

# EX-PATRIOTS: THE EFFECTS OF ANTI-TERRORISM LEGISLATION

*by B. David Rowe*

On October 26, 2001, President George W. Bush signed into law the “USA PATRIOT” (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act. The law places a heavier administrative responsibility on universities to screen and track international students while drastically limiting their ability to enroll foreign nationals.

This paper proposes modifications to the USA PATRIOT Act that would better accomplish national security objectives without creating an undue burden on educational institutions and without decreasing foreign student enrollment unnecessarily. Security aims and educational goals can be met more efficiently and effectively by placing the U.S. Foreign Service and not universities in the role of issuing crucial immigration documents, as the law now provides.

The new law did not substantially change the thrust of the 1996 law known as the Illegal Immigration Reform and Immigrant Responsibility Act, but it expanded and fully funded the implementation of Section 641 of this law concerning the monitoring of foreign nationals studying in the United States on student visas of various types. Before the attacks of

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September 11, higher education leaders actively opposed implementing this section based on the fear that it would harm foreign student enrollment in U.S. colleges and universities while increasing costs and administrative responsibilities for those same institutions. But the opposition collapsed after the attacks in the midst of a spirit of national unity that rapidly swept the nation.

Early reports indicated that many of the hijackers entered the United States on student visas. Later reports debunked the initial speculation.<sup>1</sup>

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According to the Public Affairs Office of the Immigration and Naturalization Service (INS), only one of the hijackers actually entered the United States on an F-1 student visa.<sup>2</sup> Nevertheless, the early speculation about student visas and the later INS embarrassment of having issued student visas to two more of the hijackers, who originally had entered on B-1 visitor visas, raised the specter that the system could be exploited as a vulnerable opening in the immi-

gration policies of the United States.<sup>3</sup>

The USA PATRIOT Act provisions regarding international student visas attempt to close what some have considered loopholes in the process of obtaining official permission for studying in the United States. However, as will be discussed, these provisions may decrease security by threatening the important role of American higher education in fostering intercultural and international understanding among U.S. citizens and foreign nationals.

Foreign student enrollment has a noticeable impact on colleges and universities in the United States with more than 547,000 students in the 2000-01 academic year making up approximately 3.8 percent of total college and university enrollment. Seventy-five percent of those students were partially or fully funded by sources outside the United States, contributing between \$11.04 billion and \$12.3 billion to the U.S. economy.<sup>5</sup>

While significant in numbers and economic impact, foreign students only account for approximately 2 percent of the total number of foreign visitors in the United States on some type of visa. In 1999, that overall nonimmigrant visitors number was 31.4 million.<sup>6</sup>

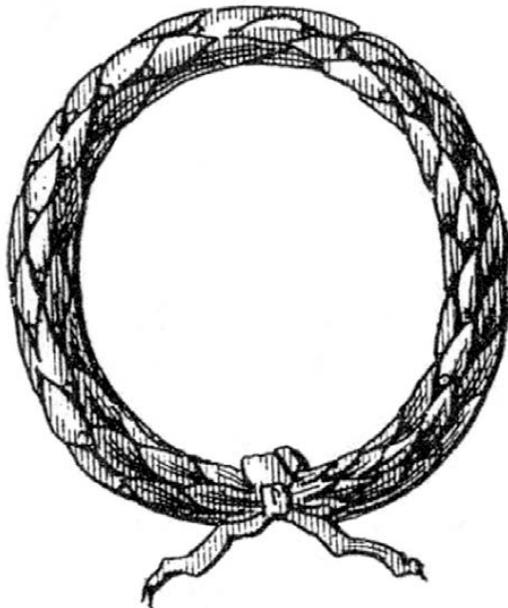
Even though far more foreign nationals are admitted into the United States on non-student visas, the September 11 attacks were not the first set of circumstances to cause the INS or Congress to look at the potential

threat posed by foreign students. The 1972 attacks at the Munich Olympic Games and the taking of hostages at the U.S. Embassy in Tehran in 1979 both prompted closer scrutiny of foreign students and visa programs, the latter resulting in increased regulation and reporting requirements for institutions wishing to admit foreign nationals.<sup>7</sup> “After the first attack on the World Trade Center in 1993, Congress instructed the INS to develop an electronic database to facilitate the rapid sharing of information about international students.”<sup>8</sup> The INS began developing such a system.

**I**n 1996, Congress passed a new law to deal with illegal immigration. Section 641 of this law regulates and monitors academic exchange visitors and the institutions that welcome them by requiring educational institutions to collect and report to the INS information regarding the status and whereabouts of aliens in U.S. institutions, as well as an institution’s disciplinary action taken against those aliens as a result of being convicted of a crime. The law prescribes that, where practicable, the data collection will take place by electronic means.

The government will issue visas only to students coming to institutions which comply with these monitoring provisions and which collect the required user fees from visiting aliens to reimburse the national treasury for the government’s costs for administering the program. The program, slated for full implementation by January 2003, is now known as the Student and Exchange Visitor Information System or SEVIS.<sup>9</sup>

Institutions of higher education and the organizations which represent them in policy matters have raised concerns about this system from



its inception. The concerns, discussed in detail below, revolve around a general sense that the full implementation of the electronic tracking system could harm foreign student enrollment in the United States.

After having once called for the repeal of Section 641 of the 1996 law, the NAFSA: Association of International Educators relinquished the debate after September 11 as an expression of national unity.<sup>10</sup> Remaining committed to openness to foreign students enrolling in U.S. colleges and universities, other educational leaders echoed NAFSA's per-

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sisting sentiments while supporting Congress's desire to act swiftly to tighten regulations regarding student visas.<sup>11</sup> With the blessing of former opponents to the 1996 law, Congress passed the USA PATRIOT Act, including a section which implements, expands, and funds the 1996 mandates for monitoring visiting students.

USA PATRIOT, however, did not address many, if any, of the concerns raised by educators prior to September 11 about the new

INS system for monitoring students. These concerns dealt with three types of issues: problems due to implementation, a reduction in the benefit to the nation which comes from giving foreign students a close look at American society, and the financial impact of weakening the United States' enviable position in the global higher education market.

While the 2001 legislation fully funds the startup costs of the new monitoring system, it does not provide government funding for the long-term, ongoing operating costs of SEVIS, either to the government or to the universities. There is no provision at all for covering the universities' costs. The law provides that the government's costs be paid by visa recipients through a non-refundable fee system. Currently set at \$95 and capped at \$100, the collection of the fee is the responsibility of educational institutions. Educators fear that the additional cost would deter foreign students from applying to U.S. schools, especially if the fee is ultimately required of all applicants, not just visa recipients. Especially challenged would be shorter and low-cost programs where the additional fee would constitute a higher percentage increase in the cost of a foreign student's education.<sup>12</sup> Further, requiring colleges to collect the fees and reimburse the Attorney General creates additional work and responsibility for colleges and universities already burdened with increased reporting and monitoring responsibilities.<sup>13</sup>

Implementation of the new SEVIS system will create additional barriers to access, especially for students in poorer undeveloped countries who may not have access to the technology required to apply for visas over the Internet or the ability to pay by credit card.

Because of these factors, it is likely that the number of foreign students studying in the United States will decline. The educational implications of this possibility are serious according to some educational leaders. While some studies have found that the presence of international students on U.S. campuses does not necessarily increase or create positive intercultural attitudes among either foreign or domestic students,<sup>14</sup> other educators argue that the case for international education is strengthened by the attacks of September 11, and the need to increase, not decrease, the number of exchanges is more apparent now than ever. International

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exchange advocates link foreign students positively to national security and global safety.<sup>15</sup> According to the Institute of International Education (IIE), "When more international students are given the chance for meaningful study and opportunity to gain an appreciation of our society, there will be less hatred of America and misunderstanding of our values and way of life."<sup>16</sup> In other words, more international students, not fewer, are essential in promoting the prospects of a peaceful future for the United States. Applying this premise to the potential for decreasing the number of approved visas may not simply fail to attain the goal of national security, it may thwart it altogether by failing to acknowledge and take advantage of the powerful tool of intercultural exchange in promoting long-term peace and understanding.

No matter what the inter-cultural and educational effects of foreign exchanges, decreased foreign national enrollment in U.S. institutions could have a sizable economic impact on the United States and particularly on U.S. educational institutions. If heightened requirements become impediments to academic exchanges, then fewer full-pay international students will be attending U.S. schools. If the regulations also increase the cost of doing business with foreign nationals, then the problem compounds itself, creating an ever-increasing inefficiency in the administration of the program. Colleges and universities, especially smaller colleges with less research emphasis, may eventually opt out of

participating in the system. All of this could jeopardize the United States' position in the global market as the preferred destination for exchange students.<sup>17</sup>

After September 11, educators joined the ranks of more vocal advocates of the SEVIS tracking system in supporting increased monitoring and regulation of those entering the country on student visas. The issue of student visas was identified explicitly and specifically by the

President as an area of vulnerability for the United States. "If a person applies for a student visa and gets that visa, we want to make sure that person actually goes to school; in other words, if they're using the visas for the intended purpose," Bush said. "...Sometimes, people come here with no intention to fulfill their purpose."<sup>18</sup> Education leaders fell in line behind the President, reversing or modifying previously held positions and endorsing proposed improvements to the system. In a

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statement issued on September 20, 2001, the NAFSA: Association of International Educators declared, "The time for debate on this matter is over and the time to devise a response to terrorism has arrived."

Testifying before the U.S. House subcommittee reviewing the legislation, American Council on Education President David Ward affirmed the federal government's "right and responsibility to protect the safety and security of the United States by deciding who should receive a visa—any type of visa to visit this country."<sup>20</sup> He went on to extol the benefits of the INS tracking system, calling for its immediate implementation and noting that it is precisely the real-time electronic nature of the system that enhances the current system of tracking and monitoring foreign student activities.<sup>21</sup>

Educational leaders agree with INS and lawmakers on the potential benefits of the INS system. However, they retracted their objections regarding the limitations of exclusive use of the system for the sake of national unity and rapid response to terrorism rather than as a result of having been persuaded that their objections lacked merit. This circumstance suggests consideration of, and indeed commends, implementation of SEVIS only with provisions that address the concerns of educators.

SEVIS's reliance on technology and the electronic data collection provide instantaneous communication which can be invaluable for



Further it takes educational institutions out of the position of being distant, unnecessary, and multiple intermediaries in the fee collection process.

Finally, locating the fee collection and data entry in consular offices would give federal government officials control over the distribution of I-20 forms issued by educational institutions. This would significantly increase the government's control over the whole process. In his testimony before the U.S. House subcommittee, