in consular work as of June 30, 1975.

**Question 4.** Could you estimate the average grade level of consular officers and can you inform us whether as a general proposition these grade levels are lower than other phases of the Foreign Service?

Answer. The following statistics, as of June 30, 1975, include Foreign Service Officers (FSO's) only :

Primary skill	Number of FSO's	Average grade level
Consular.....	520	FSO-5
Administration.....	608	FSO-4
Economic/commercial.....	808	FSO-4
Political.....	1,216	FSO-4
Information.....	2	FSO-3
Special professional.....	6	FSO-2
Executive/program direction.....	318	
Total.....	3,478	

**Question 5.** Although I recognize that the decisions of consular officers are final with respect to visa issuance or the denial or visas, is there any formal or qualitative review of these questions by the consular officer's immediate supervisors?

Answer. A formal review procedure is provided by regulation for all immigrant visa refusals under any of the grounds of ineligibility specified in the Act. The principal consular officer at the post, or a designated alternate, is

required to review the findings of ineligibility. If the reviewing officer disagrees with the original finding, he may request the Department's advisory opinion concerning the case and resolve the case upon receipt of the advisory opinion, or he may assume responsibility for the case and reverse the original finding.

In the case of refusal, the applicant himself, or any other person having a legitimate interest in the applicant's case may request that the consular officer's finding be further reviewed. Such requests may be made to the Department or directly to the consular office at which the application was made.

Supervisory consular officers also conduct a regular spot check review of immigrant and nonimmigrant visas issued at a post by each officer of the visa section. Should the review reveal that the visa was improperly issued, it may be revoked. However, the purpose of sample reviewing of issued visas is not to revoke them, but rather to insure that standards of decision making among all officers are reasonably uniform, and that inexperienced officers are given adequate and continuing guidance.

*Question 6.* Do you believe that consular officers should be upgraded and promotional opportunities increased for this phase of the Foreign Service?

Answer. The consular function is an important and indeed an essential element in the spectrum of responsibilities exercised by the Department of State and the Foreign Service. We are constantly seeking ways to improve and promote the development of a professional corps of consular and other functional groups required by the Service. It is important, however, that we examine our needs and programs for upgrading professional competence and career development of particular functional groups against the standards of overall service needs. Therefore questions of position levels and promotional opportunities for consular officers—as for administrative, political and economic/commercial officers—must be viewed as part of the overall question of management of all employees of the Department and the Foreign Service.

(a) *Consular positions.*—The level of consular positions overseas is determined on the basis of job classification surveys which are intended to provide a balanced job level structure worldwide. These surveys take into consideration not only job levels for similar consular responsibilities at other posts but also job levels for other types of work (i.e., political, economic and administrative) in the same post and worldwide. On the basis of evidence of substantial upward grade creep over the years, an extensive survey of the content and levels of all jobs in the Foreign Service was recently concluded. The worldwide classification survey, implemented on June 30, 1974, resulted in the general downgrading of positions in all functional areas. It was conducted using standard methods, and with reference to Civil Service Commission classification standards. Even so, it resulted in what we believe is an improved relative standing for many consular positions. Specifically, the study resulted in a 14.8 percent increase of positions at the FSO-5 level, raising by one class the accepted journeyman level for field consular work. Consular workload is the principal factor used in classification of senior consular positions at our field posts. We anticipate that such workload will increase, and will justify further improvement in the consular position structure.

(b) *Promotional opportunities.*—Promotion opportunities for all intermediate-level officers of the Service are arrived at by comparing positions, by functional specialty and class, with employees, also by functional specialty and class. The difference between the two, taking into consideration also other factors (i.e., expected attrition, funds, needs of the Service), equals opportunities. Promotion opportunities for officers in the consular field, therefore, are as fairly allocated as those for officers in the other functions. The fact that officers are reviewed and promoted on a functional basis at classes, 3, 4, and 5 assures the Department of a sufficient number of officers in each function to fill vacancies at the next higher level. Thus promotional opportunities increase as the Department's needs increase. To go beyond this jeopardizes a promotion system that is based both on merit and need.

*Question 7.* I understand that there has been a new promotional procedure established by which, for example, consular officers would compete for promotion only with other consular officers. How has this procedure been working?

Answer. The Department, up until last year, reviewed and promoted officers on a functional basis at classes 2, 3, 4, 5, and 6. Last year, as a result of a careful study approved by the Secretary, functional consideration at Classes 2 and 6 was eliminated. This decision was based on the realization that the Foreign

Service must balance the need to develop officers' expertise in particular functions, such as consular work, with the need to maintain and develop the corps of officers available and qualified for worldwide service in position which cannot be defined simply in terms of a single functional category. Thus, for example, a senior position may require of the incumbent a mixture of skills—political, consular, economic/commercial, and administrative. At the same time, it is essential at junior levels to give officers a broad exposure to Foreign Service work before entering the mid-career period where particular functional expertise is emphasized. In any event, officers in the consular field did not suffer in classwide competition in 1974 and 1975 at either the senior (Class 2) or the junior (Class 6) threshold levels. At Classes 4 and 5, where competition has remained primarily on a functional basis, officers in the consular field continued to receive a proportionate number of promotions based on merit and need. Attached are charts showing promotions by function in 1974 and 1975.

## FOREIGN SERVICE OFFICE PROMOTIONS BY FUNCTION, 1974-75

Function	Number reviewed (eligible)	Percent of eligibles	Promotees as percent of--		
			Number promoted	Number eligible	Number promoted
<b>Class 2:</b>					
Executive program direction.....	67	23.7	17	25.4	28.8
Political.....	81	28.6	21	25.9	35.6
Economic/commercial.....	82	29.0	12	14.6	20.3
Administrative.....	38	13.4	7	18.4	11.9
Consular.....	10	3.5	2	20.0	3.4
Special professionals.....	5	1.8			
<b>Total.....</b>	<b>283</b>	<b>100.0</b>	<b>59</b>	<b>20.8</b>	<b>100.0</b>
<b>Class 3:</b>					
Executive program direction.....	19	3.6	4	21.0	4.8
Political.....	225	42.5	43	19.1	51.8
Economic/commercial.....	146	27.5	19	13.0	22.9
Administrative.....	93	17.5	12	13.0	14.5
Consular.....	44	8.3	4	9.1	4.8
Special professionals.....	3	.6	1	33.3	1.2
<b>Total.....</b>	<b>530</b>	<b>100.0</b>	<b>83</b>	<b>15.7</b>	<b>100.0</b>
<b>Class 4:</b>					
Political.....	304	43.9	57	18.8	47.9
Economic/commercial.....	203	29.4	24	11.8	20.2
Administrative.....	105	15.2	26	24.8	21.8
Consular.....	75	10.8	10	13.3	8.4
Special professionals.....	5	.7	2	40.0	1.7
<b>Total.....</b>	<b>692</b>	<b>100.0</b>	<b>119</b>	<b>17.2</b>	<b>100.0</b>
<b>Class 5:</b>					
Political.....	215	41.0	73	34.0	47.4
Economic/commercial.....	123	23.5	33	26.8	21.4
Administrative.....	89	17.0	28	31.5	18.2
Consular.....	97	18.5	20	20.6	13.0
Special professionals.....					
<b>Total.....</b>	<b>524</b>	<b>100.0</b>	<b>154</b>	<b>29.4</b>	<b>100.0</b>
<b>Class 6:</b>					
Political.....	72	28.0	35	48.6	34.6
Economic/commercial.....	47	18.3	14	29.8	13.9
Administrative.....	65	25.3	20	30.8	19.8
Consular.....	73	28.4	32	43.8	31.7
Special professionals.....					
<b>Total.....</b>	<b>257</b>	<b>100.0</b>	<b>101</b>	<b>39.3</b>	<b>100.0</b>
<b>Total, all classes:</b>					
Executive program direction.....	86	3.8	21	24.4	4.0
Political.....	897	39.1	229	25.5	44.4
Economic/commercial.....	601	26.3	102	17.0	19.8
Administrative.....	390	17.1	93	23.8	18.0
Consular.....	299	13.1	68	22.7	13.2
Special professionals.....	13	.6	3	23.0	.6
<b>Total.....</b>	<b>2,286</b>	<b>100.0</b>	<b>516</b>	<b>22.6</b>	<b>100.0</b>

## TOTAL PROMOTIONS BY FUNCTION WITHIN THE FOREIGN SERVICE OFFICE

	Through general competition or classwide						By primary function							
	Total	PD	Pol	E/C	Adm	Cons	Total	PD	Poi	E/C	Adm	Cons	Spt	
Class:														
2-----	59	17	21	12	7	2	-----	-----	5	2	12	3	1	
3-----	60	4	38	17	-----	1	23	-----	-----	-----	-----	-----	-----	
4-----	35	-----	33	2	-----	-----	84	-----	24	22	26	10	2	
5-----	46	-----	43	2	1	-----	108	-----	30	31	27	20	-----	
6-----	101	-----	35	14	20	32	-----	-----	-----	-----	-----	-----	-----	
Total.....	301	21	170	47	28	35	215	0	59	55	65	33	3	

Key to symbols: PD = Executive program direction; Pol = Political; E/C = Economic/Commercial; Adm = Administrative; Cons = Consular; Spt = Special professionals



## COMPARISON OF 1974 FSO PROMOTIONS BY FUNCTION WITH 1973 FSO PROMOTEES (CLASS 2 THROUGH 5)

Function	Fiscal year 1974 promotions					Fiscal year 1973 promotions				
	Promotees as percent of—					Promotees as percent of—				
	Number reviewed	Percent of class	Number promoted	Number eligible	Number promoted	Number reviewed	Percent of class	Number promoted	Number reviewed	Number promoted
<b>Class 2:</b>										
Administrative.....	41	13.1	(1 FSRU)	21.4	6.7	47	13.5	8	17.0	21.6
Consular.....	14	4.5	3	6.1	1.3	18	5.3	2	11.1	5.4
Economic/commercial.....	69	31.5	6	22.6	13.3	97	27.9	6	8.2	21.6
Political.....	159	50.6	36	100.0	80.0	184	53.0	19	10.3	51.4
Special professional.....	1	.3				1	.3			
<b>Total.....</b>	<b>314</b>	<b>100.0</b>	<b>45</b>	<b>14.3</b>	<b>100.0</b>	<b>347</b>	<b>100.0</b>	<b>37</b>	<b>10.7</b>	<b>100.0</b>
<b>Class 3:</b>										
Administrative.....	86	16.0	3	3.5	4.8	83	15.3	9	10.8	17.6
Consular.....	48	8.9	4	11.3	6.3	50	9.2	5	10.0	9.4
Economic/commercial.....	141	26.1	16	11.3	25.4	135	23.2	12	8.9	23.5
Political.....	265	49.0	40	15.1	63.5	273	50.5	25	9.2	49.1
Special professional.....										
<b>Total.....</b>	<b>540</b>	<b>100.0</b>	<b>63</b>	<b>11.6</b>	<b>100.0</b>	<b>541</b>	<b>100.0</b>	<b>51</b>	<b>9.4</b>	<b>100.0</b>
<b>Class 4:</b>										
Administrative.....	91	13.7	10	10.9	12.3	89	13.8	15	16.9	19.2
Consular.....	67	10.2	5	7.5	6.2	66	10.2	7	10.6	8.9
Economic/commercial.....	190	28.7	22	11.6	27.2	182	28.3	25	13.7	32.1
Political.....	314	47.4	44	14.0	54.3	307	47.7	31	10.1	39.8
Special professional.....										
<b>Total.....</b>	<b>662</b>	<b>100.0</b>	<b>81</b>	<b>12.2</b>	<b>100.0</b>	<b>644</b>	<b>100.0</b>	<b>78</b>	<b>12.1</b>	<b>100.0</b>
<b>Class 5:</b>										
Administrative.....	72	13.6	34	47.2	21.0	67	13.2	22	32.8	18.8
Consular.....	67	12.7	12	17.9	7.4	38	7.5	15	39.5	12.8
Economic/commercial.....	138	26.1	55	39.8	34.0	115	22.6	33	28.7	28.2
Political.....	251	47.4	60	23.9	37.0	288	56.6	46	16.0	39.3
Special professional.....	1	.2	1	100.0	.6	1	.1	1	100.0	.9
<b>Total.....</b>	<b>529</b>	<b>100.0</b>	<b>162</b>	<b>30.6</b>	<b>100.0</b>	<b>509</b>	<b>100.0</b>	<b>117</b>	<b>23.0</b>	<b>100.0</b>

Note: The number promoted at each class level includes:

(a) those promoted from the functional (political, economic/commercial, consular, administrative) rank order lists for all classes, and

(b) those promoted from rank order lists not related to the above functions,  
 (i) at the O-2 and O-3 levels, from class wide rank order lists stressing policy direction and executive leadership skills, and

(ii) at the O-4 and O-5 levels, from interfunctional rank order lists stressing multifunctional assignments, assignments to other agencies and "out of track" assignments.

The number of promotions was determined on the basis of skills requirements at the next higher level. For example, one reason there were not more promotions of administrative function officers to class 1 this year is because 8 were promoted last year.

**Question 8.** How many officers in each of the separate categories (cones) which comprise the Foreign Service?

Answer. The following statistics areas of June 30, 1975, and include Foreign Service Officers, Foreign Service Reserve Officers Unlimited, Foreign Service Reserve Officers available for worldwide assignment, and Foreign Service Staff Officers available for worldwide assignment :

Executive/program direction.....	408
Administration .....	2, 218
Consular .....	668
Information .....	30
Economic/commercial .....	888
Political .....	1, 281
Special professions.....	195
<b>Total .....</b>	<b>5, 664</b>

**Question 9.** Does SCA play any role in evaluating the performance of consular officers?

Answer. Information in answer to this question provided to the Subcommittee November 7, 1973, remains current in all important respects.

**Question 10.** There are a number of different types of appointments and assignment commissions for consular officers. Give a description of each and how many officers are in each category.

Answer. (1) The four major categories, by pay plan, of consular officers are as follow :

Category and number :	Description
FSO, 520.....	Foreign Service Officers who shall be appointed in accordance with Section 511 of the Foreign Service Act of 1946, as amended.
FSRU, 6.....	Foreign Service Reserve Officers Unlimited appointed under authority of Public Law 90-494.
FSSO (worldwide), 93....	Foreign Service Staff Officers who shall be appointed in accordance with the provisions of Section 531 of the Foreign Service Act of 1946, as amended.
FSR (worldwide), 49.....	Foreign Service Reserve Officers who shall be assigned to the Service on a temporary basis from Government agencies or appointed on a temporary basis from outside the Government in accordance with the provisions of Section 522 of the Foreign Service Act of 1946, as amended, in order to make available to the Service additional skills as may from time to time be required.

(2) Appointment Commissions—Since 1909, all Foreign Service Officers (FSO's) receive one appointment commission which covers their appointment as FSO of class, their appointment as a Consular Officer and their appointment as a Diplomatic Secretary. Foreign Service Reserve and Staff Officers receive an appointment commission as a Consular Officer and/or, in the case of Reserve Officers, a Diplomatic Secretary.

(3) Assignments Commission—An assignments commission is the formal notification by the United States Government to the host foreign government of the assignment of an officer to that country in an official capacity. The consular and/or diplomatic title reflects the needs of the position to which the officer is being assigned. All Foreign Service Officers (FSOs) and Foreign Service Reserve Officers (FSR's) assigned to perform consular work are designated as Vice Consuls, Consuls or Consuls General.

Section 533 of the Foreign Service Act of 1946, as amended, provides that Foreign Service Staff Officers may be commissioned only as vice consuls and consuls.

**Question 11.** Are personnel policies the same for positions appointed by the President and consular agents which are appointed by the Secretary of State?

**Question 12.** What criteria is used in evaluating the performance of Presidential appointments and consular agents?

**Question 13.** What is the extent of the practice of appointing: (1) noncitizens as consular agents? (2) temporary acting consular agents?

**Answer.** Consular Agents perform limited consular services, such as notariats, and act as point of contact between citizens and the principal officer of the supervisory consular post of the district. They are not consular officers and are not authorized to issue passports or visas. They are responsible for reporting deaths of U.S. citizens to their supervisory consular office and can assist in handling estates of deceased citizens, but only under the supervision of a consular officer. They can also provide various non-statutory services for U.S. citizens, as the need arises.

Consular Agents work only on a part-time basis, with no regular, required work schedule. Since they are not required to work fixed hours, they do not acquire annual leave, sick leave or overtime pay, as Foreign Service Officers and other Government employees do. It is unlikely that this differentiation in compensation affects the performance of any Agent, however, since these positions are not undertaken as a full-time means of support. Typically, candidates are drawn from American businessmen, foreign employees of American companies and retired Foreign Service personnel living in the area. While preference is given to Americans, qualified U.S. citizens who are willing to take on such responsibilities are sometimes difficult to find and thus non-citizens may also serve in this capacity. Acting Consular Agents exist only while the hiring and approval of a permanent Agent is pending and the Acting Agent is normally the same individual who will be appointed permanent Agent.

There are three classes of Agencies, Class I, Class II and Class III, with a respective salary range of \$3,400, \$2,250, and \$1,700 per annum. Classification is based upon the importance of the services provided by the Consular Agent to the Government and volume of work performed. At the present time there are ten Class I Consular Agencies and three Class II Agencies.

Foreign Service Officers, who are appointed by the President, and other career Foreign Service employees, are given thorough performance evaluations at least once a year in accordance with the requirements of the Foreign Service Act. Comprehensive and detailed annual performance evaluations are not completed on Consular Agents, however, since they are not competing for advancement within the Foreign Service. Their performance is monitored by the principal officer of the supervisory Embassy and the appropriate geographic bureau and SCA to assure that it fully meets the Department's requirements. Additionally, Consular Agencies are periodically inspected by the Inspector General of the Foreign Service as are all Foreign Service operations.

**Question 14.** The ambassador, as the representative of the President, has responsibility for the overall direction of U.S. Government activities overseas. He also determines the precise structure of the mission in light of the local circumstances. How much does he influence the number of consular officers in his country?

**Answer.** Information in answer to this question provided to the Subcommittee November 7, 1973, remains current in all important respects.

**Question 15.** Has the number of consular personnel increased during the past few years? Have there been any cuts?

**Answer.** There has been a steady increase in the number of permanent American consular positions in recent years. The following positions compared to political and economic/commercial positions.

PERMANENT AMERICAN POSITIONS

Date	Consular	Economic commercial	Political
January 1970.....	785	883	1,499
June 1971.....	817	830	1,382
June 1972.....	834	810	1,258
June 1973.....	841	848	1,220
June 1974.....	859	880	1,212
June 1975.....	940	900	1,258

**Note:** These figures include (1) FSO, FSR/FSRU and civil service positions, and (2) FSO FSRU/FSR (worldwide FSS (worldwide), FSR (department service), FSS (department service), and civil service officers. Clerical and other nonconsular positions located in the passport office, visa office and office of special consular services are not included. Also excluded are foreign service local (foreign national) positions abroad and temporary positions in the United States.

**Question 16.** In determining the number of consular personnel needed, what criteria has been established?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

**Question 17.** It is my understanding that a monthly report entitled "Nonimmigrant and Immigrant Visa Work Load" is provided to each regional bureau advising them on visa staffing problems. In your opinion, do these reports appear to have any influence on the bureaus when they determine the number of consular personnel which they will require?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

**Question 18.** To what extent does the Administrator of SCA advise the Director General of the Foreign Service and the geographic bureaus on the assignment of key consular personnel? In other words, how much influence does the Administrator of SCA exert with respect to the allocation of consular personnel?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

**Question 19.** Does a consular officer receive any additional training after his arrival at his assigned post?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

**Question 20.** Are the economic and political phases of the Foreign Service given a higher priority for staffing purposes than the consular functions of an Embassy?

Answer. The answer continues to be no and for the reasons given in the previous report. The ratio of consular positions and personnel increases to those in the political and economic/commercial cone still favors the consular area as demonstrated in the answer to Question 15.

**Question 21.** I understand that there are certain limitations on the compensation and other benefits which are available to consular agents (i.e., no overtime, annual or sick leave). How do these limitations affect the performance of consular agents?

Answer. The answer to this question is contained in the reply to Questions 11, 12, and 13.

**Question 22.** What is the "Visas Raccoon" system or the so-called "Sixty-six" message system? Have these systems been fraudulently used by aliens to enter the United States?

Answer. Several years ago the Department adopted code words (numbers, animals and birds) to be used in messages between the Department and Foreign Service posts, and also between Foreign Service posts, which serve to reduce the number of words in repetitive type messages having to do with the visa function. Visas Raccoon and Visas Sixty-six are but two of the many code words currently in use, and these may be described as follows:

Whenever an alien appears at a Foreign Service post and reports that he is one who had been lawfully admitted to the United States for permanent residence but whose document evidencing such status (Form I-151—Alien Registration Receipt Card) has been lost, stolen, or never received, the consular officer may transmit, at the alien's expense, a telegram to the Immigration and Naturalization Service via the Department's communication system requesting the Service to confirm the alien's claim to lawful residence status. Such telegrams are authorized only when the alien is able to demonstrate to the consular officer's satisfaction that he would be seriously inconvenienced were he required to remain abroad until the Service could issue and deliver to him a replacement Alien Registration Receipt Card. The telegram from the Foreign Service post is headed Visas Raccoon, and it contains certain basic information about the alien which enables the Immigration and Naturalization Service to check its records.

All incoming Visas Raccoon telegrams are routed electronically to the Central Office, INS, and information copies are passed to the Visa Office in the Department. The Central Office contacts the appropriate district office of INS, either by Telex or telephone, to determine whether the alien concerned had in fact been admitted for lawful permanent residence. If this is established, INS telephones the Visa Office which in turn prepares a Visas Sixty-six telegram for transmission to the Foreign Service post. Upon receipt of such telegram, the consular officer contacts the alien and issues him a letter which authorizes him to proceed

to the United States, as contemplated by section 211(b) of the Immigration and Nationality Act.

Although the Department has no actual evidence to support the belief that the system may have been used fraudulently by aliens to gain entry into the United States, no doubt some aliens have posed as lawful residents by assuming the identity of know resident aliens, and thus conceivably could gain entry under the Raccoon procedure. For this reason, the entire Visas Raccoon procedure was amended midway through 1973. Briefly stated, the revised procedure calls upon the consular officer to require every alien for whom a Visas Raccoon telegram is sent and a Visas Sixty-six received, to complete an application form for a replacement Alien Registration Card. That form, together with the alien's photograph, is carried by the alien to the port of entry and the immigrant inspector compares the alien with the photograph and other documentation, such as his passport, before admitting him as a returning resident alien. The application for a replacement Alien Registration Receipt Card is then forwarded to the appropriate district director's office where final action is taken on the issuance of a new card.

Although the Central Office of INS has informed the Department that none of the District Offices have reported any difficulties with the procedure and, most importantly, that no imposters are known to have gained entry by assuming the identity of another person, even with the new procedure it is possible for an imposter to effect entry. The real possibility that legally admitted aliens are selling or lending their I-151's to other aliens to enable them to make an illegal entry into the United States, and then are claiming that the I-151's were lost or stolen to obtain a duplicate, is very difficult to control.

The Department is preparing instructions to all consular officers to follow procedures similar to those used in the lost or stolen United States passport cases whenever there is any suspicion of fraud. These procedures include close interrogation of the applicant about the circumstances of loss, careful screening of available documents, and confirmation of identity by as many sources as possible.

*Question 23.* At what consular posts are visas presently being issued by mail?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 24.* In your opinion, are any screening controls sacrificed by this type of procedure since it obviates the interview with a consular officer which is of utmost importance in determining the subjective intent of the visa applicant?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 25.* Are visas issued by mail only in those posts which are experiencing a very small amount of fraud or mala fide N.I.V. Applications?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 26.* Can you estimate what percentage of the total number of adjustees each year actually change their mind and decide to remain in the United States after arrival? Isn't it really only a small percentage and don't most adjustees have a preconceived intent to stay when they apply for their nonimmigrant visa?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 27.* You stated that fraud may take the form of false letters from employers, false bank statements and false marriage or birth certificates. What steps are generally taken to determine the validity of these types of documents?

Answer. The Department has established a fraud unit within the Visa Office staffed by three officers and one clerk to brief and debrief visa officers—especially those en route to or from high fraud posts—to analyze patterns of fraud, to coordinate anti-fraud activities, to provide guidance for visa officers in the field and to act as liaison between INS, the Visa Office and the Security Office of the Department of State. The unit arranges consultation with INS offices at ports of entry for all visa officers going to high fraud posts. Besides learning about INS operations in general, the officers watch airport inspections and discuss with their INS colleagues the kinds of fraud prevalent in the posts they are destined to.

Experience indicates that within a reasonably short period of time at port visa officers are able to detect many kinds of fraudulent documentation, and

that in many cases these are detected at the time of preliminary interview or examination of the visa application. In cases in which the visa officer is in doubt about the validity of documentation submitted in connection with the visa application, visa issuance is, of course, withheld pending verification.

The visa officer may verify local employment letters by telephoning the employer, or may verify job offers in the United States by writing to the employer. Bank statements and civil documents may be checked with the issuing authority if they appear to be questionable.

At some posts staffing limitations and sheer volume of work unfortunately preclude in-depth checking of all documentation submitted. The visa officers at those posts must be guided by institution based on experience in assessing the validity of documentation submitted in the absence of time or resources to perform meaningful investigations.

**Question 28.** You stated that the efficiency of a particular post cannot be judged by looking at the number of visas issued per officer assigned. How, in fact, is the efficiency of a post ascertained—is it based on the number of applications considered?

**Answer.** Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

**Question 29.** Are there any procedures for determining the number of nonimmigrants who return to their residence abroad in accordance with the terms of their visa; or, alternatively, is a post notified when a nonimmigrant overstays and is located by the INS or if a nonimmigrant seeks and obtains an adjustment of status?

Along these lines have any efforts been made to make INS and State computer systems compatible in an effort to promote a greater exchange of information between consular officers and INS inspectors?

The Electronic Name Check File now contains only refusal data or negative information with respect to a particular applicant (i.e., he was refused a visa at a post, a particular applicant is excludable under one of the statutory grounds). Can these computers be utilized to develop a data base which would contain positive detailed information regarding all visa applicants?—Should this information be available to INS inspectors at ports of entry?

Do you plan to expand the Electronic Name Check File to any additional posts in fiscal year 1974 or fiscal year 1975?

**Answer.** There are no procedures for determining the number of nonimmigrants who return abroad and the Immigration and Naturalization Service does not notify the posts of overstays. The Service does, however, notify the nonimmigrant visa issuing post concerning an alien whose case falls within the following categories and INS has, or intends to, take action with respect to such alien:

Nonimmigrant visa cancelled by INS as alien was excluded at port of entry;  
Nonimmigrant visa cancelled by INS since alien withdrew application at port of entry;

Nonimmigrant visa cancelled by INS because deportation proceedings have been initiated;

Nonimmigrant visa cancelled by INS and alien has been permitted to depart voluntarily;

Nonimmigrant visa cancelled by INS because it has revoked the order permitting the alien concerned to enter the United States on the basis of a waiver given earlier under Section 212(d)(3) of the Act; and,

Nonimmigrant visa cancelled by INS because it was presented by an imposter, i.e., an alien different from the one to whom it was issued.

The Department of State itself has no means of determining the number of nonimmigrants who return abroad in accordance with the terms of their visas: the Immigration and Naturalization Service, however, does collect information on departing aliens and this forms a basis for calculating the number of alien overstays. The Service does not notify our posts about overstays located since this in itself would serve no useful purpose, but it does take the following actions:

INS sends form G-325A to the post that issued an alien's visa if he applies for adjustment of status (from nonimmigrant to permanent resident status) under section 245 of the Immigration and Nationality Act. Receipt of form G-325 A causes the post to check its files for derogatory information and it also alerts the post to the alien's impending adjustment of status.

INS sends form I-275 (Notice of Withdrawal of Application for Admission) to the visa issuing post when an alien is permitted to withdraw his application for admission to the U.S.

INS sends form I-213 (Record of Deportable Alien) to the visa issuing post when an alien is granted voluntary departure in lieu of being deported.

INS furnishes the Department of State with a monthly list, by visa issuing post, of the number of form I-275's and form I-213's applicable to visitor and student visas issued by each post. The Department makes use of this statistical information in determining which posts have the highest ratios of aliens refused admission or deported in relation to the number of visas issued during a given period. Although this management analysis tool has only been available for a short time, we hope that it will enable us to identify posts which are having particular difficulty with mala fide nonimmigrant visa applicants and to provide the posts so identified with useful guidance.

INS also, under authority delegated by the Secretary of State, cancels the nonimmigrant visas of aliens who; are excluded at a port of entry; are permitted to withdraw their entry applications; are granted voluntary departure in lieu of deportation against whom deportation proceedings are initiated; have their 212(d)(3) visa waiver orders revoked; are found to be imposters or to have their visas or other documents presented by imposters seeking entry.

(a) Although the Department of State has used a computer for lookout purposes for several years, the Immigration and Naturalization Service only recently began to use an automated system. Both agencies recognize the need to develop a system whereby information possessed by one can be shared and indeed made available to the other electronically, and to this end have agreed to seek recommendations from a private research corporation that [we hope will shortly examine] has examined both consular and INS operations along the United States-Mexico border. It is [hoped] anticipated, as a result of the study and the recommendations of the research group, that even greater and more integrated use will be made of computers and present day communications systems by State and INS.

(b) Although most of the data in the computer's name check file relates to known or suspected ineligible aliens, the system as presently programmed has the capability of storing considerable additional information. For example, the Embassy at Manila has been adding to the file the names of applicants who are registered on oversubscribed waiting lists of intending immigrants; information regarding lost, stolen, or invalidated foreign passports is being added by the Department on a continuing basis; and information on beneficiaries of temporary work petitions is added by four of our larger posts. The Department has not been unmindful of the possibilities of using the computer to even greater advantage and, in this connection, notes that a mechanization study was prepared a few years ago that proposed utilizing the computer to maintain waiting lists of intending immigrants, trigger the dispatch of instructions to applicants through posts abroad at the appropriate time depending on priority date, foreign state chargeability, and availability of visa members. However, we were unable to implement these proposals because of insufficient funding, lack of both hardware and software, and the need for amendments to the immigration laws. [Yet as both State and INS move ahead, it is intended to explore the development] Yet both State and INS are moving ahead in the development of new systems that are compatible and which serve the needs of the two agencies, including, of course, consular offices and ports of entry. This could, in the long run, include positive detailed information regarding all visa applicants.

(c) At the present time, 25 Foreign Service posts, are "on line" with the Department's computer. A recent survey indicated that these "on line" posts account for approximately [40 percent] 38 percent of the overseas workload in the non-immigrant and immigrant visa function. It is contemplated that additional posts will be included in the computer system in the future as funds become available. The cost of installing the system at a single post is in the neighborhood of \$100,000 for the first year of operation and roughly \$80,000 for each succeeding year. The costs vary of course depending on the distance from a given post to Washington and the charges involved for least of communications link.

*Questions 30.* You indicated last week that one of the problems in the consular area is that the State Department is organized on a geographical rather than a functional basis. Yet most ambassadors and geographical bureaus couldn't care less about consular activities. In view of this and the fact that SCA has been created by statute and expressly charged with the administration of the Immigration and Nationality Act, shouldn't greater consideration be given to the functional role of SCA?—In other words, shouldn't SCA have control (greater control) over all aspects of consular activities abroad?

You indicated that the consular function must compete for resources with the more prestigious functions of the Department of State. Therefore, wouldn't it be advisable to administratively separate the consular function from the other phases of the Foreign Service and place this function under the direct supervision of SCA?—Would legislation be needed to accomplish this objective?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 31.* Isn't it true that when cutbacks at our embassies are ordered by either OMB or the Department of State, the consular service is the first to be affected (the salaries of political and economic officers are often partially paid by other branches of the government—AID, CIA, Defense—while consular officers are paid entirely by the Department of State—therefore, the greatest savings would be realized by eliminating the number of consular services)?

Answer. The number of officer-level positions as opposed to support staff in the Department of State has increased by 14 percent since December 1968 and by 17.6 percent since June of 1973. The cuts desired under the so-called BALPA and OPRED programs have generally been achieved and present staffing levels for the United States Government abroad are now monitored through a process referred to as MODE (Monitoring Overseas Direct Employment).

Consular positions for the Department of State have increased relative to both 1968, the base year, and to 1973. At present there are 940 consular positions representing a 9.8 percent increase over 1968 and by 11.7 percent relative to 1973. This is the second largest increase of any functional position in the Department. The increase is exceeded only by the increase in administrative positions much of which, in turn, is attributable to an upgrading of staff support positions primarily in communications and to the need to greatly expand our security positions because of the dramatic increase in terrorism worldwide. For comparison, Program Direction positions increased by 6.8 percent, Economic/Commercial positions decreased by 0.6 percent and political positions by 14 percent during the same seven year period.

*Question 32.* You indicated that you would supply the Committee with sample copies of the different examinations which are given for each phase of the Foreign Service. Do all exams have the same degree of difficulty and are there uniform requirements for the passage of these exams?

Answer. Under the new FSO examination procedures adopted this year, State Department applicants will no longer choose examination in a particular function. Instead they will take a test which includes questions from all four functional areas. Candidates will have to achieve passing scores on both the General Background and English Expression tests, and on the Functional Field test as a whole.

As indicated in 1973, the written examination is the property of the Educational Testing Service (ETS) of Princeton University, the Department of State's prime contractor for development of this year's written examination. Because of copyright and contract relationships we are unable to provide a full copy of the examinations. The enclosed announcement of the 1975 examination contains a sampler of test questions.

*Question 33.* You stated that you work closely with INS in the United States and abroad in your efforts to deal with the illegal alien problem. Can you give us any specific examples of this close cooperation?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 34.* Do you anticipate that any specific actions will be taken to implement the recommendations which will be made by the Special Nonimmigrant Visa Survey Team which has just returned from visiting various posts abroad?

Answer. The Special Nonimmigrant Visa Survey Team which visited various posts abroad in the summer of 1973 prepared a detailed report of its findings. On February 8, 1974, the Department transmitted by telegram to all Foreign Service posts the attached guidelines for the improvement of the nonimmigrant visa issuing process. These guidelines were based on the findings of the Survey Team.

Attachment.

[Telegram]

DEPARTMENT OF STATE,  
Washington, D.C.

To all diplomatic and consular posts.

For ambassadors and principal officers from the Deputy Under Secretary for Management.

Subject: Non-immigrant visa issuance process.



1. As a result of the visit of a survey team to selected posts last summer and recommendations they developed, I have approved the following policy and working guidelines concerning the nonimmigrant visa function.

2. Policy statement and working guidelines on the nonimmigrant visa issuance process.

#### A. IMPORTANCE

The processing and issuance of nonimmigrant visas is a key statutory responsibility of the foreign service. There never has been a time when the demands were greater on the consular officer than today with respect to the nonimmigrant visa. Visa fraud is a constant concern, illegal immigration, trafficking in drugs, and terrorism all add increasing responsibility. At the same time we are embarking on an unprecedentedly large effort to promote foreign tourist travel to the United States, placing a greater emphasis on good public relations. It is through the nonimmigrant visa program that a large number of visitors to the United States acquire initial contact with Americans and develop their first impression of American institutions. Effective performance of the nonimmigrant visa function helps to facilitate tourism, commercial and trade relations, cultural contacts, and the exchange of ideas and technologies.

#### B. PURPOSE

The following guidelines are designed to provide an approach to the process of issuing nonimmigrant visas which may help achieve greater effectiveness and efficiency. It is our hope, too, that they will assist toward strengthened morale among consular officers, foster professionalism and focus the attention of posts on the significance and complexity of the NIV problem.

These guidelines are not conceived to be comprehensive. Many procedures are already being followed at a number of posts. Each post is urged to review its current NIV operation with a view to adhering as closely as practicable to these guidelines and to developing independent initiatives toward other improvements in local operations.

#### C. OPERATIONS

1. A review of operations at a number of posts has suggested that a more effective use of manpower might be possible. The following suggestions are based on practices which some posts have found to be effective:

It is often inefficient for a post to remain open for nonimmigrant visa applications for a full 40 hours per week. Many posts have found that a reduction of the time in which they are open to the public to a maximum of 20 hours a week is more productive. The remaining hours can then be devoted to screening and processing of applications and other essential operations. Posts which have not already done so are urged to consider the desirability of limiting open hours. In so limiting these hours, some posts have found continuous open hours more efficient than closing and opening more than once in the course of a day. In adjusting post hours, adequate notification of changes should, of course, be given to the public including use of local mass media.

It would be appreciated if posts changing their hours in accordance with this suggestion will carefully assess the effectiveness of the change and after a reasonable trial period report on the results.

2. Wherever practicable, interviews with American officers to determine eligibility should precede clerical processing of completed applications. This will strengthen the public relations role of the consular officer and afford an opportunity to meet the public as well as expedite final disposition of applications.

3. Every effort should be made to minimize congestion in waiting rooms and to limit staff utilized exclusively in processing walk-ins:

A. Applicants should be encouraged to receive their visaed passports by mail thus obviating the need for:

The applicant either to return to pick up his passport, or, less desirably, to wait until it is ready.

B. Where extensive waiver of personal appearance is possible, the public should be encouraged to apply for MIV's by mail or through reliable travel agencies or transportation companies. If appropriate, the media should be requested as a public service to publicize the "visa-by-mail" program.

C. Also where extensive waiver of personal appearance is possible, convenient and secure means, appropriately advertised, whereby applicants can leave their passports and applications for processing together with a self-addressed envelope should be provided at the consulate.

4. Telephone inquiries on consular matters should be channeled, to the extent possible, towards a limited number of staff members, thereby permitting the majority of the staff to work uninterrupted. Posts should also examine the feasibility of utilizing tape recordings to inform the public of "open" hours and to respond to the most frequently asked questions.

5. Posts are encouraged to issue visas for the maximum length and entries permitted by reciprocity and established department policy.

6. Posts are encouraged to separate applications and applicants into district categories (visitors, third country nationals, students, transits, etc.) for processing particularly if the post handles a large volume of applicants and if one or more category requires greater attention than others. This would also provide maximum usage of pre-set Todd protectograph visa plates for different categories.

In implementing these guidelines, posts should bear in mind that primary emphasis in processing applications must be placed on the post's capacity to meet over-all applicant demands. Exceptional cases will arise and will require special attention. Obviously, post procedures and personnel should not be geared to the exception but should be oriented to providing services for the majority of applicants.

#### D. WORKLOADS AND STAFFING

1. The goal is to process NIV's as rapidly as possible in accordance with the requirements of the law and regulations and with minimum inconvenience to the applicant. Nevertheless, requirements of law and sheer numbers of applicants often cause some backlog of cases. Cases carried over from one day to another do not constitute a backlog but cases carried over more than a week do and such a backlog should not be permitted to develop. Applicants should be informed of the specific date—or processing time in the case of mail—on which their passports will be returned. Since processing time may vary from month to month or even week to week depending on existing workloads, the chief of section should review the operation at appropriate intervals to assure that target dates are as short as possible consistent with effective processing.

2. Consular complements are established to accommodate normal workloads. Peak period requirements should be met, in the first instance, through recourse to the manpower of other sections that can be made available. Chiefs of consular sections should keep the principal officer or DCM and the administrative officer advised in a timely manner of the anticipated workload increase to permit timely deployment of personnel.

3. At those posts where local salaries (in dollar equivalents) have risen to such a level that the employment of resident Americans becomes cost-effective, posts should consider hiring qualified dependent resident Americans in lieu of local personnel to perform functions normally assigned to local personnel. This applies to both temporary peak season and regular employment needs. First priority should be given to spouses of foreign service personnel, followed by spouses of other United States government employees and other dependents of U.S. Government employees.

In the case of temporary employment, the temporary position ceilings do not distinguish between Americans and locals, prior clearance from the geographic bureaus to substitute an American for a local is therefore not necessary. Requests for necessary shifts in permanent position ceilings for Americans to fill permanent local positions should be submitted to the geographic bureaus with appropriate cost data. "Cost-effectiveness" will in this case be determined by the department (M/FRM) upon receipt of the geographic bureau's approval of the request.

Posts should bear in mind that all prospective American employees, temporary as well as permanent, should receive security clearances in accordance with 3 FAM 161.4B before they may be appointed.

#### E. POST RESPONSIBILITIES

1. In those countries where there are constituent posts, the embassy is responsible for the maintenance of compatible nonimmigrant visa issuance procedures at the constituent posts. This includes the establishment of consistent procedures and the rationalization of personnel resources, both American and local. Embassies are encouraged to examine constituent post workloads and to shift resources or workloads where required.

2. In any operation that involves the public, it is always highly desirable for the U.S. Government to provide an environment that does it credit. It is not always possible to provide the optimum. However, special attention should be

paid to enlargement and attractiveness of work space and public areas and to enhancement of operational efficiency including adequate privacy for counter interviews conducted by American officers. The use of office machines and other labor-saving mechanical aides should be explored. The department intends to provide posts with technical assistance in these areas, but in the interim wishes to encourage local review and examination of other possibilities for consular program improvement.

#### F. EVALUATION

Where resources in terms of manpower, funds and equipment are determined inadequate to meet demands after full implementation of these guidelines, posts are requested to forward an evaluation telegraphically by April 30. End text.

3. In implementing the for going guidelines, it should be borne in mind that an environment should exist and operations be such in the nonimmigrant visa processing that consular officers may take pride in the quality of their work, and recognize the value the department places on it. Kissinger.

*Question 35.* On page 18 of your prepared statement you indicated that you are considering reinstating the requirement that every new Foreign Service Officer take basic consular officer training. You are also considering increased language training for consular officers. The Subcommittee would be anxious to know whether these matters are in the early formative stages or whether we can expect action in these areas in the near future?

*Answer.* (a) During the Junior Officer Basic Course at the Foreign Service Institute, every new Foreign Service Officer, regardless of cone or onward assignment, receives a good grounding over a three-day period in the statutory obligations which the Immigration and Nationality Act imposes upon the Foreign Service.

(b) Increase language training for consular officers has occurred within the context of increased training for all Foreign Service Officers as the Department has greatly strengthened enforcement of the Language Designated Position (LDP) program. Under this program the Department trains to a designated level of language proficiency, prior to arrival at post, all officers assigned to an LDP or ensures through testing that officers have the required level of proficiency. Exceptions are rare and can be authorized only by the Director General or designee. The purpose of the program is to insure that key positions abroad are filled by officers competent in the language of the host country.

