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# The Meaning of “International Student” Post-9/11: A Rhetorical Analysis of How Organizational Change Altered Perceptions of International Students in the United States

Ann Margaret Sinshiemer  
*Carnegie Mellon University*

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Carnegie Mellon University

**The Meaning of “International Student” Post-9/11: A Rhetorical Analysis of How  
Organizational Change Altered Perceptions of International Students in the United States**

A dissertation submitted in partial satisfaction of the requirements for the degree of

Doctor of Philosophy in Rhetoric

By Ann Margaret Sinsheimer

2011

Dissertation Committee:  
Dr. David Kaufer, Chair  
Dr. Christine Neuwirth  
Dr. Andreea Deciu Ritivoi  
Prof. George Taylor

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### Abstract

Following 9/11, U.S. immigration law and policy toward international students in the U.S. dramatically changed. Post-9/11, the government instilled restrictive policies, including a tracking program (SEVIS), to closely monitor international students because these students were viewed as possible terrorists. Additionally, the government replaced the Immigration and Naturalization Service (INS) with a new enforcement agency, Immigration and Customs Enforcement (ICE). The elimination of INS was part of a major reorganization of the executive branch, which consolidated Federal departments and agencies into a single Department of Homeland Security, whose mission is to prevent terrorist attacks within the U.S. and reduce U.S. vulnerability to terrorism. This dissertation examines the interactive nature of a transformative event, such as 9/11, discursive strategies, and organizational design in promoting these changes. This project further explores the effect of such changes in law, policy, and government structures on language and meaning.

To probe the interrelationship between material events, discourse, and organizational structure, I used three theories of rhetorical analysis: *kairos*, frame theory, and genre analysis. Each theory provided a different level of analysis to examine the narrative of international students in the post-9/11 United States. Collectively, these three methods offered a systematic and sustained way to examine the story of international students in a time of transition.

These three methods expose a process in which material events and discursive practices led to organizational change that then acted as a rhetorical device to replace discursive practices. The new organization created new understandings of social and cultural situations and influenced language and the ability of individuals to promote and curtail argument. This study reveals that rhetoric is not confined to discourse and language. Discourse and organizational change can

become so intertwined that organizational change seamlessly replaces discourse and therefore must be considered in rhetorical analysis.

While my work has focused particularly on legal institutions and on how institutional change within the executive branch of the United States affected the meaning associated with “international student,” this work has implications for the study of institutions and organizations generally. Furthermore, this work demonstrates the need to consider organizational change in rhetorical analysis.

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## The Meaning of “International Student” Post-9/11: A Rhetorical Analysis of How Organizational Change Altered Perceptions of International Students in the United States

### Chapter 1: An Overview

*We must dare to think the “unthinkable” thoughts. We must learn to explore all the options and possibilities that confront us in a complex and rapidly changing world. We must learn to welcome and not to fear the voices of dissent. We must dare to think about “unthinkable things” because when things become unthinkable, thinking stops and action becomes mindless.*

—J. William Fulbright, Speech in the Senate, March 27, 1964 (*Bartlett*).

*Suit the action to the word, the word to the action; with this special observance, that you o’erstep not the modesty of nature.*

—*Hamlet*, Act III, scene 2, 1, William Shakespeare (*Bartlett*).

#### I. Introduction

Prior to the attacks on the World Trade Center and the Pentagon on September 11, 2001, the United States viewed international education as a means to increase world peace and promote cross-cultural understanding by reaching out, inviting people in, exchanging ideas, and broadening perspectives. International education sought “to bring a little more knowledge, a little more reason, and a little more compassion into world affairs and thereby increase the chance that nations will learn at last to live in peace and friendship” (“Fulbright On Line”). Before 9/11, the United States treated international students, particularly those studying at colleges or universities in a degree program or as part of an exchange program, as unofficial diplomats representing their countries of origin. These students, viewed as some of “the best and the brightest” of individuals and as potential citizens, represented an elite intellectual or economic population. Although regulated by a visa process, the path to become an international student was consistent with this view of international education as fulfilling important foreign policy goals. This goodwill and positive view of international students changed dramatically with 9/11.

Shortly after 9/11, the government began to regulate international students through restrictive programs, including the National Security Entry Exit Registration System (“NSEERS”) and the Student and Exchange Visitor Information System (“SEVIS”). These regulations established requirements, such as the registration of males from Muslim countries and the close monitoring of the activities of all international students. Many of the regulations governing international students implemented following 9/11 had been initially proposed by presidential Administrations prior to 9/11, but were not initiated. Pre-9/11, such policies were quickly challenged and limited or successfully defeated. Critics participated in a deliberative process in which they raised and discussed concerns; decision-making followed a consideration of these arguments. The academic community, among others, objected to collecting data electronically on international students, arguing that such a system was burdensome, costly, and sent the wrong message to international students. As a result of this process, the electronic data collection program was abandoned after the completion of an initial pilot study. (Haddal 7-8; Hebel; Schackner; Seghetti).

Following 9/11, United States immigration policy toward international students and academic institutions changed significantly and rapidly. International students and academic institutions now have a different status. The federal government post-9/11 began “to dismantle an industry that we spent 50 years establishing in the conviction that the presence of international students and scholars serves the national interests” (Johnson 25). This dissertation tries to show how the arguments related to immigration policy and national security made post-9/11 had substantial similarities with the arguments in favor of more restrictive immigration policy raised pre-9/11, but these post-9/11 arguments were characterized as patriotic, while debate or deliberation about monitoring students was cast as anti-American. Furthermore, this dissertation

attempts to illustrate how policy changes related to international students met with relatively little resistance, despite the dramatic nature of these changes to the status quo.

The changes, which I argue were characterized as necessary to combat terrorism, included the implementation of the Student Exchange Visitor Information System (SEVIS), a system that closely “tracks” and maintains extensive data on “international students” during the tenure of these students’ study in the United States. The category of individuals subject to monitoring as “international students” expanded post-9/11 as well: The term international students now refers to those individuals participating in trade schools and private training programs to learn such skills as language, cooking, or flight. Before 9/11, these individuals had the opportunity to pursue this type of skill training without applying for foreign student visas; they could also pursue such training part-time. Now, the same requirements and restrictions that govern international students working toward academic degrees at colleges and universities also apply to international vocational students (USA PATRIOT Act of 2001). Additionally, the SEVIS regulation places a burden of enforcement upon institutions of higher learning, demanding that schools undergo a certification process and requiring schools to regularly report information to DHS about international students. Other changes following 9/11 include the dismantling of the Immigration and Naturalization Service (INS), an agency established in 1891, and the creation of the Department of Homeland Security (DHS), a cabinet level enforcement agency established to secure the United States from terrorist threats and to protect the homeland. One of the specified duties of this new agency pertains particularly to the tracking and monitoring of international students and overseeing the operation of those institutions of higher learning that accept international students. The transfer of responsibility from INS to DHS

reflects a change in philosophy in favor of more rigorous enforcement of immigration laws (Passel and Suro).

International education and international students are defined differently in post-9/11 immigration laws and are regarded differently within U.S. society. While still viewed as economically important to the United States, international education and international students have a more complicated relationship to foreign policy goals. Because international students post-9/11 represent national security concerns, institutions of higher learning are now considered part of a program of national security. In this post-9/11 era, the United States still opens its doors to international students. However, during the visa application process, DHS, through the Student and Exchange Visitors Program (SEVP), “Collects, maintains, and provides the information so that only *legitimate* foreign students or exchange visitors gain entry to the United States” (“About ICE”; emphasis added). Furthermore, DHS continues to watch international students for suspicious behavior during their stay in the United States.

Given the magnitude of September 11, both the breadth and the speed of the changes might initially seem unsurprising, unremarkable, beyond question, even inevitable (Grant-Davie 276). As Lloyd Bitzer suggests in his theory of the “rhetorical situation,” the events of 9/11 seem to invite and determine a result of increased monitoring and greater record keeping (Bitzer, “The Rhetorical Situation”). The changes seem all the more straightforward if we consider that one of the 19 hijackers entered the United States on a student visa, but failed to report for his language program. Two other hijackers entered the United States on tourist visas and began flight training after gaining admission. After the flight school advised them to change their visas to student status, they applied for student status. Not only did INS actually grant them this status, but it also sent notice to the hijackers after the two had died in 9/11, sparking harsh criticism of the INS, an

already unpopular government agency (United States Cong. Senate Subcommittee on Technology, Terrorism, and Government Information of the Judiciary Committee; questioning of INS Commissioner Ziglar following his testimony<sup>1</sup>).

These post-9/11 policy changes are often justified as a result of “9/11” by saying that “9/11 changed everything.” However, these changes were not the inevitable outcome of the terrorist attacks of 9/11. The events of 9/11 did not cause policy or language change. Instead, the Bush Administration used the material reality of 9/11 to create a “rhetorical situation” or “objectified social need” that brought about organizational changes that had previously been impossible to obtain (Bitzer, “The Rhetorical Situation”). In this dissertation, I will try to illustrate how the events of 9/11 gave the Bush Administration the opportunity to use existing frameworks to successfully argue for new frameworks that, designed in accordance with Bush’s ideology, included a top-down management style. The new framework materialized as the Department of Homeland Security. I propose that DHS was and continues to be rhetorically powerful, making implicit assumptions about international students and tacitly influencing decision-making by implementing and enforcing policies based on these assumptions.

In this dissertation I argue that, because the basis for the Department’s decision-making is implicit and often goes unnoticed, undetected, and unquestioned, DHS discourages and limits public participation in the decision-making process. Also, because of its enforcement nature, DHS favors action, not deliberation. As an executive agency, DHS’s focus is on implementing and enforcing laws enacted by Congress and making rules to regulate behavior. As such, DHS

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<sup>1</sup> Congressional Research Service Report notes that INS had been the subject of frequent concern since its inception in 1891. Concern often focused on inherent conflicts in the INS’s role to provide benefits and to enforce immigration law (Seghetti).

provides few channels of communication by which the public can question or debate the actions of the Department before the Department actually implements action.<sup>2</sup> As a result, an organization such as this can influence language and ideas in an inconspicuous but powerful manner as this dissertation attempts to show.

## **II. Significance of the Study**

My work contributes to the understanding of rhetoric in a transformative event, such as a crisis situation, and the potential impact of this rhetoric on organizations and institutions, including the effects and implications of this rhetoric on deliberation in constitutional democracies. This study, which also has practical import for those dealing with immigration policy and law, will provide a foundation for further studies that explore the effect of post-9/11 policy on the experience and identities of international students.

Legal scholarship has addressed the impact of 9/11 upon international students; these articles focus on the legal and societal implications of policies like SEVIS. The scholars typically review the history of SEVIS, examine the potential harm SEVIS has upon the students and programs for international students, and consider the potential benefits of SEVIS as a deterrent against terrorism. (Romero; Johnson). These articles offer helpful compilations of U.S. immigration policy toward international students, but the articles neither examine the role of language in creating the policy nor address the emergence of a new conceptualization of international students as possible terrorists.

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<sup>2</sup> The Administrative Procedure Act (APA), 5 U.S.C. § 553 governs the commenting process of many executive branch agencies, including DHS.

Several scholars selected the response to 9/11 to explore how language is used to construct a particular view (Murphy; Merskin; West and Carey; Papacharissi and Oliveira; Dunmire; Kaufer and Al-Malki; Hodges) or to create a sense of urgency (Bostdorff). In my research, I build upon these studies and the argument strategies they identify. However, I also seek to understand how the organizational changes that occurred after 9/11 contributed to the timing and success of argument and how these changes affected argument strategies, an area of study that rhetorical literature has not extensively addressed.

Studies often examine the ability of language to influence and shape organizations. I have drawn upon these studies to consider the role of language in shaping organizations dealing with international students such as INS and DHS. For example the essays in the collection by Charles Bazerman and James Paradis present how scholars, such as Paradis, Herndl, Fennell and Miller, Doheny-Farina, Devitt, and McCarthy, examine the way in which written discourse shapes organized professions. Scholars have also focused on discourse to consider how changes to institutions and organizations promote social change. Allen and Faigley look at how people challenge dominant discourse by examining the 1912 Convention of the Socialist Party, in which a woman denied her identity as a woman to support an amendment to the Socialist Party’s Constitution to read “men and women.”

My work, however, also considers how institutions affect language so I have also drawn upon studies that consider the interplay between organizational design and argument. For example, new institutions, in the form of organizations or technologies, can enable argument. The work of Yates and Orlikowski demonstrate how the inventions of the vertical file and e-mail influenced styles of communication, such as the office memorandum (“Genres of Organizational Communication”). Other works consider the power of institutions and organizations to affect



discourse and argument: Giandomenico Majone, who discusses the ability of institutional design to influence argument, notes that “[e]xperienced policy actors know that results depend upon institutional structures, so the important choice is not among abstract methods but among specific institutional arrangements to implement them” (144); Scollon and Scollon suggest that corporations, including governmental and other institutional structures, are “voluntary,” goal-oriented discourse systems formed for specific purposes (179); and Jennifer Andrus, who studied transcripts of a spousal abuse case involving the excited utterance evidentiary exception, examines how legal institutions, specifically the United States’ court system, constructs a reality and alters meaning by transforming an utterance into “legally intelligible discourse” (81).

These rhetorical studies of organizations take a variety of approaches, sometimes using a temporal approach to determine how institutions emerge from language and influence ideas over time. The close reading of historical documents involving the introduction of a new genre, environmental impact statements, and the influence of this genre on what could be said exemplifies this temporal approach (Bazerman, Little, & Chavkin). Other examples include: Dwight Atkinson’s work on the Royal Society of London and its journal *The Philosophical Transactions*; Alan Gross and Arthur Walzer’s work on the *Challenger Disaster*; and Danielle Wetzel’s observation-based study of the “Police Civilian Review Board,” an emerging organization to understand the role of discourse in shaping a new organization. My work has also used a temporal approach, studying historical documents related to international students to understand how the events of 9/11 affected language.

In his article “Toward a Rhetoric of Change: Reconstructing Image and Narrative in Distressed Organizations,” Brenton Faber proposes a discursive model of change to look at rhetoric and organizational change (217). Studying change from the context of organizational

communication contributes to the understanding of communication in organizations and expands the comprehension of discursive processes and argument. According to Faber’s model, which describes change as a function of organizational identity, change allows the members of an organization to redefine the organization in order to meet different purposes and fulfill new needs (220). Faber’s model holds that each organization is created by communication and that change occurs through discourse (220-23). Drawing upon Faber’s work, I further explore the way in which language can enable change in organizations and how organizations, in turn, change to accommodate language and eliminate discord so that the organization can function.

My work, however, is distinct from work like Faber’s in that it applies rhetorical analysis in a systematic and sustained way to examine how language and organizational change interact in response to a monumental event such as 9/11 to both promote and eliminate argument. Moreover, my work differs from the previous work examining organizational transformation discussed above because it examines change not only as the result of discourse or rhetorical strategies, but also considers the capacity for organizational change to act as a rhetorical device, able to potentially replace argument or curtail deliberation.

### **III. Methodology**

In this dissertation project, I initially sought an answer to the following question: What are the discursive practices surrounding a time of crisis, such as 9/11, and how do these practices differ, if at all, from practices present in non-crisis situations? However, in the process of completing this project, I came to believe that rhetoric is not confined to discourse and language. Discourse and organizational change can become so intertwined that organizational change seamlessly replaces discourse and, therefore, must be considered when analyzing rhetorical discourse. Using 9/11 and the policy changes toward international students during that crisis as my object of

investigation, I examined the following sub-questions pertaining to the rhetoric of a transformative event:

- What was the nature of argument “pre-crisis,” specifically pre-9/11?
- What was the nature of argument “post-crisis,” or post-9/11, and can a change in the nature of argument be detected?
- If a change is evident, what is the nature of the change in terms of rhetorical characteristics or material effect? If no change is observable, what accounts for the lack of change given the magnitude of the event?
- What effect did the creation of a new organizational structure, as represented in the creation of the Department of Homeland Security and the abolishment of an existing organization, the Immigration and Naturalization Service, have upon argument strategies post-9/11? Did the organizational structure limit, end, or redirect deliberation?
- To what extent was the political style of the Bush Administration influential upon post-9/11 argument strategies?
- To what extent did argument strategies, political style, and organizational change operate individually or collectively to affect the use of the words “international student”?

My study began with archival research and the collection of documents, consisting of the various legal texts that illustrate policies related to “international student.” I then constructed a time line of the documents I identified as crucial to a rhetorical analysis. As a result, my dissertation involves a rhetorical analysis of pre-and post-9/11 legislative, executive, and judicial documents.

My archive contains approximately 420 digitized texts related to international students between 1993-2008. In particular, my analysis focuses on the 227 texts pertaining to international students from the first four years of the George W. Bush Administration, beginning with President Bush’s address to the nation on September 11, 2001, and including Bush’s Executive Order 13228 establishing the Office of Homeland Security (OHS) on October 10, 2001, the Presidential Homeland Security Directive-2 of October 29, 2001, the Senate Hearings of October 12, 2001 and June 27, 2002, and the SEVIS regulations and enabling legislation such as the Homeland Security Act (HSA).<sup>3</sup> The pre-9/11 documents detail the response of President Bill Clinton, Bush’s predecessor, to the first World Trade Center Bombings in 1993 and the 1997 Report on Immigration by the Jordan Commission. My selection of documents has in part been informed by my conversations with international student advisors and immigration attorneys and scholars who identified the SEVIS regulations as a major policy shift post-9/11 and a potential focus area. As part of my research, I uncovered and examined additional documents from 2001 and 2002 that might suggest anything about the standing and status of international students in a linguistic or organizational sense or that provide evidence of linguistic or organizational change with respect to international students. I looked particularly at the way in which the word “student” appears in these documents. My study also includes non-legal texts that inform the legal texts, such as law reviews or other documents reflecting the views of academia and policy statements by interest groups.

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<sup>3</sup> In order to identify the 227 texts that discussed international students, I used the freeware concordance software, AntConc, developed by Laurence Anthony (available at <http://www.antlab.sci.Waseda.ac.jp/software.html>). Using the terms “international student(s) and “foreign student(s),” I used AntConc to select “high density” documents, which I defined as those texts containing more than two “hits.”

To analyze these documents, I used different rhetorical theories to explore questions about potential linguistic and organizational changes. I drew upon tools from the following three areas of rhetorical analysis that address different levels of analysis and enhance the understanding of the presence or absence of change: argument theory, frame theory, and genre analysis. These methods explore different levels of abstraction. Specifically, argument theory focuses on the level of proposition; frame theory explores the scenarios or contexts illuminated within various texts; and genre analysis considers why certain texts are influential. These three different discourse frameworks provide complementary lenses with which to view the story of the posited transformation of international student into possible terrorists. Based upon these frameworks and their underlying assumptions, I advanced a narrative about the words “international student” and immigration policy toward international students post-9/11. These frameworks and literature provide a systematic means of studying the interplay of language and political motivation, and they suggest a possible approach to the study of language and organizational change. Additionally, through the process of writing my dissertation, I have gained a better understanding of the strengths and limits of each method as a tool by which to uncover the story of the “international student” before and after 9/11. I discuss this understanding in Chapter 6 of this dissertation.

Argument theory, and in particular *kairos* and arguments of time, and provides a framework for analyzing the arguments used by the Bush Administration to justify and implement policy change. Argument theorists suggest that events, including catastrophic or crisis situations, may be transformative. Lloyd Bitzer, for example, states that a situation invites a certain discourse (“The Rhetorical Situation”). James Kinneavy’s work explains that the concept of *kairos* demands that a response “fit” a circumstance (“*Kairos*: A Neglected Concept in

Classical Rhetoric (1986)”). However, in the 9/11 situation, the rhetor invited the discourse; the situation alone did not call the discourse into being. The rhetor influenced whether a discourse or response seemed to “fit” the circumstance. Using Andreea Ritivoi’s concept of situated narrative to examine notions of *kairos* or timeliness (Ritivoi, “St. Augustine in Continental Rhetoric and Philosophy”), I will show that the catastrophic event of 9/11 enabled the Bush Administration to employ issues of timeliness or “urgency” as a rhetorical device to argue that the time for talk was over. These arguments of timing allowed the Bush Administration to raise arguments that had been presented pre-9/11 in a way that put an end to the deliberation process and implemented policy not actually responsive to 9/11 but consistent with the Administration’s pre-9/11 ideology and political agenda.

Frame theory presents a way to examine the decision to abolish INS and to establish DHS and to examine the impact of this decision on international students. Frame theory explores the social construction of social phenomena by the media, political, and social organizations (Goffman; Entman, *Projections of Power*; Lakoff, *The Political Mind*). Framing involves the use of rhetorical devices to influence meanings attributed to words or phrases. Writers and speakers project interpretative frames to understand events around them. Frames are often implicit and only become explicit as events require a new frame or a shift in frame. In the case of immigration policy toward international students post-9/11, I will show that the Bush Administration was able to expand its arguments of “urgency” by framing the story of 9/11 as a story of institutional failure. By claiming that 9/11 occurred because of the inefficient and ineffective government that the Bush Administration inherited, President Bush was able to successfully argue for a major government overhaul. This included abolishing INS, an agency housed within the Department of Justice, and transferring responsibility for immigration

enforcement, including student visas, to a new Department of Homeland Security whose mission was to fight terrorism and who had a greater emphasis on enforcement.

In addition to arguments of time and frame theories, I also used genre analysis as a framework by which to examine a rhetor’s choice of genre as an argument strategy in a time of crisis. More specifically, genre analysis provides a framework by which to consider the relationship between genre and changes in organizational structures. Through genre analysis, I will show that President Bush used discourse strategies consistent with his corporate managerial style, what Robert Hariman and David Kaufer have identified as a “realist style,” to create a new organization with a new system of communication. These organizational and discursive changes enabled the Bush Administration to establish an organizational and discursive structure that embedded assumptions about exigency and enforcement, international students as threats, and immigration as a national security concern. This structure, intact today, continues to implicitly reinforce this ideology even under the Obama Administration. I suggest that this ideology endures not as a result of public deliberation indicating continued support for such views, but is preserved by the continued use of rules and adherence to policies that tacitly presume such ideology.

Ultimately, my use of these three rhetorical methods provides insight into the complex nature of change and the significant effect of organizational change in the rhetorical process. Organizational change in the context of 9/11 acted as a rhetorical device. My work also affirms the benefit of using rhetorical analysis and the importance of studying rhetoric in the context of change.

#### IV. Chapter Summaries

Chapter 2: International Students in the United States. This chapter presents the story of how life changed for international students post-9/11, and it lays a foundation for later rhetorical analysis by focusing on details that suggest that this change was rooted in discourse practices. The chapter describes how the terrorist attacks of September 11, 2001, affected international students. The chapter additionally examines the specific restrictions placed upon international students and institutes of higher learning post-9/11 as a result of the implementation of the SEVIS tracking system.

Chapter 3: *Kairos*. In this chapter, I use notions of time such as *kairos* and specifically Andreea Ritivoi’s work on situated narrative and time, along with Perelman and Olbrechts-Tyteca’s work on temporality in argumentation, to explore why international students became the subject of national security policy post-9/11. In this chapter, I particularly focus on the six weeks after 9/11 in which Congress passed the U.S.A. PATRIOT Act, because this Act not only funds the student monitoring system that Clinton initially established in 1996, but it also extends the power of the system to include the regulation of flight training programs in addition to colleges and universities.

Chapter 4: Framing. In this chapter, I use frame theory to examine the decision to create a new cabinet level enforcement agency, the Department of Homeland Security (DHS). This decision resulted in the largest restructuring of the federal government since 1947. As a part of the reorganization, INS was abolished, and DHS assumed responsibility for the enforcement of immigration laws, including the enforcement of the international student tracking and monitoring system, SEVIS.



Chapter 5: Genre. In this chapter, I examine how the Bush Administration used genres, such as executive orders and directives, to influence organizational changes. Through the Department of Homeland Security (DHS), an executive department, the Administration brought a close to deliberation about immigration policy and homeland security. The President successfully presented arguments that had been unsuccessful during the Clinton Administration and enabled DHS to normalize the logic underlying these arguments through its actions.

Chapter 6: Conclusions and Implications. I use this chapter to reflect upon the practical and theoretical implications of my work. First, I summarize my findings and consider the implications of my work in terms of rhetorical theory and immigration policy. Next, I evaluate the methodological framework as a tool of analysis. Finally, I consider the opportunity for future studies.

**V. Abbreviations**

ACE	American Council on Education
APA	Administrative Procedure Act
CEU	Compliance Enforcement Unit
CFR	Code of Federal Regulations
CIPRIS	Coordinated Interagency Partnership Regulating International Students
CIS	Center for Immigration Studies
CRS	Congressional Research Service
DHS	Department of Homeland Security
DOJ	Department of Justice
DSO	Designated Student Official
EBSVRA	Enhanced Border Security and Visa Reform Act
FR	Federal Register
GAO	General Accounting Office
HSC	Homeland Security Council
HSA	Homeland Security Act
ICE	Immigration and Customs Enforcement
IIE	Institute of International Education
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
INS	Immigration and Naturalization Service
NAFSA	National Association of Foreign Student Advisors/International Educators
NCT	National Commission on Terrorism
NSEERS	National Security Entry Exit Registration System

OIG	Office of Inspector General
OHS	Office of Homeland Security
SEVIS	Student and Exchange Visitor Information System
SEVP	Student and Exchange Visitor Program
TESOL	Teachers of English to Speakers of Other Languages
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism
U.S.C.	United States Code

## **Chapter 2: International Students in the United States**

### **I. International Students: Ambassadors Promoting World Peace**

The United States has a long tradition of educating international students: the U.S. government first created a new category of nonimmigrant visas for students in 1921. Because the government recognized that international education fostered cross-cultural understanding, it passed the Immigration Act of 1921 to enable students to bypass the strict post-World War I quotas. Politicians and educators saw international education as one of the best ways to achieve lasting peace among nations (“History of IIE”).

After World War II, the U.S. government, eager to promote international understanding and trust, worked to expand existing programs and create new opportunities for educational exchange. In 1946, President Harry S. Truman signed the Fulbright Act into law. This law required that money from the sale of surplus war property be used “to fund the ‘promotion of international goodwill through the exchange of students in the fields of education, culture and science’” (“Fulbright Program History”). Senator J. William Fulbright of Arkansas, who sponsored the bill, believed that “‘educational exchange can turn nations into people, contributing as no other form of communication can to the humanizing of international relations’” (“CIEE History”). The Act and the Fulbright Program it established have enabled international exchange programs throughout the world for more than half a century (“Fulbright Program History”).

In addition to government support, a number of non-governmental, non-profit organizations also formed to promote international education. The post-World War II years saw the emergence of such organizations as the Council on International Educational Exchange

(CIEE), Youth For Understanding (YFU), and NAFSA: Association of International Educators.

All of these groups endorsed similarly missions:

“To help people gain understanding, acquire knowledge, and develop skills for living in a globally independent and culturally diverse world” (“CIEE History”). Because of these government and private programs, about 25,000 foreign students studied in the United States in 1948 (“The History of NAFSA”).

Educational exchange was not just a national priority, but also a world priority. In addition to the United States Department of State and the Department of Education, international organizations, such as the United Nations Educational, Scientific, and Cultural Organization (UNESCO) and the World Federation of Education Associations, and groups like the Carnegie Endowment for International Peace, focused on bringing foreign students to the United States and promoting educational exchange (“CIEE History”).

Although government officials had accumulated data on international students since the 1950s, they did not pay a great deal of attention to these students in the pre-9/11 era. For example, during the 1979 Iranian hostage crisis, the Immigration and Naturalization Service (INS) was unable to provide President Jimmy Carter with even the most basic information on Iranian students in the U.S. As a result, the government instituted the I-20, a paper-based system on international students to collect basic information (Elliston). After the World Trade Center bombing in 1993, President Clinton supported the Illegal Immigration Reform and Immigration and Nationality Act of 1996 (IIRIRA), which among other things, amended the Immigration and Nationality Act to develop a program that electronically collected information related to nonimmigrant foreign students at institutes of higher education (INA, 8 U.S.C. § 641). Public discussion did not focus heavily on the student status, but instead emphasized those visa holders,

like students, who were subject to “limited duration admission” and those who overstayed their visas (U.S. Commission on Immigration Reform).

The Clinton Administration remained strongly supportive of international education. At the start of the new millennium, it announced a policy to support international education. President Clinton acknowledged that in 2000 “nearly 500,000 international students” were studying at academic institutions in the United States, contributing “some \$9 billion annually to our economy,” and enriching “our communities with their cultures, while developing a lifelong appreciation for ours. The goodwill these students bear for our country will in the future constitute one of our greatest foreign policy assets” (President Clinton). The government valued international students, asserting that they contributed to the United States economy and to foreign policy goals.

Pursuant to IIRIRA, INS developed a pilot program, the Coordinated Interagency Partnership Regulating International Students (CIPRIS), to electronically collect data on international students (§ 641). Twenty-one schools, mostly in the South, piloted this program from 1997-1999 (Haddal 7). As the pilot program neared completion and INS moved forward with plans to more widely implement the program by 2001 and 2003, opponents raised a variety of concerns. While acknowledging that some form of data collection had been in place for years, opponents of CIPRIS were troubled by the following: 1) civil liberty concerns; 2) feasibility issues and concerns about INS’s ability to handle the volume of information; 3) a proposed \$95 fee that was to be charged to students; and 4) a fee collection system that required institutions to do the bookkeeping for the INS (Hebel; Schackner).

Proponents of the INS plan pointed out that Eyad Ismoil, one of the convicted 1993 World Trade Center bombers, had overstayed his student visa. Ismoil had come to the U.S. with

a plan to study engineering in 1989; he began by studying English as a Second Language at Wichita State University for three semesters before he stopped studying altogether. Although Ismoil remained in the States for years, he left the country shortly after the 1993 bombing (Pasternak; Timms and Suhler). Without the collection of electronic data on foreign students, supporters of the INS plan argued, “The same thing could happen again” (Elliston; McMurtrie, “Commission Seeks to Prevent Terrorism by Monitoring Foreign Students”).

Strong public sentiment, which supported international education, successfully blocked implementation of the INS program. International students—both foreign students in the United States and United States students overseas—were widely viewed as “ambassadors of their own countries” representing “the best national interests” of their societies to “promote international understanding” (“CIEE History”). As Marlene M. Johnson, executive director of NAFSA: Association of International Educators, expressed, “We all need to be concerned about terrorism, but we ought not to think we can solve the problem by overtracking and overregulation of people who are not the problem” (McMurtrie, “Commission Seeks to Prevent Terrorism by Monitoring Foreign Students”). Moreover, many individuals, both in Congress and in the public, apparently shared the concerns of Catheryn Cotten, the director of Duke’s International Office, about the manner in which CIPRIS would be implemented. Cotten, who participated in the pilot program and supported CIPRIS, nevertheless had concerns that “the real threat may be ‘the insidious effect of the mindset that thinks of the world as full of terrorists.’ If that notion starts to define U.S. policies toward foreign students, then all the benefits derived from international education will be at risk” (Elliston).

The situation abruptly changed on September 11, 2001. Those who had supported the electronic monitoring of international students seemed to have acquired the evidence they needed to argue that international students posed a threat to the national security of the United States.

## **II. September 11, 2001**

On September 11, 2001, terrorists hijacked four commercial airplanes carrying passengers and, as part of a coordinated attack, aimed the planes at the World Trade Center in New York City and at the Pentagon in Washington D.C. Two of the planes destroyed the Twin Towers of the World Trade Center, buildings that at the height of the day could contain 50,000 people. At about 9:00 a.m. when the planes struck, the buildings held closer to 15,000 individuals (The 9/11 Commission 238). The third plane crashed into the Pentagon, destroying a portion of the building. Passengers attempting to take over the cockpit prevented the fourth plane from reaching the White House or Capitol; the plane crashed in rural Pennsylvania, killing all aboard. Approximately 3,000 people died as a result of these attacks; those in the planes and many more in the buildings died instantly (The 9/11 Commission 238).

Initial reports about the hijackings emerged from airport records, airline communication with air traffic control, and data from flight attendants and passengers who used airphones and cellphones to communicate for help or to call loved ones. The story of how 19 men successfully took control of four transcontinental commercial flights horrified the nation and many parts of the world. Shortly after take-off, the hijackers on each flight brutally stabbed several of the passengers and crew and moved people to the back of the planes by spraying an irritant in the first class section. The first plane crashed into the North Tower of the World Trade Center at 8:46 a.m. (The 9/11 Commission 13). By 10:02 a.m., as the fourth plane went down in a field in Shanksville, Pennsylvania (The 9/11 Commission 18), the nation, caught by surprise and



numbered by the magnitude of the events, struggled to understand what had happened, why, and how. The nation began a process to identify fault, place blame, seek justice, and prevent future tragedy. As part of this process, the government enacted policies that viewed international flight school students as academic students and all international students as possible terrorists.<sup>4</sup>

Former President George W. Bush addressed the nation in a five-minute statement at 8:30 p.m. on September 11, about 12 hours after the attacks began. His words painted a picture of the event and indicated what he believed to be the proper response: “Today, our fellow citizens, our way of life, our very freedom came under attack in a series of deliberate and deadly terrorist acts.” Bush further acknowledged the strength and patriotism of the American people: “A great people has been moved to defend a great nation. Terrorist attacks can shake the foundations of our biggest buildings, but they cannot touch the foundation of America. These acts shattered steel, but they cannot dent the steel of American resolve.” He informed the nation, “The search is underway for those who are behind these evil acts. I’ve directed the full resources of our intelligence and law enforcement communities to find those responsible and to bring them to justice. We will make no distinctions between the terrorists who committed these acts and those who harbor them.” President Bush called upon the nation and its allies to fight the enemy:

America and our friends and allies join with all those who want peace and security in the world, and we stand together to win the war against terrorism. . . . This is a day when all Americans from every walk of life unite in our resolve for justice and peace. America has stood down enemies before, and we will do so this time. None of us will ever forget this day. Yet, we go forward to defend freedom and all that is good and just in our world. (Bush, “Statement by the President”)

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<sup>4</sup> See, e.g., USA PATRIOT Act section 416(c)(3). In October, 2001, Congress enacted the PATRIOT Act, which among other things expanded the data collection program created by IIRIRA in 1996 for higher education to include “other approved educational institutions,” such as flight schools, language training schools, and vocational schools.”

The language used in this statement foreshadows the Bush Administration response to 9/11. Bush spoke of attacks, evil, defending America, enemies, allies, and unity—ideas that emerge explicitly and implicitly in the government’s subsequent decision-making.

According to the 9/11 Commission, many Americans immediately attributed the attacks to Osama Bin Laden and his al Qaeda group (The 9/11 Commission). The day of the attacks, the Immigration and Naturalization Service (INS) began working with the Federal Bureau of Investigation (FBI) to arrest “individuals for immigration violations whom they encountered while following up leads in the FBI’s investigation of the 9/11 attacks. Eventually, 768 aliens were arrested as ‘special interest’ detainees. Some (such as Zacharias Moussaoui) were actually in INS custody before 9/11; most were arrested after” (The 9/11 Commission 265). This action reflects a change towards internationals, including international students, living in the United States.

### **III. Media Coverage, Public Outcry, and Student Status**

Investigating who carried out the hijackings was, like any criminal investigation, a matter of gathering information and using this information to bring a certain picture of the events into focus. For example, the investigators obtained information that the hijackers had studied aviation at flight schools in the United States. This detail would ultimately be used to expand attention beyond flight school students to all international students. One piece of information that came to light post-9/11 was what is now referred to as the “Phoenix Memo.” In July 2001, an FBI agent in Arizona sent a memo to FBI headquarters and the international squad of the FBI in New York. The memo warned of a “possibility of coordinated effort by Osama Bin Laden to send students to the United States to attend civil aviation schools. The agent, who based his theory on the “inordinate number of individuals of investigative interest’ attending such schools,” suggested

constructing a list of schools and visa applicants interested in these schools (The 9/11 Commission 272).

The New York office did not act on the Phoenix Memo, and the managers at FBI headquarters did not read the memo before September 11, 2001. Neither the Osama Bin Laden unit nor the Radical Fundamentalist unit within the FBI saw the memo before September 11. The 9/11 Commission<sup>5</sup> concluded that even if the FBI had widely read this memo and acted prior to the attacks, the memo probably would not have uncovered the plot (The 9/11 Commission 225).

Because people from all over the world have studied flight in the U.S., the F.A.A. prior to 9/11 found nothing unusual about Middle Eastern men studying at U.S. flight schools (The 9/11 Commission). However, post-9/11, the Phoenix Memo promoted increased regulation of international students. International visitors interested in attending flight school training frequently applied for vocational student visas or “M” visas, the same category of visa used for technical schools, beauty academies, language training programs, and non-degree programs.<sup>6</sup> Those interested in flight training did not always require a student visa. International visitors who desired recertification or wanted to maintain certification could train on simulators while in

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<sup>5</sup> Congress and the President created the National Commission on Terrorist Attacks Upon the United States (Public Law 107-306, November 27, 2002) to investigate how the 9/11 tragedy could have been avoided. The Commission consisted of five Republican and five Democratic Commissioners who presented their findings and recommendations without dissent through the 9/11 Commission Report.

<sup>6</sup> According to testimony by David Ward, President of American Council on Education, on October 31, 2001, to House Subcommittees on Select Education and 21<sup>st</sup> Century Competitiveness, in 1999, 570,000 student visas were issued out of a total of 31.4 million visas. Of these student visas, 560,000 were F visas (full-time academic students) and approximately 10,000 were M-visas (vocational student).

the U.S. on a tourist or “B” visa (The 9/11 Commission 63; U.S. DOJ, Office of Inspector General, *The INS’s Contacts with Two September 11 Terrorists*).

