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The Remarkable Case of Robert Olsen

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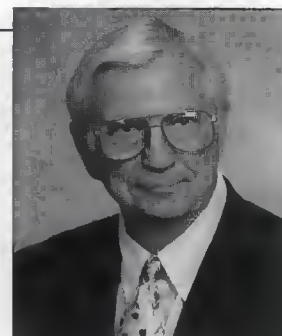
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PRESIDENT'S VIEWS

The Quiet Success of Our Consular Corps

BY DAN GEISLER

Back in 1924, President Calvin Coolidge signed legislation which created today's merit-based Foreign Service. That law, the Rogers Act, combined the diplomatic and consular corps into a single institution. In the past few years, our consular corps has scored some remarkable achievements in meeting increased demand for services and in keeping pace with new technology. These achievements don't get the recognition they deserve. Nor does the role that Consular Affairs plays in foreign policy.

The only direct experience most Americans and many foreigners have with the Foreign Service is through our consular officers. With their Civil Service and Foreign Service National colleagues, our 700-plus consular officers issued well over six million passports last year. That's a 100 percent increase over 1991, and they did it with just 10 percent more staff. While responding to higher demand, the Bureau of Consular Affairs also improved passport security. At the end of this year, the State Department will digitize an applicant's photo and print it directly on the passport. That will put an end to the old problem of photo substitution.

Consular officials make it possible for foreigners to travel to America. Those visits net the United States about \$25 billion per year. Of course, more tourists mean more visas to issue. In the early 1990s, non-immigrant visa

*Consular Affairs
has an essential
policy job that is
often overlooked.*



(NIV) issuance rose inexorably, up by 10 percent every three years. Recently it has fallen a bit, thanks to a Visa Waiver Pilot Program allowing short-term visitors from 26 countries to enter the United States without a visa. The waivers provided a brief respite from the inexorable rise in NIV applications. But we've already included most of the nations that meet the eligibility requirements, such as a refusal rate of less than three percent. So the workload is bound to rise again.

Our consular corps also helps the traveling American public and U.S. citizens living abroad. It responds to more than 500 requests per day for information about the welfare and whereabouts of Americans overseas. Consular officials play a crucial role in crisis management and emergency response, as we saw recently in the aftermath of the tragic bombings in Nairobi and Dar Es Salaam.

For many of us in the Foreign Service, that's the Consular Affairs story: passports, visas and American cit-

izen services. The Consular Corps has performed these functions admirably, serving the American people with distinction. Within the Department of State, the Consular Affairs Bureau works for the under secretary for management, as do the bureaus responsible for administration, personnel, security and finance. So an outside observer would judge Consular Affairs to be a service function, not a policy function. That's wrong.

Management of our borders is an integral part of national security. Consular officials do that. Negotiating multilateral conventions dealing with kidnapped children, dealing with extradition of criminals, deciding when to advise travelers to avoid a given country, and asserting access to U.S. citizens detained by foreign authorities are matters of foreign policy. Consular officials do all of that, too.

The great majority of Foreign Service officers personally experience the strain of working on a visa line with grossly inadequate resources. It's a tribute to the management and people of the Bureau of Consular Affairs that they deliver services so well with little. But their often-ignored role in foreign policy is important as well. So it was highly appropriate that Assistant Secretary for Consular Affairs Mary Ryan was recognized for her role managing both resources and policy this year, when Secretary Albright named her a career ambassador, the highest rank in the Foreign Service.

Congratulations to her, and to all of our consular colleagues. ■

Dan Geisler is president of the American Foreign Service Association.

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LETTERS

Ambassadorial Pressure

Robert Fauver's article in the June FSJ on "What Didn't We Know, and When Didn't We Know It?" was excellent, but he left out one key reason Washington was not informed properly about the looming Asian financial crisis: ambassadorial pressure and control.

In one East Asian country, a Commercial Service counselor began sounding warnings more than a year in advance that the economic boom was headed for a bust. Unfortunately, his message did not coincide with the good-news message that the ambassador was promoting. The ambassador began to marginalize the counselor, shutting him out of key briefings for Washington visitors or — if he could not keep him out altogether — putting him at the tail end of the briefing cycle so that time frequently ran out before he could speak. Privately, the ambassador ridiculed the counselor and his ideas.

I am ashamed to say that I did not go to the FCS counselor, offer my support and suggest that he prepare a dissent message. All I could think about

was how to do my own job as best I could so as not to incur the ambassador's wrath. In retrospect, I know that I should have acted, and I pray that in future I will be more supportive of officers whose views do not match the ambassador's.

Name withheld

How the Japanese Export

The *Journal's* two June 1998 articles on the global economy did not address adequately one of the main reasons why Japan's exports far exceeded American exports over the past several decades.

Japanese business leaders usually do not attempt to sell industrial products in developing countries until they first build warehouses close to distribution points, stock them with spare parts, and recruit and train host country repair personnel. This takes time.

Most American business leaders do not have that kind of time. Instead, they attempt to meet stockholder demands for profits right away by selling first. They postpone building warehouses, stocking spare parts, etc. Often the American approach succeeds, but the successes are ephemeral.

During my five years in Indonesia, 1978-83, I saw that host country leaders often bought American jeeps only because the vehicles were available. The Japanese refused to sell their jeep-

like vehicles until the auxiliary support was in place. After a year or two, many American jeeps were broken down along the highways, unable to be repaired, and Indonesians started to buy the equivalent Japanese vehicle. The same was true in high-grade electric power generating and distributing equipment.

Although our government must continue its negotiating efforts with the Japanese government to loosen trade barriers, American business leaders should also consider the Japanese approach to developing country exports.

*Morrie K. Blumberg
Retired FSO, USAID
Albuquerque, N.M.*

Unacceptable Language

How the editorial staff of a journal representing the American expression of thoughts allows the printing and distribution of the language and thoughts of Johnnie Prather and others in the July-August 1998 edition of the *Foreign Service Journal* is hard to accept.

The Nixon and Agnew episodes were severe tests of diplomatic behavior for those of us overseas at the time, but the printing and distributing of unacceptable language and behavior in our magazine calls for protest.

*Sarah H. Booher
Warrenton, Va.
FS Retiree*

The Foreign Service Journal welcomes your signed letters to the editor. Please mail letters to the Journal, 2101 E St., NW, Washington, D.C., 20037; fax to (202) 338-8244; or send via e-mail to journal@afsa.org. Letters, which are subject to editing, should include full name, title and post, address and daytime telephone number.

LETTERS

The editor responds: We regret any offense given to readers of our summer fiction issue, although we stand by our decision to publish those stories. Interestingly, no one on our Editorial Board, which reviewed those stories, raised any objections to the language or subject matter. It seems that what is dirty to one generation is earthy to the next.

Why Not Fewer Embassies?

Everyone is exercised about the bombings in Nairobi and Dar Es Salaam, and wondering how to improve embassy security.

Based on my experience of 30 years as an FSO, the answer is so obvious that I wonder that no one has mentioned it before: reduce the number of U.S. embassies abroad.

We are one of only a half-dozen countries that deems it essential to have a mission in every country in the world. Other countries have one embassy in a region (where neighboring countries have little political or economic importance). The regional ambassador is individually accredited to neighboring countries and travels to them from time to time as circumstances may demand. This would not only economize on salaries and living costs for ambassadors and support staff, but also on the cost of elaborate residences for each ambassador (and deputy) as well as on the enormous costs of constructing block-house embassies with perimeter fences and a dozen or more Marine security guards in 40 or 50 countries.

The main objection to such a straightforward answer to embassy security is Foreign Service egos. Every FSO aspires to become an ambassador, and the more embassies, the more chance of picking the golden plum. Cost, security and national foreign policy requirements have little to do with

such decisions. Perhaps it is time for the Congress to step in and dictate some good sense to the State Department.

David Brighton Timmins
FSO, retired
Salt Lake City, Utah

Another Seoul Survivor

Robert Rudolph's "Seoul Survivor" (July-August *Journal*) brought to memory a story told me in 1956 by Stan Philippi, an irrigation engineer I met in Sri Lanka, then known as Ceylon.

Stan and his wife had been evacuees from Seoul when the North Korean forces invaded the South. However, they returned after our forces recovered the city. When they went to their old home, they met the teenage son of their previous servant. This boy told them that he had hidden all of their belongings underground, and he would see that they were returned to the house.

When that boy graduated from high school, Stan financed his way to four years of college in the U.S.

Carl R. Fritz
FSO, retired
Chapel Hill, N.C.

Fly America Yourself!

If you have ever dropped everything for a CODEL, or sped a reply to a congressional inquiry, you might be interested to know that my congressman, after a letter, an e-mail, and a call to his constituency office has not seen fit to reply to this simple question: Why do you impose the Fly America Act on Foreign Service officers, and not on yourselves?

It's been months now, so I guess he's just not interested.

Michael Mates
Consular Officer
Consulate General
Karachi

Stopping Terrorism, Contd.

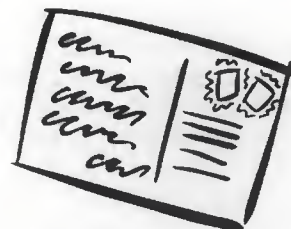
In response to retired ambassador Hume Horan's thoughtful letter (October *FSJ*):

I wholeheartedly agree with Ambassador Horan that perhaps the law needs to be changed, so that we can better change the direction of attacks on U.S. embassies, aircraft and military emplacements — before they happen. The present law does not apply to world situations we now face.

William B. Flynn, Jr.
Retired FSO, USAID
Washington, D.C.

State is Outclassed

Though I have not seen the new Mission Performance Plan version Martin Brennan talks about in the September *Journal*, I watched the problems of the earlier version. What Brennan hasn't seen from his end is the extent to which State is overselling in



On the Road to ...?

(Potential Writers Invited to Fill in the Blank)

The *Foreign Service Journal's* "Postcard from Abroad" is not your average travel section.

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Potential writers should refer back to issues of the *FSJ* for subjects covered and guidance in preparing submissions, which should be from 600 to 800 words in length. For more information, contact Kathleen Currie, Managing Editor, *Foreign Service Journal*, E-mail: currie@afsa.org

LETTERS

Washington the virtues of this document. The nature of U.S. official organizational contacts abroad is impossible to capture in one MPP document.

As Brenman noted, State's representation has decreased in the U.S. embassies — the GAO reports foreign affairs agencies' presence in embassies has decreased some 25 percent in the past 10 years while non-FAA presence has increased about the same percentage. Much goes on abroad that is not tracked by the embassy. The MPP, as I knew it, was not set up to capture activities that did not further the stated goals. USIS was unable to squeeze in all its authorized efforts.

The bottom line is that the Constitution did not set State up as the clearing house for foreign affairs. By getting in on the ground floor soon after the republic was founded, State held the advantage for two centuries.

But now, State has dropped well behind Defense as the U.S. leader in international relations. Seven recent years in Africa shielded me from the force of this change. Recent months in an interagency working group have brought me up to date.

State these days is certainly out-classed — in organizational skills, resources (both money and people), congressional support, and influence in the Executive Branch. As a result, State is at best now only first among equals. At worst, it too often is irrelevant.

Paul Good

USIA

Herndon, Va.

More Pol-Mil Officers

The September issue of the *Journal*, devoted largely to the Foreign Service and the military, provided fascinating reading for those who served in the World War II Cold War era. Many of us had not only the experience of active combat and command in military ser-

vice, but faced national security problems.

Our posts often had significant military importance as NATO members: they hosted U.S. air and naval bases, and received military assistance and training. Hence we had close relations, both professional and social, with our military counterparts. We had the advantage of having first-hand knowledge of military organization, training, equipment and tactics.



PETER LACALAMITA

Today, assignment to the various war colleges does provide interaction between senior Foreign Service and military officers; however, those in middle and junior ranks grew up in a generation which looked upon the military with less than admiration and respect.

Perhaps the current decrease in military experts could be ameliorated by encouraging middle-grade officers to seek political-military positions as an advantageous step toward promotion and future assignments.

David G. Nes

FSO

Owing Mills, Md.

FSO Military Experts?

Dan Geisler is correct in noting that a year at the War College or a detail to the Pentagon does not provide the depth the Foreign Service needs to create experts in political-military affairs (especially considering that the year at the War College comes when the officer has already reached the O-1 level). What the Foreign Service is missing is what society is missing — officers who have served in the military.

All of the single officers of my entering class in the spring of 1966 served in Vietnam and my assignment to the CORDS pacification program in 1968 was the basis for what became my expertise in polmil. Purely by chance, I also served as a liaison officer to JCS, and as a polmil officer in Honduras in the mid-'80s.

After Honduras, PM asked me to join them and I did. I was struck by how little expertise most FSOs in PM had to offer the regional bureaus. PM had its military officers on detail, but so did the bureaus. I think that PM will have to accumulate military expertise by increasingly taking on Civil Service personnel who will stay there, and augmenting them with some FSOs as INR has done. But it still will be difficult to stay ahead of the regional bureaus. In a time of need, they can ask for and get from the Pentagon a real military officer to provide necessary expertise and liaison to handle the crisis of the day.

Alfred R. Barr

FSO, retired

Washington, D.C.

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LETTERS

it was rare to encounter any young officers who had ever been in uniform. Training, assignments, and bureaucratic organization may help create some diplomat-warriors, but nothing beats hands-on experience.

We should be recruiting out of the services as well as from universities and business. We would also draw from a better gender/ethnic pool.

James W. Carter
FSO, retired
Bryan, Texas ■

Have a Bone to Pick?



Why not write a "Speak Out" for the *Foreign Service Journal*?

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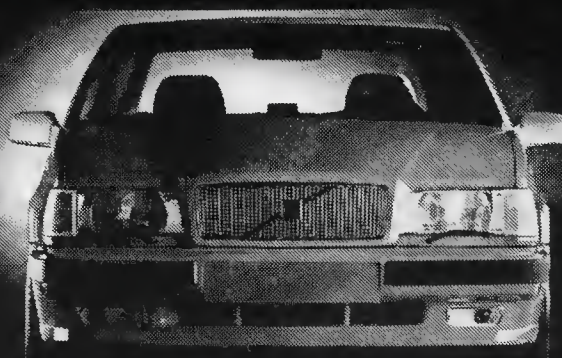
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"I hate our China policy!" Bill Clinton is reported to have shouted during a White House meeting in 1994. ... I wish I was running against our China policy. ... We gave them the MFN and we changed our commercial policy, and what has it changed?"

— COMMENTARY
SEPTEMBER 1998

KOSOVO PAYS THE PRICE OF EUPHORIA

Kosovo is paying a steep price for the wave of euphoria that swept the region last summer, according to an article by Tim Judah in the Oct. 8 *New York Review of Books*.

When the majority-Albanian region of Serbia started an almost-spontaneous uprising, the Kosovars forgot two important things: First, that Serbia still has tanks, planes, artillery and a functioning army. Second, that the West would support negotiated autonomy for Kosovo, but that full independence "was precisely the opposite of what Western leaders wanted to achieve."

Independence for Kosovo, writes Judah, a London-based journalist, would have destabilized Bosnia and Macedonia. After all, "If Kosovo could be independent, why should Serb- and Croat-controlled regions stay part of that American creation, the Bosnia established in November 1995 at peace talks in Dayton, Ohio?"

After some easy victories in June and July, the Kosovo Liberation Army held one-third of the region, and euphoria took hold. "Jubilant KLA spokesmen began talking of how, when Kosovo was liberated, they would go on to free the Albanians of Macedonia and even Montenegro."

This talk made the Western powers very nervous, Judah writes. "Almost everyone in Kosovo believes that, when the KLA kept announcing that its aim was a Greater Albania, Milosevic was given a 'green light' by the NATO powers to finish them off." This may not be true, Judah says, but "since Western policy makers began to fear that any action they took might lead to a KLA victory, it was, they decided, perhaps better to do nothing

while the Albanian guerrillas were at least cut down to size."

At the *Journal's* press time, Serb leader Slobodan Milosevic was negotiating to avoid NATO airstrikes against Serb forces still attempting to pacify the renegade province. But as Judah sees it, "if the KLA can keep its forces intact and its arms and ammunition coming across the border, the Serbs cannot in the long run win the war."

A GENUINE CASE OF "WAG THE DOG"?

Were the U.S. Tomahawk missile strikes after the bombings of U.S. embassies in Nairobi and Dar Es Salaam an attempt by President Clinton to divert public attention from the scandal engulfing his presidency? That's the intriguing question raised by investigative journalist Seymour Hersh in the Oct. 12 *New Yorker*.

Hersh points out that Clinton announced the retaliation Aug. 20, just three days after he had completed his grand jury testimony in the Lewinsky matter. The scenario is reminiscent of the recent comedy film "Wag the Dog," in which a U.S. president goes to war with Albania to divert attention from a sex scandal.

Hersh, a sometimes controversial journalist and author, first gained attention when he exposed the My Lai massacre during the Vietnam War. He has written books, often highly critical of U.S. government actions, about Israel's nuclear arsenal, Henry Kissinger, the downing of Korean Airlines Flight 007, Gulf War Syndrome and, most recently, the Kennedy White House (*The Dark Side of Camelot*).

Hersh interviewed a number of critical sources (most of them anonymous), who



CLIPPINGS

cast doubt on the wisdom or effectiveness of both the retaliatory strikes—the bombing of the Al Shifa factory in the Sudan, and the strikes against sites in Afghanistan said to be terrorist training camps run by Osama bin Laden, alleged mastermind of the embassy bombings.

National Security Adviser Sandy Berger said the U.S. had impeccable intelligence on “the so-called pharmaceutical factory in Khartoum which we know with great certainty produces essentially the penultimate chemical to manufacture VX nerve gas.” But Hersh says the case is far from clear. “There is known to be dismay within the Directorate of Intelligence and the Directorate of Science and Technology of the CIA over what is seen as an unseemly rush to judgment on the involvement of the Al Shifa plant in chemical warfare,” he writes.

On a less sophisticated level, Hersh interviewed an Arkansas businessman and long-time Clinton supporter, Bobby May, who was in Khartoum the week of the bombings. May says, “I’m lying in bed and watching the White House talking about this place being a heavily guarded chemical factory. I couldn’t believe my ears. ... One of the places where the Sudanese like to take you is the pharmaceutical plant. It was a showplace for them.”

While acknowledging that U.S. intelligence found Empta, the nerve gas precursor, near the Al Shifa plant, Hersh suggests that the chemical may have been stored or shipped through there in the past.

In the days after the missile attack, the Sudanese government made news by producing evidence that the plant was processing and shipping antibiotics, and by demanding an independent U.N. investigation of Al Shifa and its surroundings, Hersh notes.

On the missile strikes against the bases in Afghanistan, Hersh claims the 60 Tomahawk missiles did little damage. The U.S. telegraphed its blow by evacuating diplomats and their dependents from the U.S. embassy in Islamabad, Pakistan, he says. “When bin Laden saw that happening, he flew the coop,” one senior military officer told Hersh.

Hersh also reports that the four military service chiefs and the FBI were excluded from the decision to bomb. It is widely believed that the uniformed military see Secretary of State Madeleine Albright and Sandy Berger as “too quick to advocate force as a solution to diplomatic problems.” One U.S. general, Hersh says, told him, “This is classic Sandy Berger. ... The general added with a laugh, ‘Madeleine is willing to fire a missile at anybody.’”

Hersh concludes, though, that if Berger was too hasty in retaliating, “he was doing precisely what Bill Clinton wanted.”

THE GAY LIFE OF CANADIAN FSOs

Gays and lesbians in Canada’s Foreign Service have far more extensive rights than their U.S. colleagues, but they still often have to struggle for respect and equal treatment. That’s the story told by three articles in the summer 1998 issue of *bout de papier*, the magazine of the Canadian Professional Association of Foreign Service Officers.

A 1995 change in federal law extended most employee benefits to same sex spouses, including, most importantly, the right to accompany a partner to overseas posts. “Employees living with a same sex spouse must meet the same criteria as an employee living with an opposite sex common-law spouse — the relationship must exist for a

50 YEARS AGO

“In line with this effort to rationalize the workload of the Service, the Office of the Foreign Service is fostering a campaign of Work Simplification. ... The concept of Work Simplification is not a complicated one. It holds only that repetitive operations can be examined on the spot and rearranged in sequence or reduced in components so that a given volume of work can be accomplished more easily,” according to a November 1948 *Journal* article. “The necessary review of work is carried on in a consistent manner, utilizing methods and symbols which have been developed to make the job easier. ... [The program] owes less to ‘expertise’ and more to common sense (which is, unfortunately, too uncommon in some of the over-specialized techniques) than do most other phases of administrative analysis.”

"When statesmen want to gain time, they offer to talk."

— HENRY A.
KISSINGER, 1994

continuous period of one year and the individuals must publicly represent the other person as his/her spouse." Pension benefits, though, are still not covered.

According to department lore, the acceptance of same sex couples living together at post came about partly inadvertently. "A very senior member of the Foreign Service had every intention of taking his common-law spouse on posting, with allowances. He got his way. The unintended consequence of his success was to undercut arguments that no comparable provision could be made for same sex spouses," writes one author.

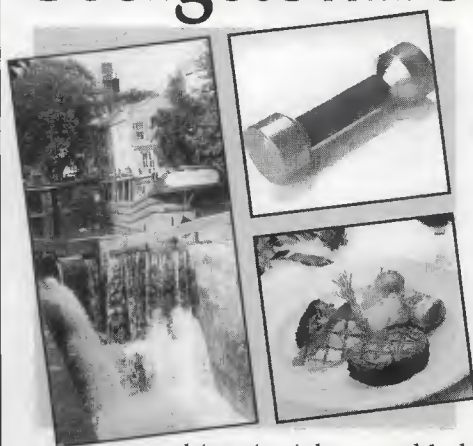
Despite this newly acquired right, the author suggests that "gays and lesbians are well represented in today's Foreign Service because as 'singles' they can better afford to weigh the quality of life and interest in the job against meager pay." Besides, asks the author, in these days of budget-cutting, "is it

too cynical to wonder if gays and lesbians are better tolerated because it is cheaper to run the Foreign Service with singles?"

Another FSO describes serious difficulties in getting spousal benefits, even after the law changed in 1995. After registering for benefits at the overcasas posting, the FSO was subjected to intensive questioning and verification of the relationship, housing, finances and "character." "What should have been a personal matter was discussed around the embassy as if I were some kind of circus freak," the FSO writes.

The Department of Foreign Affairs and International Trade is conducting a campaign this year to promote tolerance of gay employees, and attitudes among heterosexual Canadian FSOs do appear to be changing. Still, says one FSO, "contrary to popular belief, often the population of the host country is far more accepting." ■

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SPEAKING OUT

Warning: Principled Stands May be Hazardous to Your Career

BY ROBERT E. OLSEN

In 1992, when I began my career as a Foreign Service officer, a staple of instruction at the old Foreign Service Institute's orientation class for new FSOs was: "The Foreign Service will protect you."

FSI instructors told stories of diplomats who had acted on principle and who, even if the political winds were blowing against them, had ultimately been protected by a brotherhood of career officers. I thought that the Foreign Service would protect me and my classmates as it had protected legendary FSO F. A. "Tex" Harris when he bucked Washington's alliance with Argentina's military junta in 1977 to establish ties with the mothers of the desaparecidos (the disappeared). It would protect us, as it had protected an equally legendary desk officer caught up in policy conflict over Cyprus with Secretary of State Henry Kissinger. Today Tex Harris is consul general in Melbourne, Australia. The desk officer became an ambassador.

I thought FSOs were like Knights of Malta setting forth at the head of a holy crusade with the Foreign Service as protector. But I learned the sad reality — that the Foreign Service as an organization values loyalty, teamwork, networking and career advancement over other qualities — before my career ended just two-and-one-half years later.

As a first-tour consular officer posted

FSO Robert Olsen is currently on administrative leave without pay.

*U.S. diplomats in
Brazil refused
visas to beautiful
women because
they might be 'X-
rated actresses'
and to young men
who owned
Volkswagens
instead of Fords.*



to Sao Paulo Brazil from 1992 to 1994, I challenged so-called local "policy" for issuing visas. This "policy" was created at the consulate and disseminated to other Brazilian posts. It consisted of written "profiles" of the types of people to whom visas should be denied. Later, when the State Department fired me for failing to carry out my duties because I refused to follow the local policy, I sued for wrongful termination. Eventually, U.S. District Court Judge Stanley Sporkin held these same policies to be racially and ethnically discriminatory, and therefore unlawful

under the Immigration and Nationality Act of 1952.

When my case became public, *The New York Times* published an editorial saying that the practices that I had complained of were unfair and unworthy of the United States government. Radio and television networks on three continents sought me out for comment and members of Congress invited me over to chat.

With a few exceptions, within the State Department, however, I was shunned.

This is what happened before Judge Sporkin and the world press had their say:

■ A State Department career development officer urged me to "try to internalize" my supervisors' attitudes. I took that to mean that I should go along with the visa profiles.

■ A consul general secretly lobbied the U.S. ambassador to Brazil to urge the director general of the Foreign Service to quietly remove me from Brazil for reasons of efficiency and morale. The ambassador complied without further investigation.

■ The chief of the visa unit in Sao Paulo requested that my American peers and a local Brazilian employee screen all my visa approvals for conformity with "local policies." They complied.

■ With the consent of their supervisors, my colleagues secretly dumfied up a "random survey" of my visa issuances that was neither random nor accurate. The visa unit chief refused to show it to me, but used it to support a



contention on my yearly efficiency report that 22 percent of the visas I issued were to illegal immigrants.

■ The FSO who wrote my yearly review advised the State Department that my commitment to the principle of fair treatment of all persons was "unsatisfactory" and labeled me "possibly sexist," because I had allegedly once used the word "girls" to describe women in their early twenties.

■ An embassy personnel officer secretly encouraged the consul general to threaten me with firing to get me to request a curtailment of my assignment in Brazil. The consul general tried this tactic.

■ A senior Foreign Service officer took home official documents with relevance to my case, purportedly to "organize them." Later, during an investigation, the documents could not be found.

■ The same senior Foreign Service officer reportedly ordered his secretary to assist him in deleting e-mail records from his computer after he knew that I had filed a grievance and just before they were requested as part of the investigation.

■ Thirty-seven days into a 60-day "trial period" designed to improve my performance, my immediate supervisor relieved me from duties in the visa unit, relegating me to virtually no job at all.

■ I became a non-person at the consulate. I was dropped from the guest list for all official consulate meetings and entertainment and given a desk normally occupied by the visa unit secretary in a room separate from other visa officers. When officials from the Foreign Service Institute visited the consulate to meet with junior officers, I was excluded from the meetings.

The chain of command worked to end my career. Unit chiefs persuaded section heads, who convinced ranking officers, who constructed "performance-based" reasons to support my

firing and presented them to chiefs of mission. Chiefs of mission lobbied bureau chiefs and their assistants in Washington, all to get rid of me.

My point is *not* that I was mistreated. It is that the institutional safety net failed; the Foreign Service rallied to support Sao Paulo's "local policies." It didn't matter that these policies were subjective classifications that associated negative qualities with some races, some ethnic groups and people from some national origins. Apparently, authority, order and efficiency were the values that mattered to the Foreign Service as an institution. A few brave FSOs and Foreign Service National employees in Brazil offered me written evidence and moral support, but most engaged me in secret conversations and withheld public use of their names.

Of course, there is a context to these attitudes. Conventional wisdom in the Foreign Service is that visa applicants are outside the jurisdiction of the United States. Accordingly, they are not entitled to constitutional guarantees of "due process" and have no right to challenge a consular officer's treatment in a U.S. court. Publicly, the State Department says it issues visas in adherence with undefined U.S. laws and values. Privately, it encourages parceling out visas according to "local policies" which have never been considered by Congress or even reviewed by State Department headquarters in Washington, D.C.

My Foreign Service supervisors in Brazil sometimes put it more simply: Visa applicants, they asserted, have no rights. U.S. diplomats in Brazil sneered at applicants they called "slimy looking" or the "sort of person who would be serving you drinks," refused visas to beautiful women because they might be "X-rated actresses" and to young men who owned Volkswagens instead of Fords. They rejected visa applica-

tions from Brazilian citizens, whom they called "Koreans," simply because their ancestors had immigrated from Seoul, and dismissed documents submitted by dark-skinned, casually dressed persons whose ancestors had been slaves, describing them as looking "really, really poor."

I refused to adhere to these policies. I was fired from the State Department, effective Jan. 30, 1994. Later, I filed a grievance, claiming that I had been wrongfully terminated from my job. The Foreign Service Grievance Board ruled against me in 1995, so I filed a complaint seeking judicial review in March 1996. After having spent \$15,000 on an attorney and representing myself in the U.S. District Court, I obtained pro bono representation in 1997.

In December 1997, Judge Sporkin entered a summary judgment against the State Department and sent my case back to the FSGB for reconsideration. Last March the FSGB reversed itself. Last May I was again sworn into the Foreign Service, but I have yet to resolve the details of my case with the State Department and resume active status.

Suing the State Department isn't easy. Its resources are vast and bureaucrats' concern for saving face is immense. Each year, the Foreign Service Grievance Board decides about 100 cases brought by Foreign Service employees. On average, only one employee will seek a judicial review of an adverse decision. And U.S. District Court will vacate an FSGB decision only once or twice in a decade. For more than four years — including several months of unemployment — I traveled this tortuous route.

While the Foreign Service did not protect me, I am proud that I fought for the rule of law and the principle that people should not be judged on facile, appearance-based stereotypes. ■

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FOCUS ON RACE, CLASS AND VISAS



SCOTT HODGDON

EDITOR'S INTRODUCTION

The problem with Robert Olsen was that he just wouldn't follow orders. As a consular junior officer in Sao Paulo, Brazil, he was told to use certain shortcuts to keep the visa line moving. He objected. He refused. Eventually, he was sent back to Washington and fired.

Robert Olsen took his case to federal court, where Judge Stanley Sporkin found great merit in Olsen's scruples. Though Olsen has been reinstated as a Foreign Service officer, he's still not back on the job, as personnel matters remain unresolved.

This issue of the *Journal* takes a close look at Robert Olsen's case, and the issues it raises — about visa criteria, about American attitudes toward race and class, about procedures within the Department of State.

First, Robert Olsen (*p. 15*) explains in a Speaking Out column how he feels the Foreign Service failed to support him when he tried to take a principled stand.

On the pages immediately following, Steven Honley takes a look at the Olsen case, and puts it in the broader perspective of U.S. visa law and procedure. He also brings us up to date on Olsen's indeterminate situation.

Nancy Sambaiew, deputy assistant secretary of State for visa services, on page 25 explains why she believes it is entirely incorrect to impute any racial intent or effect to U.S. visa procedures.

The last word goes to Judge Stanley Sporkin, whose ruling in the Olsen case — and harsh words about the visa process in Brazil — put the issue before the news media. Excerpts from his opinion begin on page 28.

RACE, VISAS & ROBERT OLSEN

WHAT HAPPENS WHEN A JUNIOR CONSULAR OFFICER CLAIMS THE VISA LINE IS RACIST?

By Steven Alan Honley

It's not often that consular issues make the front page of *The New York Times*, but they did on Jan. 23, 1998. The headline read "Judge Denounces U.S. Visa Policies Based on Race or Looks." The *Times* told the story of Robert Olsen, a U.S. consular officer in Sao Paulo, Brazil, who was dismissed from the State Department for refusing to discriminate against visa applicants "solely because of their skin color, their ethnic background, or the way they look — down to the clothes and jewelry they wear."

But the story had a happy ending: U.S. District Court Judge Stanley Sporkin strongly criticized the Sao Paulo guidelines, and ordered the State Department to reconsider Olsen's firing.

To most casual observers, particularly those already predisposed to believe all the clichés about heartless, arrogant, mealy-mouthed diplomats in pinstripes and wingtips, the Olsen case — or at least the version of it presented in most media accounts — provides heartening proof that "the little guy can sometimes beat City Hall," even when armed only with the truth.

For their part, members of the Foreign Service and their supporters tend to view the Olsen saga as another painful reminder of how misunderstood the diplomatic profession is and how little gratitude FSOs receive for all their hard work.

Understandable as both these perceptions are, it would be a real mistake to oversimplify or lose sight of the far larger issues this case raises. These include: the role of race and class in visa decisions; the ques-

tion of how individual officers can best push for change; and, most fundamentally, what values American diplomats are expected to embody when representing their country.