There were 981 occupied LDP's in September 1974. Of these, 223 were consular positions. Seventy-five percent of the officers in these consular positions had the required language proficiency. Since 1974 the number of LDP consular positions has been increased more than 25 percent to 282, based on recommendations by Ambassadors and Principal Officers abroad. In addition, consular officers not assigned to LDP's receive requisite language training at FSI whenever possible and are encouraged to make use of post language programs in the field. A compilation of the language skills of consular cone officers is attached.

*Question 36.* Many individuals have suggested that we prohibit adjustment of status to those who enter as F's, H's, J's, and L's. Others have suggested that we prohibit adjustment to those who are seeking visas as 3rd, 6th, and non-preference petitioners. How would you react to these suggestions?

*Answer.* Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 37.* The Subcommittee is extremely concerned that there have been abuses in the admission of A and G aliens (diplomats). For example, some embassies have filed an inordinate amount of these petitions. Would it be feasible for the Department of State with the cooperation of the foreign country to establish a maximum amount of A and G petitions which may be filed?

*Answer.* We have been advised by INS that nothing can be done when the spouses and dependents of the principal alien is considered by the Department of State to be maintaining his diplomatic status. Shouldn't something be done to prevent these spouses and dependents from working?—Is the principal alien notified that his spouse and dependents are not permitted to work?—How many A and G aliens "moonlight" in addition to their work at the embassies?—How often are the diplomatic lists revised to eliminate those who are no longer maintaining their A and G status?—Is INS notified when this takes place?

Under the authority contained in Sections 101(a) (15) (A) and 101(a) (15) (G) of the Immigration and Nationality Act visas are issued to diplomats, officers and employees of designated International Organizations, members of their

immediate family and their attendants, servants and personal employees and members of their immediate family.

The bona fides of an A-1, A-2, or G-1 or G-3 visa request is most generally established by the submission of a formal diplomatic note to a consular officer identifying an individual by name, rank and position of assignment.

The basis for determining eligibility for G-4 visa classification is generally an official communication from a designated International Organization identifying an alien by name and position as an officer or employee (including family) of the organization.

The types of communication mentioned above are usually accepted at face value with respect to determining eligibility of "A" or "G" visa classification. No "petition" procedure is involved.

Restricting the issuance of "A" or "G" visas could raise a most significant political issue that would necessarily have to be resolved at the highest levels of government. It would involve questions of international law and practice, reciprocity of treatment for American diplomatic and consular establishments abroad, United States obligations under international agreements to which this country is a party as well as agreements between the United States and the various international organizations having offices in the United States.

The Department of State does seek to prevent the dependents of diplomatic personnel from working in violation of their visa status. Since March 1965 all embassies have been on notice that, with the exception of educational, nursing and cultural pursuits, the acceptance of gainful private employment by a family member, servant, or personal employee of a foreign government official, as well as the official himself, is inconsistent with their exempt status as nonimmigrants under Section 101(a) (15) (A) of the Act. By agreement with the Immigration Service, the Office of Protocol has served as the action office within the Department to receive and approve or deny requests from embassies for special authorization to accept such employment. From the evidence available to the Department it would appear that the embassies do notify the principals that neither they nor their dependents may accept outside employment without this permission. A new communication sent in September 1975 to all diplomatic missions restated the Department's policy and emphasized the importance of obtaining advance approval from the Department through the mission to avoid jeopardizing one's privileged status.

The Department has taken the same position with respect to international organization aliens classified as nonimmigrants under Section 101(a) (15) (G) of the Act.

Should any such person in either class wish to engage in gainful, private employment, either full or part-time (with the exception of educational, nursing or cultural pursuits), it is necessary for that person to obtain a change or adjustment of status. The Department has no means of knowing how many aliens in "A" or "G" status "moonlight" in addition to their regular job.

When the Department is officially notified that an alien in "A" or "G" status is working in violation of his status, the Department advises the appropriate Embassy or International Organization of the fact and indicates that the unauthorized employment must cease or steps will be taken to terminate the alien's status and facilitate his departure from the United States.

The diplomatic lists are revised and published anew every quarter on the basis of corrected copy filed by each embassy and checked against Protocol's records. These publications are of course available to INS. In addition, copies of the individual notification of termination of assignment forms with respect to employees are routinely forwarded to INS. Heretofore copies of the forms notifying the Department of the termination of a diplomat's assignment have not been sent to INS on the theory that diplomats are career officers who leave the United States for another assignment. However, it is possible that a problem can arise when a coup takes place and diplomats might choose not to go home and might not be retained in the diplomatic service under the new regime. To close this potential gap, the Department is instituting a change to provide INS with notification of the termination of all diplomatic assignments.

*Question 88.* The Subcommittee did not become aware of the manpower problems in Korea until about six months after these problems originally developed. I wonder if a procedure could be worked out whereby the Subcommittee would be advised, say on a monthly basis, of the posts which are experiencing administrative backlogs. Can an arrangement be made whereby we can be specifically advised when personnel shortages prevent the issuance of visas to eligible applicants?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 39.* It has been suggested that there is a need for greater management and administrative skills on the part of the consular officer. Would you support the idea of a management training program for consular officers prior to their assignment to a particular post?

Answer. The previous response to this question in 1973 indicated that the Department was investigating the feasibility of especially designed management training programs for consular officers. Subsequent studies indicated that it would not be practicable to create a separate management training program solely for consular officers prior to their assignment to a particular post. However, the Department is very aware of the need for improved management skills for consular officers.

Consular officers are selected for advanced career training (e.g., Senior Seminar, National Defense University, Sloan Fellowship at Stanford in fiscal year 1976). At least two mid-career consular officers are assigned annually to graduate-level programs in management and administration at Syracuse (Maxwell). The Department strongly encourages consular officer participation in the FSI Management Behavior Seminar, in addition to other FSI short courses. The Consular Course and Advanced Consular Course both include elements of managerial training.

*Question 40.* On page 4 of your prepared statement you indicated that "it is the consular officer who must pass on the validity of most of the documentation submitted." Does the consular officer ever go behind the approved petition to verify the information contained in the supporting documents (i.e., authenticity of college degree, medical certificates, etc.)?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 41.* What steps are taken to determine whether the applicant is excludable under the Immigration and Nationality Act? How often do consular officers check police records?

Discuss the 212(d)(3) waiver procedure—what steps have been taken to prevent terrorists from entering the United States?

What evidence of financial support is usually required for those applying for a B-2 visitor's visa?

Answer. In addition to examining each nonimmigrant application form for completeness and also to see whether the alien has indicated if any of the excluding provisions of U.S. law are applicable in his case, the consular officer checks the post's files and the Department's Visa Lookout System. If the applicant has resided elsewhere, i.e., in another country or countries for six months or more, the consular officer will normally ask the Foreign Service post or posts concerned to give "clearance" before he makes a final decision in the case.

Consular officers do not routinely require nonimmigrant visa applicants to present police certificates in support of their applications. Where circumstances warrant, however, such certificates may be requested.

Section 212(d)(3) of the Act contains those provisions which authorize a consular officer or the Secretary of State to recommend to the Immigration and Naturalization Service that a nonimmigrant visa be issued despite the fact that the alien concerned is ineligible to receive a visa under one or more provisions cited in Section 212(a) of the Act. (Such waivers are not authorized in the cases of aliens who are ineligible under sections 212(a)(27) and (29).) In the absence of INS concurrence in the recommendation, no visa may be issued.

Consular officers are authorized to seek INS concurrence direct in the majority of waiver cases by contacting the INS officer stationed abroad who is responsible for the area in which the Foreign Service post is located. In specific cases the consular officer is required or may choose to seek the Department's advisory opinion and simultaneously recommend that the Department request INS, Washington, to grant a waiver. If INS grants the waiver the consular officer is so informed and the notation "212(d)(3)(A)" followed by the number of the paragraph in Section 212(a) which has been waived is written immediately below the visa stamp in the alien's passport. Any restrictions such as a designated port of entry or period of authorized stay are also noted in the passport.

With regard to restricting the entry of terrorists into the U.S., the Department incorporates into its lookout system the names and biographic data of known or suspected terrorists received from the intelligence and investigative agencies at Washington and abroad. These agencies also provide data to the Department concerning groups known or suspected to use terrorist tactics. This information

is also passed along to the Foreign Service posts. When a post receives a visa application from a known or suspected terrorist, the consular officer suspends action on the application and immediately notifies the Department. The final decision on whether or not a visa will be issued is made by the Department.

Concerning evidence of financial support for those applying for B-2 visitor visas: Attached to the visitor visa application form is information as to how one should apply for a visa, as well as a detailed listing of the documentary requirements and other evidence one should submit in support of an application. The following sentences appear in those instructions: "U.S. Law prohibits aliens who are granted visitor visas from working in the United States; they must, therefore, demonstrate that they will be supported there by some interested person. In this connection, evidence should also be submitted regarding the arrangements you have made to cover your expenses while in the United States."

Applicants usually submit a letter from a bank or a savings deposit book, or a letter from an employer. Those who will rely on relatives or friends in the United States for living expenses customarily submit letters or affidavits of support from such relatives or friends.

*Question 42.* Is there any exchange of information between INS and State when patterns of illegal conduct are identified (i.e., large numbers of Indian students who have been accepted at a particular trade school)?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 43.* In a recent issue of a GAO report, there was mention of the definite lack of cooperation between INS and State in combatting the illegal alien problem. Has any action been taken by the State Department to achieve greater coordination and cooperation with INS as a result of this report?

Answer. Cooperation between INS and State is currently at an all-time high. Most significant, the Visa Office and INS have now been working together and sharing expenses for nearly two years in the development of a technically advanced alien documentation and control system. This joint effort is aimed specifically at achieving improved control over the illegal alien problem. In a general sense, also, working relations between INS and State are now marked by good coordination and increasing operational cooperation at the working level.

*Question 44.* What efforts, if any, are being made by the Administration to ensure the passage of H.R. 982 and H.R. 981, in the event of House approval of the latter bill?

Answer. The Department has for a long time supported enactment of such legislation and continues to do so. The Department intends to take every appropriate occasion to make its support known to the Congress and to urge early consideration of such legislation.

*Question 45.* How many additional consular positions do you anticipate will be requested in fiscal year 1975?

Answer. An increase of 20 American and 67 Foreign Service Local positions were included in the Department's fiscal year 1975 budget request to meet rising consular workloads at Foreign Service posts. Upon enactment of the Department's fiscal year 1975 appropriation, the same numbers of new consular positions were allocated to posts most severely in need of additional personnel resources.

*Question 46.* Would you please explain your statement on page 15 that the quality of consular work cannot be insured merely by providing more consular officers—isn't it true that additional personnel would greatly increase the quality of decision making by consular officers?

Answer. Additional personnel are helpful not only because officers can work at a less hurried pace if the workload is shared, but also because an excess of consular officers would allow for more flexibility in assignments, including assignments to training programs and to positions which allow for professional broadening. The most important factor remains the professional competence and experience of the officers performing consular work. Work quantity is of great importance for the reasons outlined in 1973, but quality of work cannot be sacrificed for mere amount. Thus, the Department continues in its efforts to establish programs and to implement measures which will enhance even further the high level of competence of consular officers.

*Question 47.* Some critics have suggested that the Immigration and Nationality Act is not administrable. Does this represent the thinking of many individuals in the Department of State and if so, why has no legislation been recommended by the Administration to correct this problem?

Answer. There is no question but that the Act is a very complex statute and that its administration is rendered even more complex by the principles and requirements of administrative law. For this reason, considerable sophistication, technical expertise and sensitivity are required to ensure that its provisions are administered effectively and humanely with due regard for the interests of the United States generally and the purposes of the Act.

Perhaps the most difficult aspect of the administration of the Act involves determinations whether an applicant for a nonimmigrant visa is entitled to a nonimmigrant classification or is an intending immigrant. Section 101(a) (15) of the Act which sets forth the nonimmigrant classification defines all such classifications in terms of the applicant's future intentions. Therefore, the basic issue in each such case can be resolved only by an evaluation of the applicant's intentions. The officer engaged in this process is confronted with the requirement to make decisions on the basis of his perceptions of the applicant during an interview and without the aid of objective standards to which he can repair. There is thus considerable uncertainty involved in the process and the officer who is keenly motivated to do a good job finds it very frustrating that it is very difficult to provide any objective measurement of the quality of his performance. Even with effective exchange of information with the Immigration Service—"feed-back", as it were—it is very difficult to evaluate whether the alien to whom he issued a visa who subsequently violated his status actually had a successfully hidden intent to do so at the time of visa issuance or subsequently decided to do so after arrival in this country.

It is understandable that many, including some officers engaged in administering the Act, should consider it to be unadministrable. Nevertheless, while we recognize the difficulties in doing so, especially in the area of applications for nonimmigrant visas, we do not consider that the Act cannot be effectively administered, given adequate personnel of the necessary calibre. What is clear, on the other hand, is that perfection in the administration of the Act cannot be attained and that the task of maintaining a high level of effectiveness of administration requires both high motivation and significant commitment of resources.

*Question 48.* As a part of the Government's program to encourage foreign travel to the United States, it has been stated that "all necessary administrative steps to facilitate the granting of nonimmigrant visas" should be taken. To meet this challenge, and the demands caused by the increasing visa workloads, have nonimmigrant visa procedures become too brief and simple, and thereby contribute to the illegal alien problem?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 49.* Immigration officers and consular officers make the same determination regarding an alien's classification and eligibility, although the consular officer is in a much better position to check the alien's qualifications. Yet, to facilitate the granting of nonimmigrant visas, the consular officers may waive certain documentation and personal interview requirements. For example, police certificates are not required in nonimmigrant visa cases unless there is reason to believe the applicant has a criminal record. How can this be determined if the applicant applies for a visitor visa and personal appearance is waived.

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 50.* What is an applicant required to submit with his nonimmigrant visa application?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 51.* The interview is said to be the most important single aspect of the nonimmigrant procedure. One of a number of things to be determined during the course of the interview is whether or not the alien is a bona fide nonimmigrant. Yet, the personal appearance of an applicant for a visitor visa may be waived by the consular officer. In what other cases will a personal interview be waived and how does an officer determine whether the alien is a bona fide nonimmigrant?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 52.* Are there any statistics which indicate the frequency of the waiver of a personal appearance by the applicant? If not, could an estimate be made?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 53.* We understand that visas are issued prior to nonimmigrant clearance and local check practices, i.e., on a post-check basis. Could you explain the meaning of nonimmigrant clearance and local check practices and to what extent are visas issued on a post-check basis?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 54.* We understand that post organization arrangements are to allow typists and officers not ordinarily engaged in nonimmigrant visa duties to be typed to such work during rush periods. Is this a normal practice that is followed at most posts? What is the scope of their responsibilities and do these work assignments require any specialized training?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 55.* Regarding the consular packages for fiscal year 1974 and 1975, have the posts considered the impact of using these officers and typists during the rush periods? In other words, are the man days contributed by these temporary personnel during rush periods shown in relation to the number of consular personnel and case workloads?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 56.* Posts were required to determine the effect of the Lewis-Mota case on manpower requirements when they submitted their consular packages for fiscal year 1974 and 1975. What will be the effect on manpower requirements for these years?

Answer. Information in answer to this question provided to the Subcommittee November 9, 1973, remains current in all important respects.

*Question 57.* In April 1971, GAO issued a report on the financial administration and the revision of fees in the consular services program. GAO recommended that the Secretary of State should—"revise immigrant visa and other consular fees on a basis that is responsive to Public Law 90-609 and in consonance with public policy that services provided to or for any person should be self-sustaining to the fullest extent possible, promulgate definitive policy and criteria for establishing consular fees, and develop an accounting system and related procedures for periodically determining the cost of providing consular services."

What has the Secretary of State done in response to these recommendations?

Answer. The Department has developed unit costs for providing each of more than 65 different consular services. In developing the cost study consular operations were reviewed at 16 Foreign Service posts which together process approximately one-third of the worldwide consular workload. A proposed new Tariff of Fees is now being coordinated in the Department.

The Department's study shows that, from fee receipts, we are recovering full costs for passports issued both domestically and at Foreign Service posts. Costs abroad, however, are generally higher per unit of service because of administrative support costs entailed in maintaining Foreign Service posts and staffs.

From the study, it was determined that costs involved in the issuance of immigrant visas are considerably greater than the fees presently being charged. To recover costs, our findings show that immigrant visa fees should be more than doubled. Also being proposed is a revision in the method used for the collection of immigrant visa fees. Presently we collect \$5 for the application phase and \$20 when the immigrant visa is issued. However, it was found that the major portion of the cost (or approximately four-fifths of the total cost) is involved in the furnishing and verification of the application for an immigrant visa. It is now intended that the larger fee be collected at the time the application is made and the second, or smaller fee, when the immigrant visa is issued.

Further we find that, on a cost basis, the immigrant visa fee should be greater for adults than for children who are age 16 or under at the time the application is made. Our assessment indicates that the application fee for children should be one-half of that charged for adults.

The policy of reciprocity in issuing nonimmigrant visas was established by the Congress in Section 281 of the Immigration and Nationality Act as amended. Consequently, these services are performed largely without charging fees to cover costs. However, the Department's policy and criteria for setting fees will recognize: (a) that these services provide public benefits in the form of increased foreign trade, tourism and cultural exchange and (b) that the value



of these benefits to the United States far exceed the cost of providing non-immigrant visa services. (Fiscal year 1975, NIV fee receipts were \$800,000 and NIV services cost \$14,110,542.)

The cost study has been updated and adjusted to reflect fiscal year 1975 unit cost for each of the tariff items. The Department's consular fees collected and deposited in the U.S. Treasury during fiscal year 1975 amounted to \$35,938,043. We intend to implement the revised consular fee tariff not later than January 1976. Fee revisions will result in an additional deposit of approximately \$15,000,000 each year. We would expect to complete final internal coordination and publish a revised Tariff of Fees by the end of 1975.

#### A. ORGANIZATIONAL

*Recommendation 1.*—In consultation with the Deputy Under-Secretary for Management (M), the Administrator of the Bureau of Security and Consular Affairs should reestablish the office of the executive director (SCA/EX), transferring from the Passport Office (PPT) such positions now engaged in personnel, budget and fiscal, and statistical activities, as are required to form an adequate bureau management staff.

The concept of a "Bureau of Consular Affairs" with overall responsibility for passport, citizenship, visa and special consular services in the U.S. and abroad is sound: (1) it conforms to the directives contained in the Act of 1952, (2) it encourages the consolidation of responsibility and means at the appropriate level in the Department, and (3) it facilitates the uniform application of laws and regulations. The resources are available. What is needed is a reorganization of the present Bureau of Security and Consular Affairs to provide the Administrator with an adequate management staff and appropriate controls over the Bureau's operations.

Budgetary and statistical functions and personnel should be centralized as in other bureaus. A unified bureau budget effort would strengthen resource management and enhance the presentation of consular budgets in OMB and on the Hill. In addition, the consolidation of budgetary and statistical functions in one office should make it possible to save positions now engaged in duplicative work.

The need for additional staff in the SCA budget operation has become increasingly apparent since the institution two years ago of the "Consular Package". This functional approach to resource analysis offers many advantages as a management tool, but its potential cannot be fully realized without an adequate staff responsive to top management.

The budget, fiscal and statistical functions in the administrative division of the Passport Office should be transferred to the SCA executive director together with required personnel. Sufficient fiscal personnel should remain in the Passport Office to handle fee collections and to perform required accounting.

*Recommendation 2.*—In consultation with M, the Administrator should transfer some legal elements from the Visa Office (VO) and PPT to form a consolidated legal staff in the front office (SCA/LS).

Some legal functions now performed in the Visa Office and the Passport Office should be transferred to the Administrator's Office, together with the personnel involved, to form a bureau legal staff. This group would provide top-level review of key cases, assure the drafting and publication of key regulations, and prepare the necessary documentation for amendment or rescission of obsolete legislation. In addition, the consolidation of these legal functions should make it possible to eliminate several positions.

*Recommendation 3.*—In consultation with M, the Administrator should create a bureau research and development staff in the front office (SCA/RD) consisting of five members, three of whom should have experience in management and/or computer technology.

A research and development staff should be established in the Administrator's Office. The purpose of this organization will be to develop a unified technological program for the entire consular affairs program. The establishment of such a staff is essential to ensure that the consular affairs program does not fall behind in its use of available technology.

In 1966 the Beaulac Task Force recommended the establishment of such a function in the Passport Office. There are currently two officers in that organization engaged in this activity. The need, however, is Bureau-wide. The Inspectors propose a staff of five persons, three of whom would have backgrounds in management and/or computer technology. It will be the responsibility of this

unit to provide procedural and technological guidance to all elements of the Bureau.

*Recommendation 4.*—M should transfer at least two of the 12-member Personnel Branch of PPT (PT/AP) to the Employment Division of the Office of Personnel (PER/REM/EMP) to help the recruitment program.

Greater use should be made of centralized administrative support facilities available in the Department, such as personnel services. With a 12-member personnel unit, PPT appears to be more than adequately staffed to support the Washington headquarters and the field agencies. (As a comparison, the office responsible for approximately 5,000 Civil Service employees of the Department consists of only 10 persons.) Considering PPT's heavy dependence on seasonal hire, some of its present personnel positions would probably be better utilized if transferred to the Employment Division (PER/REM/EMP) to assist in recruitment activities.

*Recommendation 5.*—M should transfer activities relating to domestic fraud investigation and prosecution entirely to SY, together with required personnel.

Personnel of the Legal Division of the Passport Office are increasingly engaged in work relating to fraud. The Legal Division estimates that currently about 50% of the time of its 41-member staff is devoted to this activity. While fraud prevention is a recognized concern of this division, responsibility for investigation and for preparing cases for presentation to the Department of Justice properly belongs to A/SY. Therefore, cases of suspected fraud should be turned over to SY for investigation, development and submission to the Department of Justice. Personnel in the Passport Office who are now engaged in post-detection fraud activity should be considered for transfer to SY to assist in assignment elsewhere. SY estimates that it would need five legal officers plus supporting staff (not more than a total of 10 to perform this function).

*Recommendation 6.*—The Administrator should consult the Assistant Secretary for Administration (A) regarding space for a consolidated Bureau of Consular Affairs.

For some time PPT has been looking for better and more favorably situated space for its Washington operations. It has considered the idea of separating the Washington Passport Agency from the headquarters office. Such a move would enable PT to maintain a centrally located agency as a service to the public without needing to house the headquarters and the extensive passport files on the same expensive premises. At the same time it would enable the Department to recruit personnel for service in the Washington Passport Agency without the need for a full field security investigation, now required because of the co-location of the agency and the Passport Office headquarters.

In terms of managerial effectiveness, it would undoubtedly be best to gather all elements of the Bureau—the Administrator's Office, PPT (minus the Washington Passport Agency), VO and SCA—under one roof. Ideally, they should all be housed in the State Department building. If this appears unlikely in the foreseeable future, serious consideration should be given to locating the amalgamated Bureau elsewhere (preferably near the State Department) so that administration of the consular affairs program can benefit from the co-location of the responsible offices.

#### B. TECHNICAL

*Recommendation 7.*—In anticipation of a continued expansion of travel, SCA should strive on a priority basis for improvements in the production of the non-immigrant visa and the passport through modern technology.

SCA should strive for further improvements on a priority basis in the two mass-produced consular documents: the non-immigrant visa and the passport. The order of magnitude of demand for each of these documents is about three million per year. Under current procedures, they are hand-crafted at great expense. Both VO and PPT have studied the problems involved and, in the case of PPT, moved toward designing an improved substitute for present production methods. These commendable initiatives at office level should be reinforced by Departmental support and the necessary funding secured to bring them to fruition. This program should receive top priority.

*Recommendation 8.*—In collaboration with A, SCA should provide on a priority basis for the further extension of on-line computer lookout facilities at Foreign Service posts.

A major gain in efficiency was achieved several years ago as posts began to be connected with the automated visa outlook operation. Additional posts should be added to this system in advance of the expanded travel anticipated for the Bicentennial. One possibility (which is discussed in detail in Appendix B),

would be to use the services of the present teletype network which serves airlines worldwide. Within the United States, on-line capabilities should be provided to all passport agencies outside Washington.

*Recommendation 9.*—In collaboration with A, SCA should develop Bureau filing and records systems providing automated access to visa and passport data and mechanization of the immigrant visa control system.

SCA, in collaboration with A, should revise filing methods within the Bureau to provide automated access to major visa and passport collections, and should mechanize the immigrant visa control system. Both VO and PPT have been studying ways to regain control of their massive files, but have not received the necessary funds to get the job done. Meanwhile, unnecessary costs continue to mount. PPT, for example, has an entire floor of prime office space at 1415 K Street filled with file cabinets which contain less than two years' worth of recent passport applications.

#### C. PROCEDURAL

*Recommendation 10.*—The Administrator should institute joint staff meetings attended by the leadership of the Bureau and heads of all three offices, meeting initially at least once weekly.

SCA should institute joint staff meetings attended by the leadership of the Bureau and heads of all three offices. Initially, the frequency should be at least once weekly. Experts from within the organization or from outside could be invited to attend for discussion of sharply-focused issues.

*Recommendation 11.*—SCA should continue the development of the "Consular Package" as a functional budget and management tool.

The "Consular Package" has given SCA an opportunity to make a significant contribution to the development of the consular affairs side of the Departmental budget. Currently, this is being done only with regard to the budget year (i.e., the Fiscal Year following the current one) and there is limited input from consular officers abroad. Thus, while the "Consular Package" has enhanced the Department's presentation in hearings before OMB, it has not as yet evolved into a forward planning management tool.

The inspectors applaud the Bureau's encouragement to consular officers, in the latest "Consular Package" call, to submit estimates of funds requirements as well as workload statistics, which are related to personnel needs. This could be broadened in the direction of a functional consular budget, with initial estimates submitted at the time of the flash budget estimates so as to give sufficient lead time for long range planning and provision made for a centralized procurement and storage program for special consular equipment used at consular posts.

*Recommendation 12.*—SCA should identify those statistics which it needs for budgetary, personnel and general directive purposes, and concentrate its collection efforts on these, imposing minimal statistical requirements on post abroad with limited consular workloads.

At the urging of the General Accounting Office (GAO), a survey of consular fees charged abroad is being carried out by SCA, with their results not available in time for analysis in the inspection. It is apparent that two objectives conflict: one of making the users of specific services bear the specific costs, and one of minimizing paperwork and clutter in performing consular services abroad. Only in a minority of posts are as many as two man-years of American work expended on consular activities, yet all posts have to assess and account for consular fees. One might recognize that the passport fee presently charged is higher than direct cost, and acknowledge that part of the difference represents a prepayment of possible charges for consular services. On this basis consideration could be given to eliminating some non-passport fees presently charged Americans abroad.

SCA should identify those statistics which it needs for budgetary, personnel and general directives purposes, and concentrate its collection efforts on these. Posts abroad with limited consular workloads should have minimal statistical requirements imposed on them.

*Recommendation 13.*—SCA should devise new systems for handling routine waiver requests for communist visitors, including direct communication between requesting posts and INS, with information copies to SCA (VO).

The present system for handling routine waiver requests for communist visitors should be revised to permit direct communication between requesting posts and INS, with information copies to SCA (VO). The period of detente may serve to further expand the volume of these requests, currently running

over 1,000 per month. Under present procedures VO is an unnecessary extra loop in the decision circuit, creating added expense and delay.

*Recommendation 14.*—SCA and H should devise methods for more expeditious handling of Congressional correspondence dealing with policy questions; case correspondence with Congressional offices should be completed and signed within the office having direct competence (the Passport Office, the Visa Office, or the Office of Special Consular Services), with only cases of special concern to the Department signed at Bureau level.

More expeditious handling of Congressional correspondence dealing with policy (as contrasted with case correspondence) is required. Case correspondence with Congressional offices should be completed and signed within the office having direct competence (the Passport Office, the Visa Office, or the Office of Special Consular Services), with only cases of special concern to the Department signed at Bureau level.

Congressional telephonic requests at present are handled expeditiously by offices having direct technical competence. Mail procedures, in contrast, are indirect, with delays almost guaranteed by complicated clearance procedures which usually involve both SCA and H. Because of the enormous volume of case work handled by the operating offices, they should be authorized to complete, sign and forward Congressional correspondence on routine cases, the great bulk of the Bureau's mail.

*Recommendation 15.*—SCA, in collaboration with PER, FSI and the Regional Bureaus (as appropriate), should upgrade the training of personnel dealing with consular affairs by: (1) bringing junior officers into direct contact with major U.S. client groups; (2) providing higher level officers with management training; (3) putting consular conference programs abroad on a more definite schedule; and (4) providing additional training assistance to non-Departmental personnel accepting passport applications.

Within the bureau and its offices, on-the-job training is handled well. Consular conferences abroad could be enhanced by combining them with one or two-day workshops on specific consular problems (e.g., illegal immigration problems in the Caribbean) and having these attended by those directly concerned. PPT has the problem of helping train passport application acceptors who do not work for the Department; in this connection it has been trying for some time to have a training film made which would be an adjunct to present written training material.

Departmental training facilities for personnel performing consular work are somewhat limited. FSI used to provide field orientation in New York for junior consular officers, which included visits to shipping companies, seamen's unions, INS operations at an airport, etc. These key constituents, now neglected (apparently for budgetary reasons), represent a public relations problem which should be faced. FSI has instituted a senior consular training course which has met with good initial results. The continued lack of access to management training for higher level consular officers and civil service personnel limits their promotion possibilities, with resultant effects on morale.

*Recommendation 16.*—SCA, in collaboration with L, should update Volumes 7, 8 and 9 of the FAM and identify obsolete legislation for amendment or repeal by the Congress.

Steps should be taken to update Volumes 7, 8 and 9 of the FAM. Obsolete legislation should be identified and amendment or repeal sought from the Congress.

In the flash estimates for fiscal year 1976, VO asked for a temporary employee to help bring the visa manual up-to-date. Delay is unwarranted. The need is urgent and the legal resources in SCA are more than adequate.

*Recommendation 17.*—The Legal Adviser should make arrangements to change the name of the Bureau of Security and Consular Affairs to "Bureau of Consular Affairs."

Arrangements should be made to change the name of the Bureau of Security and Consular Affairs to "Bureau of Consular Affairs". Since the removal of the Office of Security from SCA in 1966 the word "Security" in the Bureau's title has been meaningless. The Bureau's only interest in security now has to do with the detection of fraud in connection with applications for visas and passports. Sections 104 (b) and (d) of the Immigration and Nationality Act of 1952 will require amendment.

DECEMBER 22, 1975.

Mr. LAWRENCE S. EAGLEBURGER,  
*Deputy Undersecretary of State for Management,  
 Department of State, Washington, D.C.*

DEAR MR. EAGLEBURGER: This is to express my sincere appreciation for your recent appearance before my Subcommittee on Immigration, Citizenship, and International Law; and I am certain that your testimony will greatly assist us in the conduct of our oversight hearings regarding the Administration of the Immigration and Nationality Act.

As I indicated to you during the hearings, it was my intention to submit additional prepared questions to you concerning the consular function of the Department of State.

I am therefore enclosing a series of questions; and I would certainly appreciate a prompt response to this request.

In addition, I am hopeful that we will be able to schedule you for another appearance before the Subcommittee at some future time.

Sincerely,

JOSHUA EILBERG, *Chairman.*

DEPUTY UNDER SECRETARY OF STATE FOR MANAGEMENT,  
*Washington, D.C., February 12, 1976.*

HON. JOSHUA EILBERG,  
*Chairman, Subcommittee on Immigration, Citizenship, and International Law,  
 Committee on the Judiciary, House of Representatives.*

DEAR MR. CHAIRMAN: The enclosed material is forwarded to you as requested in your letter of December 29, 1975.

As I indicated during the hearings December 10, 1975, I or any other officials of the Department of State who can be helpful to you in carrying out your oversight responsibilities will be glad to appear before your Subcommittee at some future time.

Sincerely,

LAWRENCE S. EAGLEBURGER.

Enclosures: Questions and answers.

#### OUT-OF-CONE ROTATION-TRAINING

*Question 1.* Could explain in more detail how "out of cone" assignments for consular officers have contributed to their overall marketability and to what extent does it enhance their promotional opportunities? Do consular assignments for nonconsular foreign service officers improve their career opportunities? Shouldn't the Department place more emphasis on the importance of consular assignments with respect to developing a broad background and enhancing the promotional opportunities of all foreign service officers?

*Answer.* Out-of-cone assignments are usually highly advantageous to officers. Such assignments provide the individual with a broader range of experience and with a broader perspective on the nature of Foreign Service work. This in turn has implications for future assignments, especially at the more senior levels, and for promotions in our highly competitive system.

The actual work experience, in the political, economic or administrative functions, is valuable in itself for the consular officer, both directly and indirectly. In a direct sense, an awareness of major political and economic trends is extremely valuable to the consular expert because these factors may have a direct relationship to consular work, including visas, passports, and protection and welfare. For example, depressed economic conditions or changing political circumstances in a foreign country could lead to a sharp increase in visa applications.

Indirectly, this type of assignment broadens an officer and improves his or her ability to compete for, and perform well in, the more senior management positions in the Service, for which some familiarity with all aspects of Embassy operations is desirable.

In the same sense, it is useful for non-consular officers to serve in consular jobs. Moreover, the system of out-of-cone assignments provides us with flexibility to meet our urgent needs which is especially important given the seasonal nature of consular work and the public impact of our performance of that function.

A large number of junior officers in other cones are given consular training and consular jobs for their first assignment because of the urgent demand to fill consular positions at these levels. We plan shortly to provide consular training to all junior officers. In addition, all rotational junior officers are given the basic consular course and spend six months to a year of their first two-year assignment in consular work. This consular experience enhances the value of an officer to the Service, whatever his or her functional specialty. Thus it would be true to say that the Department recognizes the importance of consular experience as an integral part of the career development for all Foreign Service officers.

*Question 2.* As a rule, do non-consular personnel receive special training before being given either a permanent or temporary consular assignment?

Answer. Yes, they do. The Foreign Service Institute offers two consular training courses, a basic four-week course given six times a year and a two-week advanced session usually held in April and May.

*Question 3 (a).* Could you describe the types of training being received by these consular officers and has the Department examined the specific ways in which consular skills can be improved through additional training.

Answer. Consular officers are eligible for most of the same types of training as officers in other cones. Thus consular officers have been enrolled in the Senior Seminar and in other types of top level, senior training such as the National War College and the Industrial College of the Armed Forces. Selected consular officers in mid-career are assigned to such academic programs as the Maxwell School at Syracuse, and also to the 26-week Economic/Commercial Studies Course at the Foreign Service Institute. Of course, consular officers are also assigned to the Foreign Service Institute for long term language training.

The Department has recently approved a proposal for a new system of training officers in both basic consular skills and to improve the response to those problems most frequently encountered by consular officers at posts abroad. This new course will utilize modern training techniques to upgrade the quality and effectiveness of consular training.

*Question 3 (b).* Do consular officers participate to the same extent as other FSO's in language study courses, area training and other special courses like the Senior Seminar?

Answer. Consular officers are eligible for all training appropriate to their assignments and their general career development. It is the Department's policy to assign all FSO's who will occupy a Language Designated Position (LDP) and who do not have the requisite tested skill at the time of assignment, to the Foreign Service Institute for language training. Of consular personnel presently enrolled in long-term language training at the FSI, eleven are studying such hard languages as Arabic, Chinese, Japanese, Polish and Russian. This policy applies equally to FSO's in all cones. By the same token, we try to place all officers in the appropriate area training course for their first tour in a geographic area. Cone considerations play no role in the area training assignments process.

In academic year 1975-76 we have two senior consular officers with the State Department group at the National Defense university program and another senior consular officer at Stanford in the Sloan Fellowship program. Consular officers also attend the Senior Seminar. There are also two mid-career consular officers at the Maxwell School at Syracuse. Moreover, a number have participated in the FSI long-term Economic/Commercial Studies Course prior to assuming an out-of-cone economic/commercial assignment.

*Question 4.* How is this training different than that offered to the political and economic officer?

Answer. Except for the specialized training which is essential to the consular function, the kind of training available to consular officers is the same as that available to officers in other cones. It is unlikely, of course, that a consular officer would be selected for training unrelated to the Department's needs, such as long-term advanced economic training. However, those consular officers who have been selected for the 26-week Economic/Commercial Studies Course at the Foreign Service Institute have received exactly the same training as officers in the other cones. Similarly, consular officers at the National Defense university and on other senior training assignments receive the same training as officers in other cones.

#### MODIFICATION OF CONES

*Question 1.* It is my understanding that one of the stated reasons for modifying the cone system was the overemphasis on functional expertise as the basis

for promotion. At the same time, the figures indicate that only 215 FSO's last year were promoted on the basis of function while 301 were promoted in general competition (of the 301 promoted in general competition 170 were Political officers). Don't these figures indicate that there is an underemphasis not an overemphasis on functional expertise as a basis for promotion?

Answer. Last year the Department's promotion system provided for promotions at the mid-career levels on both a functional and a non-functional basis, and for "classwide" promotions at the junior and senior levels.

The figures you have quoted (215 functional and 301 non-functional) are correct. However, it should be pointed out that slightly over half of the 301 (160) non-functional promotions occurred at those levels (junior and senior) where there was no other method of competition. The remainder (141) occurred at the mid-career levels where separate functional competition produced the 215 functional promotions.

A few words are in order regarding the differing purposes of "class-wide" and of "functional" competition. Although all Foreign Service officers are required to develop a specific "functional" expertise, successful performance in any one functional field invariably impinges on the others. For example, an appreciation of U.S. national interests in the host country, and of the local political environment by which they are affected, is often as essential for a consular officer as is a knowledge of our consular obligations to fellow citizens for a political officer engaged in negotiations with the host government. The interrelation of local economic and political issues is similarly obvious, as is their combined impact upon the welfare and interests of resident or visiting U.S. citizens. Our smaller posts impose a particular need for cross-functional abilities in order to assure back-up and fill-in support for all essential tasks. Moreover, principal officer and other senior overseas positions clearly demand a "Service-wide" orientation, as well as managerial and program direction skills which cut across functional lines.

Our present approach to promotion competition attempts to respond to this two-fold need for officers with both general breadth and concentrated expertise. At the junior and senior levels we promote "class-wide" with primary emphasis upon "breadth". During the mid-career phase we place major emphasis upon functional needs and abilities, while encouraging occasional "out-of-cone excursions" to build the breadth needed later. Officers serving out of their cone are less competitive than their counterparts in cone competition, and, therefore, we also have an "interfunctional" competition for such persons.

Thus, we have approached the problem of serving both these intermediate level objectives through a combination of functional and interfunctional promotion competition at the mid-levels. Typically, we have at classes 4 and 5 annually allocated intermediate promotion opportunities among the four "functional" groups and to a group of officers with recent "interfunctional" experience.

The allocation has been tailored to fill immediate needs in each function at the next grade and to encourage rather than penalize interfunctional experience. Thus, the total officers actually promoted from each cone has varied from year to year in accordance with functional needs and the extent to which various individuals in each cone may have recently served effectively outside that cone.

Last year's intermediate competition was somewhat atypical in that the "interfunctional" element was expanded into a "general competition," by including in it also those officers who had been ranked in the top third of their functional group but who had not been reached for functional promotion. The facts that the political cone is the largest, that political functional promotions were relatively few, and that many of the contending political officers had long experience in class probably combined to account for the strong predominance of political officers among those winning "general competition" promotion last year. As a consequence, political officers last year received 57 of the 117 class four promotions and 73 of the 154 class five promotions.

This year we reverted to a purely "interfunctional" competition to supplement "functional" competition in the middle grades and the relative number of political cone promotions declined relative to consular and the other cones.

**Question 2.** How many consular officers were promoted on the basis of function; on the basis of competition?

Answer. Thirty-five consular promotions were made on an across-the-board basis and 33 on a functional basis in 1975.

**Question 3.** In some materials recently submitted to the Subcommittee it was indicated that many foreign service officers (particularly junior consular officers)

are "dissatisfied with the cone labels" yet it appears that only one junior officer has reconed in the last 2½ years and that of the 45 foreign service officers who have reconed during that period only three left the consular cone.

Answer. Most of the junior consular officers we have talked to oppose a rigid cone system which would prevent them from receiving out-of-cone assignments, for reasons indicated in the answer to question 1 of the section above on out-of-cone rotation. These out-of-cone assignments are designed to broaden future consular officers' experience and to make them competitive for senior positions in the Foreign Service. Junior officers are normally advised to wait until they achieve mid-career status and more experience in the Foreign Service before making a decision about reconing. Under the new policy, discussed in the section on recruitment below, the Department will not make conal designations in the future until an officer passes the middle grade threshold.

The assignment process under the straight cone system would be too inflexible, both for the officers and the Foreign Service, if out-of-cone assignments were not possible. If a junior officer in consular or other type of work requests an onward assignment in a different function for career development reasons, every effort is made to meet this request, consistent with our relative needs at the officer's level in his or her cone. Similarly, if there is a Service need to fill a consular or other type of position, junior officers are assigned to the vacancy after appropriate training. Therefore, there is nothing inconsistent between a situation where one finds some officer dissatisfaction with the rigidities of the cone system and a relatively low rate of reconing. The reconciling factor is the out-of-cone tour, which introduces flexibility, for the officer and the system, by permitting both specialization in a major function and a broader range of experience.

#### RECRUITMENT OF CONSULAR OFFICERS

*Question 1.* It is my understanding that in the future the cone label will not be assigned to an officer upon entry to the foreign service through the FSO examination and that there will be no specific recruitment for consular work. Should consular officers be recruited on the same basis as other officers, and if so, how will the Department insure that such recruitment efforts will yield a sufficient number of qualified officers interested in consular work?

Answer. We foresee no problem in attracting highly qualified candidates in all four major functional areas through our new FSO recruitment examination and intake program. While we have eliminated formal conal designation at the time a new officer enters the Foreign Service, we have not abandoned the concept of functional needs. Our recruitment effort is designed to attract individuals with the mix of qualifications and in the numbers in each function we need and our examination process is designed to test their functional skills and abilities, as well as their general background and overall capabilities.

While it does not make sense, from the standpoint of either the officer or the overall system, to make a firm conal judgment at the beginning of a career—i.e. before the officer has had actual job experience and we have had an opportunity to evaluate his or her performance on the job—it does make sense to continue to base our intake program on an assessment of our conal needs and how well individuals appear to be qualified to meet those needs.

Therefore, our recruiting effort, including campus visits by FSO's, among whom are consular officers, and our literature, continue to give an equal emphasis to the consular function as to the political, administrative, and economic/commercial cones. Our recruiting brochure states, "the essence of consular work is providing services to people." This concept of service has had a strong appeal to many of our candidates in the past and we see no reason for this attraction to diminish.

Likewise, in the examination process we are testing all officers equally for their ability to perform in the four major functional areas. Moreover, after the written examination, our eligibility criteria for taking the oral examination include consideration of functional competence. The oral examination process itself is designed not only to test an individual's general capabilities but also to further test the candidate's functional skills. As a result of these new entry procedures, we are confident that the Department will be able to attract sufficient persons of all skills to fully meet our functional needs.

#### EVALUATION AND PROMOTION OF CONSULAR OFFICERS

*Question 1.* In what ways if any does the evaluation of consular officers for promotion differ from that accorded to political, economic and administrative



officers? What importance is attached to the volume of immigrant and non-immigrant visa applications? Is quantity rather than quality of visa processing the important consideration?

Answer. Consular officers are considered for promotion in the same way as officers of other categories. At the junior and senior levels officers are considered on an across-the-board basis. At the middle levels officers are considered both functionally, with consular officers competing for promotion with other consular officers, and interfunctionally, with all officers serving an out-of-cone tour competing for non-conal promotions. Selection Boards have members that represent every major functional category, including consular, who can present the views and speak to what is required of officers of that specialty. Officers are rated on the basis of their overall performance and, in the case of officers in visa issuing positions, this will include inter alia the quality of their work and, on occasion, their productivity.

Question 2. In the material submitted by the Department of State, I note the number of consular officers both eligible for review and actually reviewed is less than the number eligible for review or reviewed in other cones. What is the reason for this? What is the criteria which determines one's eligibility for review?

Answer. A considerable portion of officers in middle and lower middle ranks of the consular cone are Foreign Service Staff. The material presented related to Foreign Service Officers, and did not include staff officers. It is not surprising, therefore, that the number of eligible consular FSO's considered was smaller than the number of FSO's from other cones. The eligibility requirement for officers of all cones at these levels is essentially one year in class.

#### CAREER OPPORTUNITIES

Question 1. In 1973 we were advised that there were some thirty principal officerships which were consular-designated positions. Have they all been filled? In other words, how many more consular officers presently serve as Principal Officers at those posts today than at the time of Dr. Tarr's testimony? What types of positions are they? Can you submit for the record a breakdown by FSO level?

Answer. Constituent posts were first designated according to their primary field of interest in May, 1973. At that time 36 Consulates and Consulates General were designated as Consular Interest Posts. At that time, the principal officers at 17 of the posts were consular officers. (Two principal officer positions at these designated posts, Cali and Ciudad Juarez, were temporarily vacant.)

At the present time 35 Consulates and Consulates General are designated as Consular Interest Posts. Durban and Mexicali have been removed from the original list and Capetown has been added to it. The total positions held by consular officers has increased to 21, (including officers at post and those now assigned who will soon arrive).

The recent breakdown of principal officer positions designated for consular officers is as follows: (The asterisk indicates that the incumbent is an officer of the consular cone; the asterisk in parenthesis indicates the replacement assigned to the position is of the consular cone.)

Post:	Rank of incumbent
Bilbao -----	0-4
Brisbane -----	0-3
Call* -----	0-4
Capetown -----	0-2
Ciudad Juarez* -----	0-3
Edinburgh (*) -----	0-1
Florence -----	0-1
Frankfurt -----	0-1
Genoa* -----	0-3
Guardalajara* -----	0-1
Guayaquil* -----	0-2
Halifax* -----	0-2
Hamilton -----	0-1
Hermosillo -----	0-3
Liverpool* -----	FSSO-1
Maracaibo -----	0-4
Matamoros (*) -----	0-3

Post :	Rank of incumbent
Mazatlan*	FSSO-2
Merida*	O-3
Monterrey	O-2
Montreal*	O-1
Munich (*)	O-1
Naples	O-1
Nice*	O-4
Oporto*	O-4
Palermo*	O-2
Ponto Delgada	O-4
St. Johns*	O-3
Salzburg	O-2
Sappoto	O-5
Seville	O-4
Tangier*	O-2
Tijuana*	O-2
Toronto*	O-1
Winnipeg*	O-3

**Question 2.** What is the average FSO level of a Consul General? Can you supply the Subcommittee with a total breakdown of the FSO levels of all Consuls General?

Answer. The regulations set the general guidelines for the conferral of the Consul General designation. Within the general regulations, the Department's policy has been to reserve the title of Consul General for officers of the rank of FSO-3 and above. Officers of the proper rank receive the title if they are assigned to principal officer positions designated at the Class 3, 2 or 1 level at constituent posts or if they are assigned as Chief of a Consular Section in an Embassy or Mission at which the position is designated at the FSO-1 or FSO-2 level. A few FSO-3 Chief of Section positions at larger Embassies are Consul General positions by tradition. There are 102 positions which now carry the Consul General designation. Those in the Chief of Section category are located at London, Manila, Mexico City, Paris, Rome (FSO-1); Athens, Bogota, Santo Domingo, Seoul, and Tokyo (FSO-2); and Buenos Aires, Berlin, Madrid, Ottawa and Tel Aviv (FSO-3). The principal officer positions at constituent posts include 17 FSO-1 positions, 23 FSO-2 positions and 45 FSO-3 positions. Officers assigned to these jobs have the title of Consul General provided their personal rank is FSO-3 or higher. A few officers assigned at present to Consul General positions do not hold the title because they do not have the appropriate personal rank.

The Consul General title remains with the position and not with the individual officer; it is bestowed with the assignment and lapses at the time of reassignment. There can thus be no greater number of Consuls General than there are positions at the FSO-3, 2 or 1 level which carry the Consul General title.

**Question 3.** Is the idea of a consular-designated position inconsistent with your proposed modifications of the cone system?

Answer. No. The designation of a position as "consular" is externally generated from the nature and volume of the workload. The recent modification of the cone system refers only to officers—not positions—and only to the junior level. The functional designation of a position at that level will continue to represent the type of work that the officer assigned to that position could expect to perform. Regardless of our efforts to bring more flexibility into the cone system through the assignments process, there remains a continuing requirement to correctly identify our needs for particular functional skills at particular grade levels and the most efficient way to do this is through position designation.

**Question 4.** What is the primary reason non-consular officers are reluctant to accept consular assignments? Is it that they dislike consular work or do they feel that such an assignment fails to advance their career objectives? To what extent does this reduce the quality of consular work?

Answer. Not all officers are reluctant. Some welcome the broadening aspect of consular work, while others prefer to serve primarily in their functional field. For those who do not wish the challenge of a consular assignment, there are a number of reasons for such reluctance, at least at the junior level. Entering officers whose primary interest lies in the political or economic field may feel

that a consular assignment prevents them from getting a firm start in their preferred function.

The Department makes strenuous efforts to equip non-consular (as well as consular) officers with appropriate training before they take up a consular assignment, to ensure that the quality of work will continue to meet professional consular standards. For this reason we feel that whatever the view of certain non-consular about consular work, their performance has generally been satisfactory, even though their main career interests lie elsewhere.

**Question 5.** Are there currently any career consular officers who have achieved the position of Ambassador or DCM (Deputy Chief of Mission)? If not, why?

Answer. There are currently no career consular officers serving as Ambassadors, although the Consul General in Toronto was Ambassador to Paraguay prior to his present assignment. A consular officer is DCM (now Charge d'Affaires) in Bangui, Central African Republic.

**Question 6.** It is my understanding that in an Embassy each cone has a section chief. Is that so?

Answer. If by "cone" we understand the Subcommittee to mean functional specialty, the answer is no, not always, although this is usually the case. The staffing pattern of each mission depends on the externally generated workload and our needs in each country. For example, in many of the African countries the consular workload does not justify the assignment of a full-time consular officer or a full time officer in another function. In such cases, the work is performed by an officer in one of the relevant functions who has some background in the other function. In these cases, no "Political Section" or "Consular Section" as such exists. In most Embassies, however, each function has a separate section and a chief of section who directs the operation of the section.

**Question 7.** What generally are the grade levels of the section chiefs?

Answer. The grade levels of the section chiefs in an Embassy range from FSO-5 to FSO-1, and depend on the size of the section and of the mission as a whole. Within the Embassy the levels may vary also according to the relative size of the different functional sections.

**Question 8.** Is the Consul General in most Embassies of the same rank as the chiefs of the political and economic cones?

Answer. In general, yes, but there are some differences. The Consul General position in Athens, for instance, is classified at the 0-2 level but the positions of chief of the economic and political section are graded at the 0-1 level. The opposite is true at other posts. In Kingston, for instance, the Consul General position is designated for an FSO-2 but the economic and political officer jobs are FSO-4 level.

#### STATUTORY VS. NON-STATUTORY ACTIVITIES

**Question 1.** Can you compare for the subcommittee the number of manpower hours expended by the consular officers on the issuance of visas versus the performance of other consular functions? In other words, how much time is expended on statutory activities as opposed to the non-statutory functions of consular officers?

Answer. In fiscal year 1975, the total number of officer manhours utilized in performing consular work was as follows:

	Number	Percent
Immigrant visas.....	177,711	19
Nonimmigrant visas.....	352,185	38
<b>Visa total.....</b>	<b>529,896</b>	<b>57</b>
Passport and citizenship services.....	149,097	16
SCS.....	248,971	27
<b>Nonvisa total.....</b>	<b>398,068</b>	<b>43</b>
<b>Grand total.....</b>	<b>927,964</b>	<b>100</b>

While 43 percent of the time of American consular officers was spent in non-visa activities during fiscal year 1975, this should not be construed as time spent on non-statutory activities. This time was utilized in providing consular services to American citizens. Most of the services provided our citizens overseas

are either specifically required of the Department by law or result from general legal requirements which other agencies are not able to fulfill abroad. The Department of State has generally eliminated services not statutorily required, such as mail-drop services for tourists. However, recent trends toward increased accountability of government agencies for services rendered (consumerism) clearly indicate that the Department of State will not be able to further reduce time spent in non-visa consular activities but will in fact have to increase the quality, and possibly the types of services performed for our citizens overseas.

Increasing arrests of U.S. citizens on drug charges, especially in Mexico, and increasing allegations of mistreatment by those arrested have resulted in the use of increasing amounts of manpower in this aspect of consular operations. A recent GAO study criticizes the Department's level of service in cases of national emergencies and makes a number of recommendations including the active solicitation of registration by our citizens overseas, which, if adopted by the Department, will further increase consular manpower requirements.

#### NEED FOR INCREASE IN CONSULAR PERSONNEL

*Question 1.* Do you believe that the increase in consular personnel in recent years has kept pace adequately with the tremendous increase in the issuance of nonimmigrant visas?

Answer. Although manpower increases may not have been equal to workload increases in recent years, the substantial increases in consular personnel since the inception of the consular package, coupled with technical and management improvements, have been generally adequate to handle the increased workloads. However, the Department shares the concerns of the Subcommittee that the sheer volume of nonimmigrant visa applications does not lead to a deterioration in the quality of adjudication given each application. This concern has led us to increase our manpower in certain fraud-prone areas of the world both through appropriated increases justified for this specific purpose as well as through reprogramming positions away from less fraud-prone posts. The Department's newly established mechanisms for maintaining a better relationship between priority programs and personnel resource allocations should be most helpful in ensuring a more rapid and accurate response to emerging consular manpower requirements at any of the approximately 250 posts providing consular services. Should it not be possible to meet these requirements through reprogramming, we will seek such increases in appropriations as many become necessary in order to maintain the quality of consular service.

*Question 2.* In view of the fact that no additional consular positions will be requested in the budget for fiscal year 1977, how does the Department expect to accommodate the heavy demand for nonimmigrant visas which will occur next year as the result of the Bicentennial and the Olympics in Canada?

Answer. The extra measure of nonimmigrant visa demand attributable to the Bicentennial and the Olympics in Canada was anticipated by the Department in developing its fiscal year 1966 Consular Package in connection with the fiscal year 1976 appropriation request subsequently approved by Congress. As a result of the increase in appropriations for this purpose, in combination with reprogramming efforts within the Department, 39 new American and 44 new Foreign Service local positions have been authorized in fiscal year 1976 to meet growing consular workloads. The preponderance of these increased manpower resources will be utilized in processing nonimmigrant visas; the balance will be utilized in providing protection and welfare services to Americans in distress abroad. Should consular workloads continue to increase in fiscal year 1977, and we would expect that they might, any resulting requirements for increased positions will be met through reprogramming within the Department.

#### CONSULAR PACKAGE

*Question 1.* Can you advise the Subcommittee whether, in your opinion, the 'consular package' procedure has been working satisfactorily?

Answer. In our opinion the consular package procedure has been working satisfactorily. Consular workload factors are reviewed jointly by the bureaus and SCA on an ongoing basis during the year with a view toward reprogramming. Each year through the budget process we review thoroughly the past year's operations in an effort to forecast problem areas and request the necessary positions and funds to meet these needs.

*Question 2.* How would you evaluate SCA's input with regard to the preparation of the consular package? In other words, is it substantial, minimal, etc? To

what extent do SCA budget officials interface with the consular posts, geographic bureaus, and your office (Office of Management) in preparing this consular package?

Answer. SCA's input with regard to the consular package is substantial. The consular package is a joint effort where each year SCA budget officials work hand in hand with the regional bureaus in evaluating an array of statistical and other data on each consular post to ascertain future budgetary requirements. The Office of Management becomes involved when the package is submitted for the Departmental budget review. At this time, all means of possible reprogramming and feasibility of the budget request are fully explored by SCA, regional bureau and Departmental budget officials, resulting in an approved consular package for transmittal to OMB. SCA's role is an important one in assessing changing consular workloads and manpower needs.

*Question 3.* Is SCA properly structured to prepare or assist in the preparation of the consular package? In other words, isn't there a need for increased budgetary personnel in SCA?

Answer. Although SCA appears to be properly structured for its role in the preparation of the consular package there appears to be a need for increasing its resources for program analysis. In this regard, three new officer positions have just been authorized to SCA for the creation of a program analysis/research and development capability. SCA plans to expand its use of the Department's computer service in preparing future consular package submissions. Taken together, these actions should yield an even more precise and effective consular budgeting system. The computer was used last year for the first time in the preparation of the package. Computer usage will be expanded this year and this plus other projects within SCA may require in-office systems expertise.

*Question 4.* What has been the reaction of the geographic bureaus and ambassadors around the world with regard to the consular package concept?

Answer. Consular package submissions from abroad are submitted by airmails approved at a minimum by the Deputy Chief of Mission and the Counselor for Administration. In this manner, we are sure that consular requirements are made known to top mission management. While reactions have not been uniform, the consular package has been instrumental in bringing about an increased interest in consular operations on the part of higher management.

The reaction of the geographic bureaus has been mixed in that the package has sometimes been perceived as reducing their control over positions for their area. However, they have generally cooperated and in most cases welcomed and been very supportive in the development of an objective basis upon which to judge the validity of requests from posts for additional consular positions.

*Question 5.* Would the Department support a move in the direction of full scale functional budgeting of the consular affairs program? If not, what are the problems with such an approach?

Answer. At the present time, the accounting system of the Department does not provide for capturing costs on a functional basis. The concept of functional budgeting does have merit, however, it would require additional study before any definite decision or commitment could be made.



# REVIEW OF IMMIGRATION PROBLEMS

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## Immigration Benefits to Illegitimate Children

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WEDNESDAY, JULY 28, 1976

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,  
AND INTERNATIONAL LAW  
OF THE COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 2237, Rayburn House Office Building, Hon. Joshua Eilberg [chairman of the subcommittee] presiding.

Present: Representatives Eilberg, Holtzman, and Fish.

Also present: Garner J. Cline and Arthur P. Endres, Jr., counsel; Janice A. Zarro, assistant counsel; and Alexander B. Cook, associate counsel.

Mr. EILBERG. The subcommittee will come to order.

Today's hearing has been called to consider H.R. 10993, a bill which would allow an illegitimate child to be classified as the child of either of its natural parents.

I believe it is a primary function of this subcommittee to review on a continuing basis any problem or apparent inequities that may arise from time to time in the administration of the Immigration and Nationality Act. In order to further that objective, we have scheduled this hearing to receive testimony on a bill introduced by a member of this subcommittee, Congresswoman Holtzman, to equalize the immigration treatment accorded to the natural parents of an illegitimate child.

[A copy of H.R. 10993 follows:]

94TH CONGRESS  
1ST SESSION

# H. R. 10993

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 4, 1975

Ms. HOLTZMAN introduced the following bill; which was referred to the Committee on the Judiciary

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### A BILL

To amend section 101 (b) of the Immigration and Nationality Act.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That section 101 (b) (1) is amended—  
4               (1) by striking out clause (C) ;  
5               (2) by redesignating clauses (D), (E), and (F)  
6       as (C), (D), and (E), respectively; and  
7               (3) by striking out the semicolon at the end of the  
8       clause redesignated as (C) by paragraph (2) of this  
9       section and by inserting in lieu thereof “or natural  
10      father; or”.

#### I

Mr. EILBERG. I am hopeful that the witnesses today from both the Departments of State and Justice will discuss the various issues associated with this legislation. I am certain that this morning's hearings will be very productive and will assist us in determining whether



changes are needed in the definition of the term child as set forth in section 101(b) of the Immigration and Nationality Act.

I would like to yield to Ms. Holtzman for any statement she wishes to make.

Ms. HOLTZMAN. Thank you very much, Mr. Chairman. I want to thank you for holding these hearings on a bill that I introduced to correct the problems with section 101(b) (1) of the Immigration and Nationality Act. As a result of cases brought to my attention by constituents of mine, I became aware that the present provisions of section 101(b) of the Immigration Act creates a discrimination between fathers and mothers of illegitimate children.

It seems to me, Mr. Chairman, that the basis of the discrimination is arbitrary and untenable. As the courts have held in many circumstances, it is no less important for a "child" to be cared for by its parent when that parent is male rather than female and a father no less than a mother has a constitutionally protected right to the custody, care, protection, and management of the children he has sired and raised.

I would hope these hearings would shed some light on how we can bring section 101(b) of the Immigration and Nationality Act into accord with our constitutional prohibitions against discrimination based on sex and irrational discrimination against illegitimate as opposed to legitimate children.

Mr. EILBERG. Thank you. Our first witness this morning will be the Honorable Leonard F. Walentynowicz, Administrator of the Bureau of Security and Consular Affairs, Department of State.

**TESTIMONY OF LEONARD F. WALENTYNOWICZ, ADMINISTRATOR,  
BUREAU OF SECURITY AND CONSULAR AFFAIRS, DEPARTMENT  
OF STATE, ACCOMPANIED BY ROBERT T. HENNEMEYER, DEPUTY  
ADMINISTRATOR; AND JULIO J. ARIAS, DIRECTOR, VISA OFFICE,  
STATE DEPARTMENT**

Mr. WALENTYNOWICZ. I am more than pleased to appear before you on this bill. I have with me this morning Mr. Robert Hennemeyer, new Deputy Administrator of the Bureau of Security and Consular Affairs. Speaking for both of us, we are very happy to be here and present the Department's views on this bill.

If I may, I would like to read the statement we prepared in response to your request.

Mr. Chairman, members of the subcommittee, I am pleased to have been invited to present the views of the Department on H.R. 10993. The Department believes the objective of the bill, which is to provide immigration benefits to and through the illegitimate child by reason of its relationship to its natural father, is sound.

The Department is aware that courts in recent years have conferred benefits of other types through such a relationship. There appears to be no compelling reason why immigration benefits should be deprived through the relationship of an illegitimate child to its natural mother but not through its natural father.

The Department does recognize that some basis has existed for not permitting immigration benefits to flow between an illegitimate child and its natural father. All of the derivative immigration benefits pro-

vided by the existing clauses of section 101(b) (1) of the act contemplate the existence of a family unity.

Along with the legitimate child there is included within the meaning of the term "child" subject to certain qualifying conditions, the stepchild, the legitimized child and the adopted child, as well as the illegitimate child when the benefits derive by reason of its relationship to its natural mother.

All of these classifications contemplate the existence of a family unity between the child and the parent by or through whom or on whose behalf a status, privilege, or benefit is sought.

The bill would include new beneficiaries within the meaning of the term "child" by adding to the existing classifications an illegitimate child by virtue of its relationship to its natural father; a relationship which does not necessarily contemplate the existence of a family unity.

To state the situation differently, a parent normally maintains a family unity with a natural child that is born in wedlock as would a parent with a stepchild or an adopted child.

However, in the case of a child born out of wedlock, a family unity is normally maintained between the child and its natural mother but not necessarily between the child and its natural father.

Experience would indeed indicate that there is frequently no unity of family between the illegitimate child and its natural father. In these situations where there is no family unity, the separation of the child from its natural father would not be violative of the unification of family principles underlying our immigration laws.

The Department concedes that there is a basis for including within the meaning of the term "child" for immigration purposes the illegitimate child claiming status through its natural father because there is a family unity in many of these situations. However, the Department is fearful that the enactment of H.R. 10993 in its present form will provide open invitation to fraudulent claims.

For example, an alien lawfully admitted for permanent residence would be in a position to claim a paternal relationship to any number of alien children not having a common mother. If these claims were to be considered to have been proven and were accepted by this country for immigration purposes without any requirement for participation by the appropriate authorities for the alien's own government, we believe that fraudulent claims for the benefits would be energetically and persistently pursued.

This would be particularly true in countries of the Western Hemisphere where the establishment of the relationship contemplated by the bill would provide an automatic statutory exemption from the labor certification procedures prescribed in section 212(a) (14) of the act for the child; and after the child's admission to the United States for lawful permanent residence a similar exemption for the child's mother; and after her admission as an immigrant a similar exemption for her spouse and children.