Within days after the attacks, government security and law enforcement agencies uncovered information like the Phoenix memo; the role of Osama Bin Laden and al Qaeda in the attacks and the identities of the terrorists soon emerged (The 9/11 Commission). These details of the government investigation were quickly leaked to the press and disseminated to the public (The 9/11 Commission; Firestone and Canedy). Media coverage exposed the government’s inability to connect separate details to a larger plot to prevent the attacks. The idea that terrorists could move undetected within the U.S. embarrassed, outraged, and frustrated the White House, Congress, and the public (The 911 Commission; CNN, “INS Chief blames visa mess on old technology”; Elliot). A September 15, 2001, article in *The New York Times* by David Firestone and Dana Canady, “FBI Documents Detail the Movement of Hijackers,” focused on the fact that twelve of the 19 hijackers lived in Florida sometime between 1999 and 2001, some of these men had studied at flight schools, and one had obtained a four-year degree [1993-1997] at an aeronautical university in Florida (Firestone and Canedy).

Articles soon appeared focusing on the hijackers’ study at vocational flight training schools, criticizing the INS for its “lax” visa policies, and emphasizing the nation’s inability to identify and locate international visitors, particularly international students, within the United States. On September 16, 2001, the *Houston Chronicle* ran an article typical of stories carried throughout the country. Entitled “INS policies criticized as too lenient toward students,” the article asserted that pre-9/11 policies might have prevented the attacks: “A law passed by Congress in 1996 would have required the government to look for terrorists by monitoring

foreign students, such as the men allegedly responsible for last week’s hijackings” (Hegstrom, “Assault on America”). The article continued as follows:

But the U.S. Immigration and Naturalization Service never implemented the program designed to identify foreign terrorists studying in the United States. That lapse, combined with the government’s record of providing visas to people who turned out to be terrorists, has led critics to question whether the agency has done enough to protect the country by screening immigrants more thoroughly at the border and monitoring them once they are here. (Hegstrom, “Assault on America”)

The article quoted U.S. Representative Lamar Smith, R-San Antonio, who stated: “There is just going to have to be more vigilance’ against terrorists by the INS.” Smith “called the INS the worst-run federal agency” (Hegstrom). This article, and other articles appearing about this time, presented to the public the idea that international students, immigration law, and terrorism were related.

The article, in fact, seems to claim that had a monitoring program been in place on September 11, 2001, the attacks would have been prevented. The author points to the following information:

A review of previous cases shows that terrorists usually do not enter the United States by sneaking across the border at night. They usually arrive legally as tourists, students or businessmen. Some overstay their visas and remain illegally, while others extend their stay by applying for asylum. . . . In the current investigation, attention first focused on the possibility that some of the terrorists may have come across from Canada recently, first into Maine and going on to Boston. But investigators now believe many of the terrorists had lived legally in the United States for some months. Two of the men, Mohamed Atta, 33, and Marwan Al-Shehhi, 23, went to flight school at Huffman Aviation in Venice, Fla. . . . If they were here on M visas, the students would have come under the new data-collection system known as the Student and Exchange Visitor Program. It would allow the government to charge foreign students a \$95 fee and then check up on them with a computerized record of their biographical information and transcript to see what they study. (Hegstrom, “Assault on America”)

Only midway through the article did the author acknowledge that it is not at all clear that such data collected about international students would have helped to identify or stop the

terrorists (Hegstrom, “Assault on America”). This article, and others like it, did not address hard questions surrounding intelligence gathering and crime prevention. In many respects, the article obscured these questions. Even with a data collection system in place, both of these hijackers could potentially have entered legally on tourist visas and taken part-time training courses without triggering the tracking system (U.S. DOJ, Office of Inspector General, *The INS’s Contacts with Two September 11 Terrorist*). Additionally, the monitoring system authorized by IIRIRA included only institutions of higher education, not flight schools, so the government would not have been required to look for these men, as the article suggested. The inclusion of flight schools in the monitoring system was only authorized by the USA PATRIOT Act in October, 2001 (*supra* note 4).

Moreover, a National Commission on Terrorism (NCT) report<sup>7</sup> from 2000 cited in this article seemed to suggest that monitoring foreign students was attractive not because of the high risk all international students posed, but because it was feasible to monitor this category of visa holders: “‘The question of border security is horribly complicated,’ said L. Paul Bremer, who

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<sup>7</sup> The NCT report, in recommending that the CIPRIS pilot program be expanded to monitor the status of all foreign students, stated: “The Commission found that the massive flows of people across U.S. borders make exclusion of all foreign terrorists impossible. There are more than 300 million legal crossings each year at the U.S./Mexican land border alone. Millions more stream through our airports. . . . While the problems of controlling America’s borders are far broader than just keeping out terrorists, the Commission found student visas an area of special concern. For example, thousands of people from countries officially designated as state sponsors of terrorism currently study in the United States. This is not objectionable in itself as the vast majority of these students contributes to America’s diversity while here and returns home with no adverse impact on U.S. national security. However, experience has shown the importance of monitoring the status of foreign students. Seven years ago, investigators discovered that one of the terrorists involved in bombing the World Trade Center had entered the United States on a student visa, dropped out, and remained illegally. Today, there is still no mechanism for ensuring the same thing won’t happen again” (Report of the National Commission on Terrorism, *Countering the Changing Threat of International Terrorism*).

chaired the NCT. ‘We just decided that we could wring our hands about what to do with this impossible problem (the border), or we could look at other areas like monitoring students’<sup>8</sup> (U.S. National Commission on Terrorism).

International students, particularly students from the Middle East, soon felt the impact of the 9/11 attacks and the subsequent attention to the hijackers’ visa status. National Public Radio (NPR) reported, for example, that “within weeks” of the attack, “FBI agents swooped down on college campuses, looking for students with possible terrorist ties.” In an interview on NPR, Dr. Nancy Marlin, Provost of San Diego State University, recalls “We were not able to secure our students” (Marlin). On September 23, 2001, *USA Today* reported that a number of Middle Eastern students had withdrawn from U.S. colleges and universities (Marklein, “Some Middle Eastern Students Withdrawing”; McMurturie, “Many Arab Students in the U.S. Head Home, Citing Growing Hostility”). The University of Colorado said 26 of its 250 Middle Eastern students left; American University lost 32 of its Middle Eastern students out of a population of 2,000 students from 160 countries; University of Arizona reported 27 students having left the U.S. Although “[a]dministrators at colleges nationwide say they have stepped up efforts to protect vulnerable students,” many in higher education anticipated “foreign students to come under greater scrutiny” from the Bush Administration’s promise of stricter security and from the on-going investigations by Federal agents (Marklein, “Some Middle Eastern Students

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<sup>8</sup> *The Chronicle of Higher Education* on June 16, 2000, quoted Paul Bremer as saying, “We don’t think this is a particularly important recommendation of ours. We’re under no illusions that anything you do with foreign students makes a serious dent in the security of a country’s borders.” Instead, Bremer compared the tracking system to a home-security system, in which a homeowner puts locks on the doors and bars on the windows. “You might say to yourself, is any one part of this worth doing to secure my house?” he said. “But each little step provides an additional degree of security” (McMurtie).

Withdrawing”). In the weeks following 9/11, the FBI requested records of foreign students from colleges and universities throughout the country; about 200 schools responded to this request (Romero 358 n34).

The *USA Today* article also reported upon another reoccurring theme in U.S. post-9/11 policy: The suggestion that universities had stood in the way of a monitoring system that could have prevented the attacks, but because of 9/11 these institutions had seen the “errors of their ways” (Marklein, “Some Middle Eastern Students Withdrawing”; Southwick). Noting that the system was developed after the 1993 bombing in which “one of the attackers had entered the country with a student visa to study at Wichita State University in Kansas,” the article stated that “international educators are backing off opposition to a computerized system being developed by the Immigration and Naturalization Service to track foreign students more efficiently.” While still concerned about the “unwelcoming message” and “unreasonable barrier” the INS plan presented, “most acknowledge that the events of Sept. 11 changed everything. ‘The time for debate on this matter is over, and the time to devise a considered response to terrorism has arrived,’ says a statement by NAFSA, the Association of International Educators” (Marklein, “Some Middle Eastern Students Withdrawing”). The article suggests that even student advocates now appeared to be calling for action and conceding to a need to monitor international students, but as I discuss later in this chapter, the student advocates were more likely motivated to concede to the monitoring out of fear that the government would place an absolute ban on all student visas.

The wave of suspicion toward all foreign visitors and immigrants intensified toward international students with the news that, in addition to the two hijackers who studied at a flight



school without having received student visas,<sup>9</sup> a third hijacker had received a visa to study English at a four-week course in California. He entered the U.S. on a student visa, but failed to report for classes (Schemo and Pear). On September 27, 2001, *The New York Times* reported: “For Hani Hanjour, identified as the pilot who flew the jet that rammed into the Pentagon, blending into the American landscape began in Saudi Arabia with a \$110 application for a four-week English course in California. He had only to prove that he had \$2,285 to pay for the lessons along with room and board. He never turned up for class” (Schemo and Pear).<sup>10</sup> The article, like earlier articles, referred to a report by the National Commission on Terrorism in 2000: “In a prophetic warning, the Commission noted that one of the terrorists involved in the first World Trade Center bombing in 1993 had overstayed his student visa. ‘Today, there is still no mechanism for ensuring the same thing won’t happen again,’ the Commission said” (Schemo and Pear).

The California language school at which Mr. Hanjour was to have studied reported that the INS was a year behind in notifying the school that a student-visa holder had entered the country. However, if the school had been able to report Hanjour to the INS as a no-show, INS would have been unlikely to try to find him, “‘given the limits of its staff, the immigration service focuses on investigating crimes by foreigners, domestic smuggling and illegal workers,’ said Eyleen Schmidt, a spokeswoman for the INS” (Schemo and Pear). The flight school owner

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<sup>9</sup> Al-Shehhi and Atta applied for and received student visas in 2000 and the visas had been granted, but INS and its contractor did not send out notice to this effect until March 11, 2001, six months after the terrorist attacks.

<sup>10</sup> Hanjour came to the U.S. several times, first in 1991 to study English at the University of Arizona and then again to study flight in Arizona in 1996 and 1997. He received a commercial pilot license in 1999 and returned to Saudi Arabia (9/11 Commission Report).

in Florida, where two of the hijackers took lessons, was under no obligation to ensure that students had a student visa: “‘I don’t need anything from you, just a check to start flying,’ said Mr. Dekkers, who likened flying lessons to shopping for groceries. ‘We’re just a business’” (Schemo and Pear). The article concluded with what had become a familiar refrain: “After the World Trade Center bombing in 1993, Congress moved to tighten the tracking of foreign visitors, including students. It ordered the immigration service to systematically match entries into the country with corresponding exits, for the first time. It also ordered the creation of an electronic databank on foreign students accessible to law enforcement officials. But both moves met with stiff resistance from business and educational institutions. And both were delayed” (Schemo and Pear).

#### **IV. Calls for a Moratorium on Foreign Student Visas**

The hijacking and the attention on the hijackers’ visa status resulted in a public outcry and in calls for major changes in U.S. immigration policy in general and in the U.S. student visa program specifically, which ultimately led NAFSA to withdraw its opposition to SEVIS.

Approximately two weeks after the attacks, Senator Dianne Feinstein of California, a member of the Senate Judiciary Committee, called for a six-month moratorium on the granting of student visas. Senator Feinstein stated on her website that “the reforms to the system are necessary after learning that a number of the suspected hijackers in the September 11th attack are now under investigation by authorities for enrolling in U.S. schools but never attending. Additionally, one of the terrorists in the 1993 World Trade Center bombing was here in the United States on an expired student visa” (“Senator Feinstein Urges Major Changes in U.S. Student Visa Program”; Feinstein, “Press Release”).

Feinstein’s reference to “a number” of the hijackers having been suspected of entering on student visas illustrates the confusion, anger, and fear that gripped the nation after 9/11. Soon after 9/11, it was confirmed that only one of the hijackers used a student visa, but the mood in the country made it difficult to raise questions or challenges to such statements as to exactly how many of the hijackers posed as “international students.” Similarly, it was difficult to challenge inaccuracy or potentially misleading nature of such statements, and statements that “the foreign student visa program is one of the most unregulated and exploited visa categories” (“Senator Feinstein Urges Major Changes in U.S. Student Visa Program”; Feinstein, “Press Release”).<sup>11</sup> Feinstein’s arguments were particularly powerful given the mood of the nation at the time.

Senator Feinstein’s call for a six-month moratorium “to give the INS time to remedy the many problems in the system” shocked those educational institutions and organizations supporting international students. They worried that her proposal, which she acknowledged was “controversial,” would seem reasonable to an unsettled and anxious public.<sup>12</sup> Those involved with the academic communities chose to no longer fight the electronic monitoring system, and

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<sup>11</sup> Advocates for international students argued that the foreign student category was already highly regulated, particularly since the category made up less than 2% of the population of all nonimmigrant visa categories (Marklein). For example, Victor C. Johnson of NASFA stated, “The United States monitors international students, scholars, and exchange visitors more extensively than any other non-immigrants outside the penal system” (26). David Ward of ACE said “according to INS data of the 1.67 million ‘deportable aliens’ in the U.S. in 1998, only 599—4/100 of one percent—entered the country on a student visa, making the foreign student category far and away the most law-abiding members of any other major visa category” (“To Senate Judiciary Committee Regarding Feinstein Proposal on Student Visas”).

<sup>12</sup> See AASCU Letter on National Security and Higher Education written to colleagues in the Fall 2001: “These are trying times for the country and especially in Washington. While the Congress usually functions in a deliberative manner—and at times unbearably so—there is now a rush to take action.” The letter continued to acknowledge the need to work with the government and to implement a monitoring system, but opposed the moratorium.

instead focused their energy on defeating the moratorium and other stringent policy proposals. International student advocacy groups, such as Teachers of English to Speakers of Other Languages (TESOL) and NAFSA, college advocates, professional societies, and interest groups, including the American Association of Collegiate Registrars and Admission Officers (AACRAO) and the American Council of Education (ACE), went on record to support an electronic monitoring system (Ward, “To Senate Judiciary Committee Regarding Feinstein Proposal on Student Visas”; “TESOL Matters Archive”).

The President of the ACE, David Ward said his organization “strongly support[ed]” Senator Feinstein’s plan to revise the monitoring “payment system in a way that will eliminate the administrative problems that have plagued this system from the beginning,” but “we are strongly opposed to any blanket freeze on student visas because it will undermine the nation’s long-term strategic and economic interests and is unlikely to deter entry into the country of potential terrorists. Ward offered to

work to find a solution that addresses Senator Feinstein’s underlying concerns without causing grave harm to international student education on our campuses. However, in light of the pending Congressional action, it was essential to bring this matter to your attention. I would be pleased to work with you and your staff to find ways to address this issue without seriously damaging international education. (Ward, “To Senate Judiciary Committee Regarding Feinstein Proposal on Student Visas”)

Ward, also the former Chancellor of the University of Wisconsin, did not stop with the Senate Judiciary Committee. He wrote to Representative James Sensenbrenner, Republican of Wisconsin, on October 10, 2001, as Sensenbrenner’s committee took up the PATRIOT Act of 2001, and to President George W. Bush on October 12, 2001. He stressed that his organization and the organizations he represented, of which about 50 signed his letters, strongly favored the electronic monitoring system but vigorously opposed the proposed moratorium (Ward, “To Representative Sensenbrenner”). Although ACE and other organizations had raised concerns

about the funding of the monitoring system, Ward explained that “[t]he nation’s colleges and universities recognize their obligation to work cooperatively with the federal government to keep track of international students when they are enrolled on our campuses” (Ward, “To President George W. Bush”; U.S. Cong. House. Committee on Education and the Workforce: Subcommittee on Select Education and Subcommittee on 21st Century Competitiveness). He also stated the commitment of colleges to international education as a means to “foster greater cultural understanding—the antithesis of terrorism” (Ward, “To President George W. Bush”).

On October 12, 2001, David Ward testified before the Senate Committee on the Judiciary: Subcommittee on Technology, Terrorism, and Government Information, chaired by Senator Feinstein. The subject of this hearing was “Technology’s role in preventing the entry of terrorists into the United States.” Senator Feinstein opened the hearing with a statement for the record that September 11th had

triggered concern about the shortcomings of the immigration and visa system of our country. Just yesterday the Department of Justice released information indicating that 13 of the 19 terrorist hijackers had entered the United States legally with valid visas. Of the 13, three of the hijackers had remained in the United States after their visas had expired. . . . Clearly something is wrong with our system.

Feinstein identified the student visa policy as one of three vulnerable areas in our system of immigration, noting that over the last ten years 16,000 students came to the U.S. “from terrorist-supporting states, such as Iran, Iraq, Sudan, Libya and Syria.” She emphasized her belief that

we’ve had plenty of warning of the weaknesses of our immigration system that helped lead to the September 11 attack. In fact vulnerabilities in the system, for example, have been documented as far back as 1979, when during the Iranian hostage crisis the INS was unable to locate 9,000 of the estimated 50,000 Iranian students studying in the United States.

Her call for a moratorium had gotten the attention of the INS and the academic community. “There have been two meetings with my office. The school association will testify

today. I believe they will testify that they want to be cooperative” (U.S. Cong. Senate Subcommittee on Technology, Terrorism, and Government Information of the Judiciary Committee).

With the possibility of a moratorium still looming, David Ward had limited options at the hearing. He had to deflect comments, like those of ranking member Senator Jon Kyl, a Republican from Arizona, that universities were greedy and selfish:

I don't think it's much of a sacrifice for institutions that benefit from U.S. laws, like higher education—hope there's some of you out here that are representing institutions of higher learning. You all benefit from these programs. The tuition you charge to foreign student really helps your coffers. And I was dismayed when the first reaction to Senator Feinstein's suggestion that maybe we needed to have a timeout here on the foreign visas, student visas, was 'No, we can't do that. That will really hurt us financially. (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.)

Ward endured the criticism of fellow witness Commissioner of the INS, James Ziglar, whose agency was also under scrutiny, as Ziglar attempted to shift blame to “the academic establishments” for having raised opposition to and allegedly hampered the development of a student tracking system (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Furthermore, Ward had to tolerate the views of witness Steven A. Camarota of the Center for Immigration Studies (CIS), an independent, non-partisan research organization that seeks “fewer immigrants but a warmer welcome for those admitted” (Center for Immigration Studies).

Camarota condemned the aspects of an “open society” that has prohibited the “most perfunctory oversight of such long-term foreign students and workers—so perfunctory, in fact, that at least one of the September 11 terrorists entered the country on a student visa but never showed up for class, without triggering any concerns anywhere” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Ward refuted the idea that foreign students are threats, untrustworthy, or even unregulated. He asserted that they are mostly law-abiding individuals who often become model citizens. Drawing upon his own experience as chancellor and as a foreign student in the U.S. in the 1960s, Ward described how, upon finishing his Ph.D., he “was given thirty days to leave the country,” but later “returned to the United States as an immigrant and became a citizen in 1976.” He attempted to correct Commissioner Ziglar’s view that academic institutions blocked SEVIS, pointing out that technological, administrative, and complex funding issues were the causes of the delay. Ward reiterated that the American Council on Education “never opposed the underlying idea behind SEVIS—an electronic exchange of information about international students to facilitate monitoring and tracking” (U.S. Cong. S. Subcttee. on Tech., Terriorism, and Govt. Info.).

According to Ward, the government had the “right and responsibility” to monitor, and colleges had the “obligation” to make information available, but he added that he and others had objected to INS’s first fee collection proposal, which “would have turned colleges into bill collectors for the federal government.” Ward stated that “Congress blocked” this plan. Although he expressed disapproval of a current proposal that required the fee to be paid by credit card, Ward conceded “SEVIS is ultimately the only way to obtain the information that the federal government wants and needs.” He maintained, however, that fees borne by students could discourage students from studying in the U.S. (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.)

Ward and those representing the educational community sought to shift the focus from international students in the U.S. to the State Department’s process of issuing visas and admission to the States. Along with the academic institutions and INS, the State Department was

called to testify; it received harsh criticism for having issued visas to those involved in the 9/11 attacks. One concern with the process, which David Ward raised in his testimony, pertained to Form I-20, the notice of acceptance that institutions provided to students when the institution accepted the student’s application. Prior to 9/11, a student received these forms directly from those schools that had accepted the student. A student could receive multiple forms that posed a problem since the student could use these forms to obtain multiple visas and perpetrate fraud (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Ward suggested that schools send the form directly to the State Department once a student accepted admission to a particular institution, such a system is now in place (“Welcome to Travel.State.Gov.”). The American Council on Education called for other changes to the visa process as well: “There’s been a false impression in the press about the risk posed by student visas. There is a much bigger problem here that can only be dealt with by tightening up the whole visa-awarding and monitoring process” (Curry).

Although under fire for issuing valid visas to 13 of the 19 terrorists, the Department of State, as well as many advocates of international education,<sup>13</sup> maintained that neither the visa process nor the failure to track international students addressed the real problem. Assistant Secretary of State of Consular Affairs Mary Ryan attempted to defend the conduct of her consulars. She argued that issuing these visas was not a failure of the visa system but represented

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<sup>13</sup> The Report by NAFSA’s Strategic Task Force on International Student Assessment, states that “recent congressional attacks on the Bureau of Consular Affairs ring somewhat hollow in view of the fact that Congress has routinely underfunded this Bureau, as it has much of the Department. Educators have long advocated greater funding for Consular Affairs. Thankfully, September 11 appears to have induced Congress to recognize the necessity of funding Consular Affairs at a level commensurate with its role as a first line of defense” (“In America’s Interest: Welcoming International Students”).



a more systemic problem. The issue lay in what information was available to those who granted the visas. The State Department lacked access to all the relevant information. Hence, the problem reflected a failure of the Country’s intelligence system and a lack of information sharing (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Ryan insisted that had the State Department had access to the information about the terrorists’ ties to al Qaeda at the time that the terrorists had applied for visas, the Department would not have granted the visas.

Despite Ryan’s attempts to defend the system, the visa system was restructured post-9/11 as part of the creation of the Department of Homeland Security. Secretary of State Colin Powell asked Ryan to resign in September 2002. At the time of her resignation, Ryan was the longest serving diplomat in the State Department, having served 36 years. When Ryan died in 2006, her obituary defined her resignation as a normal rotation during an administration change, but it also noted that some on the Hill had asked for her departure. “They [members of Congress] complained that she didn’t seem to realize that the visa system needed to change because of the September 11 terrorist attacks” (Holley).

By the completion of the hearings, Feinstein believed that “educators” would work with INS to better monitor foreign students. She had dropped her proposal for a six-month suspension of student visas (Curry), now directing her attention on implementing a student monitoring system by 2003.

## **V. Monitoring International Students as Part of a Program of National Security and its Impact on Students**

By the end of October 2001, the regulation of international students had become a part of the nation’s security policy. In his “Homeland Security Presidential Directive 2: Combating Terrorism Through Immigration Policies,” President Bush announced a national policy to

address the problem of “foreign terrorists” through “immigration policies,” highlighting, the program to end “abuse of international student status” as one of six programs. The program also “prohibits certain international students from receiving education and training in sensitive areas, including areas of study with direct application to the development and use of weapons of mass destruction,” and established a “limited duration” for student visas and “strict criteria” to renew student status. Bush additionally announced “periodic reviews of all institutions certified to receive nonimmigrant students and exchange visitor program students” to ensure “compliance with record keeping and reporting requirements.” Bush recognized that “[t]he United States has a long and valued tradition of welcoming immigrants. But the attacks of September 11, 2001 showed that some come to the United States to commit terrorist acts. . . .” (Bush).

The concept of monitoring students did not change the status quo: the federal government had required institutions to keep data including enrollment status, major area of study, and work-study positions since the 1950s. The government had also collected information on international students through the I-20 program since 1979.<sup>14</sup> SEVIS modernized an antiquated system, which still used four-part carbon documents (Mills; Arnone, “Colleges Expect the Worst Preparing for New System to Track Foreign Students”). Viewed in its most favorable light, SEVIS offered a way to maintain the same information electronically. However, the concern with SEVIS and CIPRIS, its pre-9/11 form, was “the juxtaposition-terrorism and students” (Elliston). This juxtaposition, and the view of international students it suggests, did change the status quo.

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<sup>14</sup> CIPRIS, the predecessor of SEVIS, had been piloted pre-9/11 and was already in place in some schools post-9/11, but the rigor of enforcement changed (informal conversation with Immigration Attorney, Matt Phillips, at Cohen and Grigsby, in Pittsburgh, PA, on 10/05/06).

SEVIS, funded by the USA PATRIOT Act with the requirements outlined in the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), became operational in 2003. Its implementation and the policies developed around the same time have resulted in major changes in the way that the government and academic institutions treat international students in their day-to-day interactions in the United States.<sup>15</sup>

The restrictions from SEVIS begin once a person receives acceptance to study in the U.S. Applicants for student visas post-9/11 must pay a one-time, non-refundable \$200 SEVIS fee to the Department of Homeland Security in addition to a visa processing fee (8 CFR § 214.13; “About ICE”). The government collects this fee, even if the visa is denied. The visa-applicant must appear at the U.S. Embassy Consular Section in his or her home country for an in-person interview after being admitted to a government approved school. The in-person interview often involves substantial travel for an applicant since many consulates are located only in capital cities. The interview cannot be scheduled until the school notifies the government of the applicant’s acceptance and the prospective student’s name appears in the SEVIS database. The visa applicant is subject to eligibility requirements, which include criminal record checks, as well

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<sup>15</sup> The speed and the extent of the change have often been commented upon: Johnny N. Williams, Interim Director, Immigration Interior Enforcement at ICE, testified, “Since SEVIS is a new system that was developed and deployed under an aggressive schedule, that he could not guarantee that there would not be technical problems with the system. . . .” (Siskin, A. *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*. Congressional Research Service. Library of Congress, p6 n23). Consider also comments by immigration attorney during a workshop on October 16, 2006 conducted by the Office of International Students at the University of Pittsburgh: “Things have been turned on their heads”; or remarks by foreign student advisors that SEVIS was part of a series of rapid changes in which dissention was impossible: “SEVIS went through quickly to look like we’ve done something”.

as additional security clearances depending on what a student plans to study (Haddal 8; Siskin 8; Krieg; Mills).

If a student receives a visa, the student must arrive in the U.S. no more than 30 days in advance of the program. Permission to stay in the U.S. is based on the program of study, and visas now have a fixed termination date so the permission to stay in the States terminates once the student completes the program of study. The ability to extend, renew, or change to a different type of visa is extremely limited (“Welcome to Travel.State.Gov.”).

Once the government allows the student to enter the country, the government notifies the educational institution of the student’s arrival; the institution must report any “failures to enroll” to the government within 30 days of the student’s arrival date. Students have reporting requirements as well. They must notify the institution of any changes, such as address or academic major, within 10 days, and the institution must then inform the government of these changes within 21 days (SEVIS). The “Technology Alert List,” or TAL, which expanded to include some 200 subjects, requires security clearance for many major courses, including chemical engineering and biochemistry (U.S. Cong. H. Cttee. on Science; Wilson). Transfers to a different institution also necessitates prior approval (SEVIS § 214).

A student must maintain a full-time credit load; if a student stops going to classes, the institution must report this to the government. If a student drops out without first telling the designated official at the school, the student must immediately leave the country. A student who drops out is only eligible for a 15-day grace period if he or she requests prior approval from the school to discontinue studies. If these students successfully complete the program of study, they have a 60-day grace period. If a student fails to report the required information or violates any of

these terms, the student will be considered “out of status” and, as a result, the government can jail and/or deport this student (SEVIS § 214).

SEVIS also regulates a student’s dependents. These dependents face numerous restrictions post-9/11. They are no longer eligible to get a U.S. driver’s license, and they may no longer study as a dependent, but instead must apply for an independent student visa ( OIS; OIE; U.S. Board on Higher Education and Workforce).

Another significant post-9/11 change that affects both students and institutions of higher learning is the inability of nonimmigrants to pursue short-term study on tourist visas. In most English-speaking countries other than the U.S., tourists may participate in short-term study for up to 90-days. These countries welcome international students without a student visa as participants in activities such as studying English, engaging in other short-term summer courses or workshops, or returning for a week to defend their dissertations. In the post-9/11 United States, however, “this practice is technically illegal, and post-September 11 crackdowns jeopardize these worthy activities” (“The History of NAFSA”).

The post-9/11 special registration requirements additionally affected students from Muslim countries. The National Security Entry-Exit Registration System (NSEERS) required males holding nonimmigrant visas from the Middle East and from Muslim countries with high populations of Muslims to report in person to the immigration office. NSEERS also periodically required these men to re-register or check in with Immigration (8 CFR § 264.1(f)); INA §§ 262, 263). As a result of these registration requirements, which one immigration attorney referred to as a “round-up,” many students were determined to be “out of status” and faced deportation (Ramirez).

The new policies related to international students, most notably the requirements to maintain and report information to the government on a frequent and systematic basis, led to changes in educational institutions. These requirements established a policing role for foreign student advisors, shifting a part of the burden of immigration enforcement from the federal government to the institution (SEVIS; ACLU). Information is reported, often at the end of each day, about the progress of each student (Clubb, Director of OIS, University of Pittsburgh; SEVIS, 8 CFR § 214.3(g)).

The government now requires schools to go through a certification process that includes routine site visits in order to be eligible to accept international students (SEVIS, 8 CFR § 214.3(h)). The institutions must identify officials, known as principal and designated student officials (PDSOs and DSOs), to serve as liaisons between the students and the government (SEVIS, 8 CFR § 214.3(l)). The implementation of SEVIS has circumscribed the school officials’ authority to act independently. For example, school officials have lost the following powers: 1) authorization to change programs of study; 2) ability to change deadlines; 3) ease to correct data errors in the system (now must work with the government to correct information);<sup>16</sup> 4) right to unilaterally authorize a reduced course load for a student who experiences medical issues or who struggles with classes; and 5) independence to reinstate a student who falls out of status (student must now work with the government and may have to apply for a new visa). In the past, school officials had the authority to make such changes or approve such decisions;

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<sup>16</sup> The technological platform for SEVIS is run by EDS, Ross Perot’s company, in Colorado Springs. The company offers a help desk to provide the first-line of support for institutions. Additional help is also offered by the Department of Homeland Security in Washington D.C. (conversation with David Clubb, OIS University of Pittsburgh).

consequently, SEVIS has altered their relationship to students as mentors, advisers, and advocates. Post-9/11, school officials have assumed a pronounced governmental role, giving the federal enforcement agency a much greater presence in the daily interaction of the university with its international students. (8 CFR § 214.3(a)(3), (h), (i), and (1)). The federal government defines the decision-making in relation to foreign students as specified in government regulations: Reduced course loads, for instance, are limited to a few circumstances, such as severe medical conditions, and require supporting corroboration from a doctor (8 CFR § 214.3). Furthermore, the federal government establishes the hiring criteria and duties for international student officers who are required by DHS to carry out the specific monitoring and enforcement functions on behalf of DHS.

If an institution fails to comply with reporting and record keeping requirements, the government can, and will, revoke the authority of an institution to accept international students (Wennerstrom 104). These reporting requirements extend to information about students' dependents, even though the spouses or children are not enrolled at their institution (SEVIS, 8 CFR § 214.2). Therefore, schools must chase down students to ensure that they meet inflexible deadlines (Krieg and Gentile). If a student leaves the university, the department is usually the first to know; in universities with large international populations, such as the University of Pittsburgh, the Office of International Students is highly dependent on the individual departments to “say something” to them if the university as a whole is to remain compliant with the government regulations (Clubb). As a result, the University of Pittsburgh offers workshops for individuals in those departments working with international students that teach the process and methods of gathering information (Clubb). Institutions may also be required to give additional information to the Department of Homeland Security. While agencies like the FBI and

CIA are required to get a subpoena to obtain certain information, Homeland Security has broader powers to access information (Clubb).

*Emphasis on Strict Enforcement*

The implementation of SEVIS, the breadth of SEVIS, and the rigor with which SEVIS has been enforced reflect the Bush Administration’s emphasis on the enforcement of immigration laws as part of a program of national security. Immigration laws became tools of security, although many commentators maintain that the laws were not written with this purpose in mind. Immigration attorneys and scholars have emphasized:

Many people can be picked up in a sweep of persons with expired visas, most of whom are not terrorists. As a result, when the borders tighten as a security measure, many immigrants suffer. . . . Attorney General John Ashcroft has already begun extending the detention times of people in the Immigration and Naturalization Service’s custody for potential threats to national security. . . . Many more immigrants will have their backgrounds checked for prior misdemeanors and other minor offenses. . . .” (Law and Rosario)

The government increasingly treated violators of immigration law as criminals (Miller, T. in which the author documents the trend to enhance the role of law enforcement and include harsh criminal penalties in immigration laws).<sup>17</sup> International students have been subject to this trend. Students have been detained for not taking a sufficient course load; in at least one case, six students were jailed for not taking a full course load (Romero 362 n34).

The use of the SEVIS database reflects the trend toward enhanced law enforcement. SEVIS enables the immigration service to sweep large numbers of people into their system. According to the Office of Graduate and Professional Administration at Ohio State University,

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<sup>17</sup> See also the work of Jennifer M. Chacón who discusses the “criminalization of migration in the United States” and the trend to impose harsh criminal consequences for violations of migration laws (“Managing Migration Through Crime.” 109 *Col. L. Rev. Sidebar* 135 (2009)).



SEVIS registered 770,000 students and 100,000 dependents at 7,470 approved schools in 2004. From this data, 36,000 records were identified as having possible violations; 1,600 yielded credible leads that resulted in 155 arrests for violations of immigration status (Hoza). Many such violations of student status were, however, technical or stemmed “from lack of knowledge or understanding by young people of what are, after all, fairly complex regulation” (NAFSA 18). While the system once gave the designated school officials discretion in cases involving minor infractions which did not implicate national security concerns, now

[t]he rigidities of the system are so great that inadvertent loss of status threatens to be a common occurrence, and the remedies are so difficult that significant numbers of international students may face significant disruptions in their studies and may even have to leave the country. This is not idle speculation. Reports have surfaced periodically since September 11 of international students being jailed for technical violations with no national security implications, or due to a misunderstanding of the regulations by enforcement officials. (NAFSA 19; Romero)

Enforcement intensified with the 2003 elimination of the Immigration and Naturalization Service (INS), an agency housed within the Justice Department, in 2003. For years, INS had been the subject of harsh criticism, in part because of its dual roles of service and enforcement (Bruno). The INS became the source of embarrassment and ridicule when, in March 2002, the notification of approval for the transfer to student visa status for the two dead hijackers was sent to the Florida flight school the hijackers attended (The 9/11 Commission). The consensus in the Bush Administration and in Congress was that INS needed to be restructured (Bruno); the passage of the Homeland Security Act (HSA) in June 2002 accomplished this restructuring, completely eliminating INS in 2003 (HSA: Homeland Security Act).

The HSA transferred immigration enforcement responsibilities to the new Department of Homeland Security (DHS). The responsibility for implementing and managing the Student and Exchange Visitor Program and the monitoring system, SEVIS, went to the Immigration and

Customs Enforcement Agency (ICE), “the principal investigative arm of DHS and the second largest investigative agency in the federal government” (“About INS”). Unlike INS, DHS received a singular mission to secure the homeland in order to keep America safe. This mission included enforcing immigration laws (“DHS Home”). The management of the Student and Exchange Visitor Program is viewed as one fundamental component within the larger national security program; SEVIS uses its information “to identify those who may have violated their terms of entry or might otherwise pose a threat to national security” (U.S. GAO; “Immigration Enforcement” 13).

The INS and DHS were not the only enforcement agencies to focus upon academic institutions. The FBI also surveilled campuses after 9/11 and the enactment of the USA PATRIOT Act in 2001. For example, the Chronicle of Higher Education reported that the FBI conducted flyovers above the Indiana University campus as part of visual surveillance (Arnone, “Closing the Gates: Watchful Eyes”). The FBI had not received terrorist threats against the university, but “was watching specific individuals, vehicles and businesses, particularly those that sent faxes or e-mail late at night” (Arnone). The FBI also interviewed several international students at Indiana University. The University of Idaho reported that the FBI had raided graduate-student housing at 4:30 a.m., arrested a Saudi graduate student, who allegedly had terrorist ties, and interrogated over 20 other international students for four hours. The surveillance, monitoring, and special registration requirements profoundly affected the mood on campuses:

The crackdown has spooked international students and scholars. They worry that they are being profiled, especially if they are Arab or Muslim, and will be arrested and deported for minor visa infractions, or won’t be allowed back into the United States if they want to leave. (Arnone, “Closing the Gates: Watchful Eyes”)

In response to civil liberty concerns over law enforcement and FBI actions on campus in earlier eras, Congress had enacted the Family Educational Rights and Privacy Act (FERPA) in 1974, which prevented colleges from disclosing information about students without a court order or student consent (Arnone, “Closing the Gates: Watchful Eyes”). The PATRIOT Act, however, altered these privacy protections and made it easier to gather and share information without judicial oversight. Additionally, the USA PATRIOT Act gave campus police greater authority to work with federal, state, and local authorities, including the FBI and DHS, and allowed government agencies access to campuses, faculty, students, and information (Arnone, “Closing the Gates: Watchful Eyes”; United States Cong. Senate Subcommittee on Immigration of the Committee of the Judiciary). The FBI still needed a court order to request information, but it could demand colleges not record the request or disclose an investigation (Arnone, “Closing the Gates: Watchful Eyes”). FERPA does not limit the Department of Homeland Security (8 U.S.C. § 1372; 8 CFR § 214.1(g) & (h); Office of International Education Carnegie Mellon University). DHS and ICE have broad powers to request information from schools and, in some cases, schools must respond within a matter of days (Clubb; Badger).