If there is one legal reference that practically all FSOs can still cite years after their last consular tour (no matter how long ago that was), it is Section 214(b) of the Immigration & Nationality Act (INA). This provision states:

Every alien shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for admission, that he is entitled to a non-immigrant status....

By contrast, most immigrant visas are based on evidence of a bona fide relationship, either by blood or by marriage, to a U.S. citizen or legal permanent resident; accordingly, in the absence of grounds to suspect fraud, an officer has far less discretion to refuse the visa.

Thus, before issuing a non-immigrant visa (NIV), the consular officer must be convinced not only that the applicant intends to carry out the stated purpose of the visit (e.g., tourism or study) but that he or she intends to leave the U.S. at the end of the stay. There is a presumption of "guilty until proven innocent," in other words.

In her book, *Immigration Laws of the United States*, retired FSO B.J. Harper describes the visa officer's position as follows: "Consular officers are not cops; rather, they are akin to judges, evaluating both evidence and facts in the light of immigration and nationality laws."

Steven Alan Honley, a freelance writer, was an FSO from 1985 to 1997, serving in Mexico City, Wellington, and Washington.

F O C U S

As if that judicial task were not sufficient to require the wisdom of Solomon, consular officers have to interpret and apply those voluminous laws and regulations (which change frequently) under many practical constraints and pressures. Visa fraud, which has been around as long as visas have, shows no sign of slackening, particularly in high-volume posts, where applicants gamble that visa officers will be under too much time pressure to conduct thorough interviews and will therefore put too much stock in hastily scanned documents.

In addition, consular officers must be on the lookout for applicants who have a legitimate purpose for traveling to the U.S. but plan to "adjust status" with the U.S. Immigration & Naturalization Service (INS) after they get there so they can then work, marry Americans, and (in many cases) stay long enough to become legal permanent residents and, eventually, U.S. citizens — who can then petition to bring their families over to join them legally. (The growing backlog in processing immigrant visas in several countries where the demand for immigrant visas far outstrips the number of slots available each year gives otherwise law-abiding applicants a powerful incentive to use this shortcut to bypass the immigration process altogether.) Significantly, the INS reports that 41 percent of all visitors to the U.S. overstay their visas.

This situation, in turn, has increased political pressure on the State Department to "hold the line" on visa issuance. Towards that end, in 1994, Congress passed an amendment to the 1980 Foreign Service Act holding FSOs responsible for mistakes made while serving in their professional capacities. The law takes specific note of issuance of visas to persons who "commit terrorist acts," stating that "If the consular officer fails to follow the procedures in processing the application required ... (this) failure shall be made a matter of record and shall be considered a serious negative factor in the officer's annual performance evaluation." Although the statute does not explicitly state that Foreign Service personnel can be held personally liable in such cases, and the law has not yet been tested in

The Olsen case raises the question: How do consular officers embody American values abroad?

court, the onus is clearly upon consular officers to do all they can to control illegal immigration.

Conversely, saying yes rather than no to visa-seekers not only is more congenial for consular officers but offers many practical benefits. An issuance requires less paperwork and processing time than a denial; the applicant goes away happy;

and the post is spared the need to conduct further interviews, handle pesky calls and letters from the applicant's family and friends (some of whom may be politically prominent), both locally and back in the States, and respond to urgent congressional inquiries on behalf of constituents who are heartbroken and stunned that their third cousin did not get a visa.

Furthermore, in many posts, the Mission Program Plan specifically tasks consular officers (along with their economic and commercial section colleagues) with encouraging tourism and trade. And, as travel organizations and other interested parties never fail to note, the U.S. already has one of the highest visa refusal rates in the world: Approximately 20 percent of more than seven million NIV applications submitted worldwide during 1997 were refused.

The Burden of Proof

The presumption of "guilty until proven innocent" implicit in the language of INA Section 214(b) is offensive to most Americans precisely because we pride ourselves on being an open society which welcomes the rest of the world, and because such a stricture challenges our faith in the fairness of our legal system (though plenty of Americans, particularly minorities, have reason to be skeptical that the presumption of innocence has ever worked exactly as advertised).

In this context, it is noteworthy that a former colleague of Robert Olsen's (who asked not to be identified) described him in a February 10, 1998 *Washington Post* article as a "trusting man" who had trouble with the "intending immigrant" concept: "It's kind of like guilty until proven innocent ... Bob couldn't deal with that. He was an attorney. He thought it was unfair."

Nevertheless, it is important to recognize that this

F O C U S

provision has been a cornerstone of American visa law since its codification, even as other requirements have been eased or abolished. Indeed, constitutional lawyer David Cole, while completely sympathetic to Robert Olsen's assertions of systemic discrimination against poor, minority foreigners, acknowledged in *Legal Times*, "Had the same issue been raised by a rejected visa applicant, the result would have almost certainly been different because the well-established policy of 'consular non-reviewability' effectively insulates visa denials from judicial review. Thus, for all practical purposes, visa applicants have no rights whatsoever."

Brazilian Impressions

In April 1992, the General Accounting Office issued a report entitled "Backlogs of Tourist Visas at U.S. Consulates." Though the GAO investigators visited a total of 14 consulates worldwide, the chief impetus for this audit came from the fact that, beginning the previ-

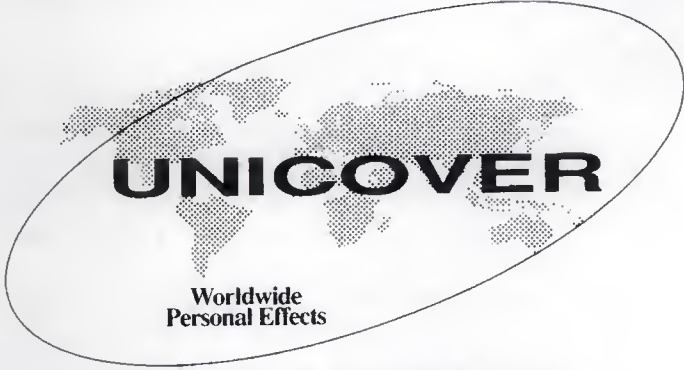
ous summer, Consulate General Sao Paulo had experienced "severe processing delays for tourist visas for Brazilian citizens wishing to visit the United States."

The report concluded that long lines of applicants, staffing gaps, reprogramming of consular resources to non-consular sections, and other resource shortages in Sao Paulo and elsewhere all combined to put tremendous pressure on consular officers to keep interviews short and to make quick decisions on applicants' eligibility for non-immigrant visas.

Just six months later, on October 29, 1992, Robert E. Olsen (a 47-year old attorney who had practiced law for 14 years in Denver prior to joining the Foreign Service) completed his junior officer and language training and arrived in Sao Paulo to serve his first tour as one of four consular officers in the NIV section. Brazil was beginning to experience an economic resurgence at that time, and since Sao Paulo was already one of the richest areas of the country, the consular section's

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workload was growing rapidly, but without commensurate increases in staffing or resources.

To make optimal use of their limited interviewing time, the junior officers in Sao Paulo took the initiative to compile an informal operating manual. Many of the items in this collection of tips and reminders, which they used from 1992 until the last officer completed his tour two years later, were purely procedural in nature. Others alerted colleagues to current fraud patterns associated with applicants from certain regions, backgrounds, or (putative) professions. However, two elements of the manual were artless at best and offensive at worst.

The first was the use of a series of two-letter codes to characterize visa applicants, such as: LP (looks poor), TP (talks poor), LR (looks rough), TC (take care), and RK (rich kid). These profiles seem to have been intended originally only to determine which NIV applicants who had applied by mail or through a travel agency needed to be called in for personal interviews. But they were also used for interviews with some walk-in applicants, as indicated by notations like "talks poor." However, contrary to allegations later made by Olsen and others, none of these appellations alluded to applicants' skin color or racial features. In fact, of the five Brazilians Olsen cited who were denied visas with such annotations made on their applications, two were white.

More disturbingly, the manual reminded interviewers to be vigilant against "Korean/Chinese fraud," reporting that alien smuggling rings were known to be moving Asians into the United States by first bringing them to Brazil and then passing them off as members of the local Korean and Chinese communities there. The manual also noted that Arab, Nigerian, and Filipino NIV applicants, among others, should receive heightened scrutiny. Despite the loose wording of these passages in the manual, the import of this section was that many recent arrivals to Brazil, who happened to be Asian in many cases, had not lived there long enough to establish "strong and compelling ties" to their new country, as required by U.S. law.

In the junior officers' defense, one should keep in

*The INS reports that
41 percent of all
visitors to the U.S.
overstay their visas.*

mind that the purpose of the manual was to improve the NIV section's efficiency and keep the long lines of applicants moving. The officers neither conceived of it as an official U.S. government document, nor thought they were making policy with it. In addition, the fact that the staff regularly referred to the manual in annotating visa applications indicates that

they felt they had an imprimatur for its use. And in that respect, while the officers demonstrated poor judgment in allowing inappropriate and alarming language into an otherwise useful tool, consular management in Sao Paulo also left a lot to be desired by allowing its use to go on for so long.

A Victory For Justice?

On August 16, 1993, Robert Olsen received an extremely unfavorable candidate evaluation report related to several different aspects of his performance. On that basis, the director general of the Foreign Service decided that he should be separated from the service, a relatively simple matter, as Olsen did not yet have tenure. His tour in Brazil came to an end January 30, 1994. Olsen served in the Bureau of International Organization Affairs back in Washington until he was finally discharged from the State Department on September 30, 1994.

He then appealed his termination to the Foreign Service Grievance Board on the grounds that the negative evaluations he received in Sao Paulo reflected bias on the part of his supervisors rather than substandard performance, but the Grievance Board upheld the decision on September 25, 1995. Olsen then filed suit with U.S. Federal District Court in Washington on March 22, 1996.

Some critics find it striking that it was only at this point in the process that Olsen filed his 51-page complaint citing the consular manual in support of his contention that he had been justified in refusing to follow State Department practices since they discriminated against Brazilian visa applicants "based on race, color, national origin, sex, and appearance." There is no evidence, for example, that he used the Department's dissent channel or made any other effort to alert the

ROBERT OLSEN: STILL IN LIMBO

So where does Robert Olsen's case stand now? Consistent with the way his Foreign Service career has run so far, the answer to that question is both contentious and complicated.

On May 18, 1998, Olsen was formally sworn in and reinstated as a Foreign Service officer. Shortly thereafter, following receipt of his input concerning assignment preferences, he was paneled for an FP-4 interfunctional (pol/econ) position in Mbabane, Swaziland.

The State Department cites several factors in its decision. First, the fact that the summer 1998 assignment cycle had already been completed, leaving so few vacancies that the usual bidding process for second-tour officers was impracticable. Second, Olsen's unusually limited timeframe (17 months) to demonstrate eligibility for tenuring, which put a premium on positions, such as the one in Mbabane, not requiring language training. And third, Olsen's stated preference for a non-consular position (which are highly sought after by junior officers, and not always available to them).

For his part, Olsen says he not only has no objection to the assignment but actually welcomed it. Nevertheless, he declined to accept the posting on the advice of his attorneys (Jonathan Abram, head of Hogan & Hartson's Community Services Department, and Dave Newmann, who won a company award for distinguished pro bono work in this case), pending resolution of several other issues.

Chief among these issues is the matter of back pay and benefits. Following the instructions of the U.S. District Court, the Foreign Service Grievance Board in March 1998 directed the department to provide Olsen with back salary and benefits, but did not specify any minimum amount. Under the terms of the Back Pay Act, which governs back pay for FSOs who win appeals with the Grievance Board, back pay is computed "less any amounts earned by

the employee through other employment." As the department notes, the impact of this provision can result in a "balance due." And in Olsen's case, his earnings from private legal practice during the grievance process have led to just such an outcome. After winning his case, Olsen owes the State Department money.

Olsen's attorneys reject this interpretation of the law, and say that the State Department is not in full compliance with the court order. Consequently, on June 30, 1998, they filed a motion in federal court to reinstate the original lawsuit (as Judge Sporkin's decision explicitly allowed by dismissing most of Olsen's complaints "without prejudice"). This motion also seeks to amend the suit to include up to five (as yet unidentified) department officials as additional defendants, on the grounds that they have "retaliated" against the plaintiff. The State Department's July 24 response did not oppose the motion to reinstate the complaint per se but did object to the addition of defendants, asserting that there is no evidence of any retaliation or foot-dragging in its implementation of the Grievance Board's ruling.

There is no specific timeframe for the court's finding, but if it agrees with Olsen's version of events, a trial date could be set as early as this fall. In the meantime, Olsen, after working for several Washington-area law firms, has set up his own independent legal practice in McLean, Va. He maintains that he is more highly committed than ever to the ideal of a Foreign Service career and his goal is still to serve overseas. For its part, the Department says that the only thing preventing his return to effective service as an FSO career candidate is his absence from the training scheduled to prepare him for his posting to Swaziland.

Both sides insist they continue to seek an amicable resolution of the case.

—Steven A. Honley

F O C U S

Bureaus of Inter-American Affairs or Consular Affairs to the policies he later protested.

In a ruling handed down on December 22, 1997, U.S. District Judge Stanley Sporkin agreed that Consulate General Sao Paulo's use of the profiles and other criteria set forth in the consular manual for NIV adjudication was illegal. Sporkin ruled that Olsen's termination could not be sustained to the extent that it resulted from the employee's refusal to use the profiles.

The District Court then sent the case back to the Foreign Service Grievance Board for further consideration in light of the court's opinion. And on March 19, 1998, the board ordered the department to reinstate Olsen as a career candidate at the FP-5 rank he held at the time of his termination, and with two opportunities to qualify for tenure, along with some back pay and allowances to which he would have been entitled had he remained in the service.

The Department's Response

The State Department continues to maintain that neither it nor its employees discriminate on the basis of race, color, or ethnicity in making visa decisions, and that its visa adjudication procedures around the world comply fully with all relevant federal laws and regulations (*see box, page 25*). Tellingly, similar allegations have never surfaced at any other post despite the enormous publicity Olsen's case has received.

In reply to the specific allegations of racial discrimination in Sao Paulo, the department told the court that Olsen himself declined to issue a visa to one of the nine applicants whose cases he cited, and four of the nine actually received visas following personal interviews despite the prejudicial annotations.

John Caulfield, a spokesman for the Bureau of Consular Affairs, points out that the NIV refusal rate for Sao Paulo in 1993 was well under 10 percent (which is roughly the rate for all of Brazil now), and as of last year was only three percent. These figures certainly do not indicate an institutional reluctance to issue visas to Brazilians.

As for Olsen's second major charge, that the Sao Paulo consulate systematically discriminated against Korean and Chinese nationals, the department stands by the affidavits

U.S. already has one of the highest visa refusal rates in the world — about 20 percent for nonimmigrant visas.

it submitted documenting that this type of visa fraud in Sao Paulo was indeed a major problem. Olsen continues to maintain that such accounts are an "invention" by the State Department.

Nonetheless, as a signal that it does take seriously the judge's decision, and its potential for damaging public perceptions of the Foreign Service, the State Department recently sent out a cable to all diplomatic and consular posts reminding

consular officers worldwide that they are required to follow U.S. law in adjudicating visa applications.

In addition, Rob Callard, a consular instructor in the School of Professional Studies at the National Foreign Affairs Training Center (NFATC) confirms that the visa interviewing segment of the consular training course has been strengthened to ensure that all consular officers know that "comments on visa applications must be professional and germane only," and that "consular notes of visa interviews must be professional, relevant, and objective."

Not Race, But Class

While the department makes a persuasive case that it does not discriminate in visa adjudication on the basis of race or ethnicity, there is a major complicating factor which needs to be acknowledged, unpalatable as it is. In many countries (including, some would argue, the U.S.), there is a correlation between skin color and socioeconomic status which consular officers cannot realistically ignore in assessing visa applicants' ties to their home country. For example, slum-dwellers typically receive a decidedly inferior or curtailed education (if they get one at all) because they have to work from an early age to support their poverty-stricken families or themselves. That, in turn, often prevents them from obtaining the sort of high-paying jobs and financial security that would constitute evidence of strong ties to their home country and would thereby qualify them for an NIV.