Similar pyramiding results would be possible through the relative preference categories established for immigration by natives of countries of the Eastern Hemisphere and their dependent areas.

It is the opinion of the Department that the bill should include some safeguard provisions to protect against the proliferation of spurious and fraudulent claims for its derivative benefits. The Department has not been able to develop a protective mechanism of this type

that would meet this requirement, but instead recommends an alternative proposal which it believes will substantially advance the objective of the bill.

It is our view that clause (c) of section 101(b)(1), which provides for derivative immigration benefits by and through a legitimized child, should be retained and that clause (d) of that section should be amended to allow for the inclusion within the meaning of the term "child" an illegitimate child by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural father where that relationship has been established by adjudication of a competent court.

The requirement for adjudication of paternity by a competent court has the safeguard of requiring an examination of the claimed paternal relationship under the internal laws of the alien's country of residence or nationality or possibly under the internal laws of the country of the child's birth.

An adjudication of paternity by a competent court is normally accompanied by an imposition of obligations on the father to support the child, as well as the establishment of visitation privileges.

With this kind of an adjudicative record, the Department believes that the family unity concepts existing within the categories of persons covered by the other clauses of section 101(b)(1) may logically be considered to have been satisfied.

This amendment would in the Department's view give meaning to the acceptable objective of the bill but would substantially reduce the opportunities for fraudulent claims. The subcommittee may feel that further safeguards are needed to reduce anticipated fraudulent claims under this proposed amendment such as reserving to the U.S. Government the ultimate decision as to whether the necessary relationship has been established thus making the adjudication by the competent court, while necessary, simply persuasive proof. The subcommittee may also, in order to promote and reemphasize the value of family life, restrict the immigration benefits only to the illegitimate child, eliminating any reciprocal benefits to the natural father unless he has married the mother or maintained a family relationship. I will be more than happy to develop any questions along that line in the question-and-answer session.

The Department believes that its preferred amendment of section 101(b)(1) imposes a reasonable standard of proof for establishing the relationship of an illegitimate child to its natural father.

The lack of such a standard in existing law for establishing the relationship of an illegitimate child to its natural mother is justified by the very nature of the event of birth.

A record of the birth affirming the relationship of the child to its mother is normally created. Additionally, there are ordinarily persons having personal knowledge of the birth, such as a doctor or midwife, who can confirm the existence of the relationship.

Evidence of this type is not as a rule available to establish the paternity of an illegitimate child. Two or more persons can logically claim paternity of an illegitimate child and a court having jurisdiction over the persons and documents involved in a paternity controversy can best determine the probative value of the evidence relating to that issue consistent with the local laws and customs governing family relationships.

The retention of clause (c) of section 101(b)(1), coupled with the amendment of clause (d), has the collateral advantage of continuing in effect in the Immigration and Nationality Act the recognition of the legal principle of legitimation.

It is a principle well-rooted in American jurisprudence and one which is still favorably regarded by our courts as well as by our society.

This concludes my prepared statement and I will be pleased to answer questions of the chairman and members of the subcommittee.

Mr. EILBERG. Thank you.

Before we begin with questions, I would like to more fully understand what we are looking into. Would you indicate without reference to sections of the Immigration Act what benefits are presently bestowed by the mother on the illegitimate child?

Mr. WALENTYNOWICZ. Once the relationship is established, then the mother, if she happens to be a U.S. citizen, she can confer certain immigration benefits upon that illegitimate child. Conversely, the illegitimate child, once he has established certain benefits, he in turn can confer certain benefits on the mother.

The fact that this relationship exists between the illegitimate child and the mother, a natural consequence under the law, there are benefits conferred upon both parties, is, I believe, the discrimination that Congressperson or Congresswoman Holtzman was talking about, the fact that there is no similar benefit or similar arrangement existing between an illegitimate child and its father.

I think that that is the purpose behind the bill.

Our point is this, that our immigration law has certain basic philosophies behind it. One is family reunification. While we believe that illegitimate children should have as much benefits from the natural father and vice versa as with natural mothers—and this is a point which the bill seeks to address—there are certain other problems attendant with natural fathers and the determination of that relationship that must be allowed for.

As we pointed out in our statement, the relationship between the illegitimate child and the natural mother is fairly easy to determine.

Mr. EILBERG. Your statement speaks for itself. You have answered the question basically. My questioning at this point is very brief.

The Department of State has suggested that immigration benefits flow through an illegitimate child only in the event the paternity issue has been adjudicated by the court of competence.

Would you elaborate on this requirement? Don't you think this requirement is too strict?

Mr. WALENTYNOWICZ. We do not. I will tell you why. The issue is how do we determine the status or the relationship between the illegitimate child and the father? As we have indicated, that is a very difficult thing to do because the issue is very difficult to substantiate.

If we place the burden on the consular officer, we have to put him in a position where he has to become an expert in the law of the country he is working in. He does not have the authority to demand documents he may need.

He will then be in a position of evaluating evidence. True, it can be said that under the present section, INA, the burden is always on the applicant to prove a certain status.

But, it seems to me that under those circumstances, the applicant would be continually approaching the consular officer and renewing his application and coming back with more and more proof.

I think this places a tremendous burden on our consular officers. It would seem to me the much wiser course is to have the applicant who wants the benefits of the relationship establish that relationship in the court and let him pay for it.

Mr. EILBERG. Are there courts in every foreign country which are charged with responsibility of adjudicating paternity issues?

Mr. WALENTYNOWICZ. We believe that there are, but we are also flexible in our view with respect to this point. In some countries, perhaps there are not formal courts. Perhaps there are tribunals that make adjudication of parentage. We are more than happy to accept that kind of arrangement.

But we do not think that the burden should be totally placed on the consular officer.

Mr. EILBERG. Ms. Holtzman?

Ms. HOLTZMAN. Thank you very much, Mr. Chairman.

Mr. Walentynowicz, let's start from the beginning. Do you agree that the present provisions of the immigration law—which basically prohibit the natural father of the illegitimate child from proving parentage or in any way demonstrating family unity and in any way conferring rights on his illegitimate child or the illegitimate child to the natural father—are these provisions discriminatory?

Mr. WALENTYNOWICZ. There are certain factual situations where that could operate in a discriminatory fashion. Take, for example, you have a father and an illegitimate child—

Ms. HOLTZMAN. My question is, a circumstance where there is no legitimation and you have a situation where you have a natural father who has supported his illegitimate child for 10 or 15 years and the natural mother has died.

There is no one to take care of this child. The natural father has no way under the present immigration laws of saying, "This is my child. I want my child to come to the United States to live with me."

This is assuming that the natural father is a U.S. citizen. If a mother were involved in the same circumstance, there would be no problem in having the child come to the United States.

Mr. WALENTYNOWICZ. There should be some remedial legislation addressed to that particular situation.

Ms. HOLTZMAN. OK. I would like to go to the question of why you decide that adjudication of paternity is the appropriate mechanism. You agree, do you not, Mr. Walentynowicz, that under the present immigration law, if the natural father should marry another woman other than the mother and that woman should go to—make an application under the immigration laws, that the stepmother now has rights under the immigration laws to bring in the illegitimate child which is not her child and that your recommendations here in no way deal with that section, is that correct?

Mr. WALENTYNOWICZ. Not the way you phrase it. We say in the case of the stepmother the law recognizes that because under the norms of our society, once the woman becomes a stepmother, marries the father, there is a family relationship established.

Ms. HOLTZMAN. Who is the family relationship established with if the stepmother is not the mother of the child? The immigration law does not require that the stepmother be the natural mother of the child.

I will give you the example of where the natural father is a U.S. citizen and an illegitimate child who lives, let's say, in France. The natural father marries a person, citizen, here in the United States.

She can now apply and your proposal leaves this untouched, as a stepmother to bring in a child that is unrelated to her. Isn't that correct?

Mr. WALENTYNOWICZ. If there is a relationship established.

Ms. HOLTZMAN. Between the father and the child, but not between the stepmother and the child, isn't that correct? Even if the child has never lived with that stepmother, she can still apply under the immigration laws—

Mr. WALENTYNOWICZ. Yes, to confer benefits on the child. If she can show that this is a stepchild, yes, she can do that. Correct.

Ms. HOLTZMAN. So what you are saying, then, is that your proposal would create discrimination between natural fathers who marry and—a woman not related to the child and natural fathers who did not marry and say the natural father who did not marry would have to go to the country where the child is living and go through a paternity proceeding, but that if he married a woman who had no relationship at all to the child, that that woman could bring this child into the United States without the father's having to go through a paternity proceeding.

That is the rational, logical conclusion to your argument. I would like to know how you justify that difference.

Mr. WALENTYNOWICZ. I do not accept your premise. You are saying that that is what we are doing and I say that is not what we are doing.

Ms. HOLTZMAN. Are you familiar with the definition of child under section 101(b)?

Mr. WALENTYNOWICZ. Yes.

Ms. HOLTZMAN. What does it say with respect to stepmothers?

Mr. WALENTYNOWICZ. A stepchild determined by 101(b)(1), which subdivision are you talking about?

Ms. HOLTZMAN. 101(b)(1)(b).

Mr. WALENTYNOWICZ. A stepchild whether or not born out of wedlock provided the child has not reached the time of 18 years at the time of the marriage creating the status of the stepchild?

Is that what you are talking about?

You still have to establish whether the child is a stepchild.

Ms. HOLTZMAN. How do you establish whether the child is a stepchild under the immigration laws?

All you have to show is that he is the son or the daughter of the natural father. Is that correct?

Mr. WALENTYNOWICZ. When the woman marries the father, the child becomes the stepchild and only after the father has established his relationship with that child.

Ms. HOLTZMAN. What does the present statute say with respect to how the father establishes the relationship with the child?

The statute does not say that the father establishes his relationship with the child through adjudication of paternity. The present statute does not require the stepfather—the natural father to go through adju-

dication of paternity to demonstrate under section 101(b), isn't that correct?

Mr. WALENTYNOWICZ. No, it does not address itself at all.

Ms. HOLTZMAN. So the question I have is how do you justify—and the law has to make rational distinctions—do you—how do you justify requiring a natural father who has not remarried or not married to go through an adjudication of paternity proceeding whereas no such requirement is made of the natural father who marries another woman and attempts—and she brings the child in through section 101(b)? What is the rational basis for treating fathers who marry and fathers who don't marry differently?

Mr. WALENTYNOWICZ. The rational basis is this. First of all, you have got a situation whether or not a child wants to get his benefits directly through a father. That is one type of an operative situation. Another type is a situation where the child wants to get the benefits through the natural father but also, as you point out, he marries somebody else, say the American citizen so that conceivably—and this is the point I think you and I differ with—conceivably the child may end up being the stepchild of the American citizen's wife.

The American citizen's wife before she can confer a benefit on this child has to still establish the fact that that child is her stepchild. She will not be able to establish the fact that that child is her stepchild until such time as there is some relationship established between the child and its father.

Ms. HOLTZMAN. You are just restating what we have already been through. What I am asking you is how you just impose a separate and different burden on a natural father who has not married someone and a father who has.

Mr. WALENTYNOWICZ. I do it because of the circumstances surrounding the event—the circumstance surrounding the establishment of the relationship. When you have a mother, as I have indicated in my statement, there is a doctor present, a midwife present—

Ms. HOLTZMAN. We are talking about stepmother.

Mr. WALENTYNOWICZ. Apparently we are at odds as to what is the premise.

Ms. HOLTZMAN. Let me state my question again. It seems to me a very important point. The Congress can only create, constitutionally, rational distinctions; I would like to know what the rational basis is for treating a natural father different when he has married a woman not the mother of the child as opposed to when he has not married?

Mr. WALENTYNOWICZ. The fact that he married the woman who is not the mother of the child does not automatically make the woman the child's stepmother. She still has to establish the relationship.

You seem to assume that as soon as the so-called natural father marries an American citizen, that automatically she can consider the child her stepchild. That is not so.

The woman still has to establish the fact that this is the child of her husband and therefore it becomes her stepchild.

Ms. HOLTZMAN. How is it done at the present time? How is paternity established under section 101(b)(1)(b) now?

Mr. ARIAS. I am Julio Arias, director of the Visa Office. Generally, there are not many cases that come to the attention of the consular

office of a stepchild relationship being established through the father as the natural parent. But in those cases where that does occur, generally the practice is that the relationship is established for the purpose of the visa through adjudication of a court or the administrative authorities.

We do have—we get in those cases a civil document in which the acknowledgement on the part of the father is made of the paternity of the child.

Mr. WALENTYNOWICZ. In summary to your answer we don't treat it differently. In other words, we use the experience that we have developed with respect to establishing stepchild—stepmother relationship in terms of what we suggest should be done with respect to an illegitimate child and the father.

The point that we are at odds at is the fact that when a mother tries to claim or confer a benefit because of the stepson or stepdaughter relationship, the relationship between her and that child has to be established in some legal fashion. For instance, in your example, if the child of the husband is illegitimate, that husband has to legitimize the child, which can be done in any number of legal ways, before that child becomes the stepchild of that wife.

Ms. HOLTZMAN. Mr. Arias, I did not understand. You said generally speaking, you require adjudication. Are there circumstances in which you have issued a visa under section 101(b)(1)(b) where adjudication of paternity of the court having jurisdiction of the child was not the basis for the issuance of the visa?

Mr. ARIAS. It was not necessarily adjudication of the court but of the administrative authorities also, the civil authorities.

Ms. HOLTZMAN. With the civil authorities, what kind of adjudication do you require?

Mr. ARIAS. An acknowledgement of paternity by the father.

Ms. HOLTZMAN. In a court proceeding?

Mr. ARIAS. In a court proceeding or sometimes through administrative authority.

Ms. HOLTZMAN. I don't understand what you mean by through administrative authorities.

Mr. ARIAS. In France it is done through the civil authorities rather than through the court.

Ms. HOLTZMAN. Do you mean you go to a notary's office and say I am the father of the child and that is a sufficient basis for determination?

Mr. WALENTYNOWICZ. It is somewhat similar to that.

Ms. HOLTZMAN. Adjudication by a court of competent jurisdiction is not even a standard you use at this time under section 101(b)(1)(b)?

Mr. ARIAS. That depends on the country.

Ms. HOLTZMAN. But it is not the absolute standard that is required now.

Mr. ARIAS. Generally the practice is to require an acknowledgement of paternity.

Ms. HOLTZMAN. An acknowledgement of paternity but not adjudication by a court of paternity?

Mr. ARIAS. It depends on the country in which we operate.

Ms. HOLTZMAN. Sometimes it is acknowledgement of paternity and sometimes it is adjudication of paternity.



Mr. ARIAS. Yes.

Mr. EILBERG. Mr. Arias, correct me if I am wrong. The first procedure is an application filed with the Immigration Service. Is that so? What is the nature of that form which is filed?

Mr. ARIAS. That is the petition form. The 130 in which the petitioner files a request for an assignment of a preference status or non-quota status for the beneficiary.

The INS generally requires the civil documents such as for instance in the case of a stepchild, all the documents to show that the relationship exists in fact, that the child is the child of the natural father in fact, and that the father has married the woman who becomes the stepmother.

Mr. EILBERG. So INS would make a decision at that point?

Mr. ARIAS. That is correct.

Mr. EILBERG. Mr. Fish?

Mr. FISH. Thank you, Mr. Chairman.

As I understand the present law, a natural father of a child born out of wedlock, may have custody, may support the child, may live with the child, and do all the things that a single father or widower would do, but subsequently if he was admitted to the United States, in view of the fact that he was not married to the child's mother, he could not confer immediate relative status on the child.

Is that correct?

Mr. WALENTYNOWICZ. By virtue of that relationship, that is correct. There may be some other ways which he can confer some immigration benefits.

Mr. FISH. How?

Mr. WALENTYNOWICZ. The example Ms. Holtzman raised.

Mr. FISH. Marrying somebody?

Mr. WALENTYNOWICZ. Yes.

Mr. FISH. I think that Ms. Holtzman has presented to us a very meritorious piece of legislation. Apparently there are some difficulties with it and some recognition by you and the Justice Department. If I can take this step by step, first of all, I think that the case of a common law marriage abroad—the issue is immediate relative status for a child—in the case of a common law marriage, we certainly should look with favor on giving relative status to the children coming into the United States.

Adjudication of paternity should fall into this category. Where the father has actual custody of this child, it seems to me you should look with favor on granting relative status. Where the father does not have custody, but has a long record of supporting the child, this should also apply.

That is my personal feeling, Mr. Chairman, as to the easier areas to consider. We get to the problem, however, where you have a U.S. citizen or a lawfully admitted adult who petitions thereafter for a child and under this bill it would be the father, the natural father.

I gather that a problem presented there is that the child that comes over to the United States under this relative status would then be in a position to petition for his mother who may be married and have a family. They would all then come over.

Now how serious a problem is that?

Mr. WALENTYNOWICZ. Well, it is a concern, sir. We don't want to make this provision unduly difficult. But as the committee well knows,

the United States still is the prime source of immigration of the world. There are great demands of people coming in here. We are constantly besieged by problems of fraud.

Mr. FISH. I am not getting into fraud. I am asking you in the case I have just described of the father bringing in a son, the son would then be in a position to petition for his mother and her family.

Now how big a problem does that present to us? It was presented to us as an obstacle to this legislation.

Mr. WALENTYNOWICZ. We have not projected the numbers. Conceivably, from my experience, I would think that there would be a definite upward flow of immigration. Particularly since the potential immigration would not in some part be subject to the numerical limitations.

Mr. FISH. You think there are that many natural fathers who have maintained the necessary family unit with their child to cause a real bulge in immigration petitions?

Mr. WALENTYNOWICZ. I would refer to Mr. Arias.

Mr. ARIAS. From the Eastern hemisphere, let's remember the child would have to be an adult before he could petition for his other parent. From the Western Hemisphere as long as the present provision exists that a child can confer the benefits on the parents, that would mean an increase in the number of individuals in the Western Hemisphere who would profit by that provision. Of course it would not mean an increase in the overall immigration from the Western Hemisphere because that is limited by law.

Mr. FISH. So these petitions would fall under the overall ceiling?

Mr. ARIAS. That is correct. Of course, once the child becomes 21 years old in the Eastern Hemisphere if he has become an American citizen, he can petition for his parents to obtain immediate relative status.

Mr. FISH. In the Western Hemisphere there would be no increase but in the Eastern Hemisphere there would be. Can you give me a guess on the Eastern Hemisphere?

Mr. ARIAS. There would be an increase depending on the number of illegitimate children of fathers who when they become 21 years of age petition for the other parent.

Mr. FISH. You are answering a question with—which I have not asked yet. I gave you the first facts, the U.S. citizen lawfully admitted adult petitions for his son which is presently not permitted and would be permitted if this bill became law.

Really, I am asking you do we have a problem? Is there any ground to think that there are so many fathers looking after children born out of wedlock that we are going to have a real bulge in immigration if we pass this?

Mr. WALENTYNOWICZ. My own feeling is based on my limited experience. I don't think we are talking about thousands of people. But on the other hand, to say that we are only talking about a few people is not accurate either. I think there would be some increase.

Mr. FISH. Having delineated everything down to the question of fraud, you give one example on page 4 of your prepared testimony, the example of an alien lawfully admitted would be in a position to claim parentage of any number of illegitimate children not having a common mother.

I can imagine that. I can see the person who has been a sailor all his life claiming that he had children all over the world. But how real is this?

Mr. WALENTYNOWICZ. I would say quite real. The movement of people in the Virgin Islands area is substantial. I am not trying to pick on any one particular group of people or any one country, but the fact of the matter is that the reports I get show that it is not unusual in certain countries for the male person to be the father of a number of different illegitimate children through various spouses. It is a real thing.

It is not imagination.

Mr. ARIAS. I heard of one case—

Mr. FISH. I will recognize you in just a minute. OK. I grant you in a different culture this may be a perfectly acceptable thing. What effect would introducing into this bill the adjudication aspect have?

He goes in and adjudicates the parentage of all the children? The chief of the village says, yes, I know all his wives and all these are his children; so what?

Mr. WALENTYNOWICZ. If in fact it is true, and if we as a country as a matter of policy want to confer on them immigration benefits and confer upon his children immigration benefits and then have the resulting sequential effects, fine. I have no problem if we do this as a matter of policy.

But my difficulty is not so much that we do it as a matter of policy. That I reserve to your judgment and also to your judgment the fact that if you do it for the wives, why not do it for the fathers?

The point we are concerned with is how this is established. Saying this is a policy is one thing, but carrying out that policy is another thing. With the problems of fraud we have, we may have many claims where people will say, Yes, I sired six or seven different children by six or seven different wives. Now, all of a sudden, we have a real pyramiding effect and we will be putting the consular officer to the test of determining whether or not the claim by the individual is so.

Mr. FISH. You have testified to that already. I just want to establish that the example we are talking about right now is not a good example of fraud.

We are talking about an accepted practice of the culture of a particular community where you don't get married apparently. You just sire children. That is not a question of fraud.

Mr. WALENTYNOWICZ. Then I have not made myself clear because it is in part a question of fraud. While it may be that the practice of a part of the community is to sire many children through many different wives, once it becomes known that this is a way of coming to the United States, a good many more male members of that society or country will want to claim that they engage in the practice even though in fact they may not have engaged in the practice.

Mr. FISH. Why would they want to do that?

Mr. WALENTYNOWICZ. To get into the United States and confer the benefits upon the children and the mother.