Post-9/11 policies made studying in the U.S. difficult for all international students, especially those Muslim males interested in studying the sciences. According to NAFSA, at the end of 2002, “Many such applicants were unable to enroll for the fall 2002 semester because their visa applications were sent to Washington, where they sat for months, without being decided, until the program start date had passed” (NAFSA 11). At the same time, a number of institutions, such as UCLA and Stanford, reported that visa delays forced students from all countries to arrive after the start of classes or to defer their studies. Schools also reported an increase in visa denials. Moreover, students who returned home during breaks or who attended

conferences were sometimes trapped at home or denied re-entry to the U.S. on return, leaving universities to wonder whether they should advise international students not to travel (Pinsker).

In March 2003, the House of Representatives held hearings to address the visa backlog and denial issues. The problems, which included increasing numbers of denials, wait times of three to nine months, and a backlog of 25,000 visa applications, stemmed from the following: 1) increased screening requirements for Arab and Muslim men; 2) an expanded and vaguely worded Technology Alert List (TAL) that subjected more students to extra layers of investigation and more frequent security clearances; 3) technical glitches with SEVIS that led to inaccurate or lost data; and 4) hyper-vigilance on the part of the State Department Consulars (U.S. Cong. House. Committee on Science). Overly abroad security measures caused lengthy delays, often blocking foreign students, scientists, and scholars from entering the United States. These visa delays particularly affected the scientific community because the delays had slowed down multimillion-dollar research projects funded by NIH, NSF, and similar research organizations (U.S. Cong. House. Committee on Science; Paral and Johnson).

Complicated procedures, delays, fear, and the perception of the State Department and Department of Homeland Security as “hostile and difficult to work with” resulted in a measurable decline in the number of students applying to study in the United States. Therefore, the 25 leading research institutes in the United States experienced sharp declines in their international student population (Selingo; Arnone, “Security at Home Creates Insecurity Abroad”). The State Department and Congress watched this trend with increasing concern, noting it in cables and calling for Congressional research studies (“State Department Cable”; Wasem). Studies such as “Open Doors,” conducted yearly by the Institute of International Education, reported that 572,509 foreign students studied in the U.S. in 2003-2004, a 2.4%

decline as compared to the previous year; this figure reflects a downward trend that would last for several years (“Open Doors 2004”).

In the four years following 9/11, many international students decided to forego study in the U.S., opting instead to study in Britain, France, Australia, or Canada. Institutions in these countries competed with the U.S. for the same students (“Open Doors 2004”; Bichard; Labi; Cohen). Other students delayed or abandoned plans to study, looking for options at home (Mooney and Neelakantan).

Universities in the United States, hoping to use international education once again as a means to promote cross-cultural understanding and to prepare students for a globalized world, took the opportunity to reach out to the world (McMurtrie, “Recruiting the World”). Along with more aggressive recruitment strategies, many U.S. institutions opted to set up campuses abroad, including Education City in Qatar (Lewin).

After 9/11, the attitude toward international students in the United States changed dramatically. The U.S. government and the U.S. people were persuaded to create new organizations, change laws, instill restrictive policies, and perceive international students as threats. What accounts for these changes? Did the events of 9/11 justify such changes? Discursive practices? Institutional structures? Ideology? Or was it a combination of these factors? In the next three chapters, I use three different levels of rhetorical analysis—*kairos*, frame theory, and genre theory—to examine both the nature of these changes and the extent to which discourse contributed to and influenced the decision-making process.

### Chapter 3: *Kairos*

#### I. Introduction

9/11 is often described as having “changed everything” (Dunmire; U.S. Cong. S. Subcommittee on Tech., Terrorism, and Govt. Info. of the Judiciary Committee). The catastrophic events of 9/11 affected material and non-material realms. At many levels, the events altered lives: loved-ones died, and people in the U.S., who no longer felt “safe,” perceived the risk of terrorism differently. However, the changes that occurred following 9/11 were not as inevitable as the phrase “9/11 changed everything” seems to suggest. Rather, these changes resulted from human choices that affected individuals in varying ways and to varying degrees. The government consciously chose to change policies in response to 9/11. For international students, these changes included the government’s decision to implement an electronic “monitoring” or “tracking” system (SEVIS) (8 CFR §§ 103, 214, 248, 274a). Although the Clinton Administration introduced such a system in a different form in 1996, the system remained undeveloped until after 9/11. Post-9/11, the Bush Administration decided to make the present monitoring system operational as one prong of the U.S. national security program. This monitoring system was an important part of the Bush Administration’s overall response to the terrorist attacks of 9/11.

To supporters and even critics of the monitoring system, the Bush Administration’s decision to monitor international students was widely accepted as a fitting, almost “inevitable” response to the exigence of 9/11. It was made to seem the natural outcome, given the assertion that three of the hijackers entered on student visas (The 9/11 Commission). It is, however, a less fitting response if the hijackers are described in more accurate detail as having attended flight training or language classes rather than studying in a degree program at a university or college

(The 9/11 Commission; Wennerstrom). In this chapter, I will argue that the Bush Administration treated 9/11 as a kairotic moment, a turning point: President Bush used 9/11 to create a sense of urgency about immigration policy, including a sense of urgency about international student visas. He then took the opportunity to make sweeping changes to immigration policy and governmental organization, ostensibly to protect the nation from terrorism.

In this chapter, I examine how the Bush Administration employed *kairos* and notions of time as a rhetorical strategy. By embracing arguments of temporality and time to reduce the event to one of exigence, the Administration and anti-immigrant lobbyists used 9/11 to advance arguments favoring restrictive immigration policy. Changes to immigration policy, including policies aimed at international students, were made to seem “fitting responses” to the threat of terrorism post-9/11, but these policies neither fit nor in fact responded to the events of 9/11. “International students as terrorists” was not a reality revealed by 9/11, but a rhetorical construct used to drive action and promote changes that had been rejected pre-9/11. As later chapters indicate, Bush used 9/11 to construct a certain view of international students. He then used this view of international students to justify a new government agency that acted in accordance with this view and, thereby, altered reality.

In the remainder of this chapter, I review theories of temporality and time, including the work with *kairos* by James Kinneavy (Kinneavy, “Kairos in Classical and Modern Rhetorical Theory”; Kinneavy, “Kairos: A Neglected Concept in Classical Rhetoric”), Bitzer’s concept of the “Rhetorical Situation,” and work by Carolyn Miller (Bitzer, “The Rhetorical Situation”; Miller, C., “Kairos in the Rhetoric of Science”; Miller, C., “Kairos in the Rhetoric of Science”; Miller, C., “Opportunity, Opportunism, and Progress: Kairos in the Rhetoric of Technology”). I also consider what theories of situated narrative, such as Andreea Ritivoi’s work based on

Ricoeur, and Perelman and Olbrecht-Tyteca’s work with temporality, suggest about the concept of time in argument (Ritivoi, *Paul Ricoeur: Tradition and Innovation in Rhetorical Theory*; Ritivoi, “Ricoeur and St. Augustine”; see also: (Perelman and Olbrechts-Tyteca; Frank). Finally, I apply the concepts of time in argument theory to examine how the decision of the Bush Administration to monitor international students became the “inevitable” response to 9/11.

## II. Notions of Time in Argument Theory

James Kinneavy defines *kairos* as “the right or opportune time to do something, or right measure of doing something” (Kinneavy, “Kairos” 221). The two ideas of right timing and proper measure, Kinneavy says, work together: a response must “fit” the circumstances or the *kairos* would not be “right” (225). Kinneavy believes that rhetoric “desperately needs the notion of *Kairos*” (224). According to Kinneavy, the concept of *kairos*, expressed as “situational context” or Bitzer’s “rhetorical situation,” enables rhetorical theory to address “the appropriateness of the discourse to the particular circumstances of the time, place, speaker and audience involved” (224).

In Lloyd Bitzer’s conception of the “right time,” rhetoric is “pragmatic.” Rhetoric results in action or change (Bitzer 219). Rhetoric is also “situational,” meaning that it gets its rhetorical significance because of a situation (220). The rhetorical situation is a “context of persons, events, objects, relations and an exigence which strongly invites utterance” (219). Bitzer argues that the situation controls the rhetorical response or invites discourse that seeks to be a fitting response to the situation (220). The situation “calls discourse into existence” (218). In terms of political rhetoric, discourse primarily responds to situations that “present problems, crises, obstacles, or other kinds of exigencies which [political speakers] seek to modify by addressing messages” to audiences who have the capacity to modify the exigencies (Bitzer 14). While the rhetor alters



reality through the choice of discourse, Bitzer adds that the discourse does not create the situation but responds to it (Bitzer 220). The situation is a necessary condition and controls the rhetorical response (220). Bitzer’s notion lends itself to the “9/11 changed everything” point of view.

Bitzer’s perception of the situation further suggests that events have an objective reality. His theory attributes determinism to certain situations and events. Richard Vatz challenged Bitzer’s theory, saying that the rhetor can create the situation and the exigence. Vatz uses Bitzer’s example of President Kennedy’s assassination to suggest that the conveyance of the assassination could create a situation of fear or increase the perception of threat (Vatz 230), Vatz proposed that “situations are created by rhetors, thus by implication, any moment in time has a *kairos*, a unique potential that a rhetor can grasp and make something of, defining (at least in part) the terms for his or her success.” The nation’s understanding of 9/11, in this view, was created by rhetors and used to advance a particular outcome. Neither Bitzer’s nor Vatz’s notion of *kairos* provides an adequate explanation as to how a “crisis” or “catastrophic” event might be influenced by discourse or how, as Vatz suggests, such events could be created by discourse.

Carolyn Miller suggests that both views of *kairos*—Bitzer’s that there are special moments of opportunity that present themselves every now and then and Vatz’s that every moment has such potential to be seized—express *kairos* as “an opening” which can be used. *Kairos* enables rhetors to “look for the particular opportunity in a given moment to find or construct an opening in the here and now, in order to achieve something there and then” (Miller, C., “Opportunity” 82). As such, *kairos* offers a means of understanding the relationship between “historical context and particular characteristics of discourse” to interpret a text. “*Kairos*,” Miller asserts, “calls attention to the nature of discourse as event rather than object; it shows us how

discourse is related to a historic moment; it alerts us to the constantly changing quality of appropriateness” (Miller, C., “Kairos in the Rhetoric of Science” 320). *Kairos* emphasizes the dynamic relationship between discourse and a situation and that “one time is different from another. . . .” (“Kairos in Rhetoric of Science” 11; “Opportunity” 83). References to *kairos* operate like “exigence.” Both “opportunity and threat are constructions of the future,” says Miller, “messages about appropriate action in the present that create a sense of urgency” (“Opportunity” 89).

Carolyn Miller suggests that a rhetorical situation is more than Bitzer’s “demand-response” in which exigence is an “external cause of discourse” and the situation is “deterministic.” For Miller, situations are “social constructs that are the result, not of ‘perception,’ but of ‘definition’” (“Genre as Social Action” 156). Before individuals can act, they must first “define,” “determine,” “interpret” a situation. Situations emerge from other situations: “The new is made familiar through the recognition of relevant similarities; those similarities become constituted as a type. A new type is formed from typifications already on hand when they are not adequate to determine a new situation” (“Genre as Social Action” 157). The way people construe the material situation, not the situation itself, is what recurs.

Exigence, for Miller, is also a form of social knowledge, “a mutual construing of objects, events, interests, and purposes that not only links them but also makes them what they are: an objectified social need.”<sup>18</sup> Exigence in this view is “social motive,” and defining a material situation, such as 9/11 or any catastrophic event, as a particular type of situation, provides the

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<sup>18</sup> Bazerman says that *kairos* helps individuals take typified, repeated patterns and “characterize rhetorical moments as of particular kinds, calling for particular kinds of comments” (Bazerman, *Constructing Experience*, 178).

rhetor with a way to make intentions known (“Genre as Social Action” 158). How people come to understand a particular response as fitting the social exigence of a situation comes about as “individuals perceive structure in life-world and act according to that structure, and insofar as that structure meshes with others, we find ourselves rewarded with responses we feel are appropriate” (Bazerman, *Constructing Experience*, 185).

While Miller’s notions of time and timeliness, expressed as *kairos*, consider decision-making as a process occurring overtime and not just a direct response to an event, her theory does not address either a rhetor’s ability to recognize a material situation as a kairotic moment or how a rhetor acquires the ability to define the situation. In other words, identifying 9/11 as a kairotic moment or a rhetorical situation within this decision-making process neither adequately explains how President Bush knew to act nor how his discourse about 9/11 could be used to define subsequent policy decisions, such as the October 29, 2001, six-point proposal on “combating terrorism through immigration policy.” What, for example, was the process that made this response “feel appropriate?” To understand why President Bush proposed changes to immigration policy, including point number three, the proposal to end the “Abuse of International Student Status,” requires a close examination of the historical context and the way in which the story of 9/11 is told, asking how kairotic moments were identified, what strategies were at work at these moments, and how audiences were addressed.

Andreea Ritivoi’s work on temporality offers a way to put human agency into the rhetorical concept of *kairos* by viewing *kairos* as a rhetorical device that uses the notion of time as an argument strategy and allows a rhetor to link a response to an event (“St. Augustine in Continental Rhetoric and Philosophy”). Ritivoi, who notes that rhetorical theory seldom addresses temporality, states that *kairos* “is by far the rhetorical concept most anchored in theory

of temporality. . . .” (12). Using Ricoeur’s study of St. Augustine, Ritivoi explains that time is “embedded in subjective experience” (7) and is an “activity of a mind engaged in recollecting, perceiving, and expecting” (6). *Kairos*, she says, can be thought of “as a way of experiencing time” (12); *kairos* makes time measurable (8). However, she points out that the “theory has remained largely assumed and hardly ever explained or elaborated” (12). For example, Ritivoi notes that Kinneavy’s work on *kairos* assumes “that we just know what ‘right time’ is, once it has been identified” (12). Ritivoi calls upon rhetorical and communication theorists to consider how “we just know” the right time (12). She suggests that rhetorical strategies such as narrative and emplotment and Ricoeur’s concept of “close relations” are involved in the creation of *kairos* (12).

Andreea Ritivoi observes that “[o]ur experience of time as a form of preoccupation [with particular needs, obligations, desires, hopes, or ambitions] is shaped, according to Ricoeur, by our ability to follow a plot” (“St. Augustine” 9). Emplotment or storytelling orients events in the world. “Our sense of urgency and timeliness, belatedness, and prematurity is shaped, in Ricoeur’s view, by the ability to place occurrences and actions within a framework that clearly marks a progression toward a narrative conclusion that is neither deduced nor fully predicted, but is acceptable given what has come before” (9). *Kairos* then becomes a useful concept when it is thought of not as an inevitable result of a situation or a “given” but when it is used as Ritivoi suggests to examine “what makes a rhetorical intervention appear as opportune in the eyes of a particular audience” (12).

*Kairos* seems to be the opportune response to an event because the response “is perceived as linked to that event” (12). The link is constructed and in this sense, *kairos* is a “strategy of emplotment” that “places an event in connection to others, making one seem as the response to

what preceded it or the cause of what would follow” (13). This link is constructed through “a narrative of care and concern” (13) The narrative “lifts what is otherwise an arbitrary and potentially insignificant occurrence into a meaningful sequence of events” (13). Ritivoi explains that the audience receiving the narrative looks in the discourse and beyond for cues that tell the audience members how to perceive the world. They become a community, or “close relations,” by accepting these cues and the world view, along with the beliefs and values that attend this view (13). This community can be constructed and may be one with whom a real audience is asked to identify (13).

In their work on argumentation and specifically in their work on temporality, Perelman and Olbrechts-Tyteca detail the way in which “one places an event in connection to others”; they state that “argumentation varies with individuals, with the place in history, with the idea that we make of them at a given moment” (Frank 308-35, 333; Perelman and Olbrechts-Tyteca). These scholars define argumentation as an action that allows individuals “to create or increase adherence to theses that are presented for assent” (Frank 315). Time, they say, is integral to this concept of argumentation in the sense that argument is an action that is “never definitely completed” (318). Although the adherence is changeable overtime, subject to revision as the context and audience shift (318), argumentation cannot be separated from its history (323). It is “built upon a host of stable factors,” and, despite its mutable quality, is a “succession of knots rather than a fluid flow” in which change must be justified (327). Argument is also time limited in terms of audience attention and the urgency involved with the decision. Moreover, in argumentation, a rhetor has a choice of what to present, placing “in the field of consciousness elements that should produce adherence” to a proposition (319). A rhetor can give presence in argumentation “to what is actually absent” but important to an argument or can “enhance the

value of some elements of which one has actually been made conscious” by making the elements more present through techniques such as repetition, which time enables (Frank 324; Perelman and Olbrechts-Tyteca 117). Time requires the rhetor to select and present the elements that are most convincing to the situation; the rhetor often uses concepts of time or timeliness to advance adherence (Frank 320). For example, the order in which information is provided will influence adherence, and arguments of direction that relate present action to future development will take on significance according to what an audience “foresees” within such arguments (Frank 325; Perelman and Olbrechts-Tyteca 381-83).

Informed by Ritivoi’s work on situated narrative, along with Perelman and Olbrechts-Tyteca’s work on temporality in argument, I now identify what was made present and how it was made in the first six weeks following 9/11. I confine my analysis to this six-week period because it was within this early post-9/11 period that the government and media first discussed international students as potential terrorists and that the government introduced the national security policy that included the regulation of these students. My analysis illustrates the manner in which exigence and opportunity were constructed to both create concern about international students and to gain adherence for national security policy. The individuals involved, their place in history, and the ideas presented illustrate that the decision-making process is not determined exclusively by the event nor can it be reduced to the product of exigence. Rather, the decision-making process is a complex story in which exigence was a rhetorical device used to gain adherence for proposals made long before 9/11.

### III. 9/11 and “Inevitability”

#### a. *The Presidential Response*

President Bush’s Directive of October 29, 2001, on Homeland Security, introduced six weeks after 9/11, announced a national policy “to work aggressively to prevent aliens who engage in or support terrorist activity from entering the United States and to detain, prosecute, or deport any such aliens who are within the United States” (“Homeland Security Directive-2”). In regards to international students, the President directed the government to develop a “new program of control” which would “end the abuse of student visas.” Bush called for measures that would limit the ability of students to study subjects the Administration determined to be “sensitive” (Note, “Responding to Terrorism”) and that would track foreign students who received visas. The President also directed INS to review “all institutions certified to receive nonimmigrant and exchange visitor program students.” He acknowledged that the U.S. has had “a long and valued tradition of welcoming immigrants and visitors,” including international students from whom “the United States benefits greatly.” However, Bush added, “The attacks of September 11, 2001, showed that some come to the United States to commit terrorist acts. . . .” (President George W. Bush). In other words, the time had come for a change in how the nation viewed foreigners, including foreign students.

The evidence that the “some” who come to commit terrorist acts pose as “international students” included: 1) the two hijackers who had taken flight training courses in Florida and 2) the one hijacker who had been accepted to take English classes in a non-degree Berlitz

Program in California (Borjas).<sup>19</sup> The government could have used this information in a variety of ways. Specifically, government officials could have focused on the terrorist’s flight training to justify increased scrutiny of flight training programs. Alternatively, the government could have used the information not to focus on a particular category of individuals, type of visa, or course of study, but to instead exclusively focus on the failure of the nation’s intelligence systems to detect an al Qaeda plot; similar to the previous Clinton Administration, officials could have focused on terrorism as criminal acts subject to criminal investigation (Note, “Responding to Terrorism”<sup>20</sup>; Miller, T.; Jordan Commission). However, through a series of rhetorical moves, the government constructed the information to prove an abuse of the international student status that harmed and put the nation at risk. In other words, through the use of *kairos*, Bush put the focus on the student visa status and used the hijackers’ visa status to construct a meaningful sequence of events.

The Bush Administration expressed the decision to monitor international students as a “necessity,” stating that these students could be terrorists. As described in this chapter, the decision was constructed as a non-controversial extension of Clinton Administration policies—not a change to the status quo but something that the Clinton Administration and the public had already addressed and approved. In other words, the monitoring program was presented as “old news” and should have been in place long ago. According to this construction of the story, the

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<sup>19</sup> Schemo and Pear state that this was a Berlitz School leasing space at a community college and was not part of a degree program at a college or university, but a language training program.

<sup>20</sup> The author states that law enforcement authorities conducted an intense investigation, which successfully identified those responsible. The terrorists found within the United States were apprehended, tried, convicted, and sentenced in *United States v. Salameh*, 152 F.3d 88, 108 (2d Cir. 1998) (Note, “Responding to Terrorism”).



country had potentially missed an opportunity that might have prevented 9/11. Academia had stalled the program because of selfish concerns, Congress had not funded it, and an inept INS further delayed it (Remarks by Senators Feinstein and Kyle, U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Post-9/11, the need to monitor students was made to seem obvious and required little debate. Held out as one of six points in post-9/11 security program, the program allegedly makes Americans safer, even though the program targets international university and college students who had no involvement in 9/11.

When considered as part of a situated narrative, however, the decision-making process appears more complex. Although the Clinton Administration had introduced the idea of electronically collecting data on students, the Administration did not give high priority to the system (Haddal; Seghetti). Rather, the Clinton Administration was concerned with a broader class of individuals—those people who overstayed their limited duration visas, people referred to as LDAs or visas of limited duration admission (Jordan Commission). Even when the international student category was the subject of discussion, the government referred to the student visa category as a “small” risk (U.S. National Commission on Terrorism; McMurtrie, Commission Seeks to Prevent Terrorism by Monitoring Foreign Students). Moreover, INS’s early student tracking prototype, CIPRIS, collected substantially less data than the current SEVIS system put in place post-9/11 that remains in place today (EBSVERA). When INS attempted to move forward with a national program, critics questioned how the volume of data could be used (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). INS and other supporters, including anti-immigrant lobbyists, suggested that international students posed a security risk, but pre-9/11 the idea that such students could be terrorists was divisive and elicited heated debate

that ultimately prevented the program’s implementation (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

The use of time as a rhetorical device began with Bush’s address to the nation on September 11, 2001 (“Statement by the President”). The timing of Bush’s speech, as well as his choice of detail and language, instilled a sense of urgency in his audience. Bush, who construed the event as catastrophic, constructed a future in which Americans must fight evil. In Bazerman’s terms, having the President speak “meshed” with Americans’ understanding of what was appropriate. According to Bitzer, the situation “called discourse into existence” (“The Rhetorical Situation” 218). The physical destruction and confusion that followed the hijackings were of such magnitude that the public needed to hear from the President. The public needed to be reassured (“The Rhetorical Situation” 224). Bush’s audience, the American nation, was ready to “rally around” in the time of crisis (Bostdorff, “George W. Bush’s Post-September 11 Rhetoric of Covenant Renewal”).<sup>21</sup> As Ritivoi’s discussion of Ricoeur suggests, *kairos* enabled Bush to give “cues” to the nation, asking the American people to put aside differences and to gather together during their time of upheaval.

While responding to the public’s need, Bush also established a connection between 9/11 and what would be his response. The President’s address to the nation began to shape the public’s understanding of the event as a terrorist attack and introduced the idea that America would have to defend freedom. The President described the “series of deliberate and deadly terrorist acts” as an “attack” on “our way of life, our very freedom.” The language that Bush

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<sup>21</sup> Bostdorff points out that Bush’s approval ratings were at an all time high in the months following 9/11 and discusses “a phenomena to ‘rally around the president’ in times of crisis” (“George W. Bush’s Post-September 11 Rhetoric of Covenant Renewal” 293).

selected in this speech drew upon the material reality of 9/11. For example, Bush spoke of the death and physical destruction that occurred on 9/11. The images his words depicted conveyed shocking events and danger: “airplanes flying into buildings,” “fires burning,” “huge structures collapsing.” He also described those who succumbed to the violence in a way that accentuated the ordinariness of these people: regular people “in airplanes, or in their offices; secretaries, businessmen and women, military and federal workers; moms and dads, friends and neighbors.” Bush told the story of what many in the nation had already witnessed on television, but he articulated collective feelings of “disbelief, terrible sadness, and a quiet unyielding anger.” He used the speech to name the events as terrorist attacks, labeling them not just as “criminal acts,” but “acts of mass murder intended to frighten our nation into chaos and retreat.” According to Bush, these “evil acts” represented “the very worst of human nature” (“Statement by the President”). Bush’s language seems to ask the nation, “the audience,” to enter into a close relation and share a common perception of the events.

President Bush also put forth what he believed to be the reason for the attacks: “America was targeted for attack because we’re the brightest beacon for freedom and opportunity in the world.” However, the attacks, he said, had “failed.” The terrorists could not “touch the foundation of America” or “dent the steel of American resolve.” President Bush emphasized that “our nation saw evil,” but “we responded with the best of America . . . the daring of our rescue workers [and] the caring for strangers and neighbors” (“Statement by the President”). The President told the nation that he, like those at Ground Zero, had responded: “Immediately following the first attack, I implemented our government’s emergency response plans. Our military is powerful, and it’s prepared.” Bush’s “first priority” was to help the injured and “to take every precaution to protect our citizens at home and around the world from further attacks.”

He assured the country that the government and “financial institutions” would function “without interruption.” Already, he had “directed the full resources of our intelligence and law enforcement communities to find those responsible and to bring them to justice.” He would make “no distinction between the terrorists who committed these acts and those who harbor them” (“Statement by the President”). Such an instantaneous and decisive response seemed to “mesh” with Bush’s narrative of the attack as an act of evil against a beacon of hope and opportunity.

The President closed with a reference to the future and a statement as to what he believed the future would hold: “None of us will ever forget this day. Yet, we go forward to defend freedom and all that is good and just in our world.” Bush called upon the American people, with this day in mind, to defend the nation from those who sought to harm it. He conveyed a great sense of urgency—that “evil doers,” who at this moment in time, could have assumed any shape and could have been anywhere, threatened us. According to Bush, these “evil doers” were willing to attack us for very abstract reasons that were related to America’s values of “freedom” and “opportunity” (“Statement by the President”).

While Bush chose to respond to 9/11 in this way, other leaders might not have responded at all or might have responded differently, thereby establishing a very different message. Bush’s choice to speak and manner of address represent an employment strategy. For example, in 1993, following the first World Trade Center bombing, President Clinton spoke in very different terms: He showed reluctance “to reach ahead of the facts to reach broad conclusions” when reporters questioned him immediately after the bombing (Clinton, “Remarks on Mayoral Support”). Instead of rallying the public to action or creating a sense of urgency, Clinton used his comments to call for patience or reason. He said, “We have massive resources at work on this case, massive. And we are doing everything we can to get as many facts as quickly as we can. When

we know the facts and when I can state them to you with real confidence so that it's not conjecture or opinion, I will be glad to make a forthright statement about it” (“Remarks on Mayoral Support”).

Furthermore, even as Clinton convened a commission on immigration reform, his discourse suggested a desire for a deliberate, measured response, insisting that the “bombing has caused us to review a whole range of issues, not just involving immigration, in terms of our ability to deal with the whole threat of actual or potential terrorism” (“Remarks and an Exchange with Reporters”). Clinton’s manner in selecting and presenting information shows that he, like Bush, seized an opportunity, but that he embraced an employment strategy that differed from the one Bush later used.

Following Bush’s address, details that emerged about 9/11 were linked with the sense of urgency to create a sense of opportunity, a sense that America would be safe if the nation took present action. Within days after 9/11, the press gave presence to the idea that monitoring international students might have prevented 9/11. Senate hearings chaired by legislators with long standing interests in immigration reform and the monitoring of students also presented information in a manner that advanced adherence to a national security policy that viewed international students as potential terrorists.

***b. The Media Response***

The press played an important role in linking international students to the story of 9/11. As Kaufer and Al-Malki have observed, the mainstream media have been an important voice in shaping the understanding of events such as 9/11 (Kaufer and Al-Malki). The authors highlighted that Arab-American News constructed “both enclaved and satellite counterpublics against the Clinton and Bush administrations’ war on terror” (Kaufer and Al-Malki 61). Papacharissi and de

Fatima Oliveira also reported a “symbiotic relationship between the policy agenda and the press,” noting that proposed policy and potential policy gains drive news reporting and the focus of the media (71). As Perelman and Olbrechts-Tyteca have observed, the press gives importance to certain information by selecting and presenting it to an audience: “The press, whether it supports the government or is in opposition to it, has made us accustomed to this selection of facts either for the purposes of explicit argument or for those of arguments which it hoped the reader will carry out for himself” (116). In the days following 9/11, the press presented information about pre-9/11 events, such as the passage of IIRIRA, the 1996 immigration reform, and the 1993 bombing, calling attention to aspects of these events that had received little attention before 9/11. Through the story of the pre-9/11 events, the press reports brought the memory of the past into the present to anticipate a future need.

Specifically, the press made repeated reference to the 1996 provision in IIRIRA that required the collection of data on international students to be transformed into an electronic system, characterizing this aspect of the law in a way that could easily lead to the incorrect conclusion that this provision would have covered flight schools (see, for example, the article by Hegstrom, “Assault on America” on September 16, 2001). The press also made frequent reference to the fact that Eyad Ismoil, one of the men involved in the 1993 bombing, studied English at Wichita State University, thereby re-characterizing him as an “international student.” (Marklein). These reports used time as a rhetorical device in a variety of ways: 1) to maintain a strong sense of urgency; 2) to suggest that the nation had missed an opportunity that it should not miss again; 3) to allow repetition to accumulate an impression over time; 4) to use the new fact of 9/11 to reopen a previously unsuccessful argument; and 5) to shift the status quo.

For example, articles such as the ones in the *Houston Chronicle* on September 16, 2001, in the *New York Times* on September 27, 2001, and in the *Chronicle of Higher Education* on September 28, 2001, presented information that IIRIRA directed the Attorney General and the Secretaries of State and Education to develop and collect information relating to nonimmigrant foreign students (§ 641; Hegstrom, “Assault on America”; Schemo and Pear; McMurtrie). The article in the *Houston Chronicle* implied that the collection system expressed in IIRIRA “would have required the government to look for terrorists by monitoring foreign students, such as the men allegedly responsible for last week’s hijackings” (Hegstrom, “Assault on America”). The article stated that INS failed to implement the program “designed to identify foreign terrorists studying in the U.S.,” a “lapse” that the paper indicated could have enabled two of the hijackers to enter the country to study at vocational schools. However, the 1996 law would probably not have addressed these terrorists since it applied to “approved institution[s] of higher education,” meaning colleges and universities (IIRIRA 8 U.S.C. § 641(a) (1996)). Neither the flight school nor the English training program with which the 9/11 hijackers interacted would have qualified as such an “institution of higher education.” The *Houston Chronicle* article did not mention that the law applied only to students at an “approved institution of higher education,” which was defined as “a college or university approved by the Attorney General” (§ 641(h)).

The 1996 program aimed at collecting data on students, including the following: 1) the address of anyone who had applied for or received a student visa; 2) the date the visa was granted; 3) whether full-time status was maintained; and 4) whether schools had enacted any disciplinary action as a result of any criminal convictions by the student (§ 641(c)(1)). The information was to “be collected electronically where practicable,” and institutions of higher education were to use existing software to collect, store, and process information (§ 641(c)(3) &

(4)). The data collection system in IIRIRA modernized an existing data collection system, the I-20 system, but did not extend to non-degree institutes like flight schools or language schools (“AILF Fact Sheet”). Only after 9/11, when President Bush signed the USA PATRIOT Act into law on October 26, 2001, did the collection program extend its coverage to “other approved educational institution[s]” (§ 416 (c)). Such institutions included “any air flight school, language training school, or vocational school” (c)(4). (IIRIRA as amended by the USA PATRIOT Act and EBSVERA).

These initial newspaper articles also presented information about the earlier attack on the World Trade Center that took place in 1993. According to *USA Today*, for instance, the data collection system in the 1996 law was created after the 1993 bombing “when investigators learned that one of the attackers had entered the country with a visa to study at Wichita State University in Kansas” (Marklein, “Some Middle Eastern Students Withdrawing”). The article presented the idea that Ismoil, the driver of the van carrying the explosives used in the 1993 attack on the World Trade Center, had entered on a student visa. As such the article drew attention to the attacker’s student visa status to create a link between international students and danger. However, this article used prior information about Ismoil in a new way. By focusing on Ismoil’s student status, the article helped to gain adherence for policies that highlighted discrete issues, but obscured the problem of terrorism at a more fundamental level. The emphasis simplified the problem: If 9/11 could be constructed, even in part, as the result of a problem with foreign student visas, policymakers could solve this problem.<sup>22</sup> The public would then perceive

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<sup>22</sup> Foreign student visas are a category of visa covering “limited duration admissions” (LDAs). The Jordan Commission suggested in 1997 that the regulation of LDAs would help to create credible policy (Jordan Commission).



that the government had responded to the situation. The story constructed the material event in a way that could create profound change, in this case change to the student visa policies.

This post-9/11 description of Ismoil re-characterized descriptions of him that emerged around the time of the first attack on the World Trade Center. Anti-terrorism and immigration legislation proposed after this bombing and after the Oklahoma City bombing focused on giving law enforcement more tools to prevent such attacks. The most prominent concern was not on the individual’s particular status, but on the failure by some temporary visa holders to depart once a visa lapsed (Gray; Jordan Commission). Very little was presented publicly about Ismoil until he was arrested in Jordan in 1995. Shortly after his arrest, a *New York Times* article described Ismoil as “a Palestinian immigrant working in a grocery store in Dallas” around the time of the 1993 bombing (McKinley). The newspaper presented information about Ismoil’s student days not to highlight his abuse of the student visa, but apparently to provide a sense of the tension in the case: Would Ismoil emerge as a central figure in the bombing, or would he be seen as a puppet of Yousef, his childhood friend, and the convicted mastermind of the bombing (McKinley)? The article, which initially depicted Ismoil as a “diminutive, baby faced former college student,” later mentioned that he entered the U.S. in 1989 “on a student visa” to study English at Wichita State University where he spent three-semester (McKinley). He dropped out in 1990, but stayed in the U.S. working in New York and then in Texas; he married an American whom he later divorced (McKinley). The story quoted his family who reported Ismoil’s love for the U.S. and everything American. His student status painted a portrait of innocence, at least in appearance. Indeed, the article even mentioned that Ismoil was arrested in Jordan as he left a class at the university where he had enrolled as a student (McKinley). Rather than making him a suspect, the author of the

article seemed to want to use Ismoil’s status as a student to make him appear, if not more sympathetic, at least a less sinister character.

News coverage of Ismoil’s trial in 1997 gave little attention to his visa status while in the United States (CNN, “Bombing suspect ‘no mental grant’”; “Jury convicts 2”; “Last WTC bombing conspirator sentenced”). The focus on his status as a student did not appear in the press until 1998, about the time that INS sought to extend its pilot program, CIPRIS. In a *U.S. News and World Report* story on nuclear weapons in Iraq, “American Colleges are ‘Weapons U.’ for Iraq,” the author of the story noted the number of student visas granted to students from “nations that sponsor terrorism” and discussed the fact that Ismoil had overstayed his student visa (Pasternak). The article also mentioned law enforcement’s hope that CIPRIS might someday become a national program (Pasternak; Suhler and Timms; Timms and Suhler). These attempts to narrow the concern about a large category of temporary visa holders to the specific concern about students were not immediately effective in advancing CIPRIS. However, the repetition of this concern in 2001 had a powerful effect. Time, or more precisely, the rhetor’s use of time, had enabled new impressions to form.

The *New York Times* article that appeared on September 27, 2001, referred to a “prophetic warning” by the National Commission on Terrorism which had issued a report in 2000 (Schemo and Pear). The *Times* presented information from the Commission that one of the terrorists involved in the first World Trade Center bombing had “overstayed his student visa” (Schemo and Pear). The Commission noted that “[t]oday, there is still no mechanism for ensuring the same thing won’t happen again” (Schemo and Pear) (U.S. National Commission on Terrorism). According to the article, the National Commission on Terrorism (NCT) also said that while America’s borders made it impossible to exclude all terrorists, the government could have

tracked terrorists posing as students (Schemo and Pear). The presentation of this information suggested that the prophecy had come true and that the country had missed an opportunity to protect itself. It also suggested that a present danger remained: “Lapses” in visa control “greased the hijackers’ way,” and without a tracking system in place the risk remained—terrorists could have entered on temporary visas, as students, and still be among us undetected (Schemo and Pear).

The implication that the 1996 law IIRIRA could have prevented the attacks and the presentation of one of the 1993 bombers as an international student contributed to a sense of urgency about international students. Not only were international students a threat in the present, but they had also been a threat in the past that the government had failed to address. Repeated press accounts of IIRIRA as a response to an international student involved in the terrorist attacks of 1993 gave a misleading impression as to the extent of the concern about these students pre-9/11. The presentation of this data would help to shift the status quo. Those who had voiced concerns about an absolute ban on student visas and those who had opposed the monitoring system as “an unreasonable barrier for foreign students with honest intentions” were compelled to shift their positions post-9/11. *USA Today* quoted NASFA as conceding that “‘the time for debate on this matter is over and the time to devise a considered response has arrived’ . . . .” (Marklein, “Some Middle Eastern Students Withdrawing”). Faced with the possibility of a ban on all student visas, as well as the apparent public support for such a ban, institutes of higher learning had little opportunity to continue the debate.