In other words, consular officers do discriminate—but on the basis of economic status, not race, and only because the law compels them to do so. Nonetheless, when non-white individuals are refused a visa under INA Section 214(b), there is an understandable tendency to assume that the rejection is because they are black (or brown), not because they have failed to meet their burden of proof.

IS VISA POLICY FAIR? STATE RESPONDS

By NANCY H. SAMBAIEW

Consular officers, of course, distinguish — between eligible and ineligible visa applicants, as mandated by the Immigration and Nationality Act; that is the essence of our job. What we most categorically do not do, however, is base our visa decisions on race, color, creed, or gender, or, for that matter, on any other legally irrelevant factor.

So where do these periodic charges come from? I think they arise out of a misunderstanding of the complexities of visa law, which may lead some to see invidious discrimination where none occurred or was intended.

First, the law is bound to lead to a higher refusal rate for poorer applicants. Section 212(a)(4) of the INA requires consular officers to deny visas to applicants who are likely to become a public charge when they arrive in the U.S.

Moreover, economic ties are necessarily a key factor in screening nonimmigrant applicants. Under section 214(b), all applicants start out ineligible for a visa, but poorer applicants may have a harder time overcoming the presumption of ineligibility. For example, all other things being equal, an individual who has a steady job and a good financial situation is considered more likely to return home than an unemployed individual with no other strong ties pulling him or her back home.

Of course, all other things are never equal. Each application is unique and is decided on an individual basis. Thus, an applicant in a relatively weak economic situation might nonetheless qualify for a visa based on some other ties, such as strong bonds to family or cultural groups in the home country. But if these ties are weak and the alien has not established his/her eligibility, then the consular officer is legally required to refuse the visa application.

Another potential area where an outside observer

might wrongly see some form of discrimination is with regard to national background. There are no legal grounds for refusing an applicant based on national background (although U.S. immigration law extends privileges such as waiver of visas to nationals of certain countries).

That said, an alien's national background can appear to be a relevant factor in adjudicating an application. The most common example of this involves applicants who are newly immigrated to their country of residence. In such cases, it is not the alien's national background per se that is the issue; rather, it is the fact that the alien is newly arrived and may not be able to demonstrate strong cultural or other ties to the new country.

Another example relates to areas with a documented history of alien smuggling, immigration fraud, and/or illegal migration patterns. In these countries and communities, many more applicants will require a personal interview with the consular officer, because time and experience have shown that documents alone cannot be trusted.

Our consular officers at a particular post may attempt to consolidate their experience into guidance or "fraud indicators," to share experience and assure that similar cases are adjudicated in similar ways. A consular officer may thus be alerted to the fact that many applicants at a particular post are presenting fraudulent letters of employment from a particular company, or that alien smugglers are attempting to get visas for persons pretending to be part of a long-standing community in the host country. But this does not mean that persons are denied visas on the basis of such indicators. Rather, the indicators alert the officer to devote more time to the case, to determine whether it is bona fide or not.

Above all, in every case it is our nation's policy that no one is refused without the opportunity for a personal interview, and every application is examined on an individual, case-by-case basis. ■

Nancy H. Sambaiew is the deputy assistant secretary of State for visa services. This statement is excerpted from a longer article submitted by Consular Affairs.

F O C U S

This impression is particularly likely to take root when a harried consular officer has to move on to the next interview posthaste without time to do more than hand the applicant a form letter of explanation.

The visa waiver program poses a similar Catch-22 for the developing world. Instituted less than a decade ago and periodically expanded, this program allows tourists and businesspeople from some 26 countries (mostly in Western Europe) to visit the U.S. without obtaining a visa. The main criterion for a country to receive this benefit (besides congressional interest, which is often driven by domestic politics) is a low incidence of illegal immigration to the U.S. And, not surprisingly, applicants from prosperous nations (most of them predominantly white) usually have less incentive to overstay their visas than those from the developing world.

A Right To A Visa?

Writing about the Olsen case in the February 23, 1998 issue of *Legal Times*, constitutional lawyer David Cole hailed Judge Sporkin's decision and commented, "The conduct of State Department officials shows what happens when we deny a group of people basic human rights." Lucas Guttentag, director of the immigrants' rights project of the American Civil Liberties Union, was similarly pleased by the decision, asserting that it demonstrates why "the actions of consular officers ought to be reviewable in U.S. courts."

Opponents of such judicial review power, like Mark Krikorian, director of the Center for Immigration Studies (CIS), counter that if foreigners were allowed to challenge visa denials in American courts, it would let them assert a "right" to a visa. Then "we will have abolished at one stroke the borders of the United States, because we will no longer have the authority to decide who's allowed in and who's not."

In fact, for better or worse, there is no reason to believe that United States visa policy will change much as a result of *Olsen v. Albright*. This is partially because the only portion of Judge Sporkin's opinion that is legally binding on the department is the order to reconsider Olsen's appeal of his firing. The main reason is that

*U.S. immigration law
seems to treat visa
applicants as guilty
until proven innocent
— a violation of
American norms.*

Congress shows little interest in doing more than tinkering on the margins of immigration law, having just revamped the system in 1996.

Even so, the Robert Olsen case should be a wake-up call for the Foreign Service. Just as most consular officers have to make visa decisions under heavy time pressure, often with few facts available, so most Americans are unfamiliar with what diplomats do and can readily be turned off by the sort of negative coverage the Olsen case generated. It is therefore in the Foreign Service's own interest to give critics as little ammunition as possible — which means not only doing a good job, but being seen to do so. Unfair as it may seem, perception often is more important than reality. ■

Statement of Ownership, Management and Circulation (required by 39 U.S.C. 3685)

1) Publication Title: Foreign Service Journal 2) Publication No: 00157279. 3) Filing Date: September 29, 1998. 4) Issue Frequency: monthly 5) No. of Issues Published Annually: 11. 6) Annual subscription price: \$40.00. 7) Complete Mailing Address of Known Office of Publication: 2101 E St. NW, Washington, D.C. 20037-2990. 8) Complete Mailing Address of Headquarters or General Business Office of Publisher: 2101 E St. NW, Washington, D.C. 20037-2990. 9) Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor: Publisher: American Foreign Service Association, 2101 E St. NW, Washington, D.C. 20037. Editor: Bob Guldin, 2101 E St. NW, Washington, D.C. 20037. Managing Editor: Kathleen Currie, 2101 E Street, NW, Washington, DC 20037 10) Owner: American Foreign Service Association, 2101 E St. NW, Washington, D.C. 20037. 11) Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages or Other Securities. 12) For completion by non-profit organizations authorized to mail at special rates; the purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes: (1) has not changed during preceding 12 months. 13) Publication's Name: Foreign Service Journal. 14) Issue Date for Circulation Data Below: September 1998 15) Extent and Nature of Circulation: average no. copies each issue during preceding 12 months: A. Total No. of Copies: 13,500. B. Paid/and or Requested Circulation: (1) Sales Through Dealers and Carriers, Street Vendors and Counter Sales: 1,000. (2) Mail Subscription: 11,100. C. Total Paid and/or Requested Circulation: 11,100. D. Free Distribution by Mail (Samples, Complimentary, and Other Free): 500. E. Free Distribution Outside the Mail: 600. F. Total Free Distribution: 1,100. G. total Distribution: 12,200. H. Copies Not Distributed (1) Office Use, Leftovers, Spoiled: 800. (2) Return from News Agents: 65. I. Total: 13,065. Percent Paid and/or Requested Circulation: 91%. Actual No. Copies of Single Issue Published Nearest to Filing Date A. Total No. of Copies: 13,500. B. Paid/and or Requested Circulation (1) Sales Through Dealers and Carriers, Street Vendors and Counter Sales: 260. (2) Mail Subscription: 11,100. C. Total Paid and/or Requested Circulation: 11,260. D. Free Distribution by Mail (Samples, Complimentary, and Other Free): 500. E. Free Distribution Outside the Mail: 600. F. Total Free Distribution: 1,100. G. Total Distribution: 12,360. H. Copies Not Distributed (1) Office Use, Leftovers, Spoiled: 800. (2) Return from News Agents: 35. I. Total: 13,195. Percent Paid and/or Requested Circulation: 91%. I certify that the statements made by me above are correct and complete. (signed) Kathleen Currie, Managing Editor.

AFSA NEWS

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CALL FOR AFSA AWARD NOMINATIONS

A FSA's awards, and the \$2500 checks which accompany them, can only be presented to those who have been nominated. Anyone in the foreign affairs community who is aware of individuals who meet the qualifications in either of the categories described below is encouraged to submit a nomination.

CHALLENGING THE SYSTEM

These three awards encourage and reward officers "who have exhibited extraordinary accomplishment involving initiative, integrity, intellectual courage and constructive dissent;" those willing to take chances, possibly even put their careers at risk, to advocate a position they think is right.

- The W. Averell Harriman Award for junior officers (FS 6 - 4)
- The William R. Rivkin Award for mid-career officers (FS 3 - 1)
- The Christian A. Herter Award for senior officers (FE OC - CA)

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These three awards are for exceptional accomplishment.

- The Delavan Award for a Foreign Service

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- The M. Juanita Guess Award for a Community Liaison Officer "who has demonstrated outstanding dedication, energy and imagination in assisting the families of Americans serving at an overseas post."
- The Avis Bahlen Award for a member of the family of a Foreign Service employee "whose relations with the American and foreign communities at a Foreign Service post have done the most to advance the interests of the United States."

Nomination Format:

1. Name of award, nominee's name, grade, agency, and position or family relationship.
2. Nominator's name(s), grade, agency, position. Describe association with nominee.
3. Justify the nomination in no more than 700 words. Provide specific illustrations of the accomplishments that meet the above criteria, especially for the awards based on dissent.

Deadline: January 31, 1999

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• AFSA Dateline •

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• AFSA welcomes two new staff members. **Karen Batchelder** is the new labor management office manager. She is a Foreign Service spouse recently returned from Namibia where she was the CLO. **Melody Fowler-Green** is a law clerk in the labor management office. She is a second-year student at Georgetown University Law School.

• Several new interns have also joined the staff. **Joanna Grossa**, a senior majoring in political science at St. Mary's College, Ind. and

Nicole Beason, a third-year law student at George Washington University Law School, are working for COLEAD. **Jennifer Roberts**, a junior studying political science at Union College, N.Y. is the congressional relations intern; and **James Adams**, a senior majoring in political science at Point Loma Nazarene College, Calif. is working in public affairs.

• Special thanks go to summer interns **Leo Morozoff**, a sophomore studying advertising at Pepperdine University in Calif., and **Lauren M. Lyon**, a sophomore studying political science and international relations at Gaucher College in Baltimore. Their up-to-date desk top publishing skills produced the FSJ's media kit.

FAS V.P. VOICE

• BY MAGGIE DOWLING •

FAS Must Maintain Its Foreign Service Corps

After decades of overseas work by GS agricultural specialists, Congress determined in 1980 (PL96-465) that FAS goals would be best furthered by a Foreign Service corps of agricultural experts. Export statistics indicate they were right. Over the years the FAS Foreign Service corps has developed and recruited to ever higher standards of performance. Our significant export success and continually brighter prospects are the tangible result of that policy. As Congress recognized, the individual who commits to a Foreign Service career brings a different set of skills and interests from one who decides to try a once-in-a-lifetime Foreign Service excursion. The dedicated FAS Foreign Service corps has helped make farmers the foot soldiers in this country's march into the global economy.

In our contract negotiations, our goal was to secure for our members attractive and predictable career options necessary for the agency to sustain a strong, viable Foreign Service corps and attract the highest qualified candidates. Management readily agreed with us on many of the measures needed to do this. The promotion process is now more transparent; the awards system more equitable; criteria for waivers and limited career extensions more uniform; in fact, all policies will now be more evenly applied. These are important steps.

But on the lifeblood of the Foreign Service corps — foreign assignments — there was less agreement. In the contract negotiations, our members' foremost concern was the opportunity for more time overseas and a clear, predictable, uniform assignment policy. Our paramount interest in assignment policy is not surprising considering the significant trade-offs we have made for a Foreign Service career. These include shorter average careers due to time-in-class (TIC) limitations, worldwide availability for ourselves and families, and

limited career prospects for our spouses.

Having made these commitments, we now find our opportunities for overseas assignments diminishing as more GS employees are selected to fill overseas positions. In our agricultural trade offices (ATOs) next year, 27 percent of incumbents will be GS. With the Department of Agriculture's goal to increase ATOs numbers and the projected \$4 million budget shortfall for FAS, there is expectation that the department's goal will result in more shifting of embassy positions to ATOs and more GS assignments.

Further, the positions in our bargaining unit, now being filled by GS employees, have not been offset by designated Washington, D.C. positions for FSOs. Positions in FAS/W are now dual classified. And while FSOs are regularly rotated from Washington assignments to new assignments and can be transferred above or below their current grade, GS incumbents can remain in a position for seven years and then must be moved to an equivalent grade position. Under this dual-classified system, we expect that fewer jobs in Washington, D.C. at grade equivalents for FSO-01 and above will be available for returning FSOs.

If one can apply with equal weight to a growing number of overseas positions as a GS employee and have increased access to more senior FAS/Washington jobs, what is the incentive for FSOs to agree to the possibility of being TICed out (often before age 50) or to worldwide availability? Management argues it needs maximum flexibility to make assignments. To achieve that, we maintain that management needs the assurance of a strong, vibrant corps of Foreign Service professionals committed to a career of overseas service just as the founders of the Foreign Service envisioned 75 years ago. American farmers, benefiting from nearly 20 years of export market expansion, would agree.

Specialists: AFSA Wants to Hear From You

Specialists make up 40 percent of AFSA's membership, and therefore have the potential to influence decisions and make their voices heard. In fact, the association does not hear enough from members in this category. AFSA welcomes comments and would like to know what specialists need from the association and to encourage them to use AFSA's many services.

Support for members filing grievances is a major AFSA activity. Grievances are not always about promotion boards or selection and disciplinary actions. AFSA's staff can help with bread and butter issues, as well.

One specialist who has called on AFSA's support three times is a good illustration. This individual went to post and after a year discovered that she had been eligible for a subsistence allowance while she was in temporary quarters when she first arrived. She submitted a voucher to the administrative officer who turned it down on the grounds that it was too late. She called AFSA and learned that she was not too late. She resubmitted her voucher with two AFSA attachments: an e-mail citing the regulations and grievance forms. Her voucher was approved within two weeks.

A year later when she received an administrative promotion, her pay grade was misclassified two steps lower than it should have been. She tried to correct the mistake through personnel, but after six months with no progress, she filed a grievance and won. Once her salary was adjusted, she decided she deserved interest on the back salary. She grieved and won that decision, too. In each case AFSA's advice was crucial.

An issue of direct interest to specialists is an AFSA proposal to management to eliminate the 22-year time-in-class (TIC) limitation. Four categories of specialists (diplomatic couriers, medical technologists, nurse/family practitioners, and office managers) are already exempt and AFSA contends that the limited number of position levels in each skill code and the limited number of positions in the senior service warrant eliminating this TIC for all specialist categories. With

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SEVEN CONCERNS FOR SECURITY

BY DAN GEISLER, PRESIDENT

As I write this article, Congress has not yet adjourned for the mid-term elections, and much of the fundamental work of the government remains to be done. In addition to the annual appropriations to keep the foreign affairs agencies open, Congress will deal with supplemental appropriations to upgrade security at our missions abroad. The request is for \$1.8 billion. To put that in perspective, State annually spends \$2.8 billion.

These upgrades are overdue. Lack of funds created significant gaps in overseas security. Some examples:

- The administration believes that security at 220 of our 260 posts is inadequate.
- In FY96, State ran no crisis management exercises; it ran only nine last year;
- DS positions are down by 12 percent since 1986. Since 1990, RSO positions are down 10 percent, even though 40 new posts have opened.

AFSA wrote to the Director of the Office of Management and Budget (OMB), which crafts the administration's budget requests, to outline our concerns about funding the future costs of investments made under the supplemental appropriation. We subsequently got a phone call from OMB's International Division. It was not encouraging. Although OMB is seized with the need to fund several hundred million unexpected dollars in recurring costs in the FY2000 budget, the administration has no mechanism for ensuring coverage of these costs further down the road. So, if the supplemental passes (not a sure bet at this point), in a few years we will be faced with the same impossible choices between employee safety and core foreign policy programs that we've lived with recently. We also wrote to many

members of Congress, such as House International Relations Committee Chairman Ben Gilman (R-N.Y.), expressing our views.