Mr. FISH. What interest would they have in these children if they were not here?

Mr. WALENTYNOWICZ. This would be their means of coming into the United States, you see.

Mr. FISH. I think you said that you could give other examples of fraud other than the one in your testimony. Could you give us some? It seems to me this is the nub of the issue. What are the dangers here? Where is the fraud? Where is the potential for fraud?

Mr. WALENTYNOWICZ. If you are talking about fraud in the sense of document fraud, I can imagine some kind of document fraud involved in this.

For example, if you place the burden entirely upon the consular officer to determine the status of this relationship, our experience has been that people will come in with all kinds of fraudulent documents. One example is our problem with labor certifications. People come in with letters indicating that they have jobs. We have examples of people getting false affidavits from other people.

That kind of document fraud will become just as prevalent in this situation once we create an opportunity and the people get to know that this is their way of coming into the United States.

Mr. FISH. One more question. Will you tell us how many cases of fraud have been discovered or investigated in the last 5 years involving false claims of parenthood?

Mr. ARIAS. We don't keep statistics—

Mr. WALENTYNOWICZ. We don't keep statistics on that particular item. We keep statistics on fraud but it is not that selective.

Mr. FISH. Thank you, Mr. Chairman.

Mr. EILBERG. Mr. Walentynowicz, you raised the very interesting proposition that the burden should be upon us, the Congress, to establish the law, write into the law elements which would prevent fraud rather than the vehicle of administrative regulations.

How do you arrive at that conclusion? Why should we have that responsibility rather than you?

Mr. WALENTYNOWICZ. I think you are raising a good question. The broad issue is just exactly how particular do you want the law to be as contrasted with how much authority you want the executive branch to have in terms of running the law.

I have no difficulty with achieving the end result that I suggested here by way of regulations. I think it is important that we at least get an indication from Congress that this type of regulation is the kind of regulation the Congress would find acceptable.

Many times we issue regulations and we find that congressional sentiment is not in favor of that regulation. We made the statement here to set forth our feelings so that you are aware of what our position is and what our thinking is.

If you would prefer that we come to this end result by regulation instead of by legislation, I have no big problem with it so long as you have an idea of what we are thinking.

Mr. EILBERG. I think many people in the country feel that we are down here making too many laws. Maybe sometime between now and the near future you might propose draft regulations which we could take a look at which would help us in this matter.

Would you be willing to do that?

Mr. WALENTYNOWICZ. Yes.

Mr. EILBERG. In your statement you talk about imposition of a 2-year resident requirement is one way of meeting the possibility of fraud. Wouldn't this create impractical difficulties and wouldn't this be an unreasonable requirement in some cases?

Mr. WALENTYNOWICZ. I think perhaps the INS has suggested the 2 years.

Mr. EILBERG. We will wait for INS on that. Should there be a different age limitation for qualifying as an illegitimate child than for a natural child or a step child?

Mr. WALENTYNOWICZ. To be candid with you, Mr. Chairman, I did not give that any full thought. But my immediate reaction in terms of dealing with the problem is that I can't see why you would have an age difference. I think if a child is a child, he is a child. If we treat one child one way, we should treat the other children the same way.

Mr. EILBERG. Do you see any problem with the number of illegitimate children a father may seek to have admitted to the United States?

Mr. WALENTYNOWICZ. Yes; I do see a problem.

For example, we have had an incident that Mr. Arias related to me that a man in the Dominican Republic has claimed that he sired 103 children through various women. The problem I see is not so much whether that man was able to do that, but how many other men will claim to be able to do that? That is the difference.

Mr. EILBERG. Mr. Fish?

Mr. FISH. Thank you, Mr. Chairman.

Mr. Arias, has this lucky fellow from the Dominican Republic expressed any interest in bringing these 103 children to the United States?

Mr. WALENTYNOWICZ. Not at this point.

Mr. FISH. Why is this cited?

Mr. WALENTYNOWICZ. Once he knows, then I think his interest will certainly be awakened.

Mr. EILBERG. We will ask you to prepare some documentation for us before we attempt further consideration on the bill itself. I think we ought to answer the rollcall.

We will return and Ms. Holtzman will ask further questions as she is the primary sponsor of the bill.

[Voting recess.]

Mr. EILBERG. Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I wondered, Mr. Walentynowicz, if you could at a later moment but as quickly as possible provide to the subcommittee some information on the acknowledgement procedure that you presently are using to administer section 101(b)(1)?

Mr. WALENTYNOWICZ. Dealing with the stepmother, I would be more than happy. I had an additional thought. In the instance of the stepmother, a family unit is being created. The stepmother has married the father and there is a family unit.

With respect to the situation we are discussing in many instances there would be no such family unit. It would be the relationship between the illegitimate child and the father.

Ms. HOLTZMAN. I appreciate the observation but I think it creates other problems with respect to discrimination between natural fathers who are not married and natural mothers who are not married and natural fathers who are married.

But let me also ask you one other question. I wondered if in preparing these proposed regulations that you said you would prepare this response to your answer to the chairman whether you would consider the possibility of considering standards for determining paternity or eligibility under my proposed bill?

For example, could it be pattern of support by the natural father for his child, some kind of acknowledgement, perhaps before a notary, perhaps in terms of a name on a birth certificate, perhaps living with the child as alternative forms or as a combined form of demonstrating the relationship of the father and child.

Mr. WALENTYNOWICZ. We would be more than happy because one of the primary thoughts in our minds with respect to this type of legislation is the fact that it should emphasize the need of the family relationship.

I think that that is an important policy underlying our immigration laws.

Mr. EILBERG. We thank you for appearing here this morning. I think one of the valuable contributions is your willingness to prepare draft regulations. I hope they will be done as soon as possible.

It will facilitate the work of this subcommittee.

Mr. WALENTYNOWICZ. We will get at them. There is one other problem which I think we can resolve by the interaction of the committee and us and that is this: The absence of an indication that the regulations have committee knowledge and approval, makes it more difficult to sustain those regulations in any kind of a court test.

One of the favorite arguments by the court with the practicing lawyer is: "If Congress had wanted it, it would have said it."

Sometimes it is important to provide for that by the interaction that you propose.

Mr. EILBERG. We will be happy to. We thank you very much, gentlemen. (See p. 150.)

Mr. WALENTYNOWICZ. Thank you, Mr. Chairman.

Mr. EILBERG. Mr. Bernsen, please? We are pleased this morning to have Mr. Sam Bernsen, General Counsel of the Immigration and Naturalization Service. Welcome.

[The prepared statement of Hon. Leonard F. Walentynowicz follows:]

STATEMENT OF HON. LEONARD F. WALENTYNOWICZ, ADMINISTRATOR, BUREAU OF SECURITY AND CONSULAR AFFAIRS

Mr. Chairman, members of the subcommittee, I am pleased to have been invited to present the views of the Department on H.R. 10993. The Department believes the objective of the bill, which is to provide immigration benefits to and through the illegitimate child by reason of its relationship to its natural father, is sound. The Department is aware that courts in recent years have conferred benefits of other types through such a relationship. There appears to be no compelling reason why immigration benefits should be derived through the relationship of an illegitimate child to its natural mother but not through its natural father.

The Department does recognize that some basis has existed for not permitting immigration benefits to flow between an illegitimate child and its natural father. All of the derivative immigration benefits provided by the existing clauses of section 101(b)(1) of the Act contemplate the existence of a family unity. Along with the legitimate child there is included within the meaning of the term "child", subject to certain qualifying conditions, the stepchild, the legitimated child and the adopted child, as well as the illegitimate child when the benefits derive by reason of its relationship to its natural mother. All of these classifications contemplate the existence of a family unity between the child and the parent by or through whom or on whose behalf a status, privilege or benefit is sought. The bill would include new beneficiaries within the meaning of the term "child" by adding to the existing classifications an illegitimate child by virtue of its relationship to its natural father; a relationship which does not necessarily contemplate the existence of a family unity. To state the situation differently, a parent normally maintains a family unity with a natural child that is born in wedlock as would a parent with a step-child or an adopted child. However, in the case of a child

born out of wedlock, a family unity is normally maintained between the child and its natural mother but not necessarily between the child and its natural father. Experience would indeed indicate that there is frequently no unity of family between the illegitimate child and its natural father. In these situations where there is no family unity, the separation of the child from its natural father would not be violative of the unification of family principles underlying our immigration laws.

The Department concedes that there is a basis for including within the meaning of the term "child" for immigration purposes, the illegitimate child claiming status through its natural father because there is a family unity in many of these situations. However, the Department is fearful that the enactment of H.R. 10993 in its present form will provide open invitation to fraudulent claims. For example, an alien lawfully admitted for permanent residence would be in a position to claim a paternal relationship to any number of alien illegitimate children not having a common mother. If these claims were to be considered to have been proven and were accepted by this country for immigration purposes without any requirement for participation by the appropriate authorities of the alien's own government, we believe that fraudulent claims for the benefits would be energetically and persistently pursued. This would be particularly true in countries of the Western Hemisphere where the establishment of the relationship contemplated by the bill would provide an automatic statutory exemption from the labor certification procedures prescribed in section 212(a)(14) of the Act for the "child"; and after the child's admission to the United States for lawful permanent residence a similar exemption for the child's mother; and after her admission as an immigrant a similar exemption for her spouse and children. Similar pyramiding results would be possible through the relative preference categories established for immigration by natives of countries of the Eastern Hemisphere and their dependent areas.

It is the opinion of the Department that the bill should include some safeguard provisions to protect against the proliferation of spurious and fraudulent claims for its derivative benefits. The Department has not been able to develop a protective mechanism of this type that would meet this requirement but instead recommends an alternative proposal which it believes will substantially advance the objective of the bill. It is the Department's view that clause (C) of section 101(b)(1), which provides for derivative immigration benefits by and through a legitimated child, should be retained and that clause (D) of that section should be amended to allow for the inclusion within the meaning of the term "child" an illegitimate child by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural father where that relationship has been established by adjudication of a competent court. The requirement for adjudication of paternity by a competent court has the additional safeguard of requiring an examination of the claimed paternal relationship under the internal laws of the alien's country of residence or nationality or possibly under the internal laws of the country of the child's birth. An adjudication of paternity by a competent court is normally accompanied by an imposition of obligations on the father to support the child. With this kind of an adjudicative record the Department believes that the family unity concepts existing within the categories of persons covered by the other clauses of section 101(b)(1) may logically be considered to have been satisfied. This amendment would in the Department's view give meaning to the acceptable objective of the bill but would substantially reduce the opportunities for fraudulent claims. The Subcommittee may feel that further safeguards are needed to reduce anticipated fraudulent claims under this proposed amendment.

The Department believes that its preferred amendment of section 101(b)(1) imposes a reasonable standard of proof for establishing the relationship of an illegitimate child to its natural father. The lack of such a standard in existing law for establishing the relationship of an illegitimate child to its natural mother is justified by the very nature of the event of birth. A record of the birth affirming the relationship of the child to its mother is normally created. Additionally, there are ordinarily persons having personal knowledge of the birth, such as a doctor or midwife, who can confirm the existence of the relationship. Evidence of this type is not as a rule available to establish the paternity of an illegitimate child. Two or more persons can logically claim paternity of an illegitimate child and a court having jurisdiction over the persons and documents involved in a paternity controversy can best determine the probative value of the evidence

relating to that issue consistent with the local laws and customs governing family relationships.

The retention of clause (C) of section 101(b) (1), coupled with the amendment of clause (D), has the collateral advantage of continuing in effect in the Immigration and Nationality Act the recognition of the legal principle of legitimation. It is a principle well rooted in American jurisprudence and one which is still favorably regarded by our courts.

This concludes my prepared statement and I will be pleased to answer questions of the Chairman and Members of the Subcommittee.

**TESTIMONY OF SAM BERNSEN, GENERAL COUNSEL, THE IMMIGRATION AND NATURALIZATION SERVICE; ACCOMPANIED BY PAUL SCHMIDT, STAFF ATTORNEY, OFFICE OF THE GENERAL COUNSEL**

Mr. BERNSEN. I have with me Mr. Paul Schmidt, a staff attorney in the General Counsel's office. With your permission may I make a summary of my short statement?

Mr. EILBERG. We would like to include your complete statement in the hearing record.

Mr. BERNSEN. Mr. Chairman and members of the committee, it is a pleasure to be here today to present the views of the Department of Justice on H.R. 10993.

This bill would amend section 101(b) of the Immigration and Nationality Act to allow an illegitimate child to be classified as the child of either of its natural parents. It should be noted that the proposed amendment would not change the 101(c) (1) definition of child under title III of the act, relating to nationality.

Presently under 101(b) (1) (D) of the act, an illegitimate child is entitled to status, benefits and privileges only by virtue of relationship to its natural mother. An illegitimate child can obtain benefits from its natural father under 101(b) (1) (C) of the act only if it is legitimated under the law of its residence or domicile, or under the law of the father's residence or domicile, before the child reaches the age of 18 and if the child is in the legal custody of the legitimating parent or parents at the time of legitimation.

It is also possible for an illegitimate child to qualify as a stepchild under 101(b) (1) (B), if its father marries a U.S. citizen or lawful permanent resident before the child reaches the age 18.

It is the administrative view, however, that such stepchild status can be conferred only if the child, its natural father and stepmother have resided together as a close family unit.

Prior to 1952 the term child was defined merely in a negative manner by the Immigration Act of 1924 as not including a child by adoption unless the adoption took place before January 1, 1924. Regulations of the Department of State, however, provided that a U.S. citizen mother could file a petition for nonquota status for her alien illegitimate child.

In enacting the 1952 act Congress expressed its intent to maintain the family unit wherever possible. The 1952 act definition of child included legitimate children, stepchildren, and legitimated children as defined in present sections 101(b) (1) (A) and (B) and (C) respectively.

The constitutionality of precluding illegitimate children from asserting a claim to benefits in behalf of their natural fathers was



recently upheld by a three-judge court in the eastern district of New York.

Basically the court held that the determination of which classes of aliens should be admitted to the United States is reserved to Congress, and that there is some rational basis for excluding natural fathers and their illegitimate children from the definitions of parent and child under the act.

The plaintiffs appealed directly to the Supreme Court which noted probable jurisdiction on June 7, 1976. The case is scheduled to be argued in the Supreme Court next term.

The Department is well aware of the increasing judicial concern for illegitimates.

On the other hand the Department is concerned about the increased opportunities for fraud and the greater administrative burdens which would result from passage of this bill. In this respect, I note that the Supreme Court recently held in a case involving the Social Security Act that subjecting illegitimates to different standards than legitimates may be justified by considerations of administrative convenience as long as the standards were not irrational.

The Department believes that any new legislation should contain at least minimal safeguards to reduce the incidence of fraud. A sufficient safeguard might take the form of a two-year residency requirement comparable to that presently contained in 101(b)(1)(E) of the act related to adoptions, except that where the child is under the age of 2 status would be granted upon a showing of continuous residence and care of the child since birth.

As mentioned earlier, administrative authorities have found the existence of a close family unit is a relevant consideration in situations involving illegitimate stepchildren. Moreover, such a requirement would be entirely consistent with the overall congressional concern for maintaining bona fide family units.

In light of increased judicial concern over discrimination on the basis of sex, it is believed that any residency requirement should be applicable to both fathers and mothers of illegitimates.

In summary the department does not oppose equal treatment of illegitimate children claiming status through their fathers if sufficient safeguards were added to the bill to reduce the possibility of fraud in all cases involving illegitimates.

Thank you, Mr. Chairman.

I will be pleased to answer your questions.

Mr. EILBERG. Mr. Bernsen, you stated recently the desirability of safeguards being placed in the legislation. I know you have been here all morning and you heard the reaction of the members to testimony offered by the State Department.

It seems to us it would facilitate a resolution of this issue if the departments involved were to provide their own regulations or their own internal safeguards making our job that much easier because of the lateness of this particular session.

Is that possible as far as Immigration is concerned? Can you prepare regulations at an early time?

Mr. BERNSEN. We will be glad to work on regulations, Mr. Chairman.

Mr. EILBERG. Please prepare draft regulations we might take a look

at and use in our consideration of this matter. Is that all right with you?

Mr. BERNSEN. Yes.

[The following letters were received from the Departments of State and Justice relating to draft proposed regulations on this subject:]

DEPARTMENT OF STATE,  
BUREAU OF SECURITY AND CONSULAR AFFAIRS,  
Washington, D.C., September 21, 1976.

HON. JOSHUA EILBERG,  
*Chairman, Subcommittee on Immigration, Citizenship, and International Law,  
Committee on the Judiciary, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: During the Subcommittee's hearings on H.R. 10993, held on July 28, 1976, the Department was asked to submit to the Subcommittee information on the procedures presently used to document immigrant visa cases arising under section 101(b)(1)(B) of the Immigration and Nationality Act, as amended, which depend upon the establishment of the relationship of an alleged natural father to his illegitimate child.

You will recall that during the hearing concern was expressed as to the possibilities of fraud, the burden that would be placed upon the consular officers in the field and the Department's present standards and experience in dealing with somewhat similar situations involving stepmothers. As a result, it was felt provident to ask our posts abroad to provide information relating to the local law and procedures available for establishing the relationship of a natural father to his illegitimate child and the documentary requirements that have been imposed for establishing the relationship as well as the extent to which fraud has been a factor in the adjudication of these cases in order to be as responsive as possible, as well as develop an adequate data base upon which to make any regulations and further recommendations.

This accounts for the lapse of time in our submission to you. In addition this additional information has caused us to reflect further on the merits and impact of the proposed legislation and we make the following additional comments with respect thereto.

Of the 111 Embassies that have responded to our request for the above-mentioned information, 87 of them have reported that no stepchild/stepparent relationships of the type in question have been adjudicated within the last year. Only 16 consular offices reported having adjudicated any significant number of these cases during the year. Nine consular offices have reported adjudicating 50 or more of these cases. The Embassy at Port-au-Prince, Haiti and the Consulate General at Tijuana, Mexico have estimated that they have separately adjudicated about 1,000 of these cases during the last year. The Embassy at Kingston, Jamaica has estimated that it adjudicated about 600 such cases last year and six other consular offices, i.e., Port-of-Spain, Trinidad; Tegucigalpa, Honduras; Guyanaquil, Ecuador; Georgetown, Guyana; Santo Domingo, Dominican Republic; and San Salvador, El Salvador, have given estimates of the number of these cases they have adjudicated during the year which range from 200 down to 50.

There is a judicial procedure available under local law for establishing a paternal relationship to an illegitimate child in seven of the nine countries concerned. There are no such procedures available in Trinidad or El Salvador. The judicial procedures which are available differ from country to country. For example, judicial procedures are available in Jamaica only after an illegitimate child has attained the age of one year without having been administratively recognized by his natural father. This is a lengthy process and one not easily concluded. The judicial procedures in the Dominican Republic provide for the establishment of paternity regardless of the age of the offspring and it is not unusual for this to occur thirty years after the child's birth.

All of the nine countries have administrative procedures for the recognition of the illegitimate child by its natural father. The procedures are very easy to comply with in most instances because all of the countries in question have a very high incidence of illegitimate births—knowledgeable sources in Jamaica, for example, estimate that 80% of the children born in that country are born out of wedlock. The responsibility for the welfare and rearing of the children usually falls on the grandmother or other female relatives of the mother and in Jamaica it is reported that about 5% are supported and cared for by the natural father. Consular officers in all the jurisdictions require a record of birth which shows the father's name and which was created at the time of birth or shortly

after the birth. In countries in which the father's name seldom appears on the original birth record, as is the case in Guyana, consular officers require that circumstantial evidence be presented which will reasonably establish proof of paternity. If an early recognition of the child has not been made a matter of official record by the natural father, where that procedure is available under local law, the consular officers usually decline to register the derivative claimant for immigration or have an investigation made in an attempt to verify the paternal relationship.

Consular officers will accept a judicial determination of the relationship when there has been no record of birth created which shows the natural father's name and where their own investigations of the circumstances fail to establish that a relationship exists between the illegitimate child and the person claiming to be the father. Court adjudication of the relationship is not required by most consular officers simply because alternative administrative recognition procedures are normally available to the natural father. These procedures are less cumbersome and time-consuming and are regarded by consular officers as equally reliable with court determinations in eliminating fraudulent claims to the paternal relationship.

While the Department favors the objective of sexual equality in the conferring of derivative immigration benefits, such objective must be considered in light of the other objectives of our immigration law. One such other objective is the reunification of families. There is ample evidence in legislative history and in provisions of the Immigration and Nationality Act, such as sections 101(b)(1)(E) and 203(a)(9), that immigration benefits will only be conferred in order to reunite families and not simply because a biological relationship exists.

It is true that in some instances, such as section 101(b)(1)(B), the language of the statute appears to confer benefits once a legal or biological relationship is established, but we believe that implicit in such language was an assumption by Congress that such relationship invariably in practice carried with it a family unity.

On the other hand, it is evident that many legal or biological relationships have no family unity accompanying them. This is vividly confirmed by our experience domestically as well as by the reports from abroad. In other words, the conferring of immigration benefits upon the relationship between an illegitimate child and its mother carries with it the implicit understanding that this will promote the unity of that family. Conferring immigration benefits upon the relationship between an illegitimate child and its father does not carry with it the implicit understanding that this will promote the unity of the family.

The Department sees insufficient reason why immigration benefits should be conferred simply because of a biological relationship between an illegitimate child and its father, particularly since experience has shown us that many fathers either abandon or show little interest in such child. Nevertheless, the Department sees no reason why immigration benefits should not be conferred in the same situation once it is established that the father and child is a family unit.