*c. The Response of the Legislature*

Policymakers, particularly those who had been advocates of monitoring students in the past, expressed outrage toward INS and the academic community (U.S. Cong. S. Subcttee. on Tech.,

Terrorism, and Govt. Info.). Their comments reflected not just a present concern about 9/11, but also presented past concerns. These individuals and their arguments embedded a particular historic narrative to the events of 9/11 (Frank 323). For example, Senator Dianne Feinstein, who chaired the Senate Judiciary Subcommittee on Technology, Terrorism, and Government Information in September 2001, had a sustained interest in immigration policy, especially towards students. She had expressed her concerns in February 1998 before a Senate Subcommittee on terrorism, complaining about the number of visas granted to students from Iran, Iraq, Syria, Sudan, and Libya (Timms and Suhler). Feinstein raised these same 1998 concerns in 2001 (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Less than two weeks after 9/11, she introduced legislation to fund the tracking system and reform the student visa process (“Senator Feinstein Urges Major Changes in U.S. Student Visa Program”). According to Senator Feinstein, reforms were “necessary after learning that a *number* of the suspected hijackers” enrolled in U.S. schools but never attended. She also pointed to the fact that “one of the terrorists in the 1993 . . . bombing was here in the United States on an expired student visa” (emphasis added) (“Senator Feinstein Urges Major Changes”). Senator Feinstein succeeded in gaining the attention of the academic community by calling for a six-month moratorium on student visas (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Like President Bush, Senator Feinstein used time as a rhetorical device. Not only did she use 9/11 as an opening to raise her claims, but she also used the call for a moratorium, a temporary halt to the granting of student visas, to suggest “danger” in continuing to allow students to enter the U.S. Moreover, she argued that a failure to reform the system would place the country at greater risk from terrorists willing to “take advantage of the vulnerabilities in the student visa program” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Believing

that INS and schools shared a responsibility to address this issue, Feinstein called on both groups to testify as to the appropriate response to these vulnerabilities. Feinstein used time, as Perelman and Olbrechts-Tyteca suggest (Frank 325), to claim that the country’s lack of safety resulted from its failure to monitor earlier—in 1993, 1996, and 1998. Feinstein argued that a “critical system” had not been put into place, despite the opportunity to do so. Her argument was one of direction: We have a “stopping point,” a chance to end our destructive behavior before more harm ensued (Perelman and Olbrechts-Tyteca 281-83). Feinstein also played on the unforeseen consequences of 9/11, “an unprecedented time in the country” (Perelman and Olbrechts-Tyteca 285). In this argumentation strategy, the past then became a condition for the future; without action in the present, the future looked bleak.

About a month after 9/11, on October 12, 2001, the Senate Subcommittee on Technology, Terrorism, and Government Information, chaired by Dianne Feinstein, held “hearings on the role of technology in preventing the entry of terrorists into the United States.”<sup>23</sup> By using her opening remarks to repeat her past concerns, Senator Feinstein reinforced a link between 9/11 and alleged past failures to control students, and conveyed a sense of urgency about a continuing problem. Calling to order the hearings in what she described as the “wake of 9/11,” she explained that the events of 9/11 “have triggered concern about the shortcomings of the immigration and visa system.” She presented current data that “just yesterday” the Department of Justice released information that 13 of the 19 hijackers had entered legally with valid visas. Three of the 13 stayed in the U.S. on “expired” visas. These new facts showed both

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<sup>23</sup> In addition to the Chair, Senator Feinstein, the committee members included Democratic Senators Biden, Kohl, and Cantwell, and Republican Senators Kyl, DeWine, Sessions, and McConnell.

past mistakes that “frustrated efforts to identify and bring to justice the perpetrators of these attacks,” and present vulnerabilities that “will expose us to future attack.” Feinstein identified three areas of vulnerability: 1) “an unregulated visa waiver program”; 2) “an unmonitored non-immigrant visa system in which 7.1 million” enter; and 3) “among the 7.1 million non-immigrants, 500,000 foreign nationals entered on foreign student visas.” She said the visa system for foreign students was particularly problematic, because, in her opinion, it was “one of the most under regulated systems we have today” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). However, statements by INS and NCT Chair Paul Bremer indicated that the student visa category has for years been one of the most regulated categories (Bremer and Holder; U.S. Cong. S. Subcttee. on Ed. and the Workforce, Statements by Rep. Mink (D-HI) ranking member of the subcommittee on 21st Century competitiveness).

Feinstein used the opportunity to reiterate past concerns that did not have a direct connection to the events of 9/11. In addition to her apprehension “that in the last ten years more than 16,000 students came from terrorist-supporting states,” Feinstein also provided examples of past problems, mostly from the early 1990s, that she believed demonstrated the flaws in the system (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info. and U.S. Cong. H. Cttee. of Ed. and the Workforce). Her examples included college officials who had taken bribes from would-be foreign students, and Iran sending students to the States to study nuclear-related subjects. Although not relevant to the events of 9/11, Feinstein mentioned these examples “because I think this [9/11] sounds a wake-up call.” She continued to express that “this isn’t a new problem. We’ve had plenty of warning of the weaknesses of our immigration system that helped lead to the September 11 attack” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Her choice of emplotment strategy links 9/11 and international student visas to a host of

other potential problems. In Feinstein’s view, 9/11 was an opportune time to fix a situation she perceived as having been broken for years.

According to Feinstein, the weaknesses went “as far back as 1979,” the Iranian hostage crisis. At that time, “INS was unable to locate 9,000 of the estimated 50,000 Iranian students studying in the United States.” However, Feinstein did admit that the problem “is a much bigger problem than just students.” She explained that the situation extended to the “30 million temporary visitors” in the country: “[W]ithout an adequate tracking system our country becomes a sieve, which it is today, creating ample opportunities for those who would do us harm to enter and to establish their operation without detection” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). The problem grew to enormous proportions: terrorists could be anywhere among us, posing as international students.

However, Feinstein’s language also suggested that she saw 9/11 as an opportunity for the high tech industry: technology would offer hope. She believed that if the country had an “adequate tracking system,” the United States would cease to be “a sieve.” With accurate record keeping through state of the art technology, agencies like INS could prevent “those who have the intent and would carry out the goal of mass destruction from entering and staying in the United States.” As a result, the committee took testimony from representatives of NEC Technologies and the Biometrics Foundation (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Although at the time of the hearing many of the technologies were years away from

implementation,<sup>24</sup> the SEVIS system tracking students had been piloted and was, by comparison, close to operational.

The committee’s choice as to whom to call to testify at the hearing was an important part of the use of time in the argument about international students. It reflected a community that joined the rhetors’ “close relations” and accepted the view of student visas as an urgent problem. Moreover, as Perelman and Olbrechts-Tyteca have noted, the effect of argumentation is not definitive; adherence to argument changes over time as audience and circumstances change (Frank 318). 9/11 provided an opportunity to reopen an argument about tracking students that had previously been resolved in favor of international students and institutes of higher learning. The event enabled the committee to simultaneously bring forward the proponents of the program and silence its opponents. Operating under the threat of a moratorium and fear of the unknown, and faced with the repetition of information that seemed to point to the involvement of international students in terrorist attacks past and present, opponents conceded the need to track students (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info. and U.S. Cong. Cttee. of Ed. and the Workforce).

In addition to influencing the choice of who would present data, the committee also controlled the order in which the information was heard, having the speakers present in a way that called attention to the student tracking system as an available technology. The committee members managed the story through this ordering. While the committee exposed the fact that an

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<sup>24</sup> The second panel concluded with expert testimony on automated fingerprinting and biometric technologies, “emerging technologies” that would someday “offer a great promise for a significant advancement in security.” At the time of the hearings, however, these technologies had not yet “realize [d] their full potential (Testimony by NEC & Collier).



effective national security policy required a large and coordinated response, the committee presented SEVIS as a tangible option and a step in the right direction.

The Senate subcommittee interviewed eight witnesses, four of whom explicitly addressed the issue of international students in their testimony or in questioning: James Ziglar, the INS Commissioner; Mary Ryan, Assistant Secretary of State for Consular Affairs; Steven Camarota, CIS Director of Research, and David Ward, the President of ACE. The other four witnesses addressed the use of technology by INS and other agencies in a general sense: Glenn Fine, Inspector General, Justice Department; Tony Doonan and Greg Spadorecio of NEC Technologies; and Paul Collier of the Biometrics Foundation. The first panel defined the problem; the second panel focused on the solution (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

The morning panel, which included the testimony of Fine, Ziglar, and Ryan, presented a theme of missed information, miscommunication, and lost opportunities. Senator DeWine, one member of the committee, noted the theme of the hearing was about integrating systems and sharing information, what he called “the age-old problem.” However, the Senator argued that “now” was the time to do something about this problem: “You all are going to be the ones that have to fix it . . . you have to fix it . . . the climate is right to get it done. Let’s get it done as fast as we can” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.) Yet, based on the testimony that morning, the complexity of getting it done “as fast as we can” emerged as a daunting task. Each witness, beginning with Fine, told a similarly disturbing story.

Fine testified that OIG’s work in the INS had “revealed significant problems with the agency’s development and implementation of its IT systems” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). He clarified that OIG had raised these concerns in pre-9/11 audits of

the INS, but that INS had made little progress in correcting these issues. Fine stated that tracking those individuals who had overstated their visas was an overwhelming task, noting that INS estimated that 40-50% of the approximately seven million illegal aliens in the country had overstayed their visas, but that INS did not have a specific program to address this problem. Fine concluded that INS mismanaged the entry-exit control systems; border patrols were understaffed and a tremendous need for effective IT systems existed (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

The National Commission on Terrorism (NCT) Report released in February 2000 had raised similar concerns (U.S. National Commission on Terrorism). Fine’s testimony alluding to these details gave presence to the NCT Report at the 2001 Hearing. The NCT report stated that the “massive flows of people” through our borders made the “exclusion of all foreign terrorists impossible.” The report also noted that about four million people lived illegally in the United States; two million entered on a valid visitor’s visa but overstayed this visa. While the Commission acknowledged that this problem was “far broader than just keeping terrorists” out, it made students an object of “special concern” because thousands of students had come from “countries officially designated as state sponsors of terrorism.” Although this subcategory of visa holders represented only a “small minority,” the subcategory had importance because data had already been collected on this group, and this information could be captured electronically. As the report noted, “one program,” CIPRIS, “holds promise as a means of addressing the issue.” The Commission believed that CIPRIS “could become a model for a nationwide program” (U.S. National Commission on Terrorism). In the midst of the many unknowns and many intangibles post-9/11, CIPRIS, and its predecessor SEVIS, would emerge from the hearings as promising tools in identifying potential terrorists.

James Ziglar, the next to testify, suggested that the technology to track international students was not a technology of the future but of the present. He acknowledged “There is an awful lot of criticism that is absolutely justified toward the INS,” but he also noted a few things that were working at INS, including the system to track international students. Ziglar announced that he would “very shortly” reveal “the reorganization and restructuring plan for the INS.” The plan, begun prior to September 11, would enable information technology, such as the student tracking system. This system, which Ziglar referred to as both SEVIS and CIPRIS, “has been the subject of much concern, opposition and other things, particularly from the academic establishment, and frankly from Congress . . . . That mysteriously, that opposition seems to have now disappeared since September 11.” Ziglar told Congress that INS was prepared to move ahead, but the statute authorizing SEVIS “has to be funded out of the fees collected,” which had thus far impeded development. He asked Congress to appropriate funds so that “we can have that system up and running well in advance of the deadline that you’ve given us. . . .” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

To counter criticism that INS had been slow to respond, Ziglar tried to overcome notions that INS had done too little too late.<sup>25</sup> He said that INS “had not been standing still” in terms of developing systems but had been working to develop a variety of systems “before September 11.” Ziglar argued that “INS is moving forward. And we were moving forward before September 11. And we are a partner, a full partner, in this fight against terrorism” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

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<sup>25</sup> Senator DeWine had, for example, mentioned the headline that morning in the *Washington Post*: “INS Stumped on how Some Hijackers Entered the United States” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

The first panel concluded with the testimony of Mary Ryan, who cited the inability to share information as the cause for the mistakes made in relation to 9/11. Ryan defended the Department of State from criticism that it had failed to respond in a timely manner and had, in fact, been the cause of 9/11 in the sense that the Department of State had issued visas to the hijackers. Ryan stressed that the Department of State was “only as good as the information that goes into the system.” Because the Department of State lacked necessary information about the hijackers, its consulars had granted visas. The consulars learned of the information too late despite the use of state of the art technology: “We cannot be the effective outer ring of border security if we do not get information on people who seek to harm our country from the intelligence and law enforcement agencies” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Ryan referred to systems that “exist” now, policies in place to protect Americans, but she rejected the idea that any policy could be “totally foolproof.” She said such systems were “impossible” and that 9/11 was a risk of “our free society.” That risk, she seemed to suggest, was present before, present now, and will remain present in the future. It was a risk that Americans must tolerate, to a certain extent, to support a “free and open society” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Senator Feinstein, who objected to Ryan’s view of the problem as a failure of intelligence, challenged Ryan’s notion of a tolerable risk. Feinstein created a sense of urgency by pointing out that the terrorists were able to legally enter the United States. Feinstein’s use of these specific details reintroduced the notion that terrorists might be among us: “Three of the 13 terrorists who received valid visas overstayed those visas but were not detected or removed from the United States. What in your view went wrong in the issuance of valid visas that permitted

these 13 terrorists to legally enter the United States? Or do you view their entry acceptable risk?” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.)

Ryan responded that the Department of State was not to blame: “What went wrong is that we had no information on them whatsoever from law enforcement or from intelligence. And so they came in. They applied for visas. They were interviewed. And their stories were believed.” Ryan admitted that she, like the public, was surprised by the details she learned about the terrorists “in the immediate aftermath of the September 11th atrocities. And my question in my own mind is why didn’t we know that before September 11?” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.)

Ryan’s testimony described a pattern of “belated” actions and struggles for information from the FBI. “We were asked by the FBI to revoke visas on August 23rd of 2011,” but the State Department had no record of one of the visas, had already denied another, another visa had expired, and the final one the State Department had revoked, but the person had already used the visa to enter the U.S. Ryan again expressed surprise that Mohamed Atta, the alleged “ringleader” of the hijackings, had been granted a visa in May 2000 if, “in the immediate aftermath of bombings and crashes, of the plane crashes and the killings, that we were told, the American people were told that a couple of these people had been at a meeting” in January 2000 “with Osama bin Laden operatives.” She wondered aloud when this information was available and why, if it was available pre-9/11, the State Department had not known about it. By responding, “How do you answer that yourself?” Feinstein highlighted the sense of the “lost opportunity” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Furthermore, Ryan’s testimony and the concept of risk reinforced a sense of urgency about not tracking international students. In

other words, why should the American people tolerate a risk that could apparently be so easily eliminated?

Feinstein concluded the first panel with her perspective that 9/11 was a “colossal failure” of the visa system. She pointed again to the 13 out of 19 terrorists who received valid visas. “Clearly our system is not able to prevent a terrorist from getting a visa legally to come in this country. That ought to be a sobering fact for all of us.” Feinstein’s final remarks established the focus for the second panel—the development of a single terrorist-oriented database, in which every agency of government is able to enter information about certain individuals (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). By the time the second panel testified, a foundation had been laid to show that intelligence systems had failed and that present technological solutions were inadequate. The audience was now ready to hear what was possible. As Perelman and Olbrechts-Tyteca suggest, the audience was “conditioned” by what had come before (Frank 326).

The second panel, comprised of Camarota, Ward, and several representatives of technology system companies, addressed “potential technology solutions” to the problems discussed by the first panel. Again, the concept of time played an important role in the selection of these speakers. Time had enabled a shift in audience; the introduction of 9/11 was used as a new fact to challenge the status quo and to overcome the inertia that would typically prevent change (Frank 327). Both Camarota and Ward were well known to Congress. At an earlier time, pre-9/11, Camarota had been on the losing end of the foreign student monitoring debate. Camarota, a public policy analyst and director of research at the Center for Immigration Studies (CIS), had advocated for SEVIS. Camarota and the CIS had frequently lobbied for a tighter

immigration policy that endorsed fewer immigrants and fewer visitor visas (Krikorian, “It’s Time to Plug Our Leaky Borders”).

In 1998, CIS had been outspoken on the issue of visa overstays, criticizing the INS for failing to execute an entry-exit computer system (“Center for Immigration Studies Home”). Moreover, around the time the U.S. District Court sentenced Eyad Ismoil, CIS literature raised the fact that Ismoil had come to the United States in 1989 to study engineering, but had dropped out in 1990. Although few newspapers covered this fact, CIS gave awards for those that did, presenting them with the Eugene Katz Award For Excellence in the coverage of important immigration issues over the prior year (Krikorian, “1999 Eugene Katz Award For Excellence in the Coverage of Immigration”). The recipients in 1999, Ed Timms and Jayne Noble Suhler, both of the *Dallas Morning News*, earned the prize “for looking at the impact of foreign students on native minorities” and for addressing security concerns raised by foreign students (Krikorian, “1999 Eugene Katz Award For Excellence in the Coverage of Immigration”). Among other things, these reporters, who garnered rewards for their work that called attention to Eyad Ismoil’s entrance to the U.S. on a student visa, stated “The misuse of student visas is not hypothetical.” In their article, they also explained CIPRIS, which was being piloted at 22 colleges and universities in the Southeastern States (Timms and Suhler, “Security worries putting spotlight on student visas: U.S. wants better monitoring”).<sup>26</sup>

CIS had also been a vocal advocate of CIPRIS, the pre-9/11 data collection system. When INS sought to extend CIPRIS nationwide, proposing that institutions of higher education collect

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<sup>26</sup> This same article referenced Senator Feinstein’s concerns about students coming from state sponsors of terrorism.

a \$95 fee from prospective international students, CIS supported the proposal, but universities that “ferociously opposed it” allegedly squelched the CIS support (Krikorian, “It’s Time to Plug our Leaky Borders”). Post-9/11, CIS’s voice was strong. Camarota found himself opening the panel on October 12, 2001, testifying before David Ward, whose agency, the American Council of Education, had successfully opposed the implementation of SEVP/CIPRIS because of ACE’s concerns that the tracking system would establish “insurmountable technological and financial barriers” for international students (Hartle). With the threat of a moratorium on the table, Ward no longer had the upper hand. Not only had he retracted any opposition to the electronic tracking system, but he had also actively supported a proposal to launch SEVIS (Ward, “To Senate Judiciary Committee Regarding Feinstein Proposal on Student Visas”).

Camarota’s choice of language, which illustrated his awareness of an opportunity and exigence, repeated much of what he had said pre-9/11: “As we consider our responses to the horrific attacks of September 11, we are clearly going to have to take action in many different areas” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). In his view, “The current terrorist threat to the United States comes almost entirely from individuals who arrive from abroad.” Camarota called for “practical” changes, including an entry-exit system that would record the entry and exit of all nonimmigrant visa holders, a figure he put at 7.1 million individuals per year (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). This practical or “pragmatic” argument, as Perelman and Olbrechts-Tyteca refer to it, allowed for the change to be evaluated in terms of its favorable consequences (266). Camarota pointed to the reasonableness of enforcing “time limited visas.” He remarked, “The whole notion of a temporary visa is pointless if we don’t know whether the time limit has been honored.” He added



that the proposal for student tracking systems could be expanded “to all nonstudent temporary visa holders” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Camarota believed tracking to be “desirable” because “these long-term visitors,” who included students and other nonimmigrant visa holders, came legally to stay in the United States for extended periods and had “time to hatch sophisticated plots.” He argued that tracking international students was not only important in and of itself, but was also significant for what it could reveal about how to implement a more wide-scale tracking system (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Many others, both pre- and post- 9/11, shared this idea (Bremer and Holder).

While the problem of people overstaying their visas was a far larger issue than the student population, the student population was likely an attractive group to target because the number of international students in the U.S. was comparatively manageable. These students, who were already regulated, had relatively weak political voices. The academic community, the primary advocate of these students, was heavily dependent on federal funding and favorable immigration policies (U.S. Cong. H. Cttee. on Science). Again, the notion of time was used to define the events of 9/11. In this case, the government used the impermanence of these international students’ authority to remain in the United States to justify increased regulation. The nation had a lesser duty to protect the civil liberties of these students because the country only granted them a limited time in the United States. In this respect, international students were an opportune visa category upon which to test new surveillance technologies.

David Ward—the President of the American Council on Education, former Chancellor of the University of Wisconsin, and a naturalized United States citizen, born in England—was the next to testify (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Ward attempted to

introduce the idea that international students were valuable members of U.S. society in terms of their potential to be productive citizens, as he himself exemplified, and in terms of the contribution they made to the economy and international understanding. Because the committee had asked Ward to testify regarding the monitoring system, Ward had limited ability when it came to introducing these ideas into the overall picture. Moreover, Ward felt the need to show his willingness and the willingness on the part of institutes of higher learning to cooperate with the federal government if he wanted to keep the moratorium off the table. To clarify the positions of institutes of higher learning toward monitoring students, Ward argued that his position had not changed but was instead consistent, saying that the opposition to monitoring had only resulted from funding. Given Feinstein’s proposal to fund SEVIS, Ward and the agencies he represented were actually advocating for the program (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

In his prepared testimony, Ward seemed to concede that 9/11 changed everything: “The recent terrorist attacks on the United States have prompted a top to bottom review of all sorts of government and institutional activities. This reassessment includes questions about the international students who come to this country on a student visa to study at our colleges and universities.” Although Ward pointed out that none of those directly involved in the attacks had come to study at a college or university, he accepted the “need for careful review of the policies and procedures affecting international student visas” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Ward further conceded the government’s ability to regulate and that the current regulatory system was no longer an optimal one. In both his prepared remarks and oral testimony, Ward acknowledged, “The opportunity to study in our nation comes with rules and

responsibilities that affect both students and institutions.” He asserted that the federal government must protect the “safety and security” of the U.S. by deciding who should receive student visas, and that colleges and universities must work with the federal government to keep track of these students. In an effort to prove how seriously colleges and universities take these responsibilities, Ward stated his support for the monitoring system. Implementing this system, now known as SEVIS, would be “the single most important step in improving our ability to monitor international students.” Ward emphasized that SEVIS “will stand in stark contrast to the obsolete paper and pencil system that is currently in use” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Ward denied that his institutions or “the academic establishment” ever attempted to needlessly delay the system, explaining that the “system has been over budget and behind schedule since it was begun in 1995.” Ward, however, realized the futility in attempting to address these issues at length: “The history of SEVIS is not what we are here to discuss today.” After pointing out that ACE “has never opposed the underlying idea behind SEVIS,” Ward urged Congress “to authorize an appropriation to cover the costs of developing” the system so that implementation could be “faster” and so that neither the academic institutions nor their foreign students would bear the responsibility of developing the program (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

NASFA, the chief critic of the monitoring program, had also dropped its opposition to the monitoring system (Marklein, “Some Middle Eastern Students Withdrawing”; Southwick). In the summer of 2000, the *Chronicle of Higher Education* quoted Marlene M. Johnson, the Executive Director of NAFSA, as being “irritated that [the national commission on terrorism who promoted CIPRIS] had provided no new data on the potential threat posed by foreign students”

(McMurtrie, Commission Seeks to Prevent Terrorism by Monitoring Foreign Students)” Johnson used a “consolidation” argument, what Perelman and Olbrechts-Tyteca define as an argument that “warns against repetitions which give full significance and value to what was a mere sketch, an inarticulate whisper, a fantasy, but will become a myth, a legend, a rule of behavior” (287). Johnson said that the NCT had “trotted out” the same example of the 1993 World Trade Center bombing year after year; she added that this example did not justify the monitoring of students (McMurtrie, “Commission Seeks to Prevent Terrorism by Monitoring Foreign Students”). However, with the post-9/11 emergence of apparent new data on the potential threat and pressure to cooperate or risk greater restrictions on student visas, opposition to the tracking system was no longer “appropriate” (Bazerman, *Constructing Experience* 185). NAFSA had little room in which to voice opposition: The group, which expressed its continued dislike for the system, would not fight it “given recent events” (Marklein, “Some Middle Eastern Students are Leaving”). Victor C. Johnson, NAFSA’s Director of Public Policy, “hoped that the government would finance the database itself instead of asking foreign students to pay for it” (Southwick). Advocates on behalf of foreign students now had to do the following: 1) ensure that stricter policies, such as the moratorium, would not be imposed and 2) try to influence the manner in which SEVIS would be implemented.

Ward’s concession and public acceptance of SEVIS advanced several actions. Most immediately, it successfully removed the moratorium from discussion (See Feinstein’s Statements at Conclusion of the Hearing). Furthermore, his support ultimately facilitated the enforcement-driven system still in place today, a system that collects far more information and is far more rigid than the system INS piloted pre-9/11 (U.S. INS “SEVIS Final Rule”; USA PATRIOT Act; EBSVERA). Finally, Ward’s input changed the discussion from whether to

monitor to how to monitor (U.S. Cong. H. Subcttee. on Ed. and the Workforce; see Statement by Michael Becraft, Acting Deputy Commissioner INS indicating that Congress authorized \$36.8 mil in funding for the tracking system.) As such, Ward conceded to the exigence of the decision-making process. Instead of debating monitoring, the government moved on to determine how to implement the system. As Perelman and Olbrechts-Tyteca stated, “The urgency of a decision may prevent debate, even if uncertainty has not been overcome and the facets of the problem have not been examined in an exhaustive manner” (Frank 318).

#### **IV. The *Kairotic* Moment Constructed**

By October 29, 2001, when President Bush issued his Homeland Security Directive, the country seemed to accept the monitoring of international students as a fitting response to 9/11. President Bush ordered the monitoring of international students as a means of combating terrorism. Specifically, President Bush ordered various government agencies and departments, including INS, the Secretary of State, the Attorney General, and the Secretary of Education, to implement a program to prohibit certain international students from studying “sensitive” subjects, to track the status of foreign students who receive visas, to implement “strict criteria” for the renewal of such visas, and to review the institutions receiving nonimmigrant students to ensure compliance with all regulations. The measures to “end abuse of international student status” were to be presented to the President within 60 days (Bush, “Homeland Security Directive-2”). Thus, the policies would be in motion within two months; once in place inertia would act to ensure that such policies would be hard to remove (Frank 328). As Perelman and Olbrechts-Tyteca observed, “Change . . . has to be justified; once a decision has been taken, it cannot be changed except for sufficient reason” (Frank 327). Organizational changes that the Bush Administration would put in place over the next year would make these policies even harder to challenge.

The language of the Presidential Directive “demonstrated” the need for change: Because 9/11 proved that some come to the United States to commit terrorist acts, international students could be a part of that population and should be monitored. Perelman and Olbrechts-Tyteca explained that a demonstration is something “reserved for the means of proof permitting us to come to a conclusion by moving from the truth of certain propositions to that of other propositions” (Frank 315). In Bush’s Directive, the truth of the proposition that “the attacks of September 11, 2001 showed us that some come to the United States to commit terrorist acts” led to the conclusion that “our long and valued tradition of welcoming immigrants and visitors” had to yield to “the policy of the United States to work aggressively to prevent aliens who engage in or support terrorist activity from entering the United States and to detain, prosecute, or deport any such aliens who are within the United States” (“Homeland Security Directive-2”).

The events of 9/11 did not demand this change in policy. Instead, this change was the result of a Presidential decision, an order not subject to debate. The order was one more link in the chain of events connecting international students to 9/11 and making the monitoring of international students appear to be the appropriate action. The arguments for monitoring international students existed pre-9/11. 9/11 did not bring these arguments into existence. However, 9/11 did give the Bush Administration and proponents of these policies an opportunity to realize these arguments without having to engage in a lengthy deliberation process. As the next two chapters describe, these arguments of urgency and timing enabled the Bush Administration to make even more powerful changes to the organization of the government. In turn, these organizational changes enabled the Bush Administration to make profound changes to government policy. With regards to international students, these policy changes influenced the

way in which the government, media, academic institutions, and other members of the American public talked about and perceived international students.

## Chapter 4: Framing

### I. Introduction

The last chapter explored how the government used the events of 9/11 to justify rapid changes to immigration policies; policies rejected pre-9/11 were quickly implemented post-9/11. The Bush Administration used arguments of timeliness to successfully promote policies, including the monitoring of international students. In this chapter, I use “framing” as a tool of rhetorical analysis to examine how 9/11 was first expressed as a story of immigration policy and student visa holders and then expressed as a story of institutional failure. This framing process, which influenced decision-making, promoted rapid change to the status quo in the form of organizational change. Within days after September 11, the Bush Administration took steps to restructure the executive branch. This restructuring belonged to the same national security strategy in which the government viewed immigration policies as a vulnerability and identified international students as a source of the concern (Bush, “Homeland Security Directive-2”). As in the previous chapter, I argue here that the events of 9/11 did not dictate the framing that prevailed. Instead, I argue that the Bush Administration chose to frame the events of 9/11 in such a way as to empower the executive branch, in keeping with the Administration’s particular perspective and ideology. The Administration constructed a frame that influenced decision-making not only about international students but also about the design of government.

The Bush Administration and proponents of organizational change succeeded in framing 9/11 as the result of an “institutional failure.” Specifically, the Administration used language to frame the need for “more effective and efficient government” to establish a cabinet level agency to secure the homeland. The choice of a frame such as “efficiency” highlighted certain realities about a post-9/11 world and de-emphasized other realities. In this case, “efficiency” stressed a



purported need for centralized control and a singular mission to allegedly achieve greater security, but the frame de-emphasized and curtailed meaningful discussion as to the role of immigration in American society. The choice of this “efficiency” frame might appear to be neutral, even non-ideological, because the frame focused on making government more rational and responsive and less bureaucratic. However, the choice of frame was far from neutral. The frame focused on efficiency in terms of enforcing homeland security, advancing goals related to the “war on terror,” and increasing the power of the executive branch at the expense of other values, such as diplomacy and international relations.

The framing enabled swift action, but the successful emphasis on efficiency and security dictated very particular solutions. For example, because the government perceived international student visas as a potential mechanism for terrorists to enter the country, it charged the new organization, the Department of Homeland Security (DHS), with tracking and monitoring students to ensure the safety of the homeland. The reorganization, which resulted in greater inefficiency for international students and academic institutions, made it more difficult to advance the goals of international education by causing long delays in visa processing, adding layers of bureaucracy, and increasing costs.<sup>27</sup> Therefore, this choice of frame and the subsequent organizational changes emerge as important parts of the story of international students post-9/11.

In this chapter, I explore how the government and media used discourse to initially frame 9/11 as an “immigration issue” and security problem. Several months after 9/11, government actors and media increasingly engaged within a dialogue that focused on the need for organizational change. This shift in frame enabled the expansive government reorganization that

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<sup>27</sup> See, e.g., U.S. GAO, *Homeland Security*.

centralized power in the new enforcement agency. The analysis of this framing reveals the framing’s value as a persuasive device, but the choice and outcome of the framing are also important in terms of the material changes the framing brought to the government. The framing led to a new organization that advanced a particular view of international students as potential terrorists. The success of the argument about international students depended upon this organization. As I will discuss in Chapter 5, DHS institutionalized the view of international students as threats. This view of international students, now embedded in America’s immigration policy toward students, continues to have a powerful impact even under the Obama Administration.

The remainder of this chapter has the following organization: In the next section, I summarize the relevant aspects of frame theory. Specifically, in this section I consider what Erving Goffman’s foundational theory of framing and the development of his theory by linguist George Lakoff and political communication theorist Robert Entman suggest about how frame theory can be used as a rhetorical device. In Section III, I use frame theory to identify the initial framing of 9/11 and to examine the shift in frame and the subsequent decision to eliminate INS. I conclude this chapter with a brief consideration of the implication of this framing upon international students.

## **II. Frame Theory**

Frame theory explores how political decision-makers, social organizations, and the media construct social phenomena through the use of rhetorical devices to influence meanings attributed to words or phrases (Entman, “Framing”). Writers and speakers understand events around them by using interpretive frames. Often, frames operate implicitly in society; they only become explicit as events require a new understanding, and the frame shifts to a new frame.

Frame analysis describes the organization of experience: An individual recognizes an event by applying frameworks or “schemata of interpretation” (Goffman 21). The frames selected to define situations and events play fundamental roles in shaping society: Framing can order a society according to certain values and can reinforce certain ideologies. A frame may contain other frames, but each frame serves to bracket or highlight the perspective from which an event is viewed (247-49; Treviño, *Goffman’s Legacy*). As the word “framing” implies, the action of framing one’s perspective of events is much like framing a painting or photograph. What a person captures within a frame will focus or highlight certain aspects of an event and de-emphasize other aspects. In this way, framing will influence the way individuals perceive and discuss an event. Therefore, the choice of frame can emerge as a rhetorical device that influences meaning and affects decision-making.

The concept of framing is based upon Erving Goffman’s theory of frameworks. Sociologist Goffman first published *Frame Analysis: An Essay on the Organization of Experience* in 1974. According to Goffman, an individual perceives a “strip,” a slice of an on-going activity, and uses it to construct a schema or “framework,” which makes a scene meaningful (21). Goffman used the metaphor of a frame to 1) explain how individuals understand what is going on and 2) give meaning to social interactions (Treviño). Goffman explains the frame of an activity as “the organizational premises—sustained both in mind and in activity” into which individuals fit their understanding of activities (247). The human desire to frame is so strong that people seem to consciously and unconsciously fit what they experience into a framework.

Goffman asserts that individuals often project a frame of reference onto the world around them without knowing why because events confirm their projections, “causing the assumptions

to disappear into the smooth flow of activity” (39). In other words, people may try to emphasize information or events that support a particular frame and disregard or de-emphasize events that appear to be inconsistent with their choice of frame. The frame organizes meaning and involvement, but if something occurs that the frame cannot manage, a break may occur (347). Although people try to resist changing frames, events may occur that cause individuals to doubt a frame or to use events to create doubts about a frame.<sup>28</sup>

According to Goffman, language not only conveys the frame but is also influenced by the frame and can act to change the frame. Goffman further explains that words provide examples of framings, fabrications, keyings, frame breaks, misframings, and frame disputes (497-98). Framing occurs in talk: “Individuals act upon what is said to them and these actions in turn become inextricably part of the ongoing world” (504).

While Goffman’s work focuses on how individuals perceive events, language and communication theorists have turned to the concept of frameworks to consider how one individual’s perceptions can be used to convey meaning and to consciously and unconsciously shape another person’s understanding and perception of events. For example, linguist Deborah Tannen draws upon Goffman’s work in her collection, *Framing in Discourse*, to bring framing into discourse analysis (Tannen). Tannen suggests that frames “refer to an expectation about the world, based on prior experience, against which new experiences are measured and interpreted” (17).

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<sup>28</sup> “Any novel current event can provide the pretext for a review of the facts and the ‘discovery’ of a pattern that was there all the time but only now appreciated” Goffman, E. (1986). *Frame Analysis: An Essay on the Organization of Experience*. Boston, Ma: Northeastern University Press.

George Lakoff, a cognitive linguist, also draws upon Goffman’s work (*The Political Mind*). Lakoff credits Goffman with the “discover[y] that all institutions are structured by frames” (*The Political Mind* 22). He also attributes the idea that people “think in terms of ‘frames’” to Goffman’s work (*The Political Mind* 249). Lakoff, who builds upon the idea of framing to articulate his theory that relates “conceptual frames” with metaphors (*The Political Mind* 248-66; Ivie 166), explains his belief that frames are a part of “the cognitive structures we think with” and that frames structure “a huge amount of our thought” (*The Political Mind* 22). Frames are the structures that make up simple and complex narratives, including the complex narratives that form an individual’s life story (*The Political Mind* 22). According to Lakoff, the brain processes information through frames and metaphors; metaphorical thinking is an innate process of the brain (“The Neural Theory of Metaphor”; *The Political Mind* 25). Metaphor allows individuals to understand and experience one thing in terms of another (5). In Lakoff’s view, people are wired to think metaphorically and to view situations in terms of “conceptual frames,” which capture ideas in small, coherent bundles (“The Thinking Behind Red and Blue States”; *Moral Politics* 419-20; *The Political Mind*; Lakoff and Johnson, *Philosophy in the Flesh* 45-59). Lakoff states that words, which are defined “relative to conceptual frames, convey frames. Words evoke frames” (Lakoff and Ferguson; *Moral Politics* 419). He says, “Frames are mental structures that shape the way we see the world” (*Moral Politics* xv).

Lakoff argues, “Our ordinary conceptual system, in terms of which we both think and act, is fundamentally metaphorical in nature” (*Metaphors* 3). These conceptual systems structure the individuals’ perceptions, relationships, thoughts, experiences, and communication: “What we do everyday is very much a matter of metaphor” (*Metaphors* 3). Although people may be unaware

of their conceptual systems, Lakoff asserts that language serves as evidence of this system (*Metaphors* 3).

As an example, Lakoff offers the conceptual metaphor, “argument is war” and its expression in language such as “Your claims are indefensible”; “He shot down all of my arguments”; and “The structure of an argument expressed as verbal battle: attack, defense, counterattack” (*Metaphors* 4). The metaphorical concept, “argument is war,” structures society’s action and understanding with regards to argument (*Metaphors* 5). Lakoff states that the metaphor “is not merely in the words we use—it is in our very concept of an argument” (*Metaphors* 5). Based upon conceptual belief, argument is understood, carried out, and discussed in terms of war (*Metaphors* 5). Metaphorical expressions such as “argument is war,” enable people to understand the metaphorical concepts that structure their lives (*Metaphors* 7). Individuals live according to inferences derived from these metaphors (*Metaphors* 273). When a listener hears a word, the brain activates the frame that accompanies this word (*Don’t Think of an Elephant!* xv). If a listener uses a speaker’s words, the hearer accepts that person’s framing of the issues (*Don’t Think of an Elephant!* xv).