Our core concerns are:

1. We must change our assumptions regarding threat assessments and security resource needs. The threat of terrorism is not limited to areas of instability. Moreover, we must account for risk displacement in our assessments, since enhancing protection of one spot may transfer the risk to another spot. As an AFSA member posted in a consulate painted out, when embassy security is upgraded, other safer U.S. facilities such as consulates and USIS posts face a higher threat.

2. The U.S. cannot simply hunker down. We must also prevent terrorist attacks. That means identifying terrorists, and then cutting off their sources of supply, transportation and funds. To do that we have to develop multilateral cooperation.

3. We must not repeat the mistakes of the past. We have been in this situation before. We were here a dozen years ago, after the Beirut bombings and the Inman Report kept management's attention focused on security issues. That attention lapsed. We need to set in place institutional mechanisms to ensure that it doesn't lapse again. AFSA recommends that appropriated funds for security be protected with a budgetary fire wall so that our people are not sacrificed again.

4. We must make provisions today to fund security maintenance costs tomorrow. If Congress appropriates supplemental funds, we will increase investment in people and programs to safeguard U.S. lives and property. This is essential. But we know that the upkeep on these investments will require

additional funds in the future, funds that were not incorporated into past budget plans. That must change.

5. At the same time, we are concerned about the absorptive capacity of State's offices which deal with embassy security. How FBO will handle a substantial injection of funds without a corresponding increase in staff is an open question. We learned from the mistakes of the '80s that suddenly throwing money at security problems won't solve them. We also learned that stop-and-go hiring policies don't work. How DS will recruit enough qualified people to fill the gaps that have arisen over the years is another unknown.

6. We must invest in people as well as programs. The recent tragedy in Africa, as well as other emergencies, demonstrated that we have not trained enough of our people in crisis management and emergency response. We live in a world where crises are all too common. Foreign Service employees and their family members can expect to encounter at least one emergency situation in the course of their careers. Training to deal with such emergencies should be a standard requirement for all employees.

7. Senior management of foreign affairs agencies must make security a top priority. When senior management officials waive security criteria or reduce security funding, they send a strong message about the relative priority of security. That message reverberates down through the foreign affairs agencies, affecting day-to-day security decisions.

Unless Congress and the administration act in these seven areas, we are doomed to relive the August 7 tragedies of some awful pain in the future.

AFSA Awards

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Mailing Address: Awards Committee, AFSA, Room 3644 Main State (pouch); or 2101 E Street NW, DC 20037 (mail); AFSA Channel (cable); 202-338-6820 (fax); or praf@afsa.org (e-mail). Questions to Richard Thompson, Coordinator for Professional Issues, 202-338-4045 Ext. 521, or at the above addresses.

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USIA V.P. VOICE • BY RILEY SEVER •

Whose Best Practices?

As the State Department, USIA and AFSA attempt to harmonize Foreign Service personnel policies on the basis of best practices, I am frequently reminded of the parents who attend the family reunion to show off their newborn. Unfortunately, the infant is quite homely and everyone is at a loss to find the right words when the proud parents insist, "Isn't this the most beautiful baby you've ever seen?" USIA and State have taken turns showing off a lot of ugly babies during the harmonization process and AFSA must bring this to their attention.

A case in point is State's commitment to a six-year window for FSO-01s to make the Senior Foreign Service. Only the State Department has clung to this legitimized form of career roulette. Both USIA and AID did away with similar regulations years ago and FCS and FAS had the good sense never to adopt them.

When USIA points out that abolishing the six-year window is a best practice, there is a chorus of explanations from State management insisting that this mechanism is crucial to maintain service discipline, allow for flow-through, weed out poor performers, and demonstrate to Congress that we have high performance standards.

A six-year window does not allow for predictable flow-through, because we are at the mercy of unpredictable budget cycles. You may open your window based upon current promotion levels only to discover the seven foot years are to be followed by seven lean ones plus two months in the career transition program.

Poor performers are not stupid; they usually wait to open their window until it is concurrent with their time-in-service date, while officers who feel they have

good files take the risk of opening a window early. As a result, the current State system keeps the poor performers, promotes the best and roots out those who fall between.

How the six-year window enhances service discipline has never been

apparent to me. Does going through this rite of passage somehow prove an officer is tough enough to be a member of the Senior Foreign Service? Fortunately, walking over hot coals wasn't in vague when the discipline option was being refined.

As for what Congress might think if State abolished the six-year window, the Foreign Service Act requires a window but doesn't specify

how it is to operate. Apparently Congress didn't notice when USIA and AID changed their window policy. We can assume that changes at State would likewise go unnoticed.

The most unattractive justification for the six-year window is as a mechanism to hasten the departure of FSO-01s to make more room for promotions at the lower grades. State management believes that junior officers wouldn't tolerate the slow-down in promotions caused by eliminating the window. According to the planning figures, promotion levels recover approximately three to four years after the window is abolished. I believe that lower-grade FSOs recognize that they will eventually be FSO-01s and that abolishing this system is a long-term improvement for all officers.

In August, AFSA sent out a cable asking officers to comment on several personnel policies being considered as part of the harmonization process, but few replied. Either my USIA colleagues don't care about these issues or these are all beautiful babies and I am the one who needs glasses.

"The current State system keeps the poor performers."

Specialists

continued from page 2

so few opportunities for promotion, TIC is often a one-way ticket out of the Foreign Service. This rule is not only unfair to the individual specialist, it works against the State Department's interest in retaining skilled personnel.

AFSA is also proposing to award limited career extensions (LCE) for senior FS medical officers and psychiatrists on a sustainable annual basis. The basic 20-year limitation on the careers of substantial numbers of medical officers and psychiatrists defeats the goal of developing the special medical expertise required in the Foreign Service.

Diplomatic Security employees stand to benefit from two AFSA initiatives. After AFSA convinced the administration to support LEAP (low enforcement availability pay) and with the State Department's push, legislation has been included in the House version of the Commerce, Justice, State appropriations bill which would provide DS with the same method for paying overtime that is applied to the rest of the law enforcement community. Likewise, AFSA urged State management to intervene on behalf of DS personnel hired before the advent of the Foreign Service Pension System who are at a disadvantage with their retirement system. Legislation (H.R. 633) now under consideration would put DS employees on the same footing regarding retirement as the other federal law enforcement agencies.

Every member benefits from AFSA's legislative activities. Right now AFSA is lobbying Congress to include Foreign Service employees in the capitol gains tax break from sole of a home that other citizens have received since 1997; to give FS employees the same right that Civil Service employees currently have to switch to another retirement system; and to fund adequate security measures to safeguard Foreign Service people overseas. In Virginia, AFSA has pushed to amend the constitution to extend absentee voting rights on state and local issues.

Specialists have a representative on the AFSA Governing Board. Michael Corbett can be reached at (202) 663-0312 or corbett_m@hotmail.com. Another specialist, Nanette Krieger, serves on the State Standing Committee.

continued on page 5

Specialists

continued from page 4

Contact her at (202) 647-7032 or fax (202) 647-8891. Michael and Nanette are eager to hear from their constituents.

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V.P. VOICE

• BY FRANK MILLER •

Selection Board Findings

From reading the reports filed by the 1998 boards and talking to board members, the employee evaluation system is clearly working better this year. Raters and appraisal committees (ACs) took their responsibilities seriously. While most of the evaluations were fairly well written, the boards highlighted the following recurring problems:

Role in organization: Many raters failed to devote enough attention to this requirement, but it provides an important context for reviewing performance. To address this problem, AFSA and HR are negotiating a small change in the format to provide a separate section to describe the employee's role in the organization.

Work objectives: Work objectives and performance measures should be commensurate with the complexity of the position and grade level of the employee and should be within the employee's control. A work objective is a results-oriented outcome developed for a distinguishable task or unit of work. Many performance measures were statements of ongoing responsibilities or processes rather than statements of expected results.

Performance: All work objectives and performance measures must be specifically addressed in Section 4. Failure to do so disadvantaged the ratee. Raters should cite examples to describe what was accomplished, how well it was accomplished and what skills were utilized in reaching results. Too much attention was placed on what, leaving little space for how and the results. Raters are encouraged to use 360s to demonstrate how skills were used to meet objectives. Raters must also demonstrate cross sectional skills in describing performance and potential. The boards looked for employees who could think and work creatively and understood the overall mission beyond their own role. Employees should not limit themselves by confining their scope of performance

and interest to a narrow technical or programmatic field.

Potential, skills and areas for improvement: This section is crucial to career advancement. Some raters used it as a continuation of the performance section. Discussion of performance should only appear in the potential section if doing so helps to demonstrate skills and potential for assuming additional responsibilities. Unfortunately, raters often ignore promotion precepts. All FSOs, raters and AC members must be familiar with the precepts. Moreover, ratees should keep precepts in mind when they work with raters to develop their work objectives at the beginning of the year and when they write their list of accomplishments at the end of the year. Clear examples of how, what, the results of their performance and their skills allow the rater to more convincingly demonstrate their potential for promotion.

Areas for improvement: were sometimes ignored. Real areas for improvement gave credibility to the evaluation. This section should be written in a positive way to help employees develop, not to punish and demoralize. Areas for improvement should be discussed with ratees throughout the rating period or at least during the mid-cycle review. Failure to review performance during the rating cycle is a disservice to employees and a failure of leadership.

Employee remarks: Employee comments are extremely important. In several cases employees were able to significantly overcome poorly written evaluations and improve their ratings with their own comments. However, employees should avoid defensive comments and the urge to vent. They should tell the board what they have accomplished, describe special circumstances they faced in meeting objectives and the progress they have made in addressing areas for improvement that appeared in the current and past evaluations. Employees need to take a proactive role in their evaluation — after all, their career is at stake.



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OLSEN V. ALBRIGHT: THE JUDGE'S RULING



SCOTT HODGDON

O

FEDERAL JUDGE STANLEY SPORKIN
RULES THAT FSO OLSEN WAS RIGHT
TO RESIST ILLEGAL CONSULAR POLICIES

n Dec. 17, 1997, Judge Stanley Sporkin of the Federal District Court in the District of Columbia ruled on the case *Robert E. Olsen v. Madeleine Albright, et al.* Sporkin overturned the State Department's dismissal of Olsen, and, in the process, declared certain consular practices — the use of fraud profiles based on race or national origin — illegal. While the Olsen case is still unresolved (see accompanying articles), there is no doubt that Sporkin's ruling gives the State Department and its consular officers a great deal to think about.

Below you will find extensive excerpts from Sporkin's ruling. In some instances particular citations are omitted for the sake of readability. Any passages in italics are the *Journal's* explanations; everything else is Judge Sporkin's opinion.

F O C U S

Judge Sporkin's Summary

Plaintiff, a former member of the United States Foreign Service, seeks a determination that plaintiff's termination by the U.S. Department of State was unlawful. Plaintiff further attacks the decision of the Foreign Service Grievance Board upholding that termination as unlawful. ... Plaintiff claims that he was terminated because he objected to and refused to follow "profiles" that required him to adjudicate visas on the basis of the applicant's race, ethnicity, national origin, economic class, and physical appearance. Plaintiff seeks reinstatement in the Foreign Service with back pay, benefits, and scheduled administrative promotions.

This Court grants plaintiff's motion in part. The administrative record indicates that the Grievance Board did not properly address the question of the legality of the consulate's visa policies when it reviewed plaintiff's termination. On their face, these profiles are contrary to law because they make generalizations based principally on the basis of race, ethnicity, and national origin. The plaintiff had the right to voice his objections to these policies and not be discharged for refusing to apply them. The Board failed to address this issue in its decision. As a result, the Court finds that Board's decision was "arbitrary," "capricious," and contrary to law within the meaning of the Administrative Procedure Act. Accordingly, the Court will remand the matter to the Grievance Board for a reconsideration of its decision of plaintiff's termination in light of this Court's decision.

The Factual Background

[Sporkin notes that Robert Olsen practiced law before] joining the Foreign Service on Jan. 6, 1992, at age 47. Plaintiff was appointed to serve an initial five-year term, at the end of which he would become eligible for tenure and a career appointment. On Oct. 29, 1992, following the completion of his training, plaintiff began a tour of duty at the Sao Paulo consulate. He was assigned to serve as one of four consular officers primarily responsible for adjudicating applications for nonimmigrant visas. ...

*"Plaintiff believed
that the policies were
not only improper,
but illegal."*

The consulate had established various policies which all officers were required to follow in adjudicating eligibility for nonimmigrant visas. Some of the policies focused on the applicant's physical appearance and economic status. According to the consulate's manual:

It is helpful to circle doubtful items on the [visa application form] so that other officers have an idea of why the applicant was g-ed [*marked specifically for questioning?*]. Officers sometimes use abbreviations on the forms:

RK= Rich kid

LP= Looks poor

TP= Talks poor

LR= Looks rough

TC= Take care

Some of the stated reasons for the denial of visas included: "Slimy looking; wears jacket on shoulders w/earring," "LP!!!!," "Looks Really Poor," "L[ooks] Scary," "Bad appearance. Talks POOR," and "Looks + talks poor."

In addition to the codes based on physical appearance and economic status, the consulate's policies focused on the race, ethnicity, place of birth, and national origin of applicants. For example, the consulate's manual provided:

KOREAN/CHINESE FRAUD

Major fraud; hard to check. In general, they are almost always called for an interview. Visas are rarely issued to these groups unless they have had previous visas and are older.

The manual also distinguished among applicants based on place of birth within Brazil. After identifying various cities "known for fraud" — most of them with predominantly black populations — the manual states: "anyone born in these locations is suspect unless older, well-traveled, etc."

In addition to the manual, an April 1993 memorandum distributed to the consulates in Brazil states in pertinent part: "Arab and Chinese last names set off

bells and whistles." ... According to Consular Section Head Patricia Murphy: "Another body of guidelines is not post-specific but nationality-specific. ... For example, Filipinos and Nigerians have high fraud rates, and their applications should be viewed with extreme suspicion, while British and Japanese citizens rarely overstay, and generally require less scrutiny."

Plaintiff believed that the policies were not only improper, but illegal. Disturbed by the policies, he began to document some of the particular cases which he found troubling to Lloyd and Murphy [*his supervisors — ed.*]. ... According to a March 10, 1993 memorandum by Laura Lockman, an officer at the consulate, the plaintiff was quoted as saying "that decisions should be made on facts going deeper than the profile information." After a temporary assignment in April 1993 to the visa unit at the consulate in Porto Alegre, Brazil, plaintiff wrote an April 27, 1993 memorandum to Murphy. It stated that "Porto Alegre uses the personal appearance of applicants simply as a rough check of their documentary evidence. Sao Paulo, on the other hand, ... relies heavily on the appearance of applicants." On his copy of the memorandum [*unit chief Thomas*] Lloyd added the following handwritten comment: "His criticisms of most everything we do in the visa section in Sao Paulo are implicitly apparent."

Lloyd and Lockman informed plaintiff that they disapproved of his judgment in particular cases because he had issued visas "to typical post fraud profiles." Lloyd and Lockman told plaintiff that he should spend approximately three minutes per interview and that he should attempt to achieve a 30 percent refusal rate. To achieve these goals, they said, "plaintiff should base his judgment on the profiles."

Plaintiff's supervisors and fellow officers grew increasingly resentful of his disagreement with their adjudication policies. According to Murphy's later description of her and the others' reactions to the plaintiff, the plaintiff was refusing to be "a part of the system" and was contesting the decisions of other officers on visa denials. "In some ways, Bob's problems here have been because he refuses to compromise with his own convictions."

[The judge describes how Olsen received an unsatisfactory Candidate Evaluation Report, was moved from the visa unit,

*"The issue that is at
the heart of this case
[is] the legality of the
consulate's visa
policies."*

was reassigned to Washington, and was eventually terminated from the Foreign Service in September 1994. Olsen appealed to the Foreign Service Grievance Board, but] the Board denied plaintiff's request for a hearing and plaintiff's grievance. The Board concluded that "the practice of establishing local post-specific guidelines is not a violation of law" and that the consulate's assertions regarding "grievant's poor judgment and resistance to post-specific guidelines" supported the unsatisfactory rating.

