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## Discussion Following the Remarks of Ms. Yost and Ms. Janssen

Discussion

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DISCUSSION FOLLOWING THE REMARKS OF  
MS. YOST AND MS. JANSSEN

MS. DONGIER: We have a few minutes for questions.

MR. CRANE: My name is David Crane from Toronto. I am very disturbed about what is happening on immigration policy. While it is true to say that Canada is still open to immigrants, we are often the best educated immigrants, we have gone far away from our practice of welcoming people who want to work hard and make a contribution.

Now, you have to have a Ph.D., be fluent in language, and have all kinds of work experience. So we have really changed our philosophy in a fundamental way; I think a quite disgraceful way. To simply say Canada remains open for business is quite misleading. We have made some very serious changes in our immigration policy. I think we should be ashamed of them. We only want the best brains, not the ordinary kind of person who wants to contribute to the future and create an opportunity for their children. It is a disgrace.

Secondly, it is a policy that is not going to work. One hundred percent of the net growth in our labor force by the end of this decade will have to come from immigration. We are going to need more than just computer scientists and microbiologists. We need people to do a vast array of kinds of work. I was in the Niagara peninsula, speaking to the Niagara Leadership Business Counsel. They already face a serious impediment in the growth of their tourism industry because they do not have people willing to work as chambermaids. Mexicans who want to come in and work as chambermaids cannot come in. We are actually paying an economic price.

It is true that there were deficiencies in both Canada and the United States on the monitoring of people who had bad intentions, whether they be drug dealers, members of the Russian Mafia, or terrorists. There is no doubt that Canada and the United States had Al Qaeda cells. We had a potential terrorist who was fortunately stopped on the way to Los Angeles by U.S. border security. A number of the September 11th bombers were in the United States with valid Saudi visas and some communicating back and forth between Germany and the United States. Obviously, both countries have a problem. I think we have to avoid the danger of overkill where we are now going.

Finally, there is a separate issue of the training of border officials. I was down in Mexico a while ago with the then Chairman of International Trade Commission, Provost of Stanford University, and a senior U.N. official. A U.S. Immigration officer at the border insists that the United States did not recognize U.N. passports. We spent over an hour trying to find somebody in

the U.S. government who could instruct this person that the United States has always recognized U.N. passports. We have a terrible case involving a Canadian coming back from India who was stopped in Chicago at the airport. Without any recourse and without access to consulate officials, she had her passport destroyed and was put back on the plane to the Middle East. It has been marked in her file never to be allowed in the United States again. There is a big issue of the training of people who handle these things. The point is that we are now creating immigration where we take the best and brightest from the rest of world and more or less tell the rest of them to keep out, which is quite contrary to the kind of words that were put on the statue of liberty.

MS. JANSSEN: Thank you. I think you make a very valid point. A point I did not have time to make is that I wish they would do the same thing on permanent residence. What I meant by that is it has opened the process of temporary entry. Having said that, you are quite right. Canada has a grave shortage in unskilled workers. The immigration has been very slow to move on that. There are some agreements pertaining to not just software, but there is crews, the construction worker industry. They have not successfully resulted in a lot of people. Manitoba had the same problem in the garment industry. I agree with you. We still could use skilled trades and not even skilled trades, just unskilled workers. The Caregiver Program gives a lot of relief in that, but not enough. There is an unskilled program, but it is only for 12 months or 24 months, and it costs quite a lot to bring the worker over. I am skeptical whether it would be successful if you do not give them an avenue to stay in Canada.

In terms of the border officials, I agree. I think the whole system stopped last year because of training and it will improve. When the law changes, there is always a change nothing happened from December to June and when the law changed and then when the law changed they went on training again. So, in fairness to the staff, I think it was nine months of total flax, which is now starting to work through the system.

MS. YOST: If I could have a comment or two on the U.S. side. I think your point is well taken about immigration. I share your concerns. I think the U.S. in 1990, changed its laws significantly and really since then that we have not allowed in any hungry, tired, or poor. I tell the people, forget the statue of liberty, it is ancient history. That was before and this is now. I think it is a world-wide trend.

