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Commission Sensitive

MEMORANDUM FOR THE RECORD

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Event: Maura Harty, Assistant Secretary, Bureau of Consular Affairs, Department of State

Type of event: Interview (Folder A Tracks 1 and 2)

Date: 11-20-03

Special Access Issues: None

Prepared by: Tom Eldridge

Team Number: 5

Location: Room 6811, Department of State (Ms. Harty's office)

Participants - Non-Commission:

<u>Name</u>	<u>Agency/Title</u>	<u>Phone</u>
Maura Harty	DOS, AS CA	202-
Jamie Borek	Asst. Legal Counsel	202-647-2193

Participants - Commission:

Tom Eldridge	Counsel Team 5	202-401-1686
Susan Ginsburg	Counsel Team 5	202-401-1747

Documents/handouts received by the Commission: None

Other contacts referred to: None

TEXT:

Maura Harty has been a Foreign Service Officer since her graduation from Georgetown Foreign Service School in 1981. She has served in the Foreign Service for 23 years. She has served overseas at four posts, including Mexico, Colombia, Spain and Paraguay, where she was the U.S. Ambassador. She also served 4-5 terms in CA in various capacities, and 5-6 terms in the Executive Secretariat, including serving as the State Executive Secretary from April 2001 until when she assumed that job as Assistant Secretary of CA (November 21, 2003). Karl Hofmann now has her old job.

Susan Ginsburg explained to Ms. Harty that our interview was to help prepare for the hearing in January 2004 involving the present and future of U.S. border security.

We reviewed with Ms. Harty, three memoranda discussing the issues facing the Bureau of CA since September 11, 2001. They are, a memo from Deputy Secretary of State Armitage dated 10-16-01, titled "CA and border security post 9-11", a memo from Amb. Mary Ryan dated 12-01 titled, "Consular Issues Post 9-11", and a memo from Maura Harty to the State IG dated December 11, 2002, including CA's responses to the IG's recommendations for change in the visa issuance process. These memos touch upon the following issues:

1. Memo from Armitage to Cheney outlines the following:
 - Enhanced information sharing – NCIC
 - Exploring facial recognition in visa screening
 - Review of visa waiver program
 - Examination of Australia-style electronic namecheck for airline passengers
 - Deployment of more secure NIV
 - Creation of State Department FDL
 - Enhanced coop with Canada to improve border safeguards
1998 Border Vision Initiative
Full-time senior consular officer assigned to seek improved coordination of visa and asylum policy, and stepped-up enforcement efforts.
2. Cable from Mary Ryan on "Consular Issues Post 9-11"
 - "Moratorium, on visa issuance" proposal on the Hill
 - Tipoff information quadrupled
 - Improved file backup systems – real time update
 - Lost or stolen ppts input from posts
 - Augmenting "lookouts with global electronic access to refusal files and photos now kept at individual posts."
 - New more tamper-resistant NIV
 - Emerging facial recognition
 - INS access to CCD data within three months
 - VWP program reviews of individual countries
 - Foreign students – SEVIS – State may "play a greater role in the handling of these forms than we have in the past."
 - Lannon coordinating Canada-Mexico efforts. – Western Hemisphere project
 - "detailed plans" for Mexican temporary worker program and undocumented Mexican immigrant pop. "temporarily deferred"
3. Harty memo to the State OIG
 - Waiver of personal appearance
 - Travel Agency Referral Programs (TARP)
 - Consolidated guidance to the field, SOPs, Cons. Access to classified data
 - Executive oversight of visa issuance at small posts

- Staffing – changing rotation of junior officers, changes in CA and FSN roles – security-driven changes
- Training
- CLASS and Visa Viper – intelligence sharing

We asked Harty if these memos reflect the landscape of issues addressed by CA since 9-11. She said these were issues addressed since 9-11, but that some things were missing.

She then told us that CA was keeping a running report of all the changes made since 9-11, and offered to provide it to us after her office had done some additional scrubbing of it. We readily agreed to receive and review her report. She read to us from the report on certain of the issues discussed below.