[Olsen appealed his dismissal to the U.S. District Court, and Judge Sporkin ruled:]

The Court concludes that the Board's decision was arbitrary, capricious and contrary to law. ... The decision of the Board rests on essentially three grounds: (1) Plaintiff's slow speed in adjudicating visas; (2) Plaintiff's poor judgment in adjudicating visas; (3) Plaintiff's refusal to follow the consulate's policies. ...

Underlying the Board's interpretation of plaintiff's judgment and resistance to the consulate's policies is the issue that is at the heart of this case: the legality of the consulate's visa policies.

[Under the U.S. Code,] the State Department may not "take ... any personnel action against any employee for refusing to obey an order that would require the individual to violate a law." Although the Board never explicitly addressed the legality of the consulate's policies, this issue is essential to how plaintiff's judgment and job performance are to be interpreted. If the policies are clearly valid, then the Board's decision is quite reasonable, for plaintiff appears rather insubordinate. If, on the other hand, the policies are unlawful, then plaintiff's conduct must be interpreted in an entirely different light.

Rather than being uncooperative, plaintiff appears to be exercising his right to refuse to obey illegal orders while at the same time attempting to meet the demands of his superiors.

[In the end,] "the court concludes that the consulate's policies are unlawful and that plaintiff was justified in refusing to follow them.

Although the Constitution clearly prohibits discrimination on the basis of race, ethnicity, or national origin, the Supreme Court declared that "the power to expel or exclude aliens (is) a fundamental sovereign attribute exercised by the government's political departments largely immune from judicial

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control." During most of its history, the United States openly discriminated against individuals on the basis of race and national origin in its immigration laws. The oldest naturalization laws only permitted "free white persons" to be eligible for United States citizenship. The Chinese Exclusion Act of 1882 expressly excluded Asians from immigrating. The Immigration Act of 1924 established quotas based on nationalities, resulting in a disproportionate exclusion of Africans and Asians.

Throughout the latter half of the 20th century, Congress moved away from such discriminatory policies. The most profound change was the Immigration and Nationality Act Amendments of 1965. That act eliminated discrimination on the basis of race and national origin. The law reads, "(N)o person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's race, sex, nationality, place of birth, or place of residence." The legislative history surrounding the 1965 act is replete with

the bold anti-discriminatory principles of the Civil Rights Era. Indeed, the 1965 act was passed alongside the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

The government does not contend that the consulate is permitted to engage in discrimination on the basis of race, ethnicity or nationality; rather, the government maintains that the consulate's policies are not discriminatory. The government argues that the notations about an applicant's physical appearance, such as "Looks Poor," "Looks Rough," etc., are used only to inform the interviewing officer as to why another consular officer believes that an interview should be conducted. Visas are denied not solely based upon these notations; rather, the appearance of the applicant is merely one factor in the decision. To support its position, the government points out that many of the cases that plaintiff complained about ultimately concluded with an approval after the interview. Further, the government claims that the statements that Koreans, Chinese, and Arabs are likely to be com-

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mitting fraud are not designed to serve as grounds to exclude these groups from obtaining visas. These generalizations based on nationality are used only to alert the visa officers of the potential for fraud and instruct them to be more careful in their examination of individuals with such national origins.

The Court finds that the consulate's policies were not as benign as the government contends. The administrative record suggests substantial evidence that physical appearance played a large role in visa determinations. Although codes such as "Looks Rough" and "Looks Poor" appear only to concern an applicant's economic status, the reality is that in many countries, such as Brazil and the United States, certain ethnicities are disproportionately represented among the poor. As plaintiff observed in a letter to the Board paraphrasing and complaining about the policies: "The applicant's race or skin color, dress and personal appearance, and demeanor are usually surer indications of his or her economic class than the information contained in any documents. Especially in adjudicating without interviews, officers should deny visas to persons who 'look poor,' 'look rough,' or 'look slimy.' ... Dark-skinned Brazilians 'look poor' because a disproportionately large percentage of Brazilian 'pardos' (racially mixed) and 'pretos' (blacks) are in fact poor."

The consulate's policies are discriminatory because they are strongly based on impermissible generalizations and stereotypes, not because these factors are the sole and exclusive reason for denying a visa application. The singling out of applicants for additional scrutiny based upon a discriminatory profile — which is likely to increase the possibility of visa denial — is sufficiently burdensome to cause a substantial injury to these groups. If the profiles really did not have much effect on the visa adjudicatory process, then there would be no need to use them. It is precisely because the consulate deemed the profiles especially useful in identifying cases of fraud that they were used.

The most disturbing elements of the consulate's policies are the statements in the manual and the April 1993 memorandum concerning applicants of specific nationalities. Although these passages do not explicitly instruct the

visa officer to deny their applications, they suggest that the applications of individuals from these groups should be denied.

Although the government argues that these stereotypes are only used to determine which applicants should receive interviews, the passages in the manual suggest that the stereotypes

play a much greater role. ... The statements in the manual inculcate visa officers to pre-judge certain groups solely on the basis of their nationality or physical appearance. The consulate's policies instruct visa officers to view members of these groups as far more suspicious and dishonest than applicants of other races and nationalities. In effect, the manual places a heavy additional burden on applicants of particular nationalities and races that other individuals do not have to face. Based on generalized stereotypes about their behavior, Koreans, Chinese and Arabs are singled out and stamped with the ignominious badge of "major fraud" before any facts about them are known.

The government contends that the fraud profiles are necessary to prevent nonimmigrant visa fraud among groups likely to commit such fraud ... Although the Court understands the difficulty of the government's task, greater efficiency is not sufficient reason to justify the discrimination of people based upon their skin color or national origin. ... The principle that government must not discriminate against particular individuals because of the color of their skin or the place of their birth means that the use of generalizations based on these factors is unfair and unjustified.

The Court is aware of the State Department's difficult responsibilities in adjudicating visa applications under strict time constraints. However, the Court is confident that the State Department can dispatch its duties effectively without using generalizations based on national origin. The nation's officials once deemed it necessary to make the broad generalization that American citizens and residents of Japanese origin were inherently suspect and likely to commit espionage. Recently, the United States recognized that this was a terrible error: "A grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review of and probative evidence against them, were

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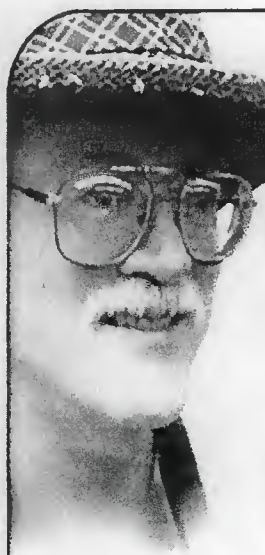
excluded, removed and detained by the United States during World War II." (from *Personal Justice Denied, Report of the Commission on Wartime Relocation and Internment of Civilians* 18, 1982). Although this country has come quite far in stamping out discrimination in all its laws and policies, some vestiges still remain. In this case, the consulate's visa policies stand in direct opposition to the progress this country has made in eliminating discrimination in the context of immigration law. Accordingly, the Court concludes that the consulate's visa policies are in violation of law and that plaintiff was more than reasonable in his protest of them.

Grievance Board Errors

The Grievance Board's decision fails to address adequately the issue of the legality of the consulate's policies in interpreting the plaintiff's job performance. Not only does the Board's decision fail to address this issue directly, it fails even to consider the reasonableness of plaintiff's belief that

the policies were illegal and the impact of plaintiff's belief on his performance. The administrative record suggests that many of the complaints about plaintiff's performance were indirectly, and sometimes directly, caused by plaintiff's refusal to follow the consulate's offensive policies. As evidence of this fact, the administrative record reveals numerous instances where plaintiff's superiors, in instructing plaintiff how he should improve his performance, told him to rely more heavily on the profiles. The administrative record indicates that plaintiff's attitude toward the consulate's policies was a major aspect of the problems identified in his job performance.

The law recognizes that government employees are not to follow orders blindly. Congress expressly gave government employees the right to refuse to follow orders requiring them to engage in illegal acts without fear of retaliation. ... With the complexity of our laws, the legality or illegality of certain orders is often an ambiguous issue. Ultimately, employees must exercise good judgment in determining



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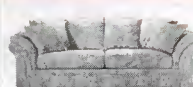
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whether an order requires them to violate the law. The law does not permit employees to second-guess every order or to sit as judges of the legality of government policies. Nevertheless, Congress contemplated that there would be certain instances when a government employee would be asked to violate the law, and Congress determined that government would function best if each employee exercised good judgment and respect for the law rather than follow orders blindly and thoughtlessly. These instances cannot be identified by a categorical formula; rather, they must be determined in a case-by-case manner.

In this case plaintiff faced the difficult tension of carrying out the responsibilities of his job while trying to avoid applying policies he rightly concluded were improper. The Court, understanding the complicated position in which plaintiff found himself, instructs the Grievance Board to recognize his plight. It is of interest that when plaintiff was performing his temporary assignment at the Porto Alegre consulate, he acquitted himself in exemplary fashion. Plaintiff's job performance during his assignment in Porto Alegre received the following review:

Robert, in that classic Foreign Service cliché, "hit the ground running." He needed very little time to adjust to our procedures, and quickly became integrated. He went through the day's workload with dispatch, and to my eye appeared to apply consistency and good judgment to each visa case.

Conclusion

The Court will grant plaintiff's motion for summary judgment on Count I of his First Amended Complaint. The Court concludes that the Grievance Board's decision was arbitrary, capricious and contrary to law. ... The Board's decision rested upon its assumption of the legality of the consulate's policies. This was in error.

[The Court then ordered that the decision of the Foreign Service Grievance Board be vacated, and that the matter be remanded to the Board. On March 19, 1998, the board ordered Robert Olsen's reinstatement as a Foreign Service officer.

Olsen's case, however, remains in an administrative limbo. For more details, see Steven Honley's update on page 23.] ■

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INTERNET[IONAL] RELATIONS

Exploring the World on the World Wide Web

BY HELDER GIL

Most of us know that the Internet is an indispensable resource in the search for precise and detailed information. While intensive research on a topic in the deserted reaches of a library may prove fruitless, one can almost always find something on the World Wide Web. It is not the quantity of information available on the net that is the problem, it is its quality and relevance.

A search query of "foreign service" using a typical search engine, for example, ultimately yields tens of thousands of sites, ranging from the State Department home page to personal web pages of FSOs and even one site advertising "girls from around the world for your viewing pleasure." Searching the net can be daunting enough to make one permanently log off and retreat to the card catalogue. It's especially frustrating for those of us with Information Age friends who can skillfully navigate the Internet, blissfully unaware of the fact that their counterparts are tearing their hair out with both hands.

The following is a selection of well-informed sites on American political and foreign policy, diplomatic news, and issues in the international community. All

Helder Gil, a student at George Washington University, was the Foreign Service Journal's spring intern.

of these sites' addresses are preceded by "http://" unless otherwise stated.

The site maintained by COLEAD, the Coalition for American Leadership Abroad, www.colead.org, contains an excellent directory of links to web sites on American political and foreign affairs institutions. It will link you to the White House, the State Department, USIA, USAID, congressional committee pages, and the Library of Congress.

When looking for background information on a particular issue, a useful site is www.usia.gov/usis.htm (or *html*, depending on your computer system). Run by the U.S. Information Agency, the site allows visitors to get information on current global issues. The USIA Alumni Association also sponsors a web site on public diplomacy at www.publicdiplomacy.org.

For information on the latest issues facing Congress, take the information superhighway to thomas.loc.gov/home/thomas2.html and then go to www.rollcall.com. The former is a federal information site maintained by the Library of Congress, containing information on Congress' present agenda as well as on individual members and committees; the latter is run by *Roll Call*, a widely-read Capitol Hill newspaper recognized for its grasp of congressional goings-on.

For its part, the State Department maintains a well-organized site at www.state.gov/index.html with categories such as "regions," "department," "policy," and "services." Furthermore, the "hot issues" link

under the policy category leads to essays and press releases on topics such as the recent Senate ratification of NATO expansion and Iraqi compliance with U.N. weapons inspection teams. In addition, the page publishes information to FSO wannabes on careers in the Foreign Service and scheduled administration dates for the Foreign Service Examination.

For job openings at the Department of State go to www.state.gov/www/careers/index.html.

By far the best site for constantly updated news is www.cnn.com, with its thorough search engines and extensive links. The site allows visitors to set up a page where they can narrow down news to the categories they are most interested in (such as world news, national, business, sports or entertainment). Visitors can also arrange their own Web news clipping service that saves CNN online news stories within these categories. And fortunately for those of us who are not quite so Web-savvy, the setup instructions for these personal sites are in easy-to-follow steps.

In the past, FSOs stationed in far-off locales have been forced to do without their daily hometown newspapers. Now many of these papers publish online editions, most of which are accessible on the American Journalism Review's site, newslink.org, which lists papers by publishing frequency, geographical region, and state of publication. The site also displays links to various foreign papers with online editions.

The *New York Times*' site, at www.nytimes.com, breaks news down into categories such as "politics" and "international" news, while its "breaking news" link is fastidiously updated every 10 minutes to provide the most up-to-date information available. Be forewarned, however, that most newspapers, including *The Washington Post* (www.washingtonpost.com) and *The New York Times*, require you to pay in order to download older archived articles, and may ask you to set up an account so that they can bill your credit card directly.

FSOs searching for information on their new foreign posts should check out the CIA's Web site at www.odci.gov/cia/ciahome.html. Visitors who follow the "publications" link will find detailed and unclassified information on every country.

Ever wonder how to say "I need a glass of water" in Estonian? If you are searching for the right words

in a foreign tongue, point-and-click your way to www.bucknell.edu/~rbeard/diction.html. It lists 400 online dictionaries in over 130 different languages from Afrikaans to Xhosa and includes thesauri and grammar tips for linguists. This is especially useful for FSOs stationed in countries where the indigenous language is particularly difficult to pick up.

Two of the most widely read and well-respected academic journals on international relations, *Foreign Affairs* and *Foreign Policy*, display some of their printed essays online (at www.foreignaffairs.org/ and www.foreignpolicy.com, respectively). American Diplomacy at www.unc.edu/depts/diplomat, run by the University of North Carolina's Diplomacy Department, is a new addition to the list. It is an online site which uploads quarterly academic articles and essays.

FSOs who find it difficult to procure books in English while abroad should turn to www.amazon.com, a "virtual bookstore" which can ship its 2.5 million titles — all listed and searchable online — to 160 different countries.

The National Security Archives, an independent research library at George Washington University (www.seas.gwu.edu/nsarchive) acquires and publishes a variety of declassified government documents. It houses a large selection of material on nuclear proliferation and made headlines several months ago after obtaining the long-coveted CIA in-house report about the 1961 Bay of Pigs invasion. And during your journeys in cyberspace, don't forget to stop by the Journal's own web site, www.afsa.org/fsj. AFSA indexes former articles published in the Journal and also publishes online editions of current articles. AFSA's main page will also link you directly to the Amazon bookstore, and if you reach Amazon from AFSA's page, AFSA will receive a commission on every book sold at no cost to the buyer.

As you have probably realized by now, an inclusive list of all sites relevant to international affairs and foreign policy would be book-length. Today most federal agencies and departments are online in some form. With a little patience and perseverance, you should soon be in the fast lane on the information superhighway. ■

The challenge on the Web is finding high-quality, relevant information.

THE CONSUL AND THE KING

A YOUNG FSO ON HIS FIRST TOUR OF DUTY MEETS THE
RULER OF THE DESERT KINGDOM OF SAUDI ARABIA

BY PARKER T. HART

Khalid al-Sudairi, emir of Dammam, looked up from his notes of our weekly exchange of Arabic-English lessons. "His Majesty has invited Your Excellency to Riyadh. We shall leave together in three days." Like most Saudi princes I had met, Khalid was sparing of words. On royal request a C-47 loaned from the U.S. Army Air Corps, bucket seats and all, would take us from Dhahran to Riyadh, at a formative moment in the U.S.-Saudi relationship.