Unfortunately, more countries are beginning to make laws. There are estimates there are 26 million refugees in the world, people are outside of their home looking for a place to live. I think most of the industrialized countries are concerned about the influx of people they would have if they would open their borders more widely.

The training issue in the United States is an enormous problem. I do not think it will be solved as easily as in Canada because our laws are extremely complex. We have four people who just do research all the time to let us know about changes in law. They send us e-mails on a daily basis when something changes.

The immigration service, now the Department of Homeland Security, does not have that kind of staffing. With all the requirements that there be more inspectors on the border, people are given two or three weeks of training and then set lose. There is no way. Our system of immigration is complex as the tax laws. It would be crazy to think you could send someone with two weeks of training to be on the line answering questions. I feel very sorry for the inspectors at the border. There is no way they can understand the complexities. I do not know what the answer to that is. It is often criticized and an increasing problem.

MR. CARMODY: Chios Carmody, University of Western Ontario. I was struck at the comment that Ellen had about the issue of nationality and how nationality is determined differently in different countries. In fact, it is an issue in international law how it is that we determine the nationality of somebody. In many instances, nationality does go beyond the formal legal criteria of citizenship. I am curious to learn from both of the speakers how it is your respective countries deal with dual nationals, that is a phenomena that is of some abstract interest, but also practical ones, certainly for a person like myself that has three nationalities. When I come to the United States, I carry my U.S. passport now. I was curious if there is sort of a pro preferentium. If, for example, you have a British national who is arriving in the United States, but has Pakistani nationality, are they treated to the better of the two national treatment standards and what is the current position in both the United States and Canada?

MS. YOST: I can speak to the U.S. view. You are treated with the worst. As far as the NSEERS Program, if an individual is a citizen of one of the designated countries, they must register.

If you are a citizen of Pakistan and you have four other passports, it does not matter. Now, if one of those is a U.S. passport, then you do not have to register. The U.S. does not recognize dual nationality. Under U.S. law, you are only a U.S. citizen. That is going to sound odd to a lot of you. Canada, I understand, recognizes dual nationality, as do most countries.

So, if you are a Canadian and take out U.S. citizenship, under U.S. law, you are only a U.S. citizen. You must use your U.S. passport when you come in. If Canada or Britain or wherever will continue to issue you a Canadian passport or British passport, you are under their law still a citizen, so you have dual nationality. It is a very odd result. From the U.S. perspective depends on the national of the other country.

The question of nationality in the U.S. is fairly simple, because anybody born in the United States is a national and a citizen. That is not true in most countries. So it is very difficult to know if somebody is a national of Pakistan. What is Pakistan's rule? Is being born in Pakistan enough to make you a citizen? Does it make you a national?

The question with NSEERS is what ties do you have to the country? If you are a Canadian citizen and you were born in Pakistan, but you have not been there for 30 years and you do not have any ties, you likely will not be required to register with NSEERS. The inspecting officer at the Peace Bridge would make that determination that you are not a national of Pakistan because you are no longer. Now, whether that is a correct analysis is doubtful because that inspector cannot really decide what Pakistan law is.

We have been advising some of our clients to register whether they tell you need to register or not because the consequences of not registering are so severe. You put your finger on a complex issues, and our poor under trained high school educated inspectors are going to have a hard time deciding on the spot what someone's nationality is.

MS. JANSSEN: In terms of Canada, we do not have that same issue. You are allowed to have as many nationalities in Canada without any implication on your Canadian status. However, on entering Canada, you must use your Canadian document, passport, or permanent residence card.

MR. McINNES: Simon McInnes, Industry Canada. I am wondering if you could talk about the southern border situation and all the illegal immigrants from Mexico, which is an issue you have not addressed yet. Domestically, I understand it is quite a sensitive issue here.

MS. YOST: It is a very sensitive issue. I suppose I did not address it because I do not have first-hand knowledge of working with it. It is a very political issue, obviously. It is an ongoing problem. One that if we wanted to address, it seems we could have. I think that there are businesses that feel they require having Mexican citizens coming in to do low wage work.

It has been a big political football. We seem unwilling to have a guest worker program. President Fox and President Bush were pretty close to an agreement on some sort of an amnesty, but September 11th took care of that. It is not on anybody's agenda. I think it is going to be a long time before that happens. I think it is kind of a tragedy that we have these things happening on our southern border. We actually entice people to come over with jobs or whatever. We have not dealt with the issue the way we should. That is my own personal view. I cannot do much about it. I think it is a national tragedy that we do that.

MR. SILVIA: Tom Silvia with the Standing Committee on Indian Law Michigan State Bar.

I want to read into the record this portion of the Immigration and Nationality Act that says nothing in this title shall be construed to affect the

right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 percent of blood of the American Indian race. A second observation I have to make, in the State of Michigan, both our Governor and the Head of the Washington County Bar Association were persons who were born in Canada. This is a forum that recognizes the close bond between our two peoples. The third thing that gives me great sadness to talk about, as a member of the American Immigration Lawyer's Association. I have two news articles, one from Montpelier, Vermont and one from Detroit. On or about March 13th both of the agencies assisting refugees in attempting to enter Canada and the United States have ceased their operation leaving hundreds of people stranded between the borders leaving many of them subject to arrest. I needed to make the record on that because we seem to have glossed over the implications that there are a very real number of people who are being affected by changes without remedy at this point.

A CONFERENCE PARTICIPANT: There is a general perception, particularly in the United States, that Canadian immigration law is more likely to allow terrorists to sneak through into Canada than into the United States. Ressay was mentioned earlier today. I was wondering if each of you could comment on that, and what your perception is of that issue.

MS. YOST: It is a big issue. You are correct. That is the perception that Canada has a more liberal policy. One of the things that we have done since 1996 is imprison people coming to the United States to seek asylum. Our law says if anybody comes without documentation and are seeking asylum, they are subject from detention. The only thing that has kept a lot of people out is we ran out of detention space, so a lot of people were not.

The Department of Homeland Security instructed anyone who was seeking asylum from Iraq, Iran, Syria, and one or two other countries must be detained. There are not enough prisons. If you come from one of those two countries, you must be retained. My personal view is we have a real problem with the asylum policy. Canada is known to be more generous. The thorny issue of asylum is, true asylum seekers. You do need to show that you have a reasonable fear of persecution. Many people are coming for economic reasons. Our laws just do not encompass that. We are trying to sort out of the ones coming for economic reasons from true asylum seekers. I think that is a difficult thing to do.

MS. JANSSEN: I am not a refugee or asylum specialist. They have six categories of protection in Canada, not just the Geneva Convention. We have one that says persons in need of protection on basis of personal danger, in the form of torture, cruel, or unusual punishment.

We also have them divided into people of country of asylum class, which are people living outside their country of residence and continue to be personally effected by civil war and conflict of massive violation of human

rights. We have a source country class, which is comprised of people who continue to live in countries of nationality, but their countries are susceptible to conflict or persecution. They have special countries listed from Columbia, El Salvador, Guatemala, Congo, and Sudan as countries that qualify for that.

Having said that, Canada under its new law also increased restrictions on who can and cannot apply for immigration. It did expand not only the Immigration Act, but the criminal code to cover issues of terror, suspected terror, involvement with human rights violations, and national war crimes. We do not necessarily have a different assessment of who is or who is not allowed into Canada. I would say Canada falls down more so is probably on the removal issue. You see a lot of bad press in Canada about removing people. In the U.S we use to detain a lot more people. Our detentions have been substantially reduced. They are very costly and were not very effective.

On entry to Canada as a refugee claimant, you get a work permit and health care immediately. That tends to be one of the attractions to people that you might not necessarily want in the country. This is why they tightened up. The success rate of refugees, however, is very small.

Under the new act, to apply for humanitarian as a way of getting around a failed refugee claim, they make it a lot of tougher. They are refusing to assess a lot of people within the country. They have a refusal option if they do not think you have to be assessed in Canada, they will ship you to a post outside to be assessed and then you have to reapply outside. That will make you leave. They have been tightening that, but I think enforcement will be more of a problem then who we let in.

MR. KING: We have to terminate now, because we have another program coming on very shortly. You all did a wonderful job.