Although Lakoff believes that people are hardwired to think in terms of frames, he does not suggest that the choice of how to frame a particular issue is biologically determined (*The Political Mind* 269). Rather, Lakoff implies that by recognizing the need to frame, the ideology expressed by a particular frame can be exposed (“The Neural Theory of Metaphor”). Once revealed, people have the ability to consciously accept or reject a frame and the ideology accompanying it (*The Political Mind* 269). Moreover, rhetors have the ability to choose a certain frame: Framing enables a rhetor to define a problem in a particular way that constrains the solution in order to address the problem (Lakoff and Ferguson 5). Lakoff and Sam Ferguson

demonstrate how framing and metaphor can be used in this way to influence others’ perceptions. The authors draw from the political realm, using the debate on immigration to analyze the framing used in President Bush’s 2006 proposal for “comprehensive immigration reform.” The term “immigration reform” was a conceptual frame, which defined the problem and the potential solutions. The problem focused on immigrants and the government agencies overseeing immigration law to the exclusion of other potential parties. The authors suggest that had the issue been framed as “foreign policy reform,” the problem and solution would have considered the Secretary of State, dialogue with Central American and Mexican leaders, and even the WTO, IMF, and the World Bank. It would, in other words, have become a global problem. Hence, Bush’s “comprehensive” solution was comprehensive only in terms of Bush’s narrowly defined view of the problem. Bush’s proposal did not consider the global aspects of mass migration (Lakoff and Ferguson).

The issue-defining conceptual frame is not neutral; rather, it shapes an individual’s concerns, solutions, and ability to raise other concerns (Lakoff and Ferguson 5). Framing the problem as “the immigration issue” enabled Bush to propose reform as the “comprehensive solution”—a solution that focused narrowly on domestic policy, ignored the complexity of the problem, and pre-empted deliberation that might actually address the larger concerns (Lakoff and Ferguson 12-13).

Framing operates to block certain understandings of an issue. For example, according to Lakoff and Ferguson, the immigration problem could be viewed as a “cheap labor issue.” Undocumented immigrants, “illegal aliens,” “allow employers to pay low wages, which in turn provide the cheap consumer goods we find at WalMart and McDonalds” (4). In the context of “immigration reform,” Lakoff and Ferguson identify multiple frames operating within the

conceptual frame, including the illegal frame that defines immigrants as “illegal immigrants,” “illegal aliens,” or simply the noun “illegal,” and the security frame that encompasses notions of “border security” and the “war on terror,” which authorized funds for border security with Mexico (5-7). The “security frame,” the authors point out, enabled the President and Congress to conflate terrorism and immigration (7).<sup>29</sup>

Communication and political theorist Robert Entman draws upon Goffman’s notion of “pretext” to suggest that framing is an active process. Entman integrates Goffman’s sociological theory and communication theory to understand how frames become embedded in a text and “how framing influences thinking” (“Framing” 51). In doing so, Entman advances communication theory and enriches Goffman’s theory by proposing to use the concept of frames as a “research paradigm” to understand how an individual might influence another’s view of the world or impose one’s view upon another (“Framing” 56). Entman says that to frame is “to select some aspects of a perceived reality and make them more salient in a communication text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation and/or treatment recommendation” (“Framing” 52). Entman states that frames “define problems . . . diagnose causes . . . make moral judgments . . . and suggest remedies” (“Framing” 52). Moreover, commonly invoked frames conveyed through discourse and thinking of a social group

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<sup>29</sup> Cunningham-Parmeter draws on Lakoff’s work to examine how “the metaphors floating in our minds determine our linguistic choices, which in turn affect social discourse and ultimately social action (1548). In particular, Cunningham-Parmeter looks at the U.S. Supreme Court’s use of three conceptual metaphors in the Court’s immigration jurisprudence: 1) “immigrants are aliens”; 2) “immigration is a flood”; and 3) “immigration is an invasion” to frame legal issues in terms of danger, attack, and criminality (1545). Using textual analysis of Supreme Court opinions, the author explains how immigration metaphors and the assumptions embedded within them consciously and unconsciously influence judicial decisions as well as debate on immigration reform and social discourse about immigrants.



define a culture (53). In the process of communication, frames consciously and unconsciously guide what communicators say.

According to Entman, frames manifest in text through the appearance and absence of certain words, phrases, sources of information, and themes. Frames influence the recipient’s response to the communication, in a manner intended or unintended by the communicator. They make words or pieces of information more noticeable or meaningful to individuals and, therefore, more memorable or “salient” (“Framing” 53). Frames may also direct attention to or from a certain aspect and may have great social impact “when encoded in a term like ‘affirmative action’” (“Framing” 55). As such words become widely accepted, audiences may come to expect the use of these words in certain circumstances so that the words and the frames they evoke may act to prevent objectivity and alternate interpretations (“Framing” 55).

In his later work, *Projections of Power*, Entman further explores the capacity for communicators to choose their frame, looking specifically at White House communications. He refines his definition of framing as “selecting and highlighting some facts of events or issues and making connections among them so as to promote a particular interpretation, evaluation, and/or solution” (*Projections of Power* 5). Entman suggests that U.S. Presidents and other high level government elites promote or “sell” their framing of events to the media, which in turn spread the frame to the public, confirming, altering, or challenging the framing of events in the process. The media then feed information about citizens back to the government officials (*Projections of Power* 9-13). Entman uses a “model of cascading activation” to explain whose framing of issues “wins” (*Projections of Power* 5). “The White House, its supporters, and its critics peddle their messages to the press in hopes of gaining political leverage. The media’s political influence arises from how they respond—from their ability to frame the news in ways that favor one side

over another” (*Projections of Power* 4). Entman argues that in the post-Cold War era, that although “always the one to beat,” the President’s framing is not the sure bet (*Projections of Power* 5).

Acceptance of a frame may require “strategic framing,” as in the case of the Bush Administration after 9/11 when it shifted the problem focus from Afghanistan to Iraq (*Projections of Power* 148). Initially by framing 9/11 as an act of war, “conveying an unambiguous and emotionally compelling frame, Bush promoted assent from Congress and the media—and overwhelming public approval” (*Projections of Power* 1). Entman states that a dominant frame “in the earliest news coverage of an event can activate and spread congruent thoughts and feelings in individuals” (*Projections of Power* 7). For example, he asserts that it required little effort for the United States government and public to see 9/11 as an act of war (*Projections of Power* 16). However, the Administration’s focus on Iraq brought about a frame contest (*Projections of Power* 148). The facts of 9/11 did not appear to justify an extension of the “war on terror” to Iraq. The Administration had to use “strategic framing” to make war in Iraq appear congruent with the public’s mental associations or “schemas” (*Projections of Power* 148). The Administration had to sell the idea that Iraq was part of the terrorist conspiracy to attack the U.S. (*Projections of Power* 121).

Entman’s example illustrates that “[t]he most inherently powerful frames are those fully congruent with schemas ‘habitually’ used by most members of society. Such frames have the greatest intrinsic capacity to arouse similar responses among most Americans” (*Projections of Power* 14). These frames successfully accommodate the facts of an event. In areas with cultural ambiguity or ambiguous guidance from political culture, the White House framing is open to

dissent (*Projections of Power* 148). The Bush Administration had to frame the situation in a way that removed the ambiguity to gain assent for the Iraq War.<sup>30</sup>

### III. The Framing of 9/11

In this section, I examine the way in which the various parties, such as the Bush Administration, the media, and Congress, framed the events of 9/11. At various points in time, multiple frames emerged; to the extent that these frames appeared congruent with society’s schema and consistent with the understanding of events, they coexisted. As Goffman suggests, however, new information that changed the understanding of events and challenged existing frames resulted in new frames that captured this new understanding (347). Ultimately, as new information about 9/11 emerged, the Bush Administration proposed a broad frame of “government inefficiency” that could incorporate many of the narrower frames. By accepting the inefficiency frame, Congress implicitly accepted the ideology carried by the narrower frames.

The analysis of framing in the context of post-9/11 immigration policy offers insight into how the Administration was able to quickly and successfully restructure the executive branch to advance its view of “effective and efficient” government. Using frame theory to examine the events post-9/11 that led to the creation of DHS also provides insight into how political decision-makers use discourse to project and implement their vision of government. The Bush Administration used the events of September 11 to focus on government inefficiency and ineffectiveness, framing September 11 as the general result of an institutional failure and the

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<sup>30</sup> In their work tracing the Bush Administration’s use of a Wild West metaphor over a three-year period from the first month after 9/11 to the Iraq War build-up, West and Carey argue that this “tactical narration of frontier justice” helped to secure consent for invasion of Iraq as necessary action to win the “war on terrorism” (380).

specific result of the flawed immigration and naturalization agency that the Bush Administration inherited. In turn, the Administration used the framework to gain support for and to make structural changes in its favor. To achieve such changes, the Administration presented the argument that the government needed to track and monitor international students as its starting point.

*a. The “War on Terror,” “Protecting the Homeland,” and “International Student Visas”*

Although initially framed as a “crime,” this frame soon became a war frame, “the War on Terror” (Lakoff and Frisch; *see also*: Note, “Responding to Terrorism”; Hodges 23-30). The language Bush used to describe the Office of Homeland Security (OHS), created by Executive Order 13228 on October 8, 2001, expresses the “war on terror” metaphor.<sup>31</sup> Specifically, evidence of the war metaphor is apparent in the mission statement “to develop and coordinate the implementation of a comprehensive national strategy to secure the United States from terrorist threats or attacks” (§ 2) and the stated functions of the Office “to coordinate the Executive Branch’s efforts to detect, prepare for, prevent, protect against, respond to, and recover from terrorist attacks within the United States” (§ 3). Nouns such as “national strategy” and “attacks” and verbs such as “detect,” “prepare for,” and “prevent” conjure images of war (Lakoff and Johnson, *Metaphors*).

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<sup>31</sup> President Bush used an Executive Order to establish the Office of Homeland Security (“OHS”) (Executive Order No. 13228). OHS, a White House office, was to implement a national strategy to secure the United States from terrorist threats or attacks. Part of OHS’s charge was to coordinate and exchange information as to immigration and visa matters to prevent terrorist attacks (Exec Order No. 13228, § 3(d)(i)). The President appointed the Former Governor of Pennsylvania, Tom Ridge, to head the Office.

The Executive Order also presents “immigration and visa matters” as aspects of the problem and a part of the solution in the war on terror. For example, the Order commands the Office to “coordinate efforts to prevent terrorist attacks within the United States” by working with all “federal, state, and local agencies, and private entities . . . to facilitate the exchange of information among such agencies relating to immigration and visa matters” (§ 3(d)). The purpose of this coordination is “[t]o prevent the entry of terrorists . . . and facilitate removal of such terrorists from the United States when appropriate” (§ 3(d)(i)). This language presupposes the presence of terrorists in the United States. As written, there appears to be little doubt that terrorists exist and that these terrorists live within the United States.

Bush often used specific language to express this war frame; Lakoff believes that this language conveys a “strict father morality.” Lakoff says this metaphor presumes that life is difficult, the world is a dangerous place, and all individuals require a strong authority figure to protect them (*Moral Politics*). The need to be a “strict father” is evident in the President’s use of an Executive Order to establish a White House office to coordinate matters related to national security one month after 9/11. The Executive Order immediately established the Office of Homeland Security and the Homeland Security Council, no deliberation was necessary. Additionally, the Order represents the action of strong parenting in that it is a mechanism that allowed Bush to act unilaterally. Bush did not have to consult or discuss his plan with the weaker parent, Congress. Speaking in the first person, he ordered the creation of an office to protect the American people from this dangerous world: “I hereby establish within the Executive Office of the President an Office of Homeland Security” (§ 1). The effect of the Executive Order was to centralize control, calling for the coordination of efforts at all levels: state, local, private sector, internationally, and within the executive branch (§ 3(6)) to assist in the “war on terror.”

Centralizing control and consolidating power within the executive branch appear to embody the actions of the strict/authoritarian figure referred to by Lakoff (*Moral Politics*).

Entman’s view of frame theory suggests that Bush’s decision to establish the White House Office of Homeland Security (OHS) by Executive Order shortly after 9/11 operated strategically (*Framing* 148). The creation of the limited office within the White House facilitated the subsequent establishment of a single, more powerful cabinet level office, accountable to Congress, by helping to establish the basis for the Administration’s later framing that supported this new office. In establishing OHS, the Administration introduced vocabulary consistent with the reorganization frame. OHS was an important step in enabling the Bush Administration to shift the frame, alter perceptions, and “change feasibility conditions” (Majone). The creation of OHS introduced a concept into America’s public discourse that many Americans had not previously considered—the concept of securing the homeland. Although Bush initially resisted a cabinet level office, he later actively supported such an office when Congress was critical of OHS and reluctant to fund the office (Lee). By the time the President introduced his proposal to create a new cabinet level department that realigned existing governmental activities, decision-makers and the public were convinced that INS had failed and that internal reform would not provide sufficient protection. Problems at INS were framed as government ineffectiveness and inefficiency of such magnitude as to jeopardize national security. This framing drew upon certain realities and hid other realities. The frame removed ambiguity and facilitated the creation of a focused enforcement-minded agency to protect America.

Consistent with the metaphor of war and defense, the Bush Administration, the media, and Congress framed 9/11 as a national security issue. In particular, failures in immigration policy had compromised the country’s national security, thereby enabling terrorists to enter the

country. America’s intelligence sharing mechanisms and visa systems failed to detect these evildoers (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). These conceptual frames helped to activate and spread the perception of 9/11 as resulting from an “international student problem” (“Senator Feinstein, Urges Major Changes”; “Homeland Security Directive-2; U.S. Cong. H. Cttee. on Ed. and the Workforce”). The public’s concern over the potential abuse of student visas helped the President, Congress, and INS to successfully implement SEVIS (“Homeland Security Directive-2”).

Even those who advocated on behalf of international students accepted this framing of 9/11 as, in part, a “student visa problem.” Although foreign policy scholars, including John Paden and Peter Singer, questioned the harsh policies toward international students, they also used the very language that defined the problem in a way that dictated the harsh solution they condemned. The authors stated, “The PATRIOT Act *was a response* to the trauma of the September 11 attacks and *to the fact* that some of the hijackers had entered the country on *student visas* to attend U.S. flight schools” (9) (emphasis added). By repeating the claim that the hijackers entered on student visas without any critical evaluation of this claim, Paden and Singer accepted the fact and the frame that 9/11 was a “student visa problem.” The authors used the frame of “the other side” and were drawn into the other side’s world (*Moral Politics* 420; *Don’t Think of an Elephant!*).

Framing 9/11 as the result of student visa policies led to a solution which views immigration reform as an issue of homeland security. Security measures, such as the USA PATRIOT Act, were framed as the inevitable response to the supposed misuse of student visas. As Lakoff and Ferguson observe, the conceptual frame defines the problem and the potential solutions. Therefore, what appears as a “comprehensive” solution to a problem of “student

visas”—i.e., restrictions on the granting of visas, the tracking and monitoring of visas—is only comprehensive in terms of this narrowly defined view of 9/11. Challenging the framing of 9/11 and proposing a counter-frame of terrorism as a foreign policy issue with global impact would have helped to expose the solution as too superficial and narrowly focused to be effective in “the war on terror.” Solutions tailored to address a student visa problem were, however, easier to address than foreign policy concerns and U.S.-Middle East relations, which likely made the student visa frame attractive.

***b. Institutional Failure***

The framing of hijackers as students and temporary visa holders was embedded within a larger frame—a frame of “institutional failure,” which, as Entman asserts, the Bush Administration increasingly promoted as a way to “sell” their plan for government reorganization, including the elimination of the INS. The reorganization ultimately concentrated power in the executive branch, a consistent trend during the Bush Administration (Mahler). INS had been under scrutiny for years prior to 9/11, criticized for its inability to enforce border security and its inefficient service in adjudicating visas (Seghetti). Even before 9/11, Bush selected Ziglar as Commissioner of INS with the idea of reforming INS (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.; U.S. Cong. H. Cttee. on Ed. and the Workforce). After 9/11, however, INS, as well as the Department of State and such intelligence gathering agencies as the FBI and the CIA, garnered additional scrutiny for their visa processing (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.; The 9/11 Commission).

In the first several weeks after 9/11, the institutional failure was framed as the government’s inability to prevent the terrorists from exploiting gaps in the country’s system. The events of 9/11 suggested that the American nation, including its government agencies, had been



tricked. The events enabled Bush to act as what Lakoff terms the strict parent, criticizing the existing governmental policies as too permissive. These permissive policies had enabled the hijackers to take advantage of America’s trusting, welcoming nature (Bush, Statement by the President in His Address to the Nation).<sup>32</sup>

According to this frame, the government granted visas to the hijackers because the hijackers had deceived the nation, pretending to come to the U.S. for educational purposes. They were posing as something they were not. In this framing, American institutions had good intentions but still were at fault; these institutions, failed to detect or anticipate such fabrications. The focus in this frame remained on the hijackers: the hijacker who did not attend class; the hijackers who attended flight school with the intent to use planes as weapons; the hijackers who “overstayed” visas and became “illegal aliens”; and the hijackers who held fraudulent documents and otherwise pursued “bad acts.” This framing of the problem necessitated government reform in order to more readily share information and protect the nation from such acts of evil.

The Bush Administration proposed “tough” reforms, and strict enforcement that would end abuse of student visas as well as other measures (Bush, “Homeland Security Directive-2”). With regards to INS, these reforms involved fixing existing systems but did not include “top-down” organizational design. Measures focused on implementing state of the art technology, such as SEVIS, so that the country could detect such trickery, but INS, an existing agency, would

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<sup>32</sup> President Bush made the following remark to explain that the attack resulted from America’s value of individuality and freedom: “America was targeted for attack because we’re the brightest beacon for freedom and opportunity in the world” (“Statement by the President”); the President’s remarks in Homeland Security Directive-2 also suggest that this sort of permissive parenting would have to change: “The [U.S.] has a long and valued tradition of welcoming immigrants and visitors. But the attacks of September 11, 2001, showed that some come to the [U.S.] to commit terrorist acts. . . .” (“Homeland Security Directive-2”).

manage such technology. In other words, the early framing of the institutional failure, which considered INS to be a competent managerial system, concentrated on making INS a stronger enforcer (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

*c. Government Reorganization*

This framing of 9/11 as the terrorists exploiting gaps in the nation’s system, however, shifted with the discovery that INS had granted a change of status to student visas for the two hijackers, Mohamed Atta and Marwan Al-Shehhi, to attend flight training school at Huffman Aviation and the revelation that the agency had sent notification to Huffman six months after 9/11. On March 12, 2002, CNN reported, “Six months to the day after Mohamed Atta and Marwan Al-Shehhi flew planes into the World Trade Center, the Immigration and Naturalization Service notified a Venice, Florida, flight school, Huffman Aviation, that the two men had been approved for M-1 vocational and technical student visas” (Potter and Phillips). Rudi Dekkers, the owner of the school, said “he was surprised to get the forms at such a late date” (Potter and Phillips). Dekkers showed the forms to CNN during an interview; his disclosure was perhaps an attempt to redeem his reputation and discredit INS. Indeed, in a House Immigration Subcommittee hearing the following week, Dekker testified to the legality of his behavior; CNN reported that Dekker “asked them to change their visa status to ensure the [flight] school was complying with immigration rules” (CNN, “INS Chief Blames Visa Mess on Old Technology”).

According to INS regulation, both Atta and Al-Shehhi entered the country on visitors’ visas and received permission to remain in the United States while the request to change status was pending (CNN, “INS Chief Blames Visa Mess on Old Technology”). Huffman Aviation had actually filed on behalf of the men on August 29, 2000 (Potter and Phillips), so that the two men could participate in a full-time pilot program from September 1, 2000 to September 1, 2001

(Potter and Phillips). Immigration law at the time legally allowed the men to pursue certain classes part-time on a visitor visa (U.S. DOJ, Office of Inspector General, *The Immigration and Naturalization Contacts with Two September 11 Terrorists*). Seven to eight months after they began the one-year training program, the men received notification in July and August of 2001 that their M-1 visas had been granted, (CNN, “INS Chief Blames Visa Mess on Old Technology”). The hijackers appeared not to have been particularly crafty in terms of exploiting a gap in the visa system, but seemed to have followed proper procedure; they had gotten approval for student visas in a highly untimely manner (U.S. DOJ, Office of Inspector General, *The Immigration and Naturalization Service’s Contacts*). The INS allowed the hijackers to acquire visas through its lax policies, indicative of its permissive style.<sup>33</sup>

The discovery that INS had not only granted the hijackers’ request for student visas, but had also been lax in sending notice of this change in status to the school was “inexplicable”; therefore, as Goffman expresses, it required a change of frame (30). Goffman notes that people resist changing frameworks; instead, people in many societies assume that all events “can be contained and managed within the conventional system of beliefs” (30). People try to maintain a status quo, adhering to existing beliefs and frameworks. According to Goffman, people will tolerate even “unexplained events, changing frames only when “inexplicable” facts emerge (30). The discovery of new facts make the old frame vulnerable: “Any novel current event can provide

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<sup>33</sup> The OIG report states, “Our review illustrated that, before September 11, the INS did not closely scrutinize aliens who were entering the United States to become students or consistently require them to possess the required documentation before entering the United States” (U.S. DOJ, Office of Inspector General, *The INS’s Contacts, Executive Summary*).

the pretext for a review of the facts and the ‘discovery’ of a pattern that was there all the time but only now appreciated” (Goffman 453).

In this sense, it was inexplicable that INS could be legitimately granting these visas and inexplicable that it could publicly announce this six months after 9/11. Attention now focused on the bad acts of INS. INS emerged not only as the victim of the hijackers’ deceit, but also a perpetrator of the deceit. This characterization of the facts defined the situation as more than a problem of detecting fraud or a student visa issue. The problem was the result of something greater than flexibility or permissiveness; it was perceived as incompetence or a lack of authority. Adding procedures or even reforming INS was no longer sufficient. INS had failed to fulfill either of its missions: it had neither enforced border security nor provided efficient service. The federal government had to be reorganized (Bush, “The Department of Homeland Security”).

To many political elites, INS could no longer be framed as a parental or authority figure at all, but rather as a child who could not be trusted to do the right thing, a child in need of a strict father who would tell it what to do (Lakoff, *Moral Politics* 65-107). The Bush Administration, for example, used this information to promote broad government reorganization: Drawing upon the “war on terror” metaphor, as well as the “strict father” image, the President used organizational theory to advance his proposal for a new enforcement agency in line with his view of government and the role of the executive. The framing of the need for a new government agency in terms of an authoritarian parent proved to be powerful. The frame captured what potentially could have been competing frames into a congruent picture of the events; it brought

together what Lakoff has identified as a widely held view of the nation as a family,<sup>34</sup> particularly the traditional conservative notions of family, security, and even efficient business practices.

The Bush Administration announced its plan for a Department of Homeland Security (Bush, “The Department of Homeland Security”). Describing DHS as a tool in the “war on terror” and using language consistent with the strong parent metaphor, Bush said, “The President’s most important job is to protect and defend the American people” (1). The changing nature of the threats facing Americans required a new kind of coordination: “A new government structure to protect against invisible enemies that can strike with a wide variety of weapons . . . a single, unified homeland security structure that will improve protection against today’s threats and be flexible enough to help meet the unknown threats of the future” (1). The experience President Bush had gained since 9/11 convinced him of the need for “a more unified homeland security structure,” whose primary mission was to protect the homeland (1). The President stated, “New challenges require new organizational structures” (6-7).

DHS would make America safer by providing focus. One department would “protect the American homeland”; “secure our borders”; “synthesize and analyze homeland security intelligence”; “coordinate communications with state, local governments, private industry, and the American people”; “train and equip first responders”; and “manage federal emergency response activities.” The single department would enable the President to put “more security officers in the field to stop terrorists” and to minimize “duplicative and redundant activities” in Washington that “drain critical homeland security resources” (Bush, “The Department of

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<sup>34</sup> Lakoff, “The Thinking Behind Red and Blue States.”

Homeland Security” 2). The proposal used “an unambiguous and emotionally compelling frame” that was relatively easy to sell (Entman, *Projections of Power* 18).

President Bush analogized his proposal to another war, World War II, and the restructuring of the armed forces. Post-WorldWar II President Harry S. Truman had asked Congress to combine the War and Navy Departments into a single Department of Defense as a way to discard ““obsolete organizational forms and to provide for the future the soundest, most effective and most economical kind of structure for our armed forces of which this most powerful Nation is capable”” (7) (quoting President Harry Truman). The Homeland Security Act and Department of Homeland Security would, like President Truman’s 1947 National Security Act during the Cold War, help Americans defend against “attack from a new kind of enemy—one that hopes to employ terror against innocent civilians to undermine their confidence in our institutions and our way of life” (7).

By including Border and Transportation Security to manage “who and what enters our homeland,” the proposed Program would prevent “the entry of terrorists and the instruments of terrorism while simultaneously ensuring the speedy flow of legitimate traffic” (9). Immigration and Visa Services would function as a separate bureau, thereby separating immigration services from immigration law enforcement in order to administer law in “an efficient, fair, and humane manner. . . . The Department would make certain that America continues to welcome visitors and those who seek opportunity within our shores while excluding terrorists and their supporters” (11). Furthermore, the Department would develop a “state of the art visa system” to make sure that “information is shared . . . so that individuals who pose a threat to America are denied entry to the United States” (10). The Department “would also lead efforts to deploy” a system of entry

and exit that would check a visitor’s compliance with visa conditions on all categories of visas, including “student status” (10).

These changes promised to result in an operation able to communicate and function efficiently and effectively. The language used to describe the Department suggested the sleek operation of a high technology company by stating that DHS would “press” its advantage in its ability to access America’s vast science and technology base. The Department would “consolidate,” “prioritize,” “gather,” “fuse,” “analyze,” “merge,” “streamline,” and “incorporate” in order to “provide,” “give,” “assist,” and “protect” the American people who face “terrorists” who “can strike at any place, at anytime, and with virtually any weapon” (3-9). The President proposed to protect Americans by selecting a strong authority figure—“a single Cabinet official” empowered to protect the country and to “ensure” its safety (8). Moreover, the President held out the promise of a better quality of life:

The technologies developed must not only make us safer, but also make our daily lives better, while protecting against the rare event. They should also enhance the commonplace. Thus, the technologies developed for homeland security should fit well within our physical and economic infrastructure, and our national habits. (13)

The President’s new enterprise was more than an enforcement agency; it also served as a research and development facility.

Bush framed this proposed Department as a “key step” in his strategy to secure the homeland as America continued to fight the “war on terror” (“The Department of Homeland Security” 2). Efficiently fighting this war on terror required a new organization with central control and a clear mission. The proposal presented a new framework—one that physically and metaphorically embedded immigration in homeland security—by which to view the world.

**d. *Organizational Theory, Restructuring, and the End of INS***

The new facts gave proponents of government reorganization a chance to undermine the frame that kept the current governmental structure in place. Both the House and Senate held hearings considering reorganization of the federal government. Most of these proposals involved separating INS service from enforcement functions (Seghetti, 2002). Although disagreement developed on how to accomplish the goal of restructuring, the language used in these hearings demonstrated 1) a belief in the conceptual framing of 9/11 as a problem of an inefficient government structure and 2) a conviction that the solution to the problem lay in creating an agency to enforce homeland security.

In terms of organizational theory, INS was a “misfit” (Burton, DeSanctis, and Obel 14). INS did not efficiently or effectively pursue its goals of enforcing immigration law and providing service (*Burton et al.* 9). In the highly complex and unpredictable environment that existed post-9/11, INS appeared unable to respond. INS reacted to bad news, but this “reactor strategy caused the death of many “inefficient and ineffective government organizations and firms in the midst of bankruptcy” (26). Organizational theorists, including Richard Burton, Geradine DeSanctis, and Borge Obel, describe organizational reactors as those that “adjust to the situation after it is possible to capture any opportunities that may have been present but are now lost” (25). Reactors do not “systematically anticipate, plan, or project into the future, “ but adjust only when forced (25). They make decisions on the basis of bad news as the news becomes known: “Problems emerge as surprises and are dealt with as they occur” (26). However, in a “turbulent environment” filled with uncertainty, organizational theory suggests that an organization must be “an analyzer,” willing to actively approach situations in an innovative manner (36). Indeed, the



9/11 Commission stated that 9/11 was in part a result of insufficient imagination on the part of the American government (Chapter 11, § 11.1).

INS had attempted to present itself as an organization willing to take advantage of new technologies and new ideas. Almost immediately after 9/11, INS had publicly announced its intent to reform its policy toward foreigners who violated student visas (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.; U.S. Cong. H. Cttee. on Ed. and the Workforce). Commissioner Ziglar testified as to INS reforms, and the media widely publicized INS “crackdowns” in the first several months after 9/11 (Sterngold and Schemo). INS also introduced a plan to separate its service objectives from its enforcement functions, while keeping the agency intact. INS Commissioner Ziglar and Attorney General John Ashcroft introduced the restructuring plan on 11/14/01 (Seghetti). The media coverage of the change in status notification in March 2002 called this plan into question and damaged INS’s already poor reputation.<sup>35</sup>

Although INS acknowledged that it was “embarrassing” to have the letters arrive so late, its spokesperson attempted to preserve the existing “visa problem frame,” by arguing that the incident further proved the need for a more modern system: “It does serve to illustrate what we’ve been saying since 1995—that the current system for collecting information and tracking students is antiquated, outdated, inaccurate, and untimely” (Potter and Phillips). INS said it had notified the two men shortly after the requests were approved but that flight schools “are

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<sup>35</sup> Criticism of INS often focused on the “dual functions” of the agency. For example, its service functions involved providing immigration benefits by processing or adjudicating immigrant visas and naturalization applications. To fulfill its enforcement objectives, the agency also enforced immigration laws by controlling the border or detaining and removing non-citizens in violation of immigration laws (Seghetti; Lake). The two functions competed for resources and were in inherent conflict (Seghetti).

routinely last to be notified” (Potter and Phillips). The spokesperson further attempted to minimize INS’s problems, pointing out reform measures INS had taken, which included awarding a contract to Affiliated Computer Services (ACS) on October 25, 2001, to “process the arrival and departure forms of foreign students, businessmen, and tourists visiting the U.S.” (Potter and Phillips). INS hired the company in part to help the agency “clear up its backlog” (Potter and Phillips).

INS Commissioner Ziglar testified before the House Subcommittee that “the visa controversy” would hopefully be “a catalyst to accelerate’ reforms” (Potter and Phillips). He acknowledged that the long delay in the notification was “not an anomaly,” but part of the normal procedure to first notify visa holders, then send I-20 forms to ACS to make a microfilm copy, and finally return the paperwork to the home institution (Potter and Phillips). Ziglar said ACS made no mistake, but he admitted that INS should have “pulled any applications tied to September 11 hijackers” (CNN, “INS Chief Blames Visa Mess on Old Technology”). Ziglar proposed several reforms to “eliminate loopholes in immigration rules upgrading and integrating computer systems and splitting the agency’s service and enforcement functions into separate entities” (CNN, “INS Chief Blames Visa Mess on Old Technology”). Again, INS tried unsuccessfully to keep the problem framing as a concern about the student visa system and the ability of terrorists to exploit gaps in security.

INS appeared to be undertaking serious reform, as evidenced by the formation, rulemaking, and implementation of SEVIS, a system that became operational in the summer of 2002 (“About ICE”). Although the tracking system INS designed was substantially the same program that DHS uses today (“About ICE”), INS did not manage to overcome public criticism or the logic of the frame that called for an end to INS. Lawmakers doubted INS’s ability to fix its

own problems. Representative Issa, Republican from California, called INS “worse than useless” (CNN, “INS Chief Blames Visa Mess on Old Technology”). Representative Flake, a Republican from Arizona, said INS was “in a free fall,” while Representative Gekas, Republican from Pennsylvania and the Subcommittee Chair, questioned INS’s credibility: “How can we believe that future terrorists will be detected in time?” (CNN, “INS Chief Blames Visa Mess on Old Technology”).

Furthermore, INS’s approval of student visas for the hijackers allegedly “stunned” and “infuriated” President Bush (Confessore). Bush ordered Tom Ridge, the OHS director, and John Ashcroft, Attorney General, to “get to the bottom of this immediately” (Garrett). The fact that visas had been granted to hijackers had already angered the Bush Administration, but the public exposure of an internal problem made the situation “unacceptable” (Garrett). INS’s “inexcusable blunder,” as INS Commissioner Ziglar called it, seemed “to capture perfectly the unfathomable ineptitude of an agency long unable to control illegal immigration but now supposed to be the front line of the domestic war on terrorism” (Confessore).

Not only was the media coverage embarrassing, but it also had the potential to destabilize the Administration’s earliest frame and to jeopardize the President’s ability to influence decision-making: The release of the data raised questions concerning the need to monitor student visa holders since the information revealed that the two hijackers had not actually entered on “student” visas, a claim made shortly after 9/11 (“Senator Feinstein Urges Major Changes”). The hijackers appeared to have legally entered on visitor visas and applied for a change of status (Potter and Phillips). This abuse could be more accurately characterized as an abuse of the training acquired at the flight school—a deception of criminals—but critics could have used this information to discredit the Bush Administration by raising questions about the basis for its

earliest claims. Hence, if the Administration had not quickly act upon the information, the information could have undermine the authority of the Administration.

Once the INS blunder became public, the Administration actively and openly pursued government reorganization by introducing the language of organizational theory into its discourse: Reorganization would enable America to “efficiently” and “effectively” realize its “goals” in the war on terror. In his proposal for a new government agency, Bush spoke in terms of organizational theory: Winning the war on terror could be broken down into “tasks,” such as “securing the homeland” and “enforcing immigration laws” (Bush, “The Department of Homeland Security”). By shifting frames to major reorganization and government efficiency, the Bush Administration was able to refocus attention, broadening both the problem definition and the potential solution. The initial frame with its focus on student visas did not adequately address the new information that presented a situation in which the hijackers were legitimate students of flight and had not overstayed their visas, but had used the training they acquired for an illegitimate purpose. Focusing on people who fake a student identity was potentially too narrow a definition of the problem to yield effective solutions. The problem had to be redefined; one frame had to replace another.

The President had already questioned the ability of INS to effectively enforce immigration laws, but he did not publicly articulate a new frame until after the “INS blunder” appeared in the media. He allowed the Attorney General on December 18, 2002, to delegate immigration enforcement authority outside of INS to the FBI. This unpublished order, only revealed well after the FBI began acting as immigration officers to enforce immigration laws, included enforcing the special registration procedures of Muslim men (“Immigration Law & Policy: Removal Procedures and Defenses”).

On April 17, 2002, Attorney General Ashcroft, with the Administration’s apparent approval, began to reorganize INS (Seghetti). The Administration maintained that the Attorney General could initiate this restructuring without additional legislative authority because the Immigration and Nationality Act gave the Attorney General broad powers to administer and enforce immigration laws (Seghetti). The INS blunder led the President and Congress to doubt INS’s ability to institute this plan, but the June 2002 announcement to allow the Attorney General to begin restructuring in advance of the Administration’s proposal to eliminate INS proved to be an effective strategy to build consensus for the new frame that promoted a more encompassing organizational change. As with the creation of the Office of Homeland Security, the President used the power of the executive branch to the fullest extent possible to continue to fight the “war on terror” (Mahler).

The release of a report by Glenn Fine, the Inspector General of the U.S. Department of Justice, further boosted the reorganization and the need to dismantle INS. The report, carried out at the request of the Attorney General after President Bush directed the Attorney General to investigate in March 2002, examined why the INS mailed the forms six months after the terrorist attacks (U.S. DOJ, Office of Inspector General, *INS’s Contacts*). According to the report, the incident raised concerns about “INS’s handling of change of status applications” and “INS’s monitoring and tracking of foreign students in the United States” (U.S. DOJ, Office of Inspector General, *INS’s Contacts*). The OIG criticized INS for 1) delaying notification; 2) taking a lax attitude toward foreign students; 3) granting the change without adequate information; 4) failing to supervise the contractor, ACS; 5) failing to consider the information as relevant to the FBI after 9/11 (U.S. DOJ, Office of Inspector General, *INS’s Contacts*). In other words, the

government saw INS as a deeply flawed agency that it could no longer trust to carry out a homeland security mission.

Although INS had developed and proposed rules for SEVIS on May 16, 2002, “to improve the collection of information on nonimmigrant students by establishing real time updates of student information” (U.S. INS “SEVIS Final Rule”), the Inspector General believed that SEVIS alone could not fix the problem (U.S. DOJ, Office of Inspector General, *INS’s Contacts*). The language in the report criticized INS for failing to “closely scrutinize aliens who were entering the United States to become students”; this language provided a foundation for proponents to argue for organizational change, insisting that INS’s process of adjudication and notification was “untimely and significantly flawed” (U.S. DOJ, Office of Inspector General, *INS’s Contacts*). INS assigned “a low priority” to student visas and created a system in which “significant backlog” and “delay” existed. “Personnel failed” in many regards, and the “fault lies with many INS employees. . . .” (U.S. DOJ, Office of Inspector General, *INS’s Contacts*). Its paper-based systems were “antiquated and inadequate”; other INS practices were “troubling,” “unenforced,” “highly susceptible to fraud,” and data were “incomplete and inaccurate” (U.S. DOJ, Office of Inspector General, *INS’s Contacts*).