I was thrilled but a bit worried. I had cooked up this invitation with Khalid a month earlier at another of our lesson exchanges and had not cleared it with my boss, our minister plenipotentiary at Jeddah, 800 miles to the west. Consuls did not, of their own accord, call on heads of state; that was the domain of chiefs of mission, in this case former Marine Corps

Colonel William A. Eddy, then U.S. minister to Saudi Arabia. Eddy was a soldier-diplomat sensitive to the recent accumulation of "courtesy" visits by U.S. officialdom. The monarch's hospitality had been great, and it had been abused. "Sword collectors" Eddy called them in protesting to the Department of State the wave of officials with dubious job descriptions who had wired ahead for arrangements to "pay respects." It was becoming more than the relationship could bear, and in no uncertain terms Eddy had demanded that Washington screen such visitors or he would do it arbitrarily from Jeddah. But this matter was now out of my hands and even those of Eddy. The king's invitation was an overriding command. How could I justify this visit with him?

It was March 1946. I had been in Saudi Arabia two years and knew that, by usual Department of State practice, my time would shortly end. The odds meant that I would never have another chance to meet this towering figure of Bedouin history, King Abd al-Aziz ibn Abd al-Rahman Al Faisal Al Saud. Often known by his Bedouin nickname Ibn Saud, this self-made king had created and consolidated a desert realm the size of the United States east of the Mississippi. He was frequently on the move, camping with his retinue in the desert, keeping in close touch with the tribes of his country, and telegraph and telephone facilities were so primitive as to be almost nonexistent. The U.S. legation in Jeddah was unlikely to "fit me in" to one

Parker T. Hart, a retired FSO who died in 1997, was ambassador to Saudi Arabia from 1961 to 1965 and assistant secretary of State for Near Eastern and South Asian Affairs from 1968 to 1969. This memoir of his service as consul in Saudi Arabia from 1944 to 1946 is excerpted with permission from Saudi Arabia and the United States: Birth of a Security Partnership, an ADST-DACOR Diplomats and Diplomacy Book, to be published by Indiana University Press in December. Copyright 1998, Jane S. Hart.

of its requisite desert field trips to communicate with the king, who made all the basic decisions.

From my post as U.S. consul in Dhahran on the Saudi east coast, I had been assisting the U.S. Army's Cairo-based African and Middle East Theater, under the local command of two able officers of the Corps of Engineers, Lt. Col. N. Shumate and Maj. E. Wenge. They had built from scratch Saudi Arabia's first airfield — the most modern in the Arabian peninsula and a gift from the U.S. government. It was almost operational after seven months of back-breaking work. Because Shumate had been demobilized, I designated his deputy, Wenge, to make the journey with me to Riyadh. Wenge had a few snapshots of the job site and could answer the king's questions, which, I rationalized, would be numerous. His Majesty had not yet seen this, his first airport, or any other modern airport. I also brought my vice consul, Larry Winter Roeder, and our Bahraini interpreter, Mahmoud Yusuf.

All four of us were dressed in Arab garb, by the king's command and at his expense, because of his sensitivity to Islamic extremism in his country's interior. Outside the oil fields, foreigners traveled in the kingdom only at the king's invitation (which, however, could be in response to one's own request) and under his protection. A tailor visited every prospective foreign traveler and outfitted him in one hour with a measured woolen robe, a cotton head cloth, an ankle-length cotton undershirt, and a head rope of black, tightly woven goat's hair.

The flight, my first to Riyadh, took about three hours and was not entirely uneventful. A teenage relative of Khalid al-Sudairi, emir of Dammam, became restless and began to finger an emergency window exit. It flew open and banged against the rudder before dropping some two thousand feet to the desert below. None of the several Sudairi princes aboard was the least bit disturbed; they did not even reprimand the boy, but simply told him to fasten his seat belt and remain quiet. The pilot came back to inspect, pronounced the rudder damage

insignificant, and returned to the cockpit. In the cool early morning air, we continued on course then banked for our descent toward what appeared to be an uninhabited, featureless terrain with no buildings. The heat came up to meet us on the "landing strip" of desert hardpan. We taxied toward a windsock and tent.

As we pulled up to the tent, a distinguished figure in Arab attire, Sheikh Hafiz Wahba, emerged from the flap to greet us. Wahba, the Egyptian-born private counselor to the king and Saudi minister to Great Britain, invited us in, picked up a World War I field telephone powered by a dry-cell battery, gave it a crank, and was immediately in conversation with the king. His Majesty, Wahba then announced, wished us to come at once to Qasr al-Murabba, the palace. We were then driven rapidly in clouds of dust over a washboard track for almost 20 minutes.

Approaching a citadel of tawny baked mud with crenelated towers, we turned into a wide gate guarded by several uniformed, bearded soldiers of fierce and determined mien. They snapped to attention as we slowed to identify ourselves. From a large inner court we were escorted to a shaded veranda, where I discovered that I was "alone" with only three other passengers from our flight: Wenge, Roeder, and Yusuf. I construed the sudden absence of the Sudairi princes as a matter of royal protocol; I was the guest, as were my party. The others would make their call when the king so directed.

As I led the way from the veranda around an L-shaped turn into the great *majlis*, usually a public reception area, the bulky frame of Ibn Saud, seated near the far corner beyond a sea of overlapping Persian carpets, rose. Giving a kind of salute, he beckoned us to come forward. Mahmoud Yusuf, knowing Bedouin protocol in

*All four of us
were dressed
in Arab garb
by the king's
command
and at his
expense.*

manners of address toward a paramount chief, knelt on one knee before the king to preserve eye-level subordination. I was gestured to take a chair on the king's immediate right, Wenge to his left, Roeder to the seat on my right. Around the walls were gilt-framed armchairs, and I estimated that easily 80 visitors could be accommodated.

At first we appeared to be alone. Then I saw two tall Arabs seated far away to the right, one of whom I at once recognized as Faisal, second prince of the realm, beside whom in San Francisco's Opera House in April 1945 I had stood as Department of State monitor while he signed documents relating to his country's membership in the United Nations. The other, taller figure I knew must be his elder half-brother, Crown Prince Saud. The king introduced them both, and I stepped over to shake their hands. Saud, like his father, was informal, jolly, and outgoing; Faisal was friendly but reserved and of the two bore the more princely demeanor. It was a meaningful contrast that never dissipated in the years that followed. After the introduction, they quietly left with their father's permission.

As I sat down, the king reached for my hand, enveloping it in his huge palm. Radiating an indefinable fatherliness, he welcomed me in a manner that reassured me that my maneuver to visit him was understood and by no means taken amiss. I thanked him for affording me the honor of meeting him and asked Wenge to show the king snapshots of his airport at Dhahran. The king went through them quickly. He asked no questions but remarked, "A good thing for both of us." And there it was, the end of my excuse for business with the king! We were served Arab car-

*I decided as an
American not governed
by traditions of royalty
to simply do an
emphatic handshake.*

damom coffee, then mint tea, whereupon the king suggested we rest. He would see us at dinner in the palace.

With our pilot and copilot, we were driven to the Badia guest house, a large two-story, mud brick building with an extensive vegetable garden, situated on the edge of the desert well outside the tiny walled city of Riyadh. We were ushered into a courtyard surrounded by two-story colonnaded passageways that shaded the bedrooms against the intense outside heat. An utter quiet was broken only by the sound of doves and the squeak of wooden wheels, as harnessed camels walking up and down a tread path raised leather well buckets.

Two hours after sundown, we returned to Qasr al-Murabba, where I found no less than the new British minister at Jeddah, Sir Laurence B. Grafftey-Smith. Quite at home with his excellent Arabic, he was asked by Arab attendants to lead the guests to the king. Grafftey-Smith bowed and kissed the king's hand. I decided as an American not governed by traditions of royalty to simply do an emphatic handshake and give a respectful verbal salutation. The king accepted it cordially. Inside the dining room we joined two

lanes of some 40 Arab guests and sons of the king crouched before the food in two rows, Bedouin-style, right sleeves rolled above the elbow. Between these lanes was an array of huge trays of whole roasted lamb on rice and, on separate plates, chickens, vegetables, camel's milk (from a single large bowl, passed around), a sweet milky gelatine called *mahallabiya*, and fresh fruits. There were no place settings, and etiquette decreed that only the right hand was to carry food to the mouth. Grafftey-Smith was on the king's right, I on his left, and etiquette further decreed that only the king and his principal guests were to converse. Barefooted stewards circulated deftly among the plates and around the great trays, using knives to cut choice pieces of lamb for the king and his guests. The atmosphere was informal.

My Arabic, rudimentary and mainly self-taught, was called upon to do its primitive best, as no interpreter was at hand, Yusuf being served elsewhere. I decided to exploit the opportunity of a lifetime and settle a question much debated by westerners. I asked the king how many children he had. He appeared slightly taken aback but quickly asked, "Sons or daughters?" I replied, "Both."

After a moment's reflection he said, "By God, I do not know exactly, but I know it is above seventy."

According to custom, the king, seeing that his principal guests had eaten their fill, led the way to waiting servants holding ewers of warm water, soap, towels, and basins for washing our hands. We entered a small lounge accommodating about a dozen leading guests. Over Turkish coffee, a free and easy conversation was possible, and an interpreter was included for my benefit. King Abd al-Aziz was in

high good humor. Like most Saudis, he joked only with people he liked and could be ultra polite and all business with others. The king brought up a favorite topic: the advantage of multiple marriages over Christian monogamy.

"I do not understand you Christians," he said. "You marry only one woman, and as you both age you become older looking at her. Why not a young woman for a second wife?" Slapping the British minister on the knee, the king added, "Look at Sir Laurence here. He has been married for ten years now and he has fever every day! Now I have four wives, and never any fever."

There was general but respectful merriment, the monarch joshing a visitor who spoke excellent Arabic.

The next morning my three colleagues and I bade a brief but grateful farewell to the king's representative and flew back to Dhahran. Minister Eddy not only took no exception to our visit with the king but a few weeks later, while I was visiting in Jeddah, sent me in an auto convoy to escort two eminent American agricultural scientists to see him.

Abd al-Aziz, the king, was a great warrior and a successful military strategist. Furthermore, the state he unified had as its main pillar assiduous respect for the *sharia* (Islamic law), as independently defined by leaders of the *ulema* (religious scholars). The Saudi *ulema* faithfully follow the teachings of the eighth-century imam Abu Abd Allah ibn Hanbal, founder of the most conservative of the four Sunni, or orthodox, schools of jurisprudence, as revived in the eighteenth century by Sheikh Muhammad ibn Abd al-Wahhab. Saudi "Wahhabism" holds together an otherwise diverse society. The

Cromwellian puritanism of Islam, it was the ultraconservative vehicle for the Saudi unification of most of the Arabian Peninsula in 1925.

Abd al-Aziz, the last unifier and first Saudi king, was a genuinely religious man. Though he rigorously held to strict Wahhabism, he loved life and had an earthy sense of humor and a profound distrust of the impractical and the extreme. He had set his mind on economic development. Under the leadership of his huge Saud family, no one in the kingdom, on principle, could be allowed to starve. Although he had no scepter, crown, or throne, the king was the most eminent of the single most eminent clan, directly accessible to his people at least once

a week. His rule was not arbitrary but by consensus.

Stories by travelers who had met Abd al-Aziz portrayed a strong leader, gracious and hospitable. One such story I had heard goes back to this period. If unverifiable in detail, its apparent authenticity must have been running through my mind during my visit.

On July 7, 1933, Abd al-Aziz had ratified a concession with Standard Oil of California to find, develop, produce, and market internationally any oil that could be found in the larger part of his kingdom. Almost immediately Western men began to arrive, dressed in Arab clothes as the king commanded and wearing full beards. In the eyes of the people



Ambassador Hart converses in Arabic with the Amir of Ja'uf, Abdal Rahman al-Sudeiri, in garden of guest quarters at al-Sakaka, north of the great Nefud desert, 1964.

→ they were, nonetheless, infidels. They roamed the desert in devilish vehicles and used all kinds of instruments never before seen. "Give them courtesy," the word spread, "they are the guests of Abd al-Aziz."

One sheikh high up in the Ikhwan, the king's fierce brotherhood in Islam, had had enough. When he demanded to see the king, he was admitted at once. Standing before the monarch he shook his finger under the nose that tradition prescribed he should have respectfully kissed. "You, Abd al-Aziz, are a traitor to your people and to Islam! You are unworthy to rule or to lead in prayers as our imam; you must get out!"

The king let him rant on without interruption, then ordered an aide to respectfully ask the highest *qadi* (judge) available to proceed in all haste to his presence to judge a matter of highest religious importance. Upon the *qadi*'s arrival, the king stood to greet him and offered him his seat, which the high cleric took. The king then removed his own *aqal* (head rope) and cast it on the carpet. In the prescribed fashion he stood beside his accuser facing the *qadi*. The *qadi* ordered the complaining sheikh to state his charge, following which he ordered Abd al-Aziz to reply. Clarifications and specifics ensued during which each party invoked the Quran to support his points. Abd al-Aziz held his own in holy writ. After several hours, the *qadi* delivered his judgment, exonerating the king from deadly sin. Thereupon Abd al-Aziz donned his royal *aqal* and turned on his adversary, warning him of dire consequences if he made further trouble. The sheikh left the room.

Rounding the corner of the L-shaped majlis of Qasr al-Murabba and passing a door to the veranda,

the plaintiff was suddenly seized by a powerful hand grasping his neck from behind and propelled into and across a windowless room, through an equally dark second room, and into a third that was well lit. The rough escort then let go and disappeared. Squinting in the light to get his bearings, the Ikhwani saw a brazier and a large coffeepot and, cross-legged before it, Abd al-Aziz.

"Come, sit here," the king commanded in a soft voice. "Have coffee. I want to talk to you."

The Ikhwani obeyed and for several hours the king, who had traveled hardly at all outside his great realm, spoke with familiarity of that wider outside world. How, he asked, was Saudi Arabia to live beside that world and keep its integrity? To do so required strength that could come only through modernization and a powerful friend, preferably one deeply interested for sound economic reasons in a Saudi relationship, but uninterested in usurping its government. Nonetheless, that friendly state must be powerful enough to be an effective ally in a world of conflict. The sheikh asked many questions, raised many objections, was not intimidated, but in the end was convinced. He became a lifetime supporter of the monarch.

Little did I realize at the time of my meeting with Abd al-Aziz that I had elbowed my way into the beginnings of a long-term relationship of mutual security between the United States and Saudi Arabia, which was to become a fulcrum of U.S. policy toward Southwest Asia and the Arab East. Nor could I have known that it would eventually involve both countries in an alliance of armed force to protect responsible custody of the world's single greatest source of oil. ■

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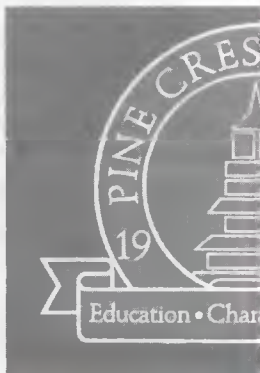
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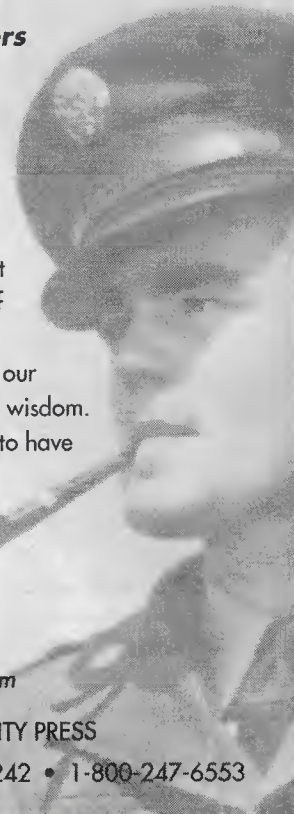
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BOOK REVIEW ESSAY

Dreams of Peace in the Middle East

By WILLIAM H. LEWIS

For the Future of Israel

Shimon Peres and Robert Littel,
The Johns Hopkins University Press,
1998, paperback, 206 pages, \$21

Negotiating Arab-Israeli Peace: Patterns, Problems, Possibilities

Laura Zittrain Eisenberg and Neil
Caplan, *Indiana University Press*,
1998, paperback, 252 pages, \$23

The Dream Palace of the Arabs: A Generation's Odyssey

Fouad Ajami, *Pantheon*, 1998,
hardcover, 344 page, \$42.

The 50th anniversary of Israel's founding was commemorated this year in Israel and among worldwide Jewry with restrained jubilation. The cause for celebration was apparent. Israel had proved victorious in armed confrontation with the armies of Arab neighbors, had faced local terrorist attacks with enduring resignation and, in the process, had grown both in population and accumulated wealth.