As to the missing items, Harty said missing from the list were the things actually done since 9-11, in particular in the areas of oversight and guidance to the field. For example, she said, CA had sent out 51 cables outlining Standard Operating Procedures for consular officials since 9-11. She also indicated that in addition to the ideas expressed above, she had gotten together with her “leadership team” since assuming the AS job, and come up with new ideas of their own to improve the functioning of the Bureau.

We explored with Ms. Harty how visa policy has changed since 9-11. She indicated that it had changed significantly. She said these changes have occurred within the context of a view articulated by Secretary Powell: “We are striking a balance between secure borders and open doors.” These changes included:

- A significant change in the personal appearance waiver policy. Based on recommendations from the OIG, and GAO, and pursuant to a “roadmap cable” from Secretary Powell, consular sections are today obligated to interview almost all visa applicants. She said, “we think the interview has value.” She later said that “consular officers around the world have told me they prefer to interview people.” [Note: this view is somewhat at odds with the Mary Ryan view that interviews are not the answer to improving border security and that consulates should “interview to their refusal rates.”] She also stressed that the value was based in part on the training provided consular officers in interviewing techniques. Training can teach officers how to tell if someone is lying to you, Harty said. Pursuant to this cable, consular officers are today obligated to interview all applicants with the exception of six categories. Harty said she was eager to implement this new policy when they did (as of 8-1-03) because she knew that State would be phasing in the implementation of collecting biometrics (two fingerprints and a photo) from all applicants during the time from October 2003 to October 2004. Hence, she wanted consular managers to address the physical plant challenges associated with the increase in interview rate before they tackled problems associated with biometrics collection. Harty acknowledged there have been some problems. She said Seoul, Korea, was a “worst case

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scenario," and that the consular section chief there had been working through significant challenges implementing the new interview policy. She said that, of the 211 visa issuing posts, fewer than 25 have waits of more than 30 days in scheduling an interview. [Note: Could these be the biggest 25 doing the majority of visa work? We shall see.]

- Changes in the use of Consular Associates, family members of consular officers who traditionally adjudicated visas. Their adjudicatory role is being phased out. This phase out is almost complete, according to Harty.
- Similarly, the role of Foreign Service Nationals (FSNs) also has changed. These employees no longer have access to the CLASS system to perform namechecks, for security reasons. Ms. Harty said that there is no shortage of work for the Consular Associates and FSNs. Rather, the nature of their work has shifted within the embassy.
- Under the category of improved datasharing, pursuant to the USA Patriot Act, NCIC data is now available in CLASS. Ms. Harty said that, whereas on 9-11, there were 7 million records in CLASS, today, there are 14-15 million, including the 8 million NCIC files. In the same category of datasharing, CCD data is now available to the INS (at secondary), and Asa Hutchinson recently learned of the potential uses of CCD, and wants to make it available to DHS broadly throughout the U.S.
- Enhanced data collection and storage. Today, State has two new visa forms and collects data in 25 new fields [REDACTED] on visa applicants. State has been collecting biometric data on visa applicants for the past several months, and now is collecting data on applicants from 24 visa issuing posts. This data is being stored until the DHS U.S. Visit program is up and running. When that occurs, State will send the data to DHS for screening of applicants against its IDENT system. State also has ready data on 6 million Mexican Border Crossing Card applicants for checking by U.S. Visit. State also backs up the CCD at a second location to protect its data from technological disruption.
- Namecheck procedures (minus Condor). State now checks all new Tipoff records against the existing CCD data files, to make sure no individual with derogatory information indicating they are a terrorist is allowed to get or keep a U.S. visa. If they already have a visa, this check can result in their visa being revoked prudentially. Tipoff moved out of the State Department effective November 14, 2003, and under the control of the FBI-run Terrorist Screening Center. Said Harty, if it becomes the case they are not getting the same level of service from the TSC as they had from Tipoff, they (CA) will start telling everybody about it.
- Travel Agency Referral Programs. They are "gone." However, Harty said, there are certainly still posts who have remote data entry programs. In addition, State has created the ability of applicants to download the DS 156 electronically, fill it out electronically, and then bring it into the consulate. The form contains a bar code that allows the consular section to "read" and download it into the consular system immediately, a definite improvement in efficiency.
- Changes wrought by statute. The Patriot Act gave DOS access to NCIC data. The EBSA of 2002 made Visas Viper meetings mandatorily monthly. And the

Homeland Security Act gave State Section 428, providing DHS with oversight of visa policy.

- CONDOR. This is the Big Kahuna. We asked Ms. Harty to clarify the development and milestones in the Condor namecheck program. She indicated that she would do this for us and put it on paper.

Basically – until we get some more facts – we understand it worked like this. Prior to 9-11, there was an agreement that agencies involved in namechecks would respond within 30 days to a cable requesting such a check. After 9-11, one of the first things requested – by DOJ – was a delay in the processing of all NIVs of 20 days. State agreed with this. Then, DOJ sought to implement a namecheck for all males, 16-45 years old, from 26 countries. State agreed with this. Then, through the interagency process, CONDOR was created. Condor set forth 10 “criteria” for males from 16-45 years of age and from 26 countries, which, if met, mandated an FBI namecheck. This was implemented in January 2002. Following the implementation of Condor, there was an outcry from the nations involved, their citizens, educational institutions affected, businesses harmed, etc.

Harty described how, from her first day on the job in November 2002, “the scream factor was quite high from all over the world.” Harty said that “every foreign country was saying, ‘why aren’t you letting in our students, business people, and scientists. We love you; why don’t you love us anymore.’” Since before its inception, State has been trying to get the criteria and list of countries included changed. Harty, however, said that her confirmation had been difficult, and that when she first started, notwithstanding the “scream factor,” she had “no desire or inclination to challenge what had been requested of us by other agencies.” “Nobody wanted to appear to be not putting security first,” at that time.

Over time, as she has watched the Condor process develop, she has begun to assert herself more. In part, this is the result of her having overseen the processing of “125,000” Condor namechecks. As Harty said, if you do anything 125,000 times, even if it is just running around your desk, you ought to be able to learn something from it. During this same time, CA has worked to improve the ability to transmit to the FBI as part of the Condor process. They rolled out a new email system of Condor SAO transmission in Kuwait on November 15, 2003. However, glitches remain. In particular, Harty said that “some will tell you” there are 587 visa applications on “hold” by the FBI who is reviewing them for derogatory information. Thus, although “we have never been told to deny a visa based on terrorism information supplied by the FBI in the Condor process,” said Harty, there remains the issue of the forgotten 587.

Harty said new Condor criteria were put into place on October 3, 2003.

In Harty’s view, the problem with the FBI is a “lack of definition” Harty is referring to the FBI’s unwillingness to give deadlines by which time they will have completed their review. In Harty’s view, if the FBI would just state that the applicants

should be denied a visa on terrorism grounds that would be much better. Harty does not want CA issuing visas to anyone who might harm the United States. What she does want though, is for the FBI to "fish or cut bait" with regard to the forgotten 587, and make up their minds as to how these applications should be handled.

As to all matters, including Condor, Harty outlined her goal in her December 11, 2002 cable: an "efficient and transparent visa process"

We discussed a number of other issues with Ms. Harty. They include:

- Access to intelligence at consular posts. In particular, we are trying to get a handle on how non-specific intelligence on terrorist mobility gets to consular officers at posts. Harty said this is something she works on constantly and that she had recently asked her DAS to "tweak" the process again to make sure information was getting to the right people. Generally, she tries to make sure information gets to posts by seeking assistance from INR to make that happen. She indicated that this information gets to posts in at least four ways: (1) [REDACTED] (2) through discussions and routine information gathering at the post such as reading newspapers, (3) from close consultation with USG colleagues at post in the Visas Viper Committee meetings and outside those meetings in a viper-like environment more prevalent since 9-11 (she made note that the country team in Saudi Arabia worked together very closely now), and (4) through distribution of hard-copy versions of relevant intelligence by members of the intelligence community present at post. [REDACTED]
- Creation of a Forensic Document Lab in CA. Harty said she thought she "pulled the plug on it." Her reasons were (1) resources, and the lack thereof, and (2) she believed CA was getting excellent cooperation from the DHS FDL and USSS lab.
- Western Hemisphere. State is working in the interagency process to have adopted a requirement that USCits going to Canada and Cancits coming here be required to have a secure travel document to cross the border. It has been approved by State and DHS (Ridge) and is now going to the HSC for their consideration. Harty is aggressively planning for new passport needs to meet the demands in the event this is adopted.

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