The Inspector General concluded that INS’s foreign student program suffered from “a lack of attention” and had been “dysfunctional for many years.” The program was deficient, inadequate, and lacked enforcement. Correcting this required INS to “improve its overall management” (U.S. DOJ, OIG, *INS’s Contacts*). The report stated that INS operated the foreign student program “without an overall coordinated plan” and that a “foreign student program manager” should be appointed to coordinate and account for “immigration issues affecting foreign students.” DHS eventually implemented this suggestion, as well as the Inspector

General’s recommendation to closely review schools accepting foreign students and to not allow visitors to take classes pending approval of “student status” (EBSVERA; HSA; U.S. DOJ, OIG, *Follow-up Review on INS’s Efforts to Track Foreign Students*).

***e. Efficient and Effective Enforcement to Secure the Homeland***

Both Houses of Congress, Democrats and Republicans, accepted the frame presented by the Bush Administration, which was a frame that seemed to necessitate government reorganization. The idea of government reorganization was included in the overarching frame of “efficiency” within government. On May 2, 2002, the Senate Committee on the Judiciary, led by Democratic Senator Edward Kennedy of Massachusetts, held hearings on “The Immigration and Naturalization Service: How Should It Be Restructured?” (U.S. Cong. S. Cttee. on the Judiciary). The testimony reveals that “efficiency” itself was operating as a frame to advance organizational change. The idea of “efficient” government served to advance policies that 1) supported the efficient and effective operation of government; 2) curtailed discussion about immigration policy and diplomacy; and 3) de-emphasized facts that appeared to interfere with or complicate the efficient enforcement of homeland security.

Democratic Senator Patrick Leahy of Vermont stated, “Everyone agrees that the Immigration and Naturalization Service needs to be overhauled” (U.S. Cong. S. Cttee. on the Judiciary). As he further explained, it was “a matter of making government work.” Senator Leahy said that the previous year had not been “a good one for INS,” but he still urged restraint by asking Congress not to “embrace change for change’s sake.” Leahy reminded his colleagues of the value of retraining many effective employees in order to better identify “potential terrorists and other safety threats to cops.” However, Leahy accepted the characterization of INS as a “troubled” agency that requires an overhaul (U.S. Cong. S. Cttee. on the Judiciary).

The Senator questioned a recent House-passed restructuring plan based on the 1997 Jordan Commission Report. He described the plan in terms of its organizational ineffectiveness, suggesting the plan might “prove fatal to its effectiveness” (U.S. Cong. S. Cttee. on the Judiciary). Leahy pointed to a “failure to establish a strong central authority to supervise immigration policy,” the creation of a “more cumbersome bureaucracy,” and the potential that “the Service Bureau would end up with insufficient funding.” His discussion of the reorganization draws upon organizational theory language of “efficiency” and “effectiveness.” This use of organizational theory language assists in developing “real, commonsense, and lasting solutions to INS’ problems” (U.S. Cong. S. Cttee. on the Judiciary).

Republican Senator Orrin Hatch of Utah, a co-sponsor of the Senate reform bill, drew upon similar organizational language, referring to a “drastic need of reform” so that immigration laws are “effectively” enforced and service provided in a “timely manner.” Hatch noted that reform has been a longtime priority, but the September 11th “attacks, combined with recent INS blunders, have subjected INS to an even more critical examination” (U.S. Cong. S. Cttee. on the Judiciary).

Testimony to the Committee by Former U.S. Representative Romano L. Mazzoli, Former INS General Counsel Paul Virtue, and Stephen Yale-Loehr of the American Immigration Lawyers Association differed as to how exactly the reorganization should be structured. Despite noting different aspects of immigration policy that organizational change should advance, the three men agreed as to the framing of the problem: There must be organizational change in the interest of efficiently and effectively enforcing national security (U.S. Cong. S. Cttee. on the Judiciary).



Mazzoli, referring to the “vexing and nettlesome issues surrounding immigration,” called for an “efficient . . . restructured immigration entity” which separates service and enforcement functions and gives “clout” to the director to get things done (U.S. Cong. S. Cttee. on the Judiciary). He stated, “The key to success in any mission, public or private, is for the leader to have the ability to marshal human and financial resources for the tasks at hand” (U.S. Cong. S. Cttee. on the Judiciary). Mazzoli also called for a clear sense of direction, saying that “conflictedness between open borders and closed borders, between more and fewer, between evenhandedness in selection and a point system to reward skills-has hamstrung the INS” (U.S. Cong. S. Cttee. on the Judiciary). Mazzoli’s call for a clear direction suggests that the efficiency frame was consistent with what Lakoff has referred to as a “strong parent,” capable of implementing strict discipline (Lakoff and Johnson, *Metaphors*). Mazzoli envisioned efficiency and effectiveness as a more authoritarian government structure which could advance the ideals of what Lakoff calls “strict parenting” (Lakoff and Johnson).

Unlike Mazzoli, Virtue’s testimony focused on improving “the structure by which our immigration and nationality laws are administered” (U.S. Cong. S. Cttee. on the Judiciary). Virtue pointed out the “staggering” numbers of people involved each year: 900,000 permanent residents naturalized, 850,000 immigrants, one-quarter billion visitors, five million undocumented aliens living in the U.S., and 71,000 criminal aliens removed. Virtue stated, “15 of the 19 foreign nationals involved in 9/11 were inspected and admitted to the United States as visitors or students by the INS.” He urged Congress to provide the organization with a “clearly defined mission objective” that kept the “customers’ needs in mind,” but the emphasis on homeland security did not lend itself to viewing immigrants as “customers.” Virtue also called for clear lines of authority and accountability, coordination of service and enforcement

components, structural flexibility to meet unanticipated challenges, integrated information systems, and adequate funding and staffing (U.S. Cong. S. Cttee. on the Judiciary).

Again, drawing on the language of organizational theory, Yale-Loehr testified that reorganizing INS was but one step in a process whose end result was “effective, efficient, and fair adjudications and enforcement” (U.S. Cong. S. Cttee. on the Judiciary). Yale-Loehr asserted, “Reorganization has consequences for U.S. citizens, legal permanent residents, refugee and asylees, American business and our national security.” He framed the reorganization as an issue of naturalization, human rights, and economic wellbeing, as well as an issue of “whether the INS will contribute its share to enhancing our security.” He said INS had been “unsuccessful” in enforcing and adjudicating immigration law, and “ill-equipped to respond appropriately to our nation’s security needs post-September 11” (U.S. Cong. S. Cttee. on the Judiciary). INS suffered from “huge backlogs” and “internal management and cultural” conflicts (U.S. Cong. Senate Committee on the Judiciary).

Arguing for an immigration policy that made legality the norm, Yale-Loehr nevertheless accepted the conceptual metaphor of immigration as a security concern: He viewed aliens as threats and enforcement as inevitable in fighting the war on terror. He said, “The terrorist attacks reinforce the need for someone in charge with clout who can articulate our nation’s immigration policies, someone with more power than the current Commissioner” (U.S. Cong. S. Cttee. on the Judiciary). Like Mazzoli, Yale-Loehr argued for a stronger authority to advance America’s security needs in the “war on terror.” INS needs to function efficiently, effectively, and fairly, and with our national security concerns in mind” (U.S. Cong. S. Cttee. on the Judiciary). Yale-Loehr added that achieving these objectives required “a new, independent cabinet level

department or agency combining all current immigration-related functions of the INS and the Departments of Justice, State, and Labor” (U.S. Cong. Senate Committee on the Judiciary).

Yale-Loehr praised the Administration’s plan that the Attorney General had offered on behalf of the Administration’s on November 14, 2001. Yale-Loehr remarked during the May Hearings on this plan’s “strong Commissioner, . . . .” “strong Commissioner, clear lines of authority, and separation (with coordination) of the agency’s enforcement and adjudication functions.” He also praised the House Bill 3231, which abolished INS and created a new office of immigration affairs to replace the “deeply troubled agency,” thereby equating INS to a “dysfunctional child.” Yale-Loehr ultimately endorsed the Senate bill, which abolished INS and established a new office with a clear chain of command. While Yale-Loehr recognized the humanitarian issues associated with any discussion of immigration, he also used language that perceived foreigners as criminals who threatened the country’s national security and were, like hunted animals, subject to “tracking.” (U.S. Cong. S. Cttee. on the Judiciary). Although other models of efficiency were possible, the framing of organizational efficiency in terms of national security limited the potential options to those consistent with security and the urgency of war. The adherence and acceptance of this efficiency frame forced out any apparently inconsistent or incongruent information.

*f. The Efficiency Frame Defines the Problem and the Solution*

The House considered the Administration’s plan, introduced in Congress on June 18, 2002, as H.R. 5005 (Relyea). Senator Joseph Lieberman, Democrat from Connecticut, had already introduced a similar bill, S. 2452, on October 11, 2001 (Relyea). Months before President Bush’s proposal, Senator Lieberman proposed making the director of OHS a coordinator of homeland security and creating a Department of Homeland Security which, headed by a cabinet member,

would administer homeland security programs and operations. The President’s proposal maintained OHS as a separate White House office. Both H.R. 5005 and S. 2452 abolished the INS and shifted responsibilities from the Department of Justice to DHS (Relyea).

The Administration’s proposal moved all of INS to DHS; the plan also created a “Border and Transportation Security” division to deal with enforcement. Although DHS would “assume responsibility of . . . Immigration and Naturalization Service,” under the proposal immigration services would be moved to a separate part of DHS and would not be joined with immigration law enforcement in the Border and Transportation Security division (Bush, “The Department of Homeland Security”).

On June 27, the Border Security and Claims Subcommittee of the House Judiciary Committee held “a hearing on the immigration role in the Homeland Security Department to consider the President’s proposal (U.S. Cong. H. Subcttee. on Border Security and Claims). The Subcommittee sought to reconcile this bill with Senate Bill S. 2452. Both bills addressed the visa function carried out by the Department of State’s Bureau of Consular Affairs, and, in particular, the overseas visa issuance policy (Lake). As stated in § 104 of the Immigration and Naturalization Act, the Bureau of Consular Affairs administers the application process for the majority of nonimmigrant visas or temporary visas, including student visas (Lake). The President’s proposal sought to change this by giving DHS “exclusive policy authority ‘through the Secretary of State’ over the granting and refusal of visas” (Lake). Under the President’s plan, DHS assumed authority to issue visas, transferring much of the decision-making power from Consular Affairs in the Department of State to DHS (Bush, “President’s Message to Congress Transmitting a Legislative Proposal to Create a New Cabinet Department of Homeland Security”).

The discussion in the House on June 27, 2002 focused on the President’s proposal to move the authority to issue visas from the Department of State to DHS and to transfer all functions of INS to DHS. The House Subcommittee heard testimony from the following: Honorable Grant Green, the Undersecretary for Management and Resources at the Department of State; John Ratigan, Immigration Consultant for the law firm of Baker and McKenzie; Mark Krikorian, the Executive Director of the Center for Immigration Studies; Kathleen Campbell Walker, an attorney for the American Immigration Lawyers Association (AILA); and Kevin Appleby, the Policy Director for the United States Conference of Catholic Bishops (USCCB), Migration and Refugee Services (U.S. Cong. H. Subcttee. on Border Security and Claims). All of the speakers endorsed the idea of reorganization to promote greater efficiency and effectiveness, but they differed as to how this should be accomplished.

The discussion of H.R. 5005 reveals the diverse perceptions of the issue, but also shows acceptance of the frame and provides insight on framing as a rhetorical device. What emerged shortly after 9/11 as a question of student visas now moved to a larger issue of government effectiveness and efficiency. This definition of the problem enabled the Bush Administration to make changes well beyond reforming student visa policy and INS. Within 14 months of 9/11, the Administration succeeded in implementing the largest restructuring of the Federal Government since 1947. Deliberation of the bill took just four months and met with relatively little opposition. Though the hearing raised competing frames of immigration, the discourse illustrates the continuing high degree of consensus as to this primary frame—institutional failure and the need for reorganization to promote efficient business practices and effective enforcement of homeland security laws.

*The New York Times* characterized the House’s work, saying it was “clear they were eager to act, and there was little dissent from the consensus that domestic security would be better coordinated under a single cabinet secretary” (Firestone). The paper, however, reported that “many of the agencies that the White House wants to move have other functions not directly related to domestic security, and it is in those areas that the consensus began to break down” (Firestone). One such area of concern involved immigration.

While Congress eventually approved the decision to move INS to DHS, it maintained the Department of State’s role in the decision to grant or deny visas. An examination of the framing used in this testimony and questioning on June 27 helps explain why the Department of State was able to maintain control of this function. The hearing reveals the extent to which the frame of reorganization had taken hold. The House, and eventually Congress, rejected any aspect of the bill that Representatives of Congress perceived as hindering efficiency or effectiveness. The idea of having the DHS direct Department of State employees was problematic due to Bush’s emphasis on organizational efficiency because the proposal to transfer the visa granting function to DHS stood to undermine the effectiveness and efficiency of the new department. Putting DHS employees in charge of or within U.S. embassies and consulates overseas raised concerns for the lawmakers. The idea of DHS assuming Department of State functions created a conflict in the organizational framing that stood to jeopardize the strength of the frame. Tightening control of the visa process to this extent was incongruent with principals of organizational design. As Entman’s theory suggests, the proposal created more ambiguity and unfamiliarity and raised the cognitive cost (Entman, *Projections of Power of Power*).

As a result, Congressional Representatives rejected this framing of the problem for being bureaucratically inefficient (Firestone). In a letter to the White House, House Democrats Henry

Waxman of California and David Obey of Wisconsin articulated the inconsistency of the proposal as follows: “Giving the new department dozens of responsibilities unrelated to homeland security risks bloating the size of the bureaucracy and diluting the new department’s counterterrorism mission” (Firestone). Because the reorganizational framing required efficiency and singularity in DHS’s mission, the frame limited the potential design solutions. The success of the frame in defining the problem dictated the solution and, therefore, forced the modification of the President’s proposed solution to be consistent with the problem definition.

Grant Green, the first speaker, favored the President’s proposal, saying that it offered an organizational change that would allow the government to meet the demands of America’s new society. He stated:

I am pleased to be here to comment on what is certainly the most far-reaching and comprehensive government reorganization proposal in many years. The events of September 11 have brought a rigorous, determined response from the people and the government of the United States. But we’ve got to do better. The Department of State has and will continue to play a vital role in this effort. And we fully support the President’s proposal.” (U.S. Cong. H. Subcttee. on Border Security and Claims)

For Green, issuing visas was a matter of homeland security:

While we know that visa policy is integral to the protection of the United States from terrorists, I think it is very important to say very explicitly why this is so. The 19 terrorists who attacked the U.S. on September 11th traveled to the United States on legally issued visas and proceeded on their deadly mission undeterred by U.S. authorities. (U.S. Cong. H. Subcttee. on Border Security and Claims)

According to Green, the reorganization should do the following:

Transfer to the new Homeland Security secretary both the current authority of the Attorney General and the authority of the Secretary of State to establish regulations related to the granting and refusal of visas by consular officers and to administer and enforce the laws regarding the issuance and the denials of visas. (U.S. Cong. H. Subcttee. on Border Security and Claims)

Green defined the issue as one of enforcement, terrorism, national security, strong leadership, and “fighting terrorism through the visa process.” Consular officers, he said, could not have

known the hijackers’ intention when they applied for visas. This knowledge required the help of “law enforcement” and “intelligence channels.” Although Green recognized that visa policy was “vital” to America’s “foreign policy goals,” these goals would be “complemented” by DHS; they emerged as secondary to the “war against terrorism,” which was a “world war” (U.S. Cong. H. Subcttee. on Border Security and Claims).

Although advocating for the President’s proposal, Green’s testimony exposed the potential for managerial inefficiency in the proposal and, hence, the incongruence of the framing that resulted from the President’s plan. Green pointed out that the new Secretary of Homeland Security would exercise authority “over consular officers through the Secretary of State,” which would raise an “inherent conflict” within the Department of State between its diplomatic mission and its protection of the homeland (U.S. Cong. H. Subcttee. on Border Security and Claims).

In his testimony, Ratigan elaborated upon this conflict, while at the same time proposing a dramatic reorganization that created just such a conflict. Ratigan, a former Foreign Service officer, acknowledged the current efforts of the Department of State to maintain “positive public relations with the host government.” He stated that it would be “hard to speculate” on the effect of moving the visa function into DHS (U.S. Cong. H. Subcttee. on Border Security and Claims).

To address the problem, Ratigan advocated a more radical reorganization than what the President proposed. Ratigan’s plan included the complete transfer of the visa function from State to the new Homeland Security Department “to form a single, unified government entity responsible for the formulation and implementation of U.S. immigration policy.” This proposal would remove State from the process since, according to Ratigan, shared authority with State and INS would be “awkward and inefficient.” Ratigan argued that it would make better organizational sense to keep duties clearly defined. He pointed to Australia and Canada, both of



which have unitary immigration services that are “respected for efficiency and professionalism.” The Department of State’s concern “with the impact of the visa process on bilateral relations with the host country” meant that the Department of State emphasized the public relations aspect of the visa process over fraud and security concerns (U.S. Cong. House Subcommittee on Border Security and Claims of the Judiciary Committee). However, Ratigan’s frame was ambiguous in the sense that Ratigan advocated for a complete transfer of duties, but also suggested the visa function should continue to be staffed by the Department of State and supervised by DHS.

In an attempt to address the counter-frame, which challenged the notion of immigration as purely a domestic security issue, Ratigan said that State would “provide appropriate input” to DHS, but this structure presented managerial conflicts, raised efficiency concerns, and reintroduced the “awkward and inefficient” scheme he condemned. Moreover, Ratigan openly acknowledged the following: “That moving the Department of State’s visa function into DHS will create a vast enforcement-minded monolith, devoted to the refusal of visas and reflecting a paranoid siege mentality” (U.S. Cong. H. Subcttee. on Border Security and Claims). From an organizational perspective, such a massive structure would be unable “to maintain responsiveness,” and would become quickly overloaded. As a result, DHS would likely encounter the same problems that INS encountered. INS suffered from too many assigned tasks, too few resources, and an inappropriate managerial structure (U.S. Cong. H. Subcttee. on Border Security and Claims). Many believed that transferring the entire agency to DHS would exacerbate these problems (U.S. Cong. H. Subcttee. on Border Security and Claims).

Kathleen Campbell Walker’s testimony demonstrated that the enforcement frame and view of immigration as solely a domestic security issue conflicted not only with the “nation of immigrant” and “melting pot” frames, but also with the country’s view of foreign policy, trade

and international commerce, and business efficiency. As Walker pointed out, the Department of State upheld these interests; therefore, she argued that the Department of State should continue to control the visa process. Walker stated the following:

If we need to have the flexibility to protect U.S. citizens abroad to achieve treaty negotiations with successful benefits for us in the United States and to also improve our competition in the global marketplace, we believe that you can put faith and confidence in the Secretary of State utilizing diplomacy, in addition to visa policy, together. (U.S. Cong. H. Subcttee. on Border Security and Claims)

Walker’s frame of immigration not only included domestic security, but it also focused on the economic issues and the efficient operation of the marketplace. Enforcement, carried to an extreme, would have the capacity to affect commerce, the economy, and the free market. In fact, members of the scientific and technological communities complained to Congress in March 2003 about the effects of such strict enforcement policies in the interest of homeland security upon science, industry, and research and development (U.S. Cong. H. Cttee. on Science). Because of the strict visa and monitoring policies enacted toward students, a drop in the student population and delays in obtaining visas allegedly hampered the work of these communities (U.S. Cong. H. Cttee. on Science).

Ultimately, H.R. 5005 and S. 2452 were reconciled in conference, and Congress passed the Homeland Security Act on November 25, 2002 (HSA). Congress enacted a version of the Act that vested DHS with responsibility to issue regulations related to visas and to train consular officers, but DHS “may not alter or reverse the decision of an individual consular officer” (Lake; HSA § 428) The HSA abolished INS and transferred the law enforcement function and service function to two bureaus within DHS. The Executive Office for Immigration Review (EOIR) that houses the Immigration Courts and Board of Immigration Appeals remained within the Department of Justice (“Immigration Law & Policy”).

Although DHS began operating on January 1, 2003, the General Accounting Office labeled DHS a “high risk program” (U.S. GAO, *Major Management Challenges and Program Risks*), indicating that the agency would continue to be examined according to an organizational theory frame. GAO stated that it considered the Department “high risk” because of the Department’s formidable goal to combine 22 agencies, including INS, and 17,000 employees into a single department within one year. GAO also noted that DHS would inherit all the problems of INS. Since 1990, GAO reported that INS lacked sufficient information to carry out its mission. GAO, which had expressed concern as to the ability of INS to process visas and to manage its workload, had the same worries concerning DHS (U.S. GAO, *Major Management Challenges*).

#### **IV. The Implications of the Framing**

In just over a year, the Homeland Security Act of 2002 put into operation a new cabinet level department, the Department of Homeland Security (“DHS Home”). DHS combined numerous executive agencies within a single department, the largest restructuring of the executive branch since the Department of Defense was created in 1947 (“DHS Home”). The mission of DHS remains to secure the United States from terrorist threats and to protect the homeland<sup>36</sup> (HSA). The Immigration and Naturalization Service (INS), the office that initially administered the student tracking and monitoring program SEVIS, was one of the agencies replaced by DHS.

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<sup>36</sup> The DHS expresses its mission as follows: “We will lead the unified national effort to secure America. We will prevent and deter terrorist attacks and protect against and respond to threats and hazards to the Nation. We will secure our national borders while welcoming lawful immigrants, visitors, and trade” DHS Report, *One Team, One Mission, Securing Our Homeland: U.S. Department of Homeland Security Strategic Plan Fiscal Years 2008-2013*.

Today, SEVIS is operated by SEVP, a program of the Immigration and Customs Bureau (ICE), an enforcement agency within DHS (“About ICE”; “ICE Home”).

This governmental reorganization has had significant implications. The frame encompassing efficient and effective government enabled the Bush Administration to make essential strides towards its security goals, which included enacting the HSA. The Administration needed to shift frames to have an enduring reach: White House offices, such as OHS, are limited in terms of both power and funding, and INS was perceived as too inept. The creation of DHS, which reflected Bush’s strong managerial style, was consistent with what many commentators have viewed as “the Bush administration’s expansive views of executive authority” (Mahler 44). Moreover, the institutional changes influenced the availability of deliberative channels and the range of topics subject to deliberation. For example, establishing an agency to protect the homeland and moving immigration policy enforcement into this agency assume that immigration policy is predominately an issue of homeland security. Even if Congress were to deliberate on other goals of immigration policy, the agency entrusted with the responsibility of enforcing such policy remains an agency with a single mission of enforcing homeland security.

As Giandomenico Majone notes in his work on argument and public policy in the context of deliberative democracies, “Argumentation is the key process through which citizens and policymakers arrive at moral judgments and policy choices” (2). Hence, policymakers recognize the need for institutions, including laws, regulations, norms, organizations, and other decision-making procedures, as ways to preserve deliberative democracy (95). Majone adds, “Policy actors not only pursue their goals within the limits set by the existing framework; they also strive to change those limits in their favor” (95). However, Majone argues that the capacity of policy

makers of “changing feasibility conditions through institutional change” is something that gets overlooked (95). For example, the deletion and creation of organizations enable arguments that were previously unsuccessful to become successful. Majone explains the importance of the institutional choice in Nixon’s unilateral decision to terminate gold convertibility of the dollar (95). The creation of the C-20, a new committee within the IMF, gave the U.S. a forum in which it retained economic and financial power and limited the IMF’s ability to control the flow of information (98-100).

Using frame theory as an analytical tool furthers the understanding of the relationship among language, argument, and material events. Through their choice of frames, the Bush Administration both highlighted and obscured certain facts and realities surrounding the events of 9/11. The Administration accentuated particular information to bring about organizational changes that had been suggested before 9/11, but not adopted. For example, the Bush Administration’s framing of the problem in terms of organizational theory and design persuaded the government to abolish INS, to establish DHS, which assumed the role of enforcing immigration laws and controlling the border, and to ultimately establish ICE and the Student Exchange Visitor Program (SEVP) that tracks students. As discussed in the next chapter, this restructuring has an impact on language as well. This organization change and introduction of a tracking system operated by an agency created to protect the country’s national security implicitly link the words “international student” to terrorism. The institution presumes a need to track students because of the threat they pose.

## Chapter 5: Organizational Change as Argument

As discussed in the last chapter, the Bush Administration recognized the power of institutional frameworks and framed the story of 9/11 to promote a government re-organization plan that suited Bush’s managerial style and ideological perspectives. Genre analysis, like frame analysis, is another tool available to examine this decision-making process and to examine the policy changes that occurred after 9/11 with regards to immigration policy. Genre analysis, by focusing attention on the means or form of communication, adds an additional dimension to the study of these changes. As with framing and *kairos*, focusing on genre may obscure the human agency involved and suggest that the form is the inevitable result of situations or events. However, genres are not inevitable. Individuals select genres, consciously and unconsciously, to convey thoughts, and genres can act as rhetorical devices to shape both individual and collective thoughts.

In the context of post-9/11 immigration policy toward international students, President Bush, who I suggest uses a political realist style and who valued decisive, centralized leadership and favored swift action, established the Department of Homeland Security (DHS), an executive organization with new communication systems that implemented his national security goals. DHS was able to implement policy absent lengthy deliberation and, by formulating rules and regulations, institutionalized a particular point of view. The rules may appear to be the inevitable result of 9/11, but they actually represent human choices that advanced ideology. As such, the organizational change within the executive branch was rhetorically powerful. The Administration was able to embed assumptions within institutional structures, rules, and regulations, and could persuade implicitly, influencing thought and decision-making outside of a deliberative process.

Post-9/11, the Bush Administration, favoring swift action that quickly advanced its policy goals, modified existing frameworks and used new institutional frameworks to promote rapid decision-making. These new institutions and organizations enabled profound changes in policy that broadly affected government structure and what it means to be an international student in the United States. These actions confirm the insight of Giandomenico Majone: “Policy actors are not artificially separated from the process that sets constraints on their behavior. The same people pursue their goals within the given institutional framework and attempt to modify that framework in their favor” (96). For example, without explicitly stating as much, the new Executive Department, DHS, advanced arguments about the need to track and monitor international students as potential terrorists. DHS accomplished this change through its organizational design and by establishing SEVIS, a new genre system that regulates communication among student visa holders, institutions of higher learning, and the government. Although unstated, the assumptions underlying SEVIS have altered how the country treats and discusses international students.

In this chapter, I use genre theory to explore the rhetorical impact of institutional frameworks and organizational change. In particular, genre theory allows me to: 1) identify a political style; 2) examine how political style is expressed in organizational change; and 3) explore the relationship between organizational change and language. I begin with a brief overview of genre theory. Next, I use genre theory to identify the political style of the Bush Administration and to show how Bush reorganized government to fit this style, putting in place an executive agency consistent with his “take action” managerial approach. Then, I use genre theory to analyze how these organizational changes and new institutions operate enthymematically. Specifically, I suggest that the introduction of new government frameworks,

such as DHS, enabled the Bush Administration to implicitly make controversial arguments and, consequently, obscure profound changes, including those changes to the executive branch and to immigration policy toward international students. Finally, I use genre theory to consider the implication of these policy changes, looking particularly at the impact of the changes on student visa policies.

## **I. Genre Theory**

Broadly defined, genre theory provides a means of classifying and comparing texts and assessing the texts’ contribution to the creation of knowledge (Swales 190). By situating texts within a social and textual context and by looking at the nature of these texts, genre as a methodology reveals how authors use conventions to meet their needs (Campbell and Jamieson, *Deeds Done in Words*). Genre analysis allows for the study of the relationship between form and function (Campbell and Jamieson, *Deeds Done in Words*). However, genre is more than a classification system (Devitt); the choice of a genre has rhetorical or persuasive impact. Genres function to structure social action and respond to the rhetorical needs of a situation (Miller, “Genre as Social Action”). Genres operate as communication systems, and the choice and adherence to the forms and conventions that make up these communication systems can influence a rhetor and an audience in explicit and implicit ways (Yates and Orlikowski, “Genre Systems”). A rhetor may select a certain genre because that genre allows the rhetor to express a certain perspective or political style. If, for example, an individual values immediate action, that individual may look for channels of communication that avoid extended debate. Consequently, the study of genre can result in a better understanding of ideology.

Genre analysis provides a lens by which to examine a rhetor’s choice of genre as an argument strategy in a time of crisis. How genre influences change often appears in rhetorical



literature: Numerous scholars have explored the role of genre, argument, and policy change and have frequently selected a significant historical event or disaster as the context in which to study genre and the role of argument.<sup>37</sup> These studies use close textual analysis to create historical accounts of policy change and to reveal what sort of arguments contribute to change.

Genre analysis can also be used to explore the relationship between the form of communication and the political style of the Bush Administration and the impact of this relationship upon post-9/11 policy. Robert Hariman’s work on political styles as genres and Hariman’s later work with David Kaufer, both identify textual patterns that convey power, decisiveness and the ability to take action. The collaborative work of Kaufer and Hariman sheds light on the characteristic textual patterns and rhetorical features of the style that Bush drew upon following 9/11 to implement policy. I draw upon and extend Kaufer and Hariman’s work to identify textual patterns within the Bush Administration and to examine how Bush’s political and managerial style and his Administration’s view of organizational structures influence the choice of genre and language use.

Additionally, genre analysis provides a tool by which to consider the relationship between political styles, changes in organizational structures, and language. Yates and Orlikowski examine the way in which organizational structure changes through genre systems and how organizational change alters genre systems (“Genres of Organizational

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<sup>37</sup> In his historical analysis of a Cold War anti-nuclear test activity group (“Nuclear Information”), Bazerman identified the use of the “information age” slogan as a rhetorical device created to assert unity in a highly complex historical situation. Work by Alan Gross and Arthur Walzer focuses on the *Challenger* Disaster; Thomas Farrell and G. Thomas Goodnight use Three Mile Island to examine communication practices; and David Coogan examines the relationship between two major train accidents and the National Transportation Safety Board’s attempt to persuade the Chicago Transit Authority to change its communication policy.

Communication”). For example, they look at the physical workplace, as well as the virtual office, and the relationship of organizational structures, technological changes, new electronic media, and genre systems (“Genre Systems”). Their work provides a model by which to understand the organizational changes within the Bush Administration that accompanied the change in policy towards international students. Because the introduction of a new genre or organizational structure can expand and alter what can be said,<sup>38</sup> the creation of a new agency, DHS, and the implementation of SEVIS potentially expanded and altered how the United States can talk about international students. Beyond the physical organizational change, the new organization actually altered the self-understanding of academic institutions and international students, instilling a perception of international students as potential terrorists instead of the prior perception of international students as welcomed guests engaged in the cause of higher learning.

By focusing on immigration policies toward international students, the present study adds to the body of genre analysis literature. This study examines the use of particular genres, such as executive orders, presidential directives, and rulemaking by executive agencies, to not only promote certain arguments, but to also replace argument and put an end to the deliberative process. The use of organizational change and the creation of the new organization, DHS, which arose from President Bush’s use of existing genres to influence decision-making, ultimately acted rhetorically, eliminating verbal argument. In other words, the organizational change served

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<sup>38</sup> Refer to the close reading of historical documents involving the introduction of a new genre, environmental impact statements, and the influence of this genre on what could be said (Bazerman, Little, and Chavkin). Also refer to Yates and Orlikowski’s work on vertical files and internal office correspondence, such as the office memorandum (“Genres of Organizational Communication”).

as a rhetorical device that implemented a new reality in which the government regulates international students as possible terrorists.

## **II. Political Style: Republican vs. Realist**

Numerous books have been written about the Bush Administration and Bush’s management style (Kakutani). Whether favorable or unfavorable towards the Bush Administration, these books consistently describe a style that used a top-down approach in its decision-making and centralized decision-making in the executive branch.<sup>39</sup> These books, and numerous others, provide a view of the Bush Administration that my data regarding post-9/11 immigration policy toward international students support: Top down decision-making, concentration of power in the executive branch, rapid departure from established policies, and minimal apparent debate. These features reveal a consistency with what Robert Hariman has defined as a realist style (*Political Style*). Bush exhibited his realist style when he and his Administration decided to create a Homeland Security Office, to dismantle the Immigration and Naturalization Service, and to track international students. To carry out these actions, Bush drew upon genres consistent with this realist style—genres such as executive orders, directives, and administrative rules. To limit debate in favor of action, Bush also used arguments focused on danger, urgency, and the need for immediate action.

Along with the realist style, Hariman identifies three other rhetorical styles associated with political action: republican, courtly, and bureaucratic. In his later work with David Kaufer, he and Kaufer found that these political styles have characteristic textual patterns and rhetorical

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<sup>39</sup> These books include the work of Barnes; Cole and Lobel; Fukuyama; Isikoff and Corn; Minutaglio, Packer, Rich, Soros, Tigar, Wolf, and Woodward.

features that recur “ambiently and unremarkably in the background of any single specimen” (Kaufer and Hariman). In particular, the authors found that realists “portray themselves as powerful individuals or entities able to act on the world decisively to effect targeted change” (479). This style makes action superior to contingency (480). By contrast, republicans prefer debate and legislative action and seek to influence public opinion. This style withholds action until deliberation runs its course (480). In the republican style, bipartisan commission reports, call to consensus, and speeches “link urgency of present and concern for future within lessons of past and attentiveness to the audience as coordinated points of focus” (480). In modern society, the realist style typifies corporate CEOs, while the republican style, with its preference toward deliberation, associates with the democratic system of government and Presidents such as Former President Bill Clinton.

The realist style also has the characteristics found in the language of change or transformation. The Bush Administration drew upon the realist style following 9/11 to implement policy. The events of 9/11 illustrate a shift in rhetorical genres from a republican style, rich with the language of contingency, resistance, consensus, and debate, to a realist style in which deliberation is no longer needed, but action is required. This shift in style also illustrates a shift in what Perelman and Olbrechts-Tyteca refer to as a value hierarchy: After 9/11, the government placed action above deliberation (81-83). While the Administration suggested otherwise, the events of 9/11 alone did not account for such a shift. Rather, this shift reflected a preference on the part of President Bush that would very likely have appeared even absent 9/11. To make this point, I first examine the Clinton Administration’s use of the legislative process to introduce anti-terrorism policy following pre-9/11 terrorist acts and then examine the Bush Administration’s use of Executive Orders, Presidential Directives, and executive agencies to

implement similar anti-terrorism policy after 9/11. Although the Clinton policies typically failed to be enacted or were altered through debate prior to 9/11, after 9/11 the government quickly adopted substantially similar measures presented by the Bush Administration with little opposition and little alteration. The shift in style and values reflects the different genres the two Presidents used to make policy decisions: the language used to discuss policy, such as the policy related to international students, also illustrates this shift. While the Clinton Administration considered passively “collecting data” on international students, the Bush Administration implemented an aggressive program “to track” international students.

*a. Pre-9/11: Withholding Action to Allow Deliberation to Run Its Course*

President Clinton used a republican style to deal with the terrorist acts that occurred during his Presidency, most notably on February 26, 1993, when “militant Islamic loyalists” exploded a car bomb in the World Trade Center garage, killing five people and injuring 650 others (McFadden; Fried). Clinton again confronted terrorism in April 1995 with the Oklahoma City bombing. In 1995, President Clinton responded to the Oklahoma bombing as a criminal act, thereby allowing the FBI to investigate the crime and the Federal District Court to bring the perpetrators to trial. After the Oklahoma City bombing, President Clinton proposed anti-terrorism measures to Congress, but he refrained from making administrative changes, such as the creation of a domestic counterterrorism center headed by the FBI, “without extensive consultations with Congress” (Purdum). *The New York Times* reported as follows:

Before Congress could even consider the first set of recommendations Mr. Clinton made on Sunday, he summoned bipartisan Congressional leaders to review his new proposals, which the White House said would cost \$1.5 billion over five years. They would permit the Government to obtain a wiretap to investigate any suspected Federal felony—not just the relatively small number of serious offenses that now qualify—and would forbid suppression of surveillance evidence in court unless investigators acted in bad faith. . . . Mr. Clinton’s initial call for new Federal powers on Sunday prompted widespread praise on Capitol

Hill and vows of quick action. But after questions were raised about constitutional issues, particularly about the FBI guidelines for domestic surveillance, Congressional leaders were a bit more cautious today. (Purdum)

Soon after the Oklahoma City bombing, Mr. Clinton requested that the Attorney General, FBI Director and national security adviser prepare a directive for the President’s signature. The directive would have authorized measures to address domestic terrorism. However, the President did not sign this directive; instead, he chose to pursue legislative action. By a vote of 91 to 8, the Senate, following four days of debate, approved the counterterrorism legislation seven weeks after the Oklahoma City bombing (Gray). The bill stalled in the House for a year “where some lawmakers, with the backing of the National Rifle Association, said it would give the Government vast new powers that would threaten civil liberties” (Associated Press). A scaled-back version of the bill eventually passed and was signed into law shortly after the first anniversary of the bombing (Mitchell). Still, many of the original proposals in the anti-terrorism bill were not adopted until the USA PATRIOT Act was signed into law on October 26, 2001, about six weeks after September 11. (Rosen).

President Clinton also signed the legislation that enabled the Bush Administration to “track” international students, although the Clinton Administration referred to the “tracking” mechanism as a system of “data collection.” The following illustrates the state of the union concerning international students in June 1995:

INS established a task force to conduct a comprehensive review and analysis of the current process for the collection of information regarding foreign students and exchange visitors in the United States. As a result of the review, that task force proposed substantial changes for the collection of information on foreign students and exchange visitors. Subsequent to the Task Force’s assessment similar changes were also mandated by Congress. Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) requires the INS to collect information on an ongoing basis from schools and exchange programs relating to nonimmigrant foreign students and exchange visitors during the course of their stay in the United States, using electronic reporting technology to the fullest extent practicable. (Cronin)

Initially, the program began as a 16-month pilot program known as CIPRIS and was implemented at 21 institutions. At the completion of the pilot program, the “data collection” program was renamed SEVIS and “deployed” at 11 institutions in the Boston Area (Cronin).

Clinton’s republican style emerged in his consideration of immigration policy, including the 1997 bipartisan report to Congress by the U.S. Commission on Immigration Reform, headed by the Former Congresswoman Barbara Jordan. Among other things, the Commission recommended, “Dismantling INS and creating a new independent bureau for the enforcement function of INS, placing the service function of INS under the Department of State, and moving its immigration labor-related functions under the Department of Labor” (Seghetti). Based on this report, the Clinton Administration in 1998 proposed restructuring INS (Seghetti). In a report to Congress, *A Framework for Change: The Immigration and Naturalization Service*, the Clinton Administration proposed separating the service and enforcement functions in INS, but full implementation of this plan did not occur (Seghetti). The Hart-Rudman Commission, formed by Congress in 1999 to examine U.S. national security policy, also endorsed the proposal raised by the Jordan Commission, but the Commission recommended a new Homeland Security Agency which would be responsible for “planning, coordinating, and integrating various U.S. government activities involved in homeland security” (Hart-Rudman Commission, viii).<sup>40</sup>

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<sup>40</sup> The Commission suggested that the agency build upon the Federal Emergency Management Agency (FEMA) and recommended transferring three organizations that dealt with border security: The U.S. Coast Guard in the Department of Transportation, the Customs Service in the Department of Treasury, and INS Border Patrol in the Department of Justice (viii & 15). The Commission also stated that homeland security should not be exclusively an executive branch responsibility, but required Congressional involvement (26-27).

***b. Post-9/11: Acting Decisively to Effect Targeted Change***

Although the Clinton Administration suggested the proposals, action regarding the INS or a national security agency did not take place until President Bush used his discretionary power to create the first Office of Homeland Security after September 11, 2001. On October 8, 2001, President Bush, prompted by the terrorist attack less than one month before, signed Executive Order No. 13228 that created the Office of Homeland Security [OHS]. OHS, a White House office, had the responsibility of implementing a national strategy to secure the United States from terrorist threats or attacks. To prevent terrorist attacks, OHS focused on coordinating and exchanging information concerning immigration and visa matters (§ 3(d)(i)). However, OHS was limited as a coordinating body of comprehensive national strategy: Congress was reluctant to fund an agency like OHS created by Executive Order because such an agency could be easily changed by Executive Order and Congress had little oversight and control over agencies created in this way (Relyea).

The President displayed a realist style by quickly responding to 9/11 with the creation of OHS. The President attempted to empower the OHS with the ability to act using a realist style. Bush wanted OHS to direct some 40 agencies and departments responsible for homeland security, but the head of OHS was not required to account to Congress. This proved problematic when Tom Ridge, the first head of OHS, refused to appear before Congressional Committees to discuss his activities, asserting that his status as a member of the White House staff and as Presidential advisor exempted him from doing so (Relyea). Ultimately, OHS was controversial because it lacked Congressional oversight and was too limited to accomplish what President Bush had hoped. Unable to completely avoid the deliberative process, Bush and his Administration turned to a more republican style strategy by proposing the Homeland Security



Act to Congress. The Act created a new federal agency directed by a Presidential appointee subject to the advice and consent of the Senate (Lee). The new department resulted in a single agency, the Department of Homeland Security (DHS), which assumed responsibilities for existing government activities, including the enforcement of immigration law (HSA). The Homeland Security Act (HSA) simultaneously created DHS and, at the same time, eliminated the Immigration and Naturalization Service (INS).

The Homeland Security Act implemented a system largely studied and proposed under the Clinton Administration, but the magnitude of the 9/11 terrorist attacks enabled the Bush Administration to use republican strategies in a manner consistent with Bush’s realist style. This kept alive a sense of urgency and motivated a deliberative body like Congress to take swift action to improve the country’s immigration system. For example, the Terrorism and Government Information Subcommittee, chaired by Senator Dianne Feinstein, held hearings on October 12, 2001. The hearings examined “*the* shortcomings of the immigration and visa system of our country” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info. of the Judiciary Cttee.) (emphasis added). Feinstein’s use of the definite article “the” illustrates a shift in rhetoric: the shortcomings, no longer subject to discussion, are now presumed. By October 12, the nation understood the problems with INS: “Just yesterday the Department of Justice released information indicating that 13 of the 19 terrorist hijackers had entered the United States legally with valid visas. . . . Clearly something is wrong with our system. The purpose of this hearing is to determine the extent to which gaps in our visa and admission system have frustrated efforts to identify and bring to justice the perpetrators of these attacks” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Subsequently, members of the Senate demanded action in the form of a nonimmigrant tracking system; little meaningful opposition to this program was heard. Feinstein named the following specific measures: “So in particular, I’m interested in learning more about the feasibility of creating tamper-resistant visas and passports, establishing a nonimmigrant tracking system using biometric data to verify the identity of persons seeking to enter the United States.” Feinstein sought the help of corporate America: “Along this line, yesterday I met with Larry Ellison, the CEO of Oracle. . . . Oracle takes seriously our responsibility in these difficult times.” Senator Kyl, Feinstein’s co-committee member, reinforced the Administration’s shift in style: “Much has been made of the unity that existed since September 11, including here in Washington . . . we are going to be offering some ideas that haven’t been implemented in the past by the administration, by any administration. And since all of you don’t have to take credit or blame for positions of the past, don’t. Be willing to think openly about new ideas that may come from the Congress.” Senator Kyl pointed to the news headlines that justified the shift in style: “Look at the headline in the *Washington Post* this morning: ‘INS stumped on How Some Hijackers Entered the United States.’ No reflection on Mr. Ziglar [commissioner of the INS]. Obviously he had nothing to do with the policies that bear on the deficiencies in INS at this moment. But obviously we’re going to have to fix this problem.” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

Commissioner Ziglar attempted to defend INS at this hearing, but he undercut his own attempts by agreeing to move ahead with a tracking system. He first argued: “There is an awful lot of criticism that is absolutely justified toward the INS. But some of the criticism that’s leveled at it is not justified, based upon my review of this institution. . . .” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info). In a future attempt to show the ability of INS to

respond to change, Ziglar agreed to move ahead with the SEVIS system, the data collection system piloted by the Clinton administration:

Madam Chairman, with your support we are moving ahead and will move ahead—and I know we’re going to have your support on this—with the SEVIS system. And that is the student tracking system, which is also known as the CIPRIS system. . . . As you know . . . the development of a student tracking system has been the subject of much concern, opposition and other things, particularly from the academic establishment and frankly from Congress in fighting about the fees and how they’re allocated and how they’re collected and that sort of thing. That mysteriously, that opposition, seems to have now disappeared since September 11.” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.)

Acting on the Directive of President Bush issued on October 29, 2001, the INS did successfully promulgate and implement the regulations that put the tracking system into widespread operation. The Directive called upon the government to:

Implement measures to end the abuse of student visas and prohibit certain international students from receiving education and training in sensitive areas. . . . The program shall provide for tracking the status of a foreign student who receives a visa (to include the proposed major course of study, the status of the individual as a full-time student, the classes in which the student enrolls, and the source of the funds supporting the student’s education.) The program shall develop guidelines that may include control mechanisms, such as limited duration student immigration status, and may implement strict criteria for renewing such student immigration status. (“Homeland Security Directive-2”)

The President called for the program to be presented to him through the Homeland Security Council within 60 days. Although officials, including INS officials, swiftly responded to the mandate, the ability of INS to respond to this Directive did not save the agency. Public support did not favor maintaining INS as it had existed prior to 9/11, particularly once the public learned that INS granted a student visas to two of the 19 hijackers in November 2001, several months after the hijackers’ death on September 11. As discussed in the last chapter, Congress enacted the President’s proposal for the Department of Homeland Security through the Homeland Security

Act of 2002 (HSA). The new Department assumed many of the duties of the now defunct INS (Seghetti).

### **III. The End of Deliberation: New Institutions Act to Secure the Homeland by Tracking and Monitoring International Students**

9/11 allowed the Bush Administration to delete and create organizations consistent with a realist’s desire to act. The creation of DHS, for example, enabled the Bush Administration to preserve a sense of urgency; this successfully advanced arguments that lacked consensus pre-9/11 and may have been subject to question even post-9/11 as time passed and arguments of exigence were attenuated and less likely to silence debate (Entman, *Projections of Power* 76-94). When combined with institutional changes, arguments of exigence that created a sense of urgency about international students that the Bush Administration raised shortly after 9/11 gained more influence and endurance. By establishing a communication system based on implicit assumptions about international students as possible terrorists, DHS installed a reality about international students as threats. The nature of this threat required neither explicit explanation nor discussion. Acting according to realist values and goals, DHS replaced dialogue, but continued to implicitly promote arguments about international students and immigrants through its choice of policy and actions.

In the first two-years post-9/11, arguments that were made publicly through deliberative genres, such as debate and the legislative process, were increasingly expressed through such genres as executive orders, presidential directives, and agency regulations that de-emphasized

discussion and contingency in favor of immediate action.<sup>41</sup> Those arguments explicitly raised immediately after 9/11 are today implicit. They are unstated understandings, emerging, for example, in the assumptions underlying the language used to convey the mission, goals, and policies of these institutions rather than through explicit statements in public forums (Bazerman, “Nuclear Information” 261).

For example, during the first six weeks after 9/11, the logic of the tracking and monitoring of international students was visible to the nation. Deliberation about the causes of 9/11, about immigration and the visa process, and about the role of technology in preventing terrorist attacks appeared in the media and took place in Congress (see Chapter 2). The deliberation explicitly described the abuse of foreign student visas as widespread and ongoing; Feinstein, calling for a moratorium on all student visas, labeled the student visa category both “underregulated” and “exploited” (“Senator Feinstein Urges Major Changes”). Witnesses argued that a tracking system would have prevented 9/11; therefore, such regulation as SEVIS might prevent future attacks (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). The government explicitly named immigration policy as a means of fighting “the war on terror” (Bush, “Homeland Security Directive-2”). Academic institutions were on the front-line of this war, and representatives of these institutions acknowledged that the government had “the right

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<sup>41</sup> While in the “typical” political process Congress does provide direction by enacting statutes and then the executive branch acts to implement these statutes, my focus in this context is the rapid movement from deliberative channels to the administrative process, in some cases the Bush Administration’s use of executive powers that excluded Congress. I find this movement away from deliberative channels of particular interest, given the Bush Administration’s use of arguments of timeliness and framing immediately after 9/11.

and responsibility to monitor” and that universities had “the obligation to make information available” to the government (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.)

The language of legislative acts, such as the USA PATRIOT Act, EBSVERA, and HSA, codified these arguments. Once codified, the executive branch could put the assumptions and understandings captured in the laws into effect by formulating detailed rules that would provide a way of implementing and enforcing these laws. As the executive branch, first through INS and then through DHS, increased its involvement, the logic of these arguments became less and less visible; although rules are subject to comment by members of the public when the agency proposes a rule, statute limits the time available for comment.<sup>42</sup> Consequently, the Administration’s use of the rulemaking process allowed for hastened action without completely pre-empting the deliberative process. Moreover, the agency could draft its final rules in a way that carried out the goals of the Administration but did not explicitly state any potentially controversial claims, such as claims about international students being potential terrorists. By using administrative organizations and genres, such as agency regulations, to implicitly carry arguments in support of change, the Bush Administration delicately balanced implicit arguments

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<sup>42</sup> According to the Administrative Procedures Act, 5 U.S.C. § 553, rulemaking by federal agencies requires agencies to publish proposed rules and to allow the public the opportunity to comment on the rule. In the case of SEVIS, INS published the proposed rules in the Federal Register on May 16, 2002 (64 *Fed. Reg.* 34862). After an agency compiles, categorizes, and considers the comments, the agency publishes final rules, along with its response to the comments and any alterations to the rules that INS decided to make on the basis of these comments. The final rule, published in the *Federal Register*, 67 *Fed. Reg.* 76256, includes the agency’s reply to comments in a section known as the “preamble.” The texts produced throughout the SEVIS rulemaking process provide insight into the arguments that were raised, considered, accepted, and rejected when the agency drafted the language of the SEVIS rules. INS’s response to comments in December 2002 help to uncover the arguments now made implicitly in the language of the rules.

of exigency with arguments about extending pre-9/11 policies; it did so by maintaining public support and quickly implementing major changes to government structure and immigration policy.

While the move to the administrative rulemaking process typically follows discussion by Congress, in this case the action of the rulemaking process followed deliberation that had not, in the words of Hariman and Kaufer, “run its course” (480). However, the major Bush Administration policies did receive limited Congressional discussion. For example, deliberation about SEVIS occurred in the first six weeks after 9/11 in an environment permeated by fear and a sense of urgency in which dissenting voices and deliberation was viewed as an unnecessary delay (Remarks by Senators Feinstein and Kyl, S. Subcttee. on Tech., Terrorism, and Govt. Info.). At the implementation stage, once Congress had approved of policies put before it, the Administration was able to create detailed structures that advanced its particular perspective and ideology. For instance, although INS proposed the SEVIS rules, addressed all comments, and implemented the rules, with the enactment of HSA, the enforcement of the SEVIS rules moved without a new comment period to DHS, an agency with a different mission and focus than INS. A new comment period was arguably not indicated since the rules themselves had not changed, but the focus of the enforcement body had changed significantly. Moreover, the stakeholders affected by the SEVIS rulemaking—international students who lacked political voice and institutions of higher education that depended on federal funding and international students—were not likely to challenge the rule through court action after the rule was implemented, a mechanism a more politically powerful stakeholder might use.

Charles Bazerman described the use of institutions to perpetuate implicit arguments as an “enthymematic process” (“Nuclear Information”). Using the classical theory of enthymeme,

Bazerman examined how genres can enable this enthymematic process. According to Bazerman, rhetors draw upon the following:

Community values, invoke some beliefs that are best left unspoken, engage the audience in a kind of thinking as they provide the missing links in the argument, increase the audience’s commitments to the conclusions they seem to come to on their own, avoid appearing to urge the audience too strongly, and yet still reliably control the overall arguments. Further, the unspoken invocation of community understandings bonds the audience and rhetor together as people who quite apparently believe the same things and see the world in similar ways. Finally, the presentation of the matters that are spoken about, which rely on the enthymemes for their interpretation and evaluation, strengthens those community values, understandings, and bonds by their very invocation in a public performance of mutual understandings. (275)

The organizational structure of the Department of Homeland Security, and the mission statements, goals, rulemaking and policies expressed by the offices that make up the Department, leave the reasoning for such design choices unspoken; this, as I suggest, illustrates an enthymematic process. In the remainder of this section, I discuss two ways in which DHS operates enthymematically in the context of immigration policies toward international students: 1) through the organizational design of DHS and 2) through the language in the SEVIS rules.

***a. The Enthymematic Process of the Organizational Design***

The organizational design of DHS shows that the Homeland Security Act (HSA) created the Department to put into effect policies to address terrorism. Specifically, the Act established a cabinet level, executive department with a statutorily defined mission to “prevent terrorist attacks within the United States [and] reduce the vulnerability of the United States to terrorism” (6 U.S.C. § 111). To satisfy this mission, DHS instituted an enforcement agency, Immigration and Customs Enforcement (ICE), which continues to oversee the Student Exchange and Visitors Program (SEVP). SEVP administers SEVIS, the electronic database that helps DHS and other government agencies keep track of international students. Under DHS, the post-9/11 student visa program became a designated program, nested within a law enforcement agency, which is nested



within the agency established to fight terrorism. Student visas and temporary or nonimmigrant visa holders are no longer handled by the agency processing immigrant visas, citizenship, and naturalization, as student visas were pre-9/11 under INS. Today, ICE, the office that “protects the borders through smart and tough interior immigration enforcement,” deals with these areas (“About ICE”). Moreover, through SEVP, international students are dealt with separately than other nonimmigrant visa holders. However, the government does not expressly articulate why international students are worthy of a special office within DHS that focuses exclusively on this category of visa holders.

Moving immigration from its former location in the Department of Justice to the Department of Homeland Security with its statutorily defined mission to fight terrorism and its focus on securing the nation implies that immigration policy is predominately about terrorism and national security.<sup>43</sup> The Department of Justice, while also seeking to enforce federal law, has a much broader mission than that of DHS:

To enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice of all Americans. (“DOJ Home”)

Shifting the responsibility for international students from Justice to DHS and creating a special program for international students within DHS suggest that international students pose a particular kind of threat.

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<sup>43</sup> INS remained a part of the Department of Justice until 2003, although administrative reorganization occurred multiple times, beginning with the passage of the Immigration and Naturalization Act of 1952 (INA, 8 U.S.C. § 1101 *et seq.*).

A closer look at the language used by DHS, ICE, and SEVP to describe their roles in securing the homeland further illustrates how the organizational design acts rhetorically to promote a certain point of view about international students. This organizational design, which influences the way the country views international students, also shifts the system of governance away from a republican style to a realist model. The unspoken argument is that immigration laws, when not enforced or properly administered, make America less safe and less secure, but the relationship is not spelled out. The language used by DHS emphasizes that the mission of the Department of Homeland Security is “to ensure a homeland that is safe, secure, and resilient against terrorism and other hazards” (“DHS Home”). DHS identifies the following five Departmental missions: 1) “Prevent terrorism and enhance security; 2) Secure and manage our borders; 3) Enforce and administer our immigration laws; 4) Safeguard and secure cyberspace; [and] 5) Ensure resilience to disasters.” DHS articulates one goal: “A safer, more secure America” (“DHS Home”). To understand the reasoning of DHS requires 1) seeing the enforcement of immigration law as a means of ensuring the safety of the homeland against terrorism, 2) defining immigrants as potentially dangerous, and 3) recognizing that immigration laws create “vulnerabilities.” As potential “invaders,” immigrants are classified with such other invaders as electronic or cyber attackers.

As such, DHS advances the Bush Administrations goal of “combating terrorism through immigration policy” (Bush, “Homeland Security Directive-2”). Material under the heading “Our Responsibilities” and the subheading “Enforce and Administer our Immigration Laws” on the DHS website emphasizes that “the Department has fundamentally reformed immigration enforcement, prioritizing the identification and removal of criminal aliens who pose a threat to public safety. . . .” (“DHS Home”). The website encourages readers to define immigration as a

criminal matter that deals with legal aliens and illegal or “criminal aliens,” some of whom could presumably be terrorists. Readers could also easily assume that “reforming” immigration enforcement, makes America safer, but this part of the document does not elucidate how or why this reform occurred. The explanation is implied several paragraphs later in a subheading “Mature and Strengthen the Department of Homeland Security.” This section explains, “The Department was formed in the wake of the terrorist attacks of September 11, 2001, as part of a determined national effort to safeguard the United States against terrorism” (“DHS Home”). The mention of the day, 9/11, invokes the images Americans share as a nation of the burning World Trade Center Towers. Reference to 9/11 implies that much had to change on that day, including the way the country enforces its immigration laws.

Immigration and Customs Enforcement (ICE), the law enforcement agency that actually manages SEVIS, is nested within DHS. Under the Bush Administration, ICE described itself as “the largest investigative arm of the Department of Homeland Security (DHS)” (“ICE Home”). ICE was “responsible for eliminating vulnerabilities in the nation’s border” (“ICE Home”). In addition to ICE, DHS consists of multiple agencies: the Transportation and Security Administration (TSA), the Coast Guard, the Secret Service, and Citizenship and Immigration Services (USCIS), another agency dealing with immigration policy which could have addressed student visa issues. Despite this plethora of alternative agencies, the government decided to place the responsibility for international students within ICE. Given ICE’s responsibility to eliminate “vulnerabilities” and Bush’s language in “Homeland Security Directive-2” ordering an end to the abuse of student visas, the placement of the international student visa program within ICE appears necessary because international students make the country vulnerable.

Under the Obama Administration, ICE still focuses on eliminating vulnerabilities through investigation and enforcement: The current ICE website implies a similar relationship among immigration, national security, and ultimately the potential for terrorists to abuse student visas. The current ICE homepage prominently lists a toll free number at the top of the page, urging Americans to report suspicious activity to “1-866-DHS-2-ICE,” a part of DHS Secretary Janet Napolitano’s “See Something, Say Something” campaign to fight terrorism (“ICE Home”). The homepage also has a visual image of five heavily armed and combat-ready ICE agents above the header “ICE Overview.” The text reads: “Immigration and Customs Enforcement is the principal investigative arm of the U.S. Department of Homeland Security (DHS) and the second largest investigative agency in the federal government” (“ICE Home”). The implicit assumption is that immigration enforcement remains a fundamental part of protecting the homeland. Immigration potentially involves criminal conduct in which immigrants, or more accurately “foreigners,” warrant close observation.

As expressed in his proposal to Congress, Bush wanted to separate immigration law enforcement from immigration services<sup>44</sup> so that the new homeland security department could focus and “make certain that America continues to welcome visitors and those who seek opportunity within our shores while excluding terrorists and their supporters” (Bush, “President’s Message to Congress” 11). Bush accomplished this separation with DHS and ICE as evidenced by ICE’s mission statement: “ICE’s primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control,

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<sup>44</sup> The United States Citizenship and Immigration Services (USCIS), a separate office within DHS, now handles immigration services.

customs, trade, and immigration” (“About ICE”). This focus differs from that of INS, whose dual-mission recognized the potential for immigrants to become citizens. INS’s mission included the following:

Administer[ ] laws relating to admission, exclusion, deportation, and naturalization of aliens, and investigate[ ] alleged violations of those laws. Patrol[ ] U.S. borders to prevent unlawful entry of aliens. Supervise[ ] naturalization work in designated courts. Register[ ] and fingerprint[ ] aliens in the United States. (U.S. National Archives)

While people criticized INS for its “dual-mission,” no confusion exists as to ICE’s priorities: The two paragraphs that appear on the homepage express ICE’s focus on investigation and enforcement. The last sentence of the second paragraph emphasizes ICE’s tough stance by clarifying the “two principal operating components” of ICE: Homeland Security Investigations (HSI) and Enforcement and Removal Operations (ERO). Unlike its predecessor, INS, this agency gives no attention to “service.” ICE functions “decisively” with clearly defined priorities: “Prevent terrorism and enhance security; protect the borders against illicit trade, travel, and finance; protect the borders through smart and tough interior immigration enforcement; and construct an efficient, effective agency” (“About ICE”).

The description of the Enforcement and Removal Operations (ERO) component, which further demonstrates the link between terrorism, national security, and immigration, expresses its intent “[t]o identify, arrest, and remove aliens who present a danger to national security or are a risk to public safety, as well as those who enter the United States illegally or otherwise undermine the integrity of our immigration laws and our border control efforts” (“About ICE”). Although not explicitly stated here, this language echoes arguments raised just after 9/11. The idea that any conduct that “undermines the integrity of our immigration laws” is a matter of national security seems rooted in the post-9/11 arguments that the hijackers took advantage of lax immigration policies. As the country saw in the first weeks after 9/11, the argument suggests

that had America been tougher, it might have prevented 9/11. The ICE Fiscal Year 2007 Annual Report explicitly stated this argument:

In order to strengthen the integrity of the nation’s immigration system, ICE focuses on compliance enforcement by investigating non-immigrant status violators and preventing exploitation of the immigration system. Had this effort been in place prior to 9/11, all of the hijackers who failed to maintain status would have been investigated months before the attack. (U.S. ICE, “ICE Fiscal Year 2007 Annual Report”)

The current website, however, now expresses this idea enthymematically. For example, in reference to the enforcement unit that investigates international student violations, the website states that “ICE prevents terrorist and criminal acts by targeting the people, money and materials that support terrorists and criminal networks” (“About ICE”).

Similarly, the Homeland Security Investigations (HSI) component of ICE “investigates immigration crime” and “conducts criminal investigations against terrorist and other criminal organizations who threaten national security” (“About ICE”). ICE also has a division of International Affairs (IA) that “enhances national security by conducting and coordinating investigations involving transnational criminal organizations and serving as the agency’s liaison to counterparts in local government and law enforcement” (“About ICE”). International Affairs (IA) manages the Visa Security Program; it places ICE agents overseas in sites including the Department of State Consulates. The Visa Security Program “is aimed at interdicting criminals, terrorists and others who would exploit the legal visa process to enter the United States,” as the 9/11 hijackers did. In describing themselves, these three operations, ERO, HSI, and IA, use language that criminalizes immigration by referring to legal and illegal aliens; the language suggests that immigration is a dangerous process and that immigrants are potentially dangerous people.

In addition to ERO, HSI, and IA, the Student and Exchange Visitor Program (SEVP) is another operating component within ICE that demonstrates ICE’s focus on enforcing immigration laws. Through SEVP, ICE specifically addresses President Bush’s desire for the agency to “lead efforts to deploy” a system of entry and exit that would check a visitor’s compliance with visa conditions on all categories of visas, including “student status” (Bush, “President’s Message to Congress 10). The SEVP homepage says that SEVP helps DHS and the Department of State “monitor” F, M, and J visa holders, the student visa categories. SEVP uses SEVIS, “a web-based solution, to track and monitor schools and programs, students, exchange visitors and their dependents while approved to participate in the U.S. education system. SEVP collects, maintains and provides the information so that only legitimate foreign students or exchange visitors gain entry to the United States” (“Student and Exchange Visitor Program”).

Implied, but almost invisible, within the language describing SEVP are many of the assumptions about international students that the government, the media, and the nation expressed just after 9/11. One such assumption is the belief that student visas fall within the jurisdiction of DHS, suggesting that international students or those applying for student visas could pose a threat to national security. The language “while approved to participate” also calls attention to the fact that student status is subject to “approval” and that this approval is of a limited duration—a temporary status. The language further implies that these students are visitors, guests who should be on good behavior. Moreover, the language presumes that such students are not completely trustworthy. The government must track and monitor both the students and the schools that admit them. The language “so that only legitimate foreign students” enter the U.S., which explains the need for the program, implies the potential for abuse and “illegitimate” acts.

Surprisingly given the Bush Administration’s desire for major change in the executive branch, the language on the SEVP webpage also suggests that SEVIS is merely a continuation of the status quo: “SEVIS came online in the summer of 2002. It converted what was a complicated manual procedure into a centralized, web-based automated process” (“Student and Exchange Visitor Program”). According to this language, this new technology represents a modern version of what had been done for years, even before 9/11. This language regarding the status quo seems to suggest that although the Bush Administration desired significant changes in immigration policy, it also desired rapid change. To avoid delays that could arise if critics raised concerns that the SEVIS program was radical or invasive, the Bush Administration claimed that SEVIS was not really a change to immigration policy at all; this rebuttal suggested that Bush, while open to the republican mechanism of debate, enabled his realist’s agenda for action.

The description of SEVP demonstrates the profound change that DHS and SEVP brought by establishing rules that actually changed the status quo: “SEVIS improves data collection and reporting, enhances customer service, facilitates compliance with regulations and helps ICE better monitor school and exchange programs,” indicating that what was in place before was in need of change (“Student and Exchange Visitor Program”). Moreover, although it is implied that all of this information was collected before 2002, SEVIS added extensive “reporting” requirements for the first time and changed the role of institutions of higher learning, necessitating that those institutes of higher learning proactively provide information to the federal government (Haddal; U.S. ICE, “Fact Sheet: SEVIS Reporting Requirements for Designated School Officials”). The “customers” to whom the description refers are neither the international visitors that INS served nor the institutions of higher learning that use the program. Rather, these “customers” are the Department of State, U.S. Customs and Border Protection



(CBP), U.S. Citizenship and Immigration Services (USCIS), and ICE which, the website explains, need to access information about foreign students from academic institutions. The implication here is that these federal agencies require this information about international students to fight terrorism.

The current SEVIS website indicates that the view of international students as potential terrorists and immigration policy as a tool in the fight against terrorism endures today. The SEVP webpage presents the premise behind the SEVIS program: The electronic system was initially authorized “to address the problem of F/M/J nonimmigrants who are out of status and remain in the U.S. illegally. . . . After September 11, 2001, Congress updated the legislation to mandate the use of an electronic system to collect information on all F/M/J nonimmigrants” (U.S. ICE, “SEVIS II Overview”). The use of “9/11” invokes the “unspoken community understandings” that Bazerman believes “bonds the audience together as people who quite apparently believe the same things and see the world in similar ways” (“Nuclear Information” 275). The statement that 9/11 led Congress to make this change implies that international students had some role in the events of 9/11 and that the issue was something other than overstaying a visa. Without expressly making the claim, the rhetor suggests that tracking and monitoring students were the inevitable result of the 9/11 attacks. Additionally, the current SEVIS website proudly reports that in the near future a new system SEVIS II will be introduced, or as the website states, SEVIS II “will deploy” (U.S. ICE, “SEVIS II Overview”).

***b. The Enthymematic Process of the Communication System***

In addition to the organizational design of DHS implicitly influencing thought about international students and style of governance, the system of communication established by DHS, through both SEVP and SEVIS, operates tacitly to advance similar arguments and

ideological views. SEVP and the electronic communication system SEVIS make up what Yates and Orlikowski refer to as a “genre system” (“Genre Systems”). A genre system is “a sequence of interrelated communication actions,” which “consist[ ] of independent genres that are enacted in some typical sequence (or limited set of acceptable sequences) in relation to each other, and whose purpose and form typically interlock” (“Genre Systems” 15). This system includes coordinated communicative acts that “accomplish an interaction” (15).

Genre systems “embody expectations that structure several dimensions of communicative interaction: why, what, who/m, how, when, and where” (“Genre Systems” 22). These expectations or rules can be explicit and implicit, but drawing on the rules of certain genres legitimates the genres, the rules, and the expectations the genres embody (Yates and Orlikowski, “Genres of Organizational Communication” 302). As these genre systems become institutionalized and adhered to, they act enthymematically. In this manner, genres can become a “vehicle for the potential implementation of power and influence in and across organizational communication but also for decision-making, information processing, and strategic action” (“Genres of Organizational Communication” 322).

In the case of SEVIS, the genre system includes administrative rules (8 CFR § 214); policy statements; a myriad of forms, such as I-94s, I-20s, and I-901s (“About ICE”; “Welcome to Travel.State.Gov”); quarterly newsletters (“*SEVIS Newsletter*”); government training courses about SEVIS for schools and telephone and e-mail “helpdesks” (“Student and Exchange Visitor Program”); and training programs run by schools to educate their larger institutions about SEVIS (Hoza; Clubb; Badger, et al.). The purpose of the SEVIS genre system is characterized as pragmatic. The system collects data on international students in an efficient manner, but the genre system also serves the less tangible institutional ends of DHS: to fight terrorism. SEVIS,

premised upon the idea that students could be terrorists, is a means by which DHS can, at least partially, fulfill these ends. The genre system also served the purposes of the Bush Administration by promoting the Administration’s views on immigration policy and national security in a manner that did not require lengthy discussion or deliberation. The use of the genre system reinforces the rules and expectations the system embodies.

The genre system, in particular the SEVIS rules, engages the audience in a kind of thinking and garners the audience’s support without “appearing to urge the audience too strongly” (Bazerman, “Nuclear Information” 275). In fact, for many individuals, SEVIS may appear to be “neutral,” advancing no particular ideology other than the promotion of technology. SEVIS might seem to be merely updating a regulatory process that was “always” in place, even prior to 9/11, but a closer look at the language of the SEVIS rules in their historical context shows that SEVIS advanced and continues to advance a very particular view of international students, immigration policy, and America’s democratic process. SEVIS reinforces a certain dialogue and way of discussing these ideas. For example, as the government, institutes of higher learning, and students use SEVIS, these users consciously and unconsciously reinforce the underlying assumptions and understandings about international students as terrorists embedded within the system. SEVIS presumably works to detect terrorists by monitoring international students, admitting individuals who pose no threat to the homeland, and removing those who are “suspicious.” As such, the system affects the perception of and actions toward international students.

The enthymematic process exhibited by the SEVIS rules suggests that the Bush Administration had to balance multiple, sometimes conflicting arguments and political styles to successfully promote its policies. Although a realist, Bush was not able to simply impose his

view, constrained perhaps by the constitutional framework that he had inherited and existing institutions, like INS, that were not easily redefined. For example, to achieve its desired goals, the Administration simultaneously argued that SEVIS reinforced the status quo and advanced major change so that the government would ensure the nation’s safety. In December 2002, the Bush Administration announced the highlights of SEVIS as an improvement over what was already in place: “Implementation of the Student and Exchange Visitor Information System (SEVIS) revises and enhances the process by which foreign students and exchange visitors gain admission to the United States” (U.S. ICE, “Fact Sheet: Student and Exchange Visitor Information System (SEVIS)”). Describing the rule as revising and enhancing the way in which foreign students gain entrance to the U.S. implies that the rule is not a radical change. SEVIS implements what the IIRIRA, the 1996 law, required (U.S. ICE, “Fact Sheet: Student and Exchange Visitor Information System (SEVIS)”), which enthymematically promotes the argument that the government has the authority to regulate international students and has exercised this authority for years.

By implying that SEVIS changed little, the Bush Administration could neutralize the change, expressing it as non-controversial and therefore necessitating no lengthy discussions. Moreover, the regulatory process helped to mask the extent to which SEVIS changed existing policies. The rulemaking process, which sought to normalize or standardize behavior, provided less opportunity for extended debate or criticism. While critics, including immigration advocates, civil liberties groups, and advocates for international students and institutes of higher education, raised concerns about the rule during a public comment period before the final rule was announced, the comment period was, and remains, a difficult forum in which to question government claims concerning the status quo (U.S. INS, “SEVIS Final Rule”). INS was able to

discount this criticism relying on authority from Congress expressed in pre- and post-9/11 laws that empowered INS to act.<sup>45</sup> In other words, arguments of status quo become somewhat irrelevant once Congress mandated the agency to act. The agency listened to comments, but felt compelled to move forward. Time for talk was over; it was now time to act. With the implementation of SEVIS, the Bush Administration established a new system of communication that presumes the need for surveillance on the basis of one’s status as an international student.

SEVIS has altered the way in which talk about international students occurs. By creating these rules of communication that view international students as “suspects,” the Bush Administration was able to perpetuate a conversation, begun shortly after 9/11, about international students as potential terrorists. The system keeps alive the sense of urgency that drove early 9/11 policy changes by ritualizing stringent reporting requirements and controlling the means of communication among international students, schools, and the government. Although almost invisible in the explicit language of the SEVIS rules, a careful examination of the rulemaking process reveals these arguments. In the remainder of this section, I discuss the language of the final rule 8 CFR § 214 and the agency’s required response to comments received from the public as published in the preamble to the final rule (U.S. INS, “SEVIS Final Rule”) to demonstrate the enthymematic process at work and the profound shift in values that SEVIS represents.

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<sup>45</sup> In rejecting comments, INS often deferred to its statutory mandates, which required action. INS explained that it would not delay the compliance date for SEVIS because of these mandates: “The January 30, 2003 compliance date evolved from the security concerns of Congress and the Administration” (U.S. INS, “SEVIS Final Rule,” *67 Fed. Reg.* 76257).

### 1. Student Visas Are a Pressing Concern

The SEVIS rules naturalized a sense of urgency about international students in a variety of ways. For example, the SEVIS rule 8 CFR § 214(2)(f) applies to “F-1 foreign students”—those students in SEVIS-approved colleges, universities, seminaries, conservatories, academic high schools, private elementary schools, other academic institutions, as well as in language training programs (INA 101(a)(15)(F); 8 CFR § 214.2(f)(i)-(iii). The rule requires schools to enter data for new students into SEVIS after January 30, 2003, and for all students after August 1, 2003 (§ 214). Reference to these dates remains in the current CFR, but the arguments pertaining to the decision are practically invisible. However, the preamble states that “the majority of comments opposed the January 30, 2003, mandatory compliance date” (U.S. INS, “SEVIS Final Rule,” 67 *Fed. Reg.* 76257). The commenters expressed concern that the technology changes made the timeframe “infeasible” for schools (67 *Fed. Reg.* 76257). Not only did commenters express concern that SEVIS was not fully operational at the time of the rulemaking, but they also worried about the costs associated with the compliance date. The INS estimated that a school would spend between \$15,000 and \$500,000 to implement SEVIS (67 *Fed. Reg.* 76257).

Although “aware of the concerns that the education community” had, INS refused to change the dates. The INS response indicated a sense of urgency consistent with the assumption that the country was vulnerable without such a tracking system and with the Administration’s desire to take action. Again, the time for talk was over: “The Service has been working under several statutory mandates for the implementation of SEVIS and must balance national security concerns with the concerns of the education community” (U.S. INS “SEVIS Final Rule,” 67 *Fed. Reg.* 76257). INS stated that the compliance date “evolved from the security concerns of Congress and the Administration,” noting the passage in 2001 of “two separate laws to

strengthen national security that focused directly on the Services foreign student program” and the President’s Directive-2 addressing “student issues” (67 *Fed. Reg.* 76257). The date “was not chosen at random,” but was selected to balance national security concerns with the burden on schools (67 *Fed. Reg.* 76257). INS made its position clear: “The sooner all schools and students are in the SEVIS database, the sooner the Service will have the ability to more fully monitor them” (67 *Fed. Reg.* 76257). The language in the preamble captures the degree of threat that was presumed—international students could be terrorists, abusing their visa status, hiding anywhere. The regulation had to be implemented as soon as possible to secure the safety of the country (§ 214.2(f)(1)(iii)). As a result, INS put SEVIS into effect before it was fully operational (Mills).