And yet, a pervasive atmosphere of uneasiness is evident in Israel today. It remains a nation incomplete, without fixed, internationally-recognized territorial boundaries; it is a pariah in much of the broader Middle East, and far from at peace with the majority of Arab states. Its defense forces continue to suffer casualties in southern Lebanon, its populace has felt threatened from long-range missile attacks, and violence generated by Hamas, the Arab terrorist group, remains an ever-pre-

sent worry. Not far from the thoughts of most Israelis are questions about which policies and strategies can ameliorate the situation.

Former Israeli Prime Minister Shimon Peres provides one set of answers in *For the Future of Israel*. In a series of interviews with the distinguished Israeli novelist and journalist Robert Littel, he outlines his rationale for the "land for peace" approach he and Prime Minister Yitzhak Rabin formulated in 1991 and 1992. Peres and Rabin recognized that past approaches offered no hope for peaceful coexistence with the Palestine Liberation Organization and Israel's Arab neighbors, so they initiated contact with PLO leader Yasir Arafat and fostered an atmosphere that resulted in the Oslo accords.

Peres, who was awarded the Nobel Peace Prize for his efforts, acknowledges without rancor that the widening ideological and political divisions within Israeli society were obstacles to his "land for peace" strategy. Unfortunately, Peres offers little advice to current Israeli Prime Minister Benjamin Netanyahu on how to draw Israelis together and encourage dialogue with Arafat. "I'm not sure he (Netanyahu) has an agenda, much less a strategy," he says.

Similarly, Peres offers no suggestions on how to cope with the resurgence of politically active Islamic groups. Islam as a religion appears opaque to him. He makes no effort to distinguish between those in the current Islamic religious revival seeking a

return to basic religious values and politically-inspired activists who seek to replace secular governing institutions with theocratic regimes. He is particularly fearful of the dangers posed by extremist clerics seeking political powers.

"We should be afraid of fundamentalist Islam. The Machiavellian description about movements that think goals justify means applies here," Peres observes. "This way of looking at things gives Islamic fundamentalists permission to kill, to cheat, to terrorize, to bluff. What they did to Salman Rushdie is what they want to do to Israel."

Peres contends that, ultimately, Islamic fundamentalists wish to "conquer the world." He fears that they may have acquired a nuclear bomb, a clear reference to Iran's efforts to develop a counter to Israel's arsenal.

The Peres-Littel dialogues lack analytical rigor and suffer from inadequate interpretive content. In contrast, Fouad Ajami has written an evocative meditation on the consequences for Arabs of Israel's emergence as a nation state. In *Dream Palace of the Arabs*, Ajami examines the torment felt by Palestinian and other Arab intellectuals as Arab-Israeli negotiations unfolded in Madrid in 1991 and resulted in the 1993 Oslo accords. Arab intellectuals were unrestrainedly agnostic, fearing that a truncated, rump Palestinian entity would emerge. They feared that the Palestinian Authority would inevitably become a tributary of a more powerful Israel, forever indentured and without pride of place. Ajami pro-



vides vignettes from Arab intellectuals of Palestinian, Lebanese and Egyptian backgrounds, painfully recording their anguish over the repeated defeat of Arab forces by the Israelis and the collapse of the Arab nationalist movement. Ajami's subjects brood over the current status of the peace process and the likelihood that their personal diaspora will continue.

Ajami, a man of poetic temperament, is well placed to present a sympathetic view of Arab angst over perceived dangers lurking on the road to Arab-Israeli accommodation. Born and raised in Lebanon, he is the Majid Khadduri Professor of Middle Eastern Studies at Johns Hopkins University, a MacArthur fellow and a well-known television commentator on the Middle East. The title of his book is borrowed from T. E. Lawrence's memoir, *Seven Pillars of Wisdom*, which described Lawrence's efforts during World War I to help Arabs build "the dream palace of their nationalism." Ajami chronicles the failures of Arab nationalism from Lawrence's time to the present by tracing the careers of several of the Arab world's leading intellectuals, particularly Palestinian exiles.

Of special relevance is his dissection of the intellectuals' reactions to the Arab encounter with Israel. In search of heroic political-military leaders capable of vanquishing Israel's vaunted defense forces, they were dismayed by repeated setbacks. They were further disillusioned by Anwar Sadat's "false peace" with Israel following the 1973 Ramadan-Yom Kippur War and wished for a return to Palestine by victorious diaspora exiles. Even as multi-track Arab negotiations with Israel unfolded under U.S. auspices in the wake of the 1991 Gulf War, they remained charter members of the "Arab dream palace."

The 1993 Oslo peace accords were an unwanted turn for Ajami's exiled confreres. When King Hussein of

Jordan sanctioned a peace treaty with Israel in 1995, they were shocked, even though the terms of the treaty required the government to honor it while allowing Jordanian citizens to decide for themselves whether they want to traffic with Israel.

Egyptian President Hosni Mubarak also left himself ample wiggle room, claiming that he had made no "official visits" to Jerusalem as had his predecessor, and that American pressures had led him to endure the "cold peace" with Israel. He indicated repeatedly that he was interested in the peace talks merely to serve as an honest broker in efforts to secure Israeli compliance with the Oslo accords.

Fantasy v. Dialogue

Ajami ultimately unleashes a devastating critique of the "fantasy world" of Arab governments and aging intellectuals who refuse to address realistically accommodation with Israel. He accuses mainstream intellectuals of being incapable of approaching dialogue with Israel in a spirit of compromise. "The Arab political imagination had never really probed in a serious way Israel's place in a region at peace. It had never felt the need to do so," he writes. Instead, he claims Arabs prefer to slay imagined monsters, to close off opportunities and to avoid risks that must be faced if there is to be peace.

The Palestinian intellectuals' exile has hardened their views and closed their minds, he writes. "From the safety — and alienation — of exile, the Arab world could be whatever the emigre intellectuals wished it to be. The one cause that had been the cause of their early years had been Palestine. This was the trail back to the past. In exile, fidelity had to be extreme and unbending."

It is not surprising, therefore, that the Palestinian exile community played no constructive role in defining realistic Palestinian goals and policy objec-

tives, nor in establishing the outlines for democratic governance in a "liberated" Palestinian state. Of course, Professor Ajami could not have foreseen in his condemnation of exile obduracy the consequences of the murder of Israeli Prime Minister Rabin at the hands of a Jewish extremist or the emergence of Benjamin Netanyahu as his successor. Netanyahu's Likud election victory has provided fresh inspiration to Arab exiles who contend that Israel will never make significant concessions to Palestinian aspirations.

Having previously assumed for itself the role of preeminent peacemaker, what can the U.S. do to refute this Arab view now that the peace talks are in the diplomatic intensive care ward? Laura Eisenberg and Neil Caplan, professors of political science at Hebrew University in Jerusalem, offer several provocative and insightful views in *Negotiating Arab-Israeli Peace*, a slender volume of enduring value. They begin by tracing the history of past abortive third-party interventions. "One of the main features of the pattern for failed Arab-Israeli negotiations was that, historically, third parties have meddled more than they have mediated, often unwittingly discouraging the leaders from making the difficult compromises successful negotiations demand," they conclude.

Secretary of State Henry Kissinger's shuttle diplomacy in the 1970s heralded the arrival of the U.S. as the premier third-party power broker in the Middle East. The implosion of the Soviet Union at the onset of this decade reinforced the American role. It was not surprising, therefore, that Arab and Israeli adversaries quietly lobbied the U.S. to mediate, endorse and guarantee diplomatic accords. The Camp David effort launched by President Jimmy Carter was viewed as a possible model for such an undertaking.

A subsidiary premise was that mean-

ingful American engagement would entail personal involvement at the highest level of the U.S. government. At the onset of the Clinton administration there were signs of this commitment. While some contended that the U.S. faced the possibility of becoming marginalized in future negotiations, the 1993 "Rose Garden" photo opportunity that followed the unveiling of the Oslo accords offered symbolic testimony that the Clinton administration had a future role to play.

Peace Process in Trouble

This diplomatic high-water mark has now been placed in jeopardy. The Oslo accords are in diplomatic limbo as a result of Israel's altered leadership in the wake of the Rabin killing. Certain realities cannot be blinked at by Prime Minister Netanyahu, however. A Palestinian National Authority has emerged in Gaza and several West Bank cities, with accompanying governing institutions and a measure of sovereignty. Without a significant rival or designated successor, Yasir Arafat is consolidating his power as the preeminent political force in the Authority. With their frustrations mounting over Israeli stonewalling in implementing the Oslo accords, Arafat and the PNA have declared plans to announce an independent Palestinian state in mid-1999. The new state will most likely receive international recognition and support; the result will most likely be a confrontation with the Israeli government.

The ability of the U.S. to defuse the situation will be tested, in the process unleashing rancorous domestic debate. Netanyahu has numerous friends and allies in the United States in the legislative branch, among conservative religious groups and in various Jewish communities. Nevertheless, should the crisis materialize, it

will likely be of Netanyahu's making. As Eisenberg and Caplan observe: "The situation since 1996 reveals that many of the historical obstacles overcome or diminished during the 1993-1996 period have reasserted themselves in traditionally more negative ways." Deeply ingrained hatreds have reemerged and the voice of Israeli society appears increasingly divided, with militants and extremists holding center stage.

According to Eisenberg and Caplan, Washington has not received a passing grade in its peacemaking efforts. In looking at previous third-party interventions, they caution that the success of such efforts depends on the following: (1) the principal involved parties must manifest a genuine desire to resolve their differences; (2) they must be prepared to negotiate without reservation with their counterpart's chosen leadership; (3) they must be equally prepared to scale back demands from a zero-sum approach to one that emphasizes the goal of mutual accommodation; (4) third parties must stress the need for compromise rather than unilateral "solutions"; and (5) there must be public acknowledgement that co-existence and peace are worthy of risks and sacrifices.

When notions of "security" and "national sovereignty" collide, principles provide little guidance on how to proceed. The matter may be moot, since, as the professors observe, we may no longer be embarked on a "peace process." Without effective U.S. intervention, future historians may one day observe, as Roman historian Tacitus once wrote, "They made a desert and they called it peace."

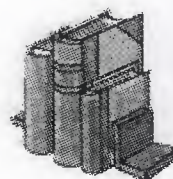
William H. Lewis, Ph.D., a retired FSO, is former director of security policy studies at the George Washington University. ■



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POSTCARD FROM ABROAD

Barefoot in Bali

BY NANCY JOHNSON

Sitting on our beach chairs on Sanur Beach in Bali recently, my husband, Charles, and I had front-row seats as the local Balinese, like diplomats at a cocktail party, used their linguistic skills to disarm unwary tourists and sell them wares.

We first discovered Bali 20 years ago when Charles was posted to Jakarta with USAID, and we fell in love with the tropical landscape and warm people. When we returned, it was with trepidation, because we heard that Bali had been ruined by tourists and racked by economic troubles. Indeed, several areas have been irrevocably changed by the crush of tourists and the shops and hotels that cater to them. Nusa Dua, once covered with rice fields and banana and papaya trees, is now home to an enclave of five-star international resorts. Kuta Beach, which was always somewhat trashy with its hundreds of commercial shops and cheap beach hotels, now spreads its blight over ten more kilometers of Balinese beachfront land.

Still, in most villages tourism and the influence of foreigners have not changed the routine. The Balinese, who live a communal life, practice Hindu Dharma, a form of Hinduism with a uniquely Balinese twist. Each day the faithful bring offerings to the shrines of traditional Hindu gods, Brahma, Vishnu and Shiva, and to the

Nancy Johnson is former managing editor of the Foreign Service Journal and the spouse of retired USAID FSO Charles Johnson.

*Each day the
faithful bring
offerings to the
shrines of
traditional Hindu
gods, Brahma,
Vishnu and Shiva,
and to the shrines
of the hundreds of
uniquely Balinese
deities.*

shrines of the hundreds of uniquely Balinese deities. Every morning, we watched women place intricate palm-leaf offerings decked with marigolds in the shrines that lined the beach walkway in front of the hotels.

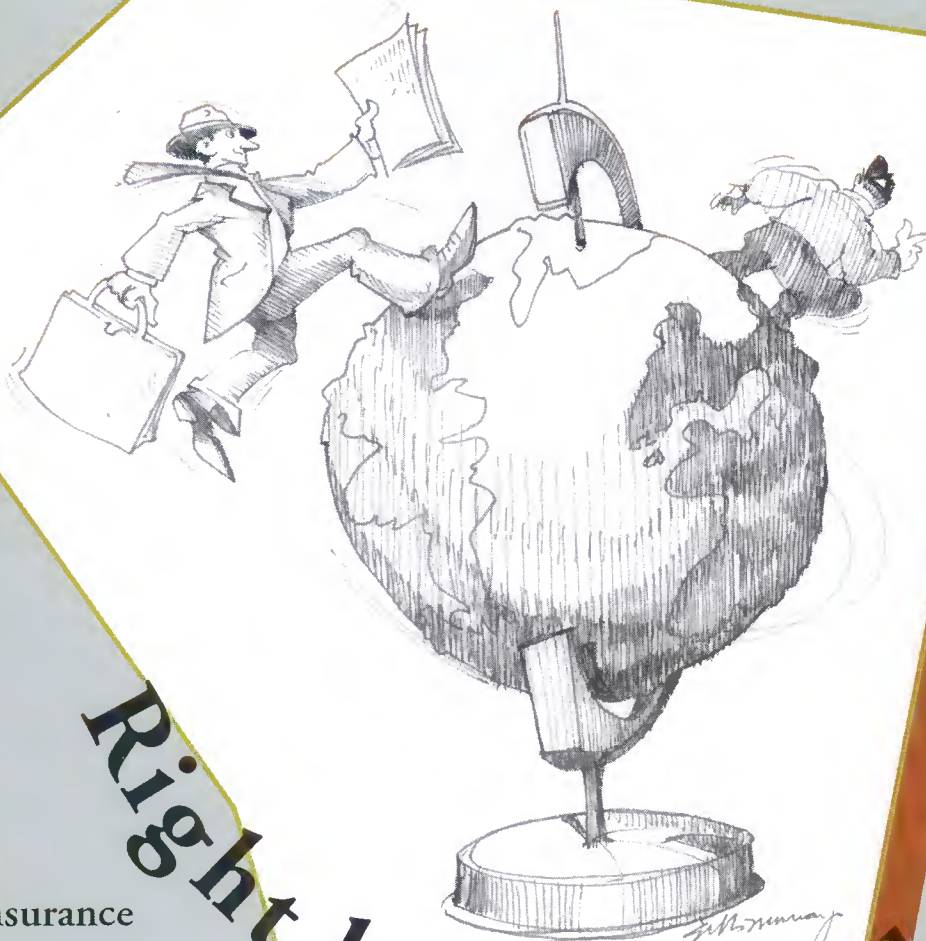
The Island's first hotels were built at Sanur Beach, and the low-rise open air pavilions with woven rattan ceilings and wood floors still blend comfortably with the island's tropical landscape. On festival days, women and children dressed in their best sarongs stroll along the

walkway as men groom their pet roosters in cages along the beach, preparing them for the cockfights that are popular on the island. On Sunday mornings, bare children frolic in the low waters and ride rubber kayaks, while tourists eat breakfast at beach-side tables.

Women dressed in long pants and straw hats wait by the public walkway as tourists stroll by. In a practiced game, they walk along with the visitors, starting their spiel in German, French or English. "What's your name? Where are you from? Just look, not buy ... special day with especially good morning prices, very low, just make an offer!" In truth, the prices are low, and tourists invariably make offers, hear a counter-offer, then buy a sarong, basket, hat, watch or belt and return to their hotels with new treasures.

Each day brought this never-ending show of capitalism. All vendors sold the same goods, had the same sales pitch. But one day I noticed an aged Balinese woman dressed in a worn sarong strolling slowly along the walkway. She conducted herself majestically; on her head she wore a large metal Buddha like a crown. I soon realized that she was trying to sell it. She did not engage anyone in conversation, but instead rang a bell, *ding, ding, ding*, while waving imperiously.

Watching her, I nodded "no." Later I realized that the Buddha would be perfect in my Virginia garden as a reminder of the vendors of Bali. I looked for the woman every day, but she was the one saleswoman who never appeared on the beach again. ■



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