Accordingly, in drafting the proposed regulations requested by the Subcommittee during the hearings, the Department has been guided by the following considerations:

(1) The totality of the information provided by our consular offices serves to reinforce the Department's belief that the amendment of section 101(b)(1)(D) in the manner contemplated by H.R. 10993 will provide substantial opportunity for the perpetration of fraud.

(2) The draft regulations allow for the concept of family unity and would consequently bar the flow of derivative immigration benefits to a parent who has never established or has no intention of establishing a family unity with the child.

(3) The draft regulations are based on the assumption that section 101(b)(1)(C) of the Act will not be repealed but that section 101(b)(1)(D) will be amended to permit immigration benefits for an illegitimate child, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to either of its natural parents, and

(4) While the proposed amendment will place additional burdens upon consular officers we believe that on balance it would be fairer to give a potential beneficiary more latitude in establishing compliance with our requirements than restricting him solely to local judicial and administrative determinations.

Furthermore, in the interests of consistency and clarity, the Department suggests that the requirements for establishing the natural father/illegitimate child relationship for the purpose of amended section 101(b)(1)(D) should apply equally to the natural mother/illegitimate child relationship.

The Department also wishes to call to the Subcommittee's attention that the standards of proof proposed in the Department's draft regulations are stricter than those imposed by courts in section 101(b)(1)(B) stepchild cases (*Andrade v. Esperdy*, 270 F. Supp. 516, S.D.N.Y. 1967). Regardless of how Congress acts to amend the law, the Report should clearly show that the Department's proposed draft regulations have been favorably received.

If you believe that the Department can provide you with any further information which would be helpful in the Subcommittee's further considerations of H.R. 10993, please let me know.

Sincerely,

LEONARD F. WALENTYNOWICZ.

Enclosure.

#### DRAFT REGULATIONS

(a) For the purpose of section 101(b)(1)(B) and (D), status as a natural parent shall only be accorded upon presentation of documentary evidence which establishes to the satisfaction of the consular officer that the asserted parent is in fact the natural parent of the child in question. Documentation to establish the relationship may include, but is not limited to any one of, or a combination thereof, the following: a contemporaneous birth certificate showing the name of the natural father; a judicial adjudication of paternity; civil acknowledgment or recognition of paternity; any other official document stating the father/child relationship; an affidavit by the natural mother identifying the natural father and describing the nature and duration of her relationship with him; evidence of the natural father's support and maintenance of the child; photographs; letters; and affidavits of persons having personal knowledge of the existence of the father/child relationship.

(b) Provided, that even when a natural parent/child relationship is established, no immigration benefit or status as a natural parent or step parent shall be accorded in the absence of a finding by the consular officer that a bona fide family relationship exists or will be created between the natural or step parent and the child concerned.

(c) For the purpose of ascertaining whether a natural parent/child relationship or a family relationship exists in any case, the consular officer may request such further documentation and/or proof as may be deemed necessary.

U.S. DEPARTMENT OF JUSTICE,  
IMMIGRATION AND NATURALIZATION SERVICE,  
*Washington, D.C., October 1, 1976.*

Hon. JOSHUA EILBERG,  
*Chairman, Subcommittee on Immigration, Citizenship, and International Law,  
Committee on the Judiciary, House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: On July 28, 1976, hearings were conducted by the Subcommittee on Immigration, Citizenship, and International Law regarding H.R. 10993, a bill to amend section 101(b) of the Immigration and Nationality Act to allow an illegitimate child to be classified as the "child" of its natural father.

At the hearing, the Service was requested to submit to the Subcommittee proposed regulations that would govern the establishment of paternity in the event the bill were enacted. Attached is a draft copy of such proposed regulations.

The Service is presently considering whether to publish a Notice of Proposed Rulemaking for similar regulations dealing with proof of paternity in connection with applications by a United States citizen or lawful permanent resident stepmother for her husband's illegitimate children under the rule set forth in *Nation v. Esperdy*, 239 F.Supp. 531 (S.D.N.Y. 1965), and, in the New York District only, under the rule set forth in *Andrade v. Esperdy*, 270 F.Supp. 516 (S.D.N.Y.) 1967).

Also, in accordance with the Subcommittee's request (transcript p. 43) the following information obtained through the Department of State is furnished concerning Canadian immigration law with respect to illegitimate children and their natural fathers:

Canadian immigration law makes no provision for benefits to flow be-

tween illegitimate child and natural father unless child is formally adopted by father before age 18. Illegitimate children sometimes are admitted to join putative father but only by special dispensation 'outside the law' to facilitate eventual adoption in Canada. These cases are treated individually and no fixed rules of proof of parentage exist.

Sincerely,

L. F. CHAPMAN, Jr.,  
Commissioner.

Attachment.

204.25 PROOF OF PATERNITY OF AN ILLEGITIMATE CHILD

(a) *Evidence.* Any application for a benefit in behalf of, or through, an illegitimate child by reason of its relationship to its natural father must be accompanied by a contemporaneous birth certificate. If a contemporaneous birth certificate is shown to be unavailable, or if such birth certificate does not identify the father of the child, the application must be accompanied by alternate proof of paternity which may include, but is not limited to: an affidavit by the natural mother identifying the natural father and describing the nature and duration of her relationship with him; a court decree, an administrative determination, or any other official document listing the relationship; evidence of residence with the child; evidence of support and maintenance of the child; photographs; letters; affidavits of persons having personal knowledge of the existence of the relationship. Submission of the foregoing evidence shall not preclude the Service from conducting any further inquiry or an investigation into the claimed relationship, or from requiring the submission of additional evidence.

(b) *Affidavits.* Affidavits should set forth (1) the nature of the affiant's relationship, if any, to the claimants, (2) the basis of the affiant's knowledge, and (3) a statement of facts the affiant knows regarding the relationship. Conclusory statements as to the existence of the relationship which do not set forth the basis and the specific facts known will not be considered acceptable evidence.

(c) *Blood Tests.* Blood tests may be required in connection with any application where paternity is in issue.

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Mr. EILBERG. What is currently done to determine whether a man is a natural father of a child in cases when an illegitimate child seeks to be qualified as a stepchild?

Mr. BERNSEN. Visa petitions are submitted to the immigration service by the petitioning parent and that parent is required to prove his relationship to the child. However, we have a rather strange situation. Section 101(b)(1)(B) provides that a step child, even if illegitimate, shall nevertheless be considered a child if the child was under age 18 when the marriage creating the status of stepchild occurred.

Because of the language in section 101 a district court in New York has interpreted the law to mean that the stepchild provision applies to fathers as well as to mothers of illegitimate children just the other way around. In other words, where we have a natural father of an illegitimate child marrying a U.S. citizen woman she can petition for that child as her stepchild under section 101 if the three of them have lived together as a family unit. This is the administrative policy based on a court decision in New York.

Another court in New York went one step further and said that you don't need to show a family unit because the literal language of section 101(b)(1)(B) does permit a natural mother to petition for her husband's illegitimate child. Her petition is submitted as the step-mother of that child.

We would require that paternity be established in that kind of case. The father of that illegitimate child would have to show——

Mr. EILBERG. How?

Mr. BERNSEN. Occasionally a birth certificate names the father. In most cases that does not appear. In that event we would request affidavits from the mother stating who the father is and how long she and the natural father lived together, or affidavits from people who know the facts of the claimed relationship and any other proof that might have a bearing.

Mr. EILBERG. Mr. Fish?

Mr. FISH. What other forms of proof? Could you develop that further?

Mr. BERNSEN. Possibly school documents naming the father. There may be letters, money orders, photographs.

Mr. FISH. How about the fact of custody, support?

Mr. BERNSEN. That would be a factor, yes.

Mr. FISH. Absent custody, how about a record of several years of mailing support to the mother?

Mr. BERNSEN. That would be considered yes.

Mr. FISH. These are considered factors today by Immigration Service?

Mr. BERNSEN. Yes.

Mr. EILBERG. Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

I think the prior questioning has been extremely important because the bill that I have introduced is designed to accomplish the objective of the immigration laws which is to reunite families to permit natural fathers and illegitimate children to live together and to eliminate the discrimination on the basis of sex that appears under present law.

I share your concern about avoiding fraud. I do agree with the chairman that the best way—in any case, I believe the best way to deal with the problem of fraud, possible fraud, is to do it through regulations.

The Immigration Service right now deals with problems of fraud under marriage laws, under all kinds of relative applications. I certainly don't believe that the Immigration Service is any less capable of dealing with the problem of fraud with respect to illegitimate children than it is with respect to husbands and wives, for example.

I am concerned that the 2-year residence requirement is an onerous requirement and will not serve to reunite families. For example the father lives in the United States. The child was cared for by the natural mother to whom the father was not married.

The natural mother died. No one to take care of the child, no other relatives in the foreign country. The father continues to support the child. The father's name is on the birth certificate of the child. Yet this father is now unable to bring this child to stay with him in the United States.

Your proposal would not permit this father in this circumstance to bring his child into this country where you have substantial proof of not only parenthood but continuous concern, continuous support over a period of time. So I would suggest Mr. Bernsen, that if you draft some proposal, some proposed regulations, you develop draft

regulations that take into account different criteria from the ones you have suggested.

I think they are much too restrictive and don't necessarily achieve the objective we are talking about which is to reunite parents and children when they are in fact parents and children.

I would suggest that standards, for example, such as acknowledgement by the father either through letters or through his name on the birth certificate or other means, that would be a factor that ought to be considered in determining fatherhood.

I think also either custody or some demonstration of support over some period of time ought to be taken into account. You might also have to take into account situations where there has not been the possibility of support, where the mother dies quickly and you are talking about an infant several months old, for example.

But I think that most might be criteria that would protect the interests of the United States against fraud and the same time guaranty that fathers and their children can be reunited in accordance with the spirit of our immigration laws.

Mr. BERNSEN. We will take those suggestions into account in trying to draft regulations.

Mr. EILBERG. Mr. Fish?

Mr. FISH. Sam, thank you. Thank you, Mr. Chairman. Are you familiar with the Canadian laws in this field?

Mr. BERNSEN. No.

Mr. FISH. I would be interested in knowing how they resolve this.

Mr. BERNSEN. We would be glad to find out and submit that information for the record.

Mr. FISH. If they don't differentiate, we can benefit from their experience under the law.

Thank you, Mr. Chairman.

Mr. EILBERG. Mr. Bernsen, you are familiar with H.R. 10993. What would happen if a 101 (b) (1) (C) were repealed?

Mr. BERNSEN. This is the provision that allows a legitimated child to come in. If we repeal that, we close off one remedy which might be better to leave on the statute books.

Mr. EILBERG. Can you suggest any other safeguards which the subcommittee might consider, especially in view of the fact that fraud is a distinct possibility in these types of cases?

Of course we are putting the burden on you at this point but I would like to explore this with you further.

Mr. BERNSEN. We should explore every possible way that can be used to exclude the possibility of fraud.

Mr. EILBERG. Should the Attorney General be required to determine if the natural father will provide suitable care for the illegitimate child?

Mr. BERNSEN. What is going through my mind in response to your question is that we do require that in the orphan cases where a petition is submitted for an orphan child, there must be such a showing. My initial reaction is that that idea appeals to me.

Mr. EILBERG. You might consider it among your draft regulations.

Mr. BERNSEN. Yes, sir.

Mr. EILBERG. Can any administrative problems be foreseen should this bill be favorably enacted? Do you see any problems with the bill

assuming that you have regulations that would meet the fraud possibilities and so forth?

Mr. BERNSEN. I believe that adjudication of these cases would require more time, more evidence. More evidence would be needed along the lines that have already been suggested. We might have blood tests. We might have to have investigations in cases that might be doubtful.

Mr. EILBERG. How many illegitimate children would qualify for immigration as stepchildren?

Mr. BERNSEN. We don't know. We tried to get an idea of the size of that situation and we called New York. We are satisfied that at present it is less than 50 cases a year.

Mr. EILBERG. If there is no legitimation, should it be required that it be established that there was a family unit? Recognizing that our aim is family unification, should the benefits flow to a child who is not a part of the family and will never become a part of the natural father?

Mr. BERNSEN. If we are going to treat children the same way with respect to fathers as well as mothers, it may not be desirable to require that they are going to have a close family unit.

Mr. EILBERG. You would not require it?

Mr. BERNSEN. That is my initial reaction to that question, yes.

Mr. EILBERG. Mr. BERNSEN, would you consider that further?

Mr. BERNSEN. Yes.

Mr. EILBERG. Mr. Fish?

Mr. FISH. On that last point it seems to me that so many of the examples that we have been discussing are examples where you would not fit neatly under close family unit situations with the father.

The easiest one is where the mother and the child are in the United States and the father is not. He had a record of monthly support over a period of years. The law excludes him. There is one other thing that concerned me. You seem to indicate that the ability to support the child would be a burden on the natural father if this indeed becomes law.

Am I not correct that the immediate relative status that the child derives from its natural mother coming into the United States, in that case there is no examination of the mother's ability to support?

Mr. BERNSEN. That is correct. There is no need to show that the natural mother will support. It comes up in this way, though. It must be shown that the child will not be a public charge.

Mr. FISH. That is true for every applicant for immigration visa. Don't you think if we are making the natural father on a par with this bill with the mother that will—it will be imposing a double standard on him and not her to show financial ability to support?

Mr. BERNSEN. I don't know that I would characterize it as a double standard. The problem that troubles me most is that we want to do right without regard to sex. But we have to face the fact that the possibilities for fraud are there and that we should be cautious in the case where the illegitimate child is seeking a benefit through the natural father.

Mr. FISH. We have discussed at least a dozen standards by which you are going to satisfy yourself that this is indeed the natural father. The only one that concerned me was you seemed to indicate in response to a question by the chairman that proof of financial support would be considered.



I don't see how it bears on the issue of paternity or, really, the question of potential for fraud.

Mr. BERNSEN. I think then in the illegitimate cases involving fathers we have two problems. One is establishing paternity. Was he the natural father? Second, we have the family unit situation. Is there going to be a family unit? We might have to be concerned about that. I think if we are going to consider these ideas in writing regulations, we really have to sit down and work on it and try to put all these conflicting ideas together and see what we can come up with and present it to the subcommittee.

Mr. EILBERG. Ms. Holtzman?

Ms. HOLTZMAN. I think Congressman Fish has raised a very important point. At the same time we are trying to fashion regulations to deal with the problem of fraud, we don't at the same time want to put into the statutes discrimination based on sex.

If for example there is a requirement with respect to the natural mother on the demonstration that the child would not become a public charge, then obviously at least that requirement should be imposed on the natural father.

But it may not be constitutional to impose different standards. Similarly with respect to family units, if there is no requirement—I think your answer was originally there is no such requirement with respect to the natural mother—then it would seem to me constitutionally questionable as to whether we could impose a different standard on the natural father.

I would hope that you would take the question of discrimination on the basis of sex into account when you draft your proposed regulations. I don't think it would be helpful to solve one problem and create another problem at the same time.

Mr. BERNSEN. I could not agree with you more. We will have to give that a great deal of consideration, yes.

Ms. HOLTZMAN. With respect to family unit, we permit—it would seem to me that if the father and child wished to live together and wished to conduct a relationship in the United States is not so much a concern of the Immigration laws as it would be if we prohibit that relationship. I would be concerned about imposing that burden.

Mr. EILBERG. Mr. Endres?

Mr. ENDRES. I have one question, Mr. Chairman, and that goes toward the conversation and whether any different problems would arise or whether any different standards would be needed to be established where you have a U.S. citizen child over 21 who is filing an immediate relative position for his natural father.

In these cases, some of the items you referred to were with regard to support, assistance and perhaps family unit criteria which might go out the window. Would you need a separate set of standards for that type situation?

Mr. BERNSEN. I am not sure. We will have to take that into account in the study that we make on the regulations.

Mr. ENDRES. Thank you.

That is all, Mr. Chairman.

[The prepared statement of Mr. Sam Bernsen, General Counsel, Immigration and Naturalization Service follows:]

STATEMENT OF SAM BERNSEN, GENERAL COUNSEL IMMIGRATION AND  
NATURALIZATION SERVICE

Mr. Chairman, members of the Committee, it is a pleasure to be here today to present the views of the Department of Justice on H.R. 10993.

This bill would amend section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b)) to allow an illegitimate child to be classified as the "child" of either of its natural parents. It should be noted that the proposed amendment would not change the § 101(c) (1) definition of "child" under Title III of the Act, relating to nationality.

Presently, under § 101(b) (1) (D) of the Act, an illegitimate child is entitled to status, benefits, and privileges only by virtue of relationship to its natural mother. An illegitimate child can obtain benefits from its natural father under § 101(b) (1) (C) of the Act only if it is legitimated under the law of its residence or domicile, or under the law of the father's residence or domicile, before the child reaches the age of 18, and if the child is in the legal custody of the legitimating parent or parents at the time of legitimation.

It is also possible for an illegitimate child to qualify as a "stepchild" under § 101(b) (1) (B), if its father marries a United States citizen or lawful permanent resident before the child reaches the age of 18. (*Nation v. Esperdy*, 239 F. Supp. 531 (S.D.N.Y. 1965); *Andrade v. Esperdy*, 270 F. Supp. 516 (S.D.N.Y. 1967)). It is the administrative view, however, that such stepchild status can be conferred only if the child, its natural father, and the stepmother have resided together as a "close family unit." (*Matter of Amado and Montelro*, 13 I&N Dec. 179 (BIA 1969); *Matter of Soares*, 12 I&N Dec. 653 (BIA 1968)).

Prior to 1952, the term "child" was defined merely in a negative manner by § 23(a) of the Immigration Act of 1924 as not including a child by adoption unless the adoption took place before January 1, 1924. Regulations of the Department of State provided that a United States citizen mother could file a petition for "nonquota" status for her alien illegitimate child.

In enacting the 1952 Act, Congress expressed its intent to maintain the family unit wherever possible. (H. Rept. No. 1365, pp. 29, 39). The 1952 Act definition of "child" included legitimate children, stepchildren, and legitimated children as defined in present sections 101(b) (1) (A), (B), and (C), respectively. However, the Attorney General held that the new definition excluded an illegitimate child seeking status through its mother. (*Matter of A-*, I&N Dec. 272 (AG 1954)). In response to this ruling, Congress in 1957 added subsection (D) to § 101(b) (1), providing "child" status to an illegitimate through its mother, and amended subsection (B) to encompass illegitimate stepchildren. (71 Stat. 639; H. Rept. No. 1199, pp. 7-8)

The constitutionality of precluding illegitimate children from asserting a claim to benefits in behalf of their natural fathers was recently upheld by a three judge court in the Eastern District of New York. (*Fiallo v. Levi*, 406 F. Supp. 162 (E.D.N.Y. 1975)). Basically, the court held that (1) the determination of which classes of aliens should be admitted to the United States is reserved to Congress, and (2) that there is some rational basis for excluding natural fathers and their illegitimate children from the definitions of parent and child under the Act. The plaintiffs appealed directly to the Supreme Court which noted probable jurisdiction on June 7, 1976. The case is scheduled to be argued in the Supreme Court next term.

The Department is well aware of the increasing judicial concern for illegitimates. (See e.g., *Stanley v. Illinois*, 405 U.S. 645 (1972); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972); *Jimenez v. Weinberger*, 417 U.S. 628 (1974)). On the other hand, the Department is concerned about the increased opportunities for fraud and the greater administrative burdens which would result from passage of this bill. In this respect, I note that the Supreme Court recently held in a case involving the Social Security Act that subjecting illegitimates to different standards than legitimates may be justified by considerations of administrative convenience as long as the standards were not irrational. (*Mathews v. Lucas*, ——— U.S. ——— 44 L.W. 5139 (June 29, 1976)).

The Department believes that any new legislation should contain at least minimal safeguards to reduce the incidence of fraud. A sufficient safeguard might take the form of a two-year residency requirement comparable to that presently contained in § 101(b) (1) (E) of the Act, relating to adoptions, except that where the child is under the age of two status would be granted upon a

showing of continuous residence and care of the child since birth. As mentioned earlier, administrative authorities have found the existence of a "close family unit" is a relevant consideration in situations involving illegitimate stepchildren. Moreover, such a requirement would be entirely consistent with the overall congressional concern for maintaining bona fide family units.

In light of increased judicial concern over discrimination on the basis of sex, it is believed that any residency requirement should be applicable to both fathers and mothers of illegitimates. (See *Stanley v. Illinois*, supra; *Weinberger v. Wiesenfeld*, 420 U.S. 636, 652 (1975)). Meeting such a requirement would impose a new burden on mothers of illegitimate children, but one which they should have little difficulty satisfying in the vast majority of cases.

The Department predicts that enactment of this bill would result in increased expenses for investigations and adjudications by the Immigration and Naturalization Service where fraud is indicated. However, the precise budgetary impact cannot presently be determined.

In summary, the Department does not oppose equal treatment of illegitimate children claiming status through their fathers if sufficient safeguards were added to the bill to reduce the possibility of fraud in all cases involving illegitimates.

Thank you, Mr. Chairman. I will be pleased to answer your questions.

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Mr. EILBERG. There are no further questions. The subcommittee is adjourned. We thank you, Mr. Bernsen, for appearing here this morning.

Mr. BERNSEN. Thank you, Mr. Chairman.

[Whereupon, at 12:02 p.m., the subcommittee adjourned subject to call of the Chair.]