The time frames for reporting information also establish a continual sense of urgency about the activities of international students. DHS wants to know immediately about changes in address, name changes, program status, or majors. The SEVIS rules assume that these activities, when carried out by international students, are relevant to the nation’s security. SEVIS requires students to report any change in such information to the school within 10 days (§ 214.2(f)(17)), and it demands that schools report this information to DHS through SEVIS within 21 days (§ 214.3(g)(2)(ii)). DHS seems to assume that these changes provide valuable clues to potentially bad behavior or malicious intent. The decisions of students to reduce their class load to less than a full-time course of study, for example, could potentially be an indication of terrorist activity, not merely a reflection of such mundane problems as academic difficulties, homesickness, depression, or even a student’s youth. These rules imply not only that time is of the essence, but also suggest that had the country had such clues prior to 9/11, it could have prevented the attacks.

## 2. Institutes of Higher Learning Are Key Players in Advancing National Security Goals

The language of the SEVIS rules indicates that the government believes that the institutes of higher learning—universities, colleges, vocational schools, and language programs—have a central role to play in the fight against terrorism and in securing the homeland. Schools accepting international students are subject to “record keeping and reporting requirements” (§ 214.3(g)). Schools must enter information into the SEVIS database that includes not only the student’s identity ((ii)) and address ((g)(1)(iv)(iii)), but also each student’s academic status and transfer credit ((v)), participation in practical training ((vii)), graduation details, degree awarded, termination of study, and failure to report to class ((g)(2)(ix) and f(2)(iii)). Schools are required to report highly detailed information on a student’s academic record. Specifically, schools must:

Identify the student’s degree program and field of study. For each course, give the periods of enrollment, course identification code and course title; the number of credits or contact hours, and the grade; the number of credits or clock hours, and for credit hour courses the credit unit; the term unit (semester hour, quarter hour, etc.). Include the date of withdrawal if the student withdrew from a course. Show the grade point average for each session or term. Show the cumulative credits or clock hours and cumulative grade point average. Narrative evaluation will be accepted in lieu of grades when the school uses no other type of grading. ((iv))

Furthermore, DHS has the right to request “any or all of the data . . . on any individual student or class of students upon notice” ((x)). The school has three days to respond to a request for information on an individual student and ten days for a class of students ((x)). The duty to comply with reporting requirements is an exception to FERPA, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, that might otherwise restrict institutions from reporting personal information in a student’s record (67 *Fed. Reg.* 76265-66; 8 CFR § 214.1). As a result



of these rules, the government is able to look “proactively” at a student or students, requesting information even absent evidence of criminal behavior or terrorist activity.<sup>46</sup>

### **3. Institutions of Higher Learning and Foreign Students Are Not Trustworthy**

The rules convey a sense that while DHS wants schools to help them acquire information, DHS does not completely trust the institutions that accept foreign students. Schools may be too permissive with these students, too lax with the interpretation or enforcement of the rules, or, even worse, corrupt. Because DHS is unwilling to count on schools to voluntarily offer this information, it insists that schools participate in SEVIS in order to be authorized to enroll international students (§ 214.3(a)(1)). An institution’s ability and willingness to supply information to DHS is apparently part of the “price” schools pay for enrolling international students (U.S. INS, “SEVIS Final Rule”). Schools must appoint “Designated School Officials” (DSOs) to communicate with DHS and submit substantial documentation in order to gain certification to accept international students (§ 214.3(a)(3)). To maintain status, schools must fulfill SEVIS requirements, satisfy DHS requests for information, and agree to routine site visits and out-of-cycle reviews (§ 214.3(h)). The rules state: “SEVP may review a school’s certification at any time to verify the school’s compliance. . . . SEVP may initiate remedial action with the school, as appropriate . . .” ((iii)). As David Ward acknowledged in his testimony of October 12, 2001, accepting international students is “a privilege” for schools (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.).

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<sup>46</sup> A recent *New York Times* article reports that FBI rules allow “agents to look into people and organizations ‘proactively’ and without firm evidence for suspecting criminal or terrorist activity,” which includes searching databases (Savage).

Those authorized to access the SEVIS database and to communicate with DHS, the “DSOs,” are highly regulated (214.3(i)). They must be “regularly employed member[s] of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students” ((l)). They must be citizens or lawful permanent residents of the United States ((l)(1)(i)). The rules specify the number of DSOs a school may employ ((l)(1)(iii)). DSOs must certify their knowledge of SEVIS and willingness to comply with the regulations in order for a school to obtain certification ((l)(3)). However, DSOs are suspect in the sense that they are not allowed individual or institutional discretion to make decisions. In the interest of national safety, the rules dictate the content and the timing of the decisions. As noted in the preamble to the final rules, DSOs cannot implement any information on a student until the school indicates that the student has arrived and registered at the school (67 *Fed. Reg.* 76259). As previously stated, many criticized the discretion afforded to INS and school officials pre-9/11 as having led to the events of 9/11: Two of the hijackers, under INS’s own rules, were able to study at flight schools without first obtaining a student visa, and one hijacker was a “no show” at a language program (Potter and Phillips). Replying to comments regarding these assumptions, INS stated, “The primary purpose of SEVIS is to provide access to current accurate information. . . . The information maintained in the system is only as reliable as those who are entering it” (67 *Fed. Reg.* 76259). The government needs “to control access” to the system to “ensur[e] the integrity of the system” (67 *Fed. Reg.* 76259). INS deemed the hiring of citizens or permanent residents to be fundamental to this goal (67 *Fed. Reg.* 76259). Unlike the former INS system that granted visas to hijackers, the new technology represented by SEVIS seems an apparently fairer, more efficient system, not subject to the fraud or the human error that had tainted INS.

The rules, therefore, remove decision-making capacity from the foreign student advisors on a range of issues (§ 214.3 & § 214.2(f)(6)(iii)(A-E)). Students must receive prior approval from the DSO for almost every action; without such prior approval, students will be considered “out of status” (U.S. ICE, Fact Sheet: SEVIS Reporting Requirements for Designated School Officials”). Additionally, the DSO ability to grant approval is specifically proscribed for the following actions: withdrawing from class ((iv)); reducing course load ((f)(6)(iii)); reducing course load for medical reasons ((f)(6)(iii)(B)); changing majors, which in some cases require special security clearance if the government considers the subject sensitive to national security (§ 214.3(g)(1)(iv); INA, “Technology Alert List” § 212(a)(3)(A)(i)(II)); taking a job on-campus ((f)(9)); and applying for a transfer ((f)(8)). Although INS received many comments suggesting that students should not have to receive “prior” approval, INS refused to remove the “prior” requirement, again explaining that “[t]o allow a student to act without first receiving approval from the DSO, undermines the most basic concept of SEVIS” (67 *Fed. Reg.* 76260). A student must “consult with, and receive the necessary permission . . . prior to performing an act that affects status” (67 *Fed. Reg.* 76260).

The “most basic concept” that INS referred to in its response to comments is to evidentially ensure that students remain students. However, another fundamental concept implied in these rules is to ensure that students and foreign student advisors know their place in the chain of command. INS consistently rejected any suggestion that enabled students to communicate directly with SEVP as “undermining the primary purpose of SEVIS” (67 *Fed. Reg.* 76265). Similarly, INS rejected comments requesting that DSOs be able to determine “other legitimate reasons” for a student to drop below a full-time course load: “The Service does not adopt this suggestion to permit the DSO to make a determination based on personal or academic reasons.

Such a determination is extremely vague and is open to abuse” (67 *Fed. Reg.* 76260). SEVIS tracks and monitors, but it also establishes loyalties and a hierarchy of authority: Students ask permission; schools report; the government makes the rules.

While the rules suggest that institutions are suspect, foreign students emerge as all the more suspect. Accordingly, the rules provide these foreign students with little autonomy: During a course of study, students who experience academic difficulties are allowed to study part-time for only one semester. Students with certified medical conditions are allowed to pursue part-time study for a year, but must get approval each semester (§ 214.2 (f)(6)(iii)(B)). The SEVIS system will presume a student is “out of status” and no longer entitled to stay in the United States if the student does not fulfill any of the visa conditions. A student must be “out of status” for no more than five months, and must receive the schools recommendation and the ICE district director’s approval to be “restated to student status” (§ 214.2 (f)(16)(i)). If a student is “out of status” for more than five months, the student must prove “exceptional circumstances,” which are defined as a natural disaster or negligence on the part of the school to reinstate the student status ((16)(i)). These rules seem to impliedly address concerns such as those raised by Senator Feinstein shortly after 9/11 that our country had become a “sieve” (U.S. Cong. S. Subcttee. on Tech., Terrorism, and Govt. Info.). Although the rules profess to be a balancing of interests that value international students but also recognize the need for national security, these provisions suggest that valuing international students does not necessarily mean trusting them.

The government’s distrust of institutes of higher learning and foreign students is also evident in the regulation’s breadth of coverage, both in terms of who is covered and what is covered. For example, the SEVIS reporting requirements apply to all categories of student visas, as well as the visas of students’ spouses and minor children (§ 214.2(f)(3)). Spouses and children

“may not accept employment” ((15)(i)). Spouses “may not engage in full-time study” ((ii)). Children may only engage in study through the twelfth grade ((ii)). If dependents wish to further their studies, they must change status and obtain their own student status, despite the considerable expense, time, and possible travel to one’s home country that this involves. Although commenters urged INS to allow dependents to enroll in full-time study without changing status as was allowed in the past, INS rejected this suggestion as an idea that would potentially undermine the value of SEVIS: “The need to monitor nonimmigrants being educated and trained in the United States is of vital importance to the national security of the United States” (67 *Fed. Reg.* 76266). The law allows no exceptions—students must be regulated, and the logic as to why these students must be monitored is implicitly connected with the students’ potential link to terrorism.

#### **4. Foreign Students Are Visitors Who Should Not Feel Too at Home**

The language of the SEVIS rules implies that international students are ontological visitors. The language also implies that they pose a threat at a variety of levels. In the most extreme case, these foreign students could be terrorists, but they could also be economic threats, hoping to remain beyond their visa terms to permanently live and work in the United States. ICE views international students who hope to remain in the U.S., whether by legal or illegal means, as threats; ICE is not concerned with citizenship or naturalization issues, but with ensuring compliance with the terms of one’s visa and with removing those who overstay or otherwise violate a visa. From ICE’s perspective, these students, who are nonimmigrant visa holders, are no longer acting according to the terms of their visa if they seek to change their status (“About ICE”).

The SEVIS language suggests that students are “temporarily” in this country and should not anticipate becoming “permanent” members of this society. The rules state that students are “admitted for duration of status” (§ 214.2(f)(5)(i)) which is defined as the time in which the student is “pursuing a full course of study” or “engaging in authorized practical training” limited to 12 months ((f)(5)(i) & (f)(10)). Students must “prepare for departure from the United States” within 60-days following the completion of studies or within 15 days if students have been authorized to withdraw from studies” ((f)(5)(iv)). A student “who fails to maintain a full course of study without the approval of the DSO [Designated School Official] or otherwise fails to maintain status is not eligible for an additional period of departure” ((iv)). In other words, such a student must immediately leave the country, or ICE will remove the student. The rules which perceive international students as potential criminals likely to fall “out of status” and intending to slip through any cracks in the system, operate to keep these students at a distance and subject to scrutiny. The rules regard all visa overstays as dangerous: An international student overstaying his or her visa might be like the driver in the first World Trade Center bombing who overstayed his visa (Schemo and Pear). If student visa holders fail to fulfill the condition of being a full-time student, they must leave. The rules reward a student for communicating with the DSO before withdrawing from classes by allowing that student a 15-day grace period to “make and complete arrangements for travel and departure” (67 *Fed. Reg.* 76262). However, if a student does not receive DSO prior authorization, SEVIS allows no grace period: “The importance of notifying the DSO and obtaining permission for withdrawal from classes cannot be overemphasized” (67 *Fed. Reg.* 76263). If a student wants “to avoid adverse consequences,” he or she must establish “a solid relationship and line of communication” with the DSO (67 *Fed. Reg.* 76263). The rule provides little flexibility, but instead reflects the “strict parenting style” of the Administration, a

style akin to the realist style with its value for decisive action and top-down decision-making (Lakoff, *Moral Politics*).

#### **IV. The Impact of the Policy Changes**

The federal government now includes a program devoted to monitoring international students and the institutions that host them. Although the government no longer explicitly articulates its reason, it finds it appropriate to house this program in the Department of Homeland Security.

The program responsible for international students exists within a federal department responsible for national security, a department created in the wake of the terrorist acts of 9/11. This department supervises the operation and controls communication about international students.

The government has embedded an ideological view in American immigration policy in which the granting of a student visa and the designation of the international student status triggers a surveillance program. Because the United States government views a person’s status as an international student with suspicion and caution, the government has empowered organizations, such as DHS, ICE, and SEVP, to monitor international students on the basis of these views.

However, the government does not explicitly state its suspicions or concerns.

The analysis of DHS and its organizational structure exposes the enthymematic process at work: By placing international students under the jurisdiction of the Department of Homeland Security, arguments once explicitly stated about international students as possible terrorists become implicit or enthymematic as the DHS-established structures carry out their day-to-day operations. As Bazerman’s theory suggests, the placement of international students under the jurisdiction of DHS “engages the members of the audience in a kind of thinking” about international students as these audience members “provide the missing links in the argument” as to why the department created to fight terrorism should regulate international students. Although

the audience is led to certain conclusions, the audience appears to reach these conclusions on its own, which strengthens its support of the organizational structure (Bazerman, “Nuclear Information” 275). The implicit assumptions and unstated understandings about international students that are used to justify DHS’ policies are barely visible; however, they emerge through a careful consideration of the organizational structure of DHS, the language used in the mission statements and the expression of goals by the offices within DHS that deal with international students, and through the SEVIS rules.

In changing the framework of government, the Bush Administration institutionalized a way of discussing international students as potential terrorists that influences the way American society perceives and responds to international students today. The organizational structure and the language used by DHS continue to implicitly advance the political views established under the Bush Administration. The enthymematic process at work in the choice of organizational design reveals an ideological commitment to keep the homeland safe through nationalistic policies, such as those expressed in the (Homeland Security Directive-2) to “end the abuse of the visa status” and to protect our “national security” from those who come “to commit terrorist acts.” The words “international student” now reside in texts with other words like “terrorism,” “terrorist,” and “national security threat,” are codified in the USA PATRIOT Act and EBSVERA, and are acted upon through the organizational framework of DHS, ICE, and SEVP. These assumptions, embedded in the organizational structures, are unstated, but people act according to these implicit assumptions by adhering to these structures.

When SEVIS first “came on-line in the summer of 2002,” international students, schools, and the government had to learn a new vocabulary and adapt to a new culture (Haddal 8 n24). Today, it is common to hear that international students and their activities are “tracked” (Farrell).



A school now has the role of “monitoring foreign students” (Farrell) or has the role of “government watchdogs” (Schemo). Similarly, DHS refers to “the close partnership that SEVP has with its front-line constituencies—the universities and colleges” (“SEVIS Newsletter”). DHS has conditioned schools to report information through SEVIS; through training and experience, schools have learned the consequences of failing to report (“F and M Student Record Termination Reasons in SEVIS.”). In fact, schools now even describe themselves as an “extension of law enforcement. . . . And it’s second nature to us now. We’re part of keeping our nation safe” (Kalionzes).

The new relationship between schools and government, and the implicit assumptions embodied by the relationship, could have both tangible and intangible effects upon an international student’s identity. For example, international student advisors want international students to trust them and may point out that they do not work for DHS, but schools are required by law to provide information on international students that “federal agents can now *mine* for suspicious behavior or violations” (Sanchez). Some privacy advocates have pointed out that this ability to “mine data” enables the government “to use potentially intrusive techniques” to pursue an individual or to evaluate a “target as a potential informant” (Savage).

An international student can also be profoundly affected if a school fails to update student records within the legal time limit: SEVIS automatically “terminates” or “cancels” student records (U.S. ICE, “ICE Fact Sheet: SEVIS Reporting Requirements for Designated School Officials”). Similarly, if data in SEVIS are inconsistent, even if unintentional, the system will treat a student as a “status violator” (U.S. ICE, “ICE Fact Sheet: F/M/J Nonimmigrants: Managing Information that the U.S. Government Needs About Nonimmigrants During Their Visit”). This could have life altering consequences for the student as the termination record stays

in SEVIS for years and can be used in making future determinations. As a result, a student identified as a “student visa violator” could be subject to deportation and can be barred from returning to the U.S. for years (U.S. ICE, Fact Sheet: F/M/J Nonimmigrants: Managing Information that the U.S. Government Needs About Nonimmigrants During Their Visit”).

Moreover, if SEVIS indicates that a student may be in violation, it will transfer the student record to the Compliance Enforcement Unit (CEU), which will investigate a student (“About ICE”). The Compliance Enforcement Unit’s investigation draws on a multitude of government databases “to gather and analyze leads . . . potential security or criminal threats and ensure full compliance with immigration laws” (“About ICE”). The Compliance Enforcement Unit website states, “Maintaining the integrity of our immigration system requires strict enforcement of official U.S. sponsored visa programs, databases, and documents” (“About ICE”). Maintaining this integrity means “track[ing] and pursu[ing] foreign students . . . who violate their immigration status” (“About ICE”). Moreover, in the interest of preserving integrity, the government seems to presume a violation until the possibility is disproven: If SEVIS considers a student “terminated,” for whatever the reason, the student is “subject to arrest and removal until officially reinstated” (U.S. DHS, Office of Inspector General, *Review of the Immigration and Customs Enforcement’s Compliance Enforcement Unit* 8). ICE refers a large number of records to CEU from various systems, including SEVIS; these referrals have the potential to affect numerous lives. In 2004, SEVP referred an average of 500 termination leads to CEU each week (9).

The enforcement unit will aggressively pursue international students who fail to comply with the SEVIS rules. The media have lauded these pursuits as an example of the government’s ability to respond to warning signs and to secure the nation. When, for example, 11 of 17

Egyptian student visa holders on an exchange program failed to show up for class at Montana State University one week after arriving in the country on July 29, 2006, the university notified ICE through SEVIS (Haddal 8). ICE and the FBI issued a nationwide alert; approximately two weeks later, officials had arrested all 11 on “administrative immigration violations as out-of-status,” but did not discover that they posed any imminent threat (CNN, “Nine Egyptian Students in U.S. Custody”). The Montana State incident was “generally accepted as [an] indicator[ ] that SEVIS is working as intended . . . adequate for monitoring students and alerting authorities to suspicious behavior or unlawful movement “ (Haddal 8). However, critics have suggested that SEVIS’s main achievement has been to “reassure[ ] a skittish public” (Schemo).

Although under the Obama Administration, DHS talks about the ability of international students to “cement relationships between nations and foster intercultural understanding” (SEVP, “SEVIS Newsletter” From the Dir. L. Farrell), student visa policies have normalized a sense of suspicion about these students: “By providing a strong security framework to weed out those who would abuse these worthy programs” (SEVP, “SEVIS Newsletter” From the Dir. L. Farrell). This “strong security framework” illustrates DHS’s continuation of the Bush Administrations’ strict enforcement style. DHS manifests this strict style through its ongoing publication of itself as a tough enforcer: “For two years running, ICE has removed more aliens than it did under the prior Administration. Additionally, ICE removed 70 percent more convicted criminals than it did in 2008 under the prior Administration” (U.S. ICE, “Newsroom: Fact vs. Fiction”).

ICE’s tough stance extends to schools and international students. In March 2010, for instance, John Morton, the Assistant Secretary of ICE, testified before the House Committee on Homeland Security on the ability of ICE to fight fraud through SEVP. Morton described “Operation Class Dismissed” as a criminal investigation carried out by ICE in which the owner

and operator of a Miami Language School was indicted for sponsoring international student visas “without requiring them to maintain full courses of study. . . . The ICE investigation uncovered information that only approximately five percent of the school’s students attended class on any given day” (U.S. Cong. H. Cttee. on Homeland Security). ICE also arrested 81 student visa holders “from countries including Thailand, Syria, Honduras, South Korea, Japan, Colombia, Dominican Republic, Turkmenistan, Turkey, Indonesia, Venezuela, Brazil, and Kyrgyzstan” who purported to be attending the school (U.S. Cong. H. Cttee. on Homeland Security).

Many questions remain as to whether the increased security toward international students is worth the costs. It is hard to measure the impact of this emphasis on enforcement and removal on national security; it is even hard to measure whether enforcement has had an impact on the government’s ability to remove those individuals who have overstayed their visas. Specifically, a review of ICE’s Compliance Enforcement Unit (CEU) by the Office of the Inspector General revealed that although ICE had a more aggressive stance toward visa overstays than INS (U.S. DHS Office of Inspector General, *Review of the Immigration and Customs Enforcement’s Compliance Enforcement Unit* 17), CEU’s apprehension and removal process had “a minimal impact on reducing the number of overstays in the United States” (3). From 2004-2005, CEU received 301,046 leads from three databases, including SEVIS. However, it processed 142,816 leads, just under half of the total. Of these, CEU sent 4,164 for field investigation, which resulted in 671 apprehensions. Very few of those 671 aliens were likely removed from the States; any individual who was removed would have had a “criminal history” (3-4). None of the “status violators” identified through SEVIS appear to have been terrorists or to pose an imminent threat.

Proponents may argue that the policies have value as a deterrent for would-be threats, but any such deterrence value comes with a cost: the government’s “broad net” is “catching all kinds

of people who are no danger whatsoever” (Schemo). Data measuring international student applications and enrollment in the first two years after the implementation of SEVIS suggest that harsh post-9/11 policies deterred international students and scholars and motivated these students to study in other countries or to avoid travel to the United States (Schemo; “Open Doors 2004”). Today, “the United States can no longer assume that this country is everyone’s first choice for undergraduate, graduate or postgraduate work” (Dean; Marklein, “U.S. Colleges’ Appeal Fading for Foreign Students”).

Strict immigration policies have significantly discouraged individuals the United States “needs,” such as those international students and researchers in science, technology, engineering, mathematics, or the so-called “STEM fields” from coming to this country (Haddal 8). The increased security continues to make it difficult for the United States to “attract the number and quality of foreign students its higher education system demands” (Haddal 8). Data from 2009 suggest that international students who temporarily return home or travel outside the U.S. to conferences still experience significant delays when trying to return to the United States (Haddal 8; Dean). The issue is a concern “because American universities rely on foreign students to fill slots in graduate and postdoctoral science and engineering programs. Foreign talent also fuels scientific and technical innovation in American labs” (Dean; “U.S. Nat’l Research Council of the Nat’l Academics of Science, “Beyond Fortress America”). A 2006 Congressional Research Service report suggests the following: “For the first time since the events of September 11, 2001, the focus on foreign students trained in the U.S. has shifted from security concerns, as universities and employers increasingly recognize that these students are key and readily available resources for American businesses struggling to stay competitive in the global economy” (Clubb, “Policy Spotlight”).

While institutes of higher education and the private sector seek ways to limit delays and advocate for “pathways to immigration” for international students, particularly those in STEM fields (Haddad 8), security concerns continue to predominate our student visa policy. These security concerns will predominate as long as the organizational structures of DHS and the SEVIS rules carry out the enthymematic process this chapter describes. The ability of these organizational structures to reinforce the view of international students as potential terrorists is elusive and therefore is, a powerful and insidious rhetorical device. Even those who advocate on behalf of international students seem to overlook the impact of the organizational structure to perpetuate this view of students. For example, NASFA’s Victor Johnson only focuses on the explicit arguments when he notes: “We have been successful at changing the nature of the debate on international students since the immediate aftermath of 9/11. Political leaders and editorialists now routinely recognize the importance of international students to our country” (26). The Bush Administration, however, has had the greater success at changing the nature of the debate on international students. In fact, it has “won” in the sense that SEVIS enacts its view on a daily basis. Yet, this “highly publicized monitoring system, unique to the United States, for which students have to pay, has done nothing to enhance the reputation of the United States as a welcoming country in which to study” (Johnson 26).

SEVIS and the enthymematic process it embodies raise concerns because of the view of international students they profess and because they potentially inhibit debate as to what visa policy should be and limit the ability to make a meaningful change through discussion alone. As Victor Johnson, who seeks to shift visa policy, argues: “We desperately need what we do not have: a visa policy, which maximizes national security by focusing not on keeping objectionable individuals out, but also on letting legitimate individuals in” (30). Rules like SEVIS make such

policy shifts difficult to achieve because SEVIS enacts a framework that, at its core, rejects the premise that “international students are part of the solution to terrorism, not part of the problem. . . .” (31); as such, SEVIS, ICE, and DHS continue to reinforce a view of a foreigner as a threat.

## Chapter 6: Conclusions

### I. Language, Organizational Change, and Meaning

This dissertation tells a story about international students and the shifts in law and policies that quickly occurred and dramatically affected these students. The mechanism responsible for these shifts involved a complex interaction between discursive practices and organizational change. This is also a study of persuasion. What causes perceptions to change? What accounts for shifts in law and policy? The changes in law and policy toward international students in the post-9/11 United States involved “discourse strategies,” or “any means of change using primarily words” (Allen and Faigley 143). However, although my study initially focused on language and discourse, I soon found that my study of change, particularly as it pertained to law and policy, needed to include institutions and organizational design as well as discursive practices.

These discursive strategies brought about a new organization—DHS—which implemented law and policy consistent with the values that the discourse expressed. In turn, this law and policy affected future discourse, influencing how the government and society discussed international students. The organization controls what discursive strategies, even what words, are used in relation to international students. As a result, the discourse and the re-organization, which are manifested in laws such as the Homeland Security Act and SEVIS, habitualize a certain ideological view of immigration policy and international students. The law, which regards immigration policy as a tool of national security, redefines what was once an international student as a possible terrorist. Institutions controlling and influencing language is not a new concept: As Wetzel’s work reminds, people construct organizations to accomplish what they cannot do on their own (13). However, this study is unique in that it examines how organizational design can become a rhetorical device, operating to establish new organizational



structures and new systems of communication that embed certain assumptions and replace discourse.

I sought an answer to the question: Did 9/11 change the meaning associated with the words “international student”? My answer to this question is both “yes” and “no.” 9/11 did alter the meaning associated with “international student” in the sense that U.S. immigration policy has changed toward international students. These policies transformed how U.S. society treats and perceives international students. Today, the government routinely screens and tracks international students as if these students were threats to national security. Although the government treats these students in a manner that ensures that they will not easily assimilate within U.S. society, the basis for this treatment—the assumption that international students could be terrorists—is implicit and rarely discussed. However, 9/11 did not change the meaning associated with “international student” in the sense that the events of 9/11 alone cannot account for the change. The change was far more complicated, involving the use of pre-9/11 argument and deliberation, strategically offered in the post-9/11 era, using organizational change to prevent further deliberation, and institutionalizing a particular view of international students as threats to national security.

## **II. Evaluating the Methodology**

Although discursive strategies alone did not bring about the change, the study of these discursive strategies helps to clarify how and why change occurred. Rhetorical analysis exposes the nature of the change and brings to light the decision-making process involved. I define the change to immigration policy that occurred following 9/11 in terms of Leland Griffin’s “historical movement” (184). The Bush Administration desired change and sought to alter the environment or, in Griffin’s words, the Administration “attempt[ed] to effectuate change” (185). As Griffin

discussed, this historical movement was marked by three phases: 1) the inception, in which “pre-existing sentiment . . . flower into public notice” or a “striking event occurs” which creates the movement; 2) the rhetorical crisis, in which the balance between “opposing groups of rhetoricians” is disturbed; and 3) the consummation, in which rhetoricians largely abandon efforts either because they have “won” or because further opposition is “useless” (186). To study an historical movement, the researcher’s task is to isolate the “rhetorical movement” within a particular historical context. Griffin suggests that this can be done by “turning the movement on a spit . . . by piercing it now from one angle, now from another, as the movement spirals to consummation” (188). Similarly, Paul Ricoeur offers that history is “bound to our narrative understanding by a line of derivation that we can reconstruct step by step and degree by degree with an appropriate method (Ricoeur 91).

To pierce this movement, I selected as my “appropriate method” three tools of rhetorical analysis: 1) *kairos*; 2) frame theory; and 3) genre analysis. Using these three tools, I examined the inception phase as marked by the events of 9/11; the rhetorical crisis that centered on international students and the INS; and the consummation phase as indicated by the establishment of DHS and SEVP, a program that tracks and monitors international students. I chose these particular methods for their ability to isolate the role of temporality and time, narrative, and institutionalization within an historical movement. Although each method considers a different level of analysis, together these three methods form a coherent way to examine the story of international students. The concepts intertwine to expose a process by which an organization was designed to not only “facilitate the dissemination of argument,” as Griffin suggests (187), but to also shut down argument or “consummate” the movement and effectuate change. Moreover, the rhetorical analysis reveals that particular changes were not

inevitable, but the product of conscious and unconscious choices, “human affairs” that rhetoric had a “vital function” in shaping (Griffin 188).

Applied individually, as independent tools of analysis, *kairos*, frame theory, and genre analysis each provide valuable insights. For example, *kairos*, with its focus on the “right moment,” adds another dimension, time, to rhetorical analysis and provides a means to consider the context in which argument occurs. The subject of concern moves beyond the rhetor and audience and even the discourse used to persuade and to encompass the situation in which these parties act. As such, *kairos* provides a means by which to consider the impact of material realities. In the case of 9/11, the material reality cannot be ignored. The events of 9/11 matter, but these events matter because a rhetor made use of them. The events alone did not determine what actions and decisions would follow. As an analytical tool, I suggest that *kairos* should not be used in a way that implies that events are determinative or that ignores human agency and human capacity for storytelling. Events, situations, and facts gain rhetorical value with human interpretation. The events of 9/11, the facts as to what occurred, were subject to interpretation. The Bush Administration interpreted the events of 9/11 and advanced a particular ideology through arguments of timeliness. The Administration used the material reality of 9/11 and arguments of time, specifically urgency, to highlight certain facts. It then drew upon those selected facts, such as the hijackers’ visa status, to advance particular policies and a specific ideology. *Kairos* becomes a valuable analytical tool when it is situated within a narrative and recognized as a rhetorical device within this narrative process.

Similarly, frame theory provides a means of understanding a rhetor’s perspective, but the idea of framing is particularly powerful when understood as a means of analyzing human agency. In other words, framing is interpretative. People perceive events in a certain way

because they interpret these events in a certain way. Cognitive science suggests that the framing process may very well be inevitable. The Bush Administration may have had no choice but to frame the events of 9/11. However, it did not have to frame the events in the way that it did; the choice of frame and the ideology attached to a particular frame are not inevitable, as my application of frame theory in the context of post-9/11 immigration policy toward international students illustrates. The material reality of an event, the facts of a situation, and the empirical data do not determine the frame.<sup>47</sup> On the contrary, the framing is the rhetorical device that turns the material reality, facts, and data into a persuasive story. Other versions of the story are possible. When the Bush Administration framed 9/11 as the result of government inefficiency, the frame was not the inevitable outcome of empirical data. Instead, the frame resulted from the Administration’s ideological perspective—a perspective that valued strict parenting, top-down control, and decisive action. The data selected and the frame that held this data were ways to influence decision-making and achieve certain ends. Considered in this light, frame theory can make a rhetor’s ideological perspective visible and the audience’s acceptance of this perspective conscious.

Finally, by focusing on patterns or the way in which people respond similarly to events that they perceive as recurring, genre analysis reveals how ideology can become institutionalized. Genre analysis identifies structures or organizations that emerge to address particular tasks. As with *kairos* and framing, genre analysis is at its most effective when situated in a narrative and viewed as a tool that human agents can use to advance ideologies. For

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<sup>47</sup> In relation to this point, see George Taylor’s work on narrative, “Derrick Bell’s Narratives as Parables,” in which Taylor argues that narratives “as manifestations of new truths serve as a tool in the material arsenal for change” (231).

example, the Bush Administration’s style favoring centralized decision-making over a deliberative process resulted in a government body, DHS, which materialized this style. Looking at genre as non-neutral helps to uncover the implicit assumptions embedded in the choice of genre. The selection of a particular genre acts as a rhetorical device. Genre analysis placed in the context of a transformative event like 9/11 reveals not only the influence of discursive strategies in shaping institutions, but also illustrates the rhetorical force of institutional change upon discourse. Specifically, the Bush Administration’s arguments in favor of DHS not only influenced the organization, but the organizational change also acted rhetorically to consolidate power in the executive branch, to advance a view of immigration policy as an aspect of national security, and to define international students as threats to that security.

Ultimately, these three methods of rhetorical analysis suggest that the power of the Bush Administration’s narrative was not derived from the events of 9/11 or its use of discursive strategies, although both contribute to the narrative’s persuasive value. Instead, the power of the Bush Administration to influence decision-making and affect the meaning associated with “international student” stemmed from the Administration’s ability to use this narrative to transform the structure of government and bring about material change. Once the narrative succeeded in changing structures, these structures then replaced discourse and enforced a new meaning.

### **III. Implications and Future Studies**

Because of the interdisciplinary nature of my research, the implications of my work extend beyond rhetoric to law and immigration studies. Most immediately, however, my work illustrates the way in which rhetoric operates as both a tool of analysis and as an object of study. Language proves useful in studying the process of change, promoting change, and understanding how

meaning is made. The close reading of an historical movement is a time-consuming endeavor, but it is perhaps the best way to see how language influences change. In this study, I argue that language should not be the only focus within a rhetorical analysis. As shown, in certain contexts, language both gains its power through institutions and loses its power because of institutions. Organizations and organizational change can become so intimately connected with the rhetorical process that they must be studied as a rhetorical device. In analyzing this situation, for example, I propose that the new organization, DHS, acted as a rhetorical device that supplanted deliberation, imposing and perpetuating a particular point of view.

Furthermore, my study highlights the power of legal institutions in influencing values, attitudes, meaning, and the use of language within the legal realm and within society in general. For example, this work exposes the capacity for administrative law to influence the deliberative process. As decision-making moves from Congress to the executive branch, which implements and enforces laws enacted by Congress by promulgating rules and regulations, the assumptions and values that support the law and the accompanying rules all but disappear as the application of these rules becomes routine. Although the ideological perspective of a rule is not always easily identifiable, the rule is not ideologically neutral and can affect language in a variety of ways. Agencies typically formulate rules to implement statutes once the deliberation process has run its course and the ideological basis for the law has been subject to debate. However, what becomes evident in the context of the SEVIS rulemaking process is the capacity for political leaders to use rhetorical strategies such as *kairos* and framing to hasten the deliberative process and to move decision-making from the Legislature, the deliberative body, to the executive branch. In such a case, the administrative agency, in formulating rules and regulations to implement and enforce the law, potentially institutionalizes behaviors, attitudes, and language

without subjecting the ideological basis for the law to meaningful debate. With a rule like SEVIS, which institutionalizes the concept of “tracking” and “monitoring” international students, the parties affected by the rule—international students and institutes of higher learning—have little political voice and little ability to challenge the rules or the underlying values the rules promote.

Finally, by endeavoring to make the basis for the immigration policy and rules such as SEVIS transparent, this dissertation offers a way to question post-9/11 policies toward international students and academic institutions as based upon faulty assumptions. For the public, this work similarly suggests a means by which to expose ideology and to challenge as shortsighted those national security policies that suggest that all immigrants, especially international students, threaten American society.

This study is just a beginning. Future studies should consider a number of issues: 1) the effect of these policies on international students, including the ontological impact of these policies upon international students; 2) the efficacy of these post-9/11 policies in terms of improving national security or countering terrorism; 3) the impact of administrative law in deliberative democracy; and, as I briefly discuss below, 4) the advancement of rhetorical theory.

For rhetorical theory, new studies have the ability to validate these findings, advance historical narrative as a methodology, and explore the relationship between discursive practices and organizational design. For example, a content analysis, similar to the work done by Kaufer and Hariman, that compares the discursive practices of the Clinton Administration and the Bush Administration could identify specific linguistic patterns associated with these styles. Content analysis could also help identify the linguistic patterns associated with particular frames;

Hodges’s work identifying “lexical correspondence” connected with a war frame and crime frame offers one example of such an analysis (27).

Additionally, Paul Hopper’s work on emergent grammar, which asserts that language has no inherent fixed structure, could be used to probe the relationship between language and organizational structures (Emergent Grammar; “Times of the Sign: Discourse Temporality and Recent Linguistics”). Information system theorists have applied Hopper’s work to suggest institutions involving computer languages, including electronic data exchange systems, need room to grow or “emerge,” as do human languages. The authors state that structuralist theories of grammars, which do not allow systems to change, often govern current systems (Damsgaard and Truex). In terms of my work, this research on information systems offers another potential lens by which to examine conversations among international students, academic institutions, and the federal government that are filtered through SEVIS. To what extent is SEVIS, an electronic data exchange system, driven by assumptions that see language as fixed as opposed to flexible, negotiable standards emerging from use? How do such assumptions affect communication? What are the implications of inter-organizational computer-to-computer communication upon discursive practices and government policies?

If, as Paul Hopper’s theory suggests, discourse is temporal and unfolding, “emerging from what has occurred before” (224), how will the rhetorical practices discussed in the context of post-9/11 immigration policy toward international students emerge over time? How will organizations like SEVIS that emerge from discursive practices continue to emerge? How will current immigration policy shape and be shaped by these changing practices? Will this story continue, and what will the next story be? My hope is that the story of international students will



cease to be a story of danger and threat and will instead become a story of tolerance and appreciation.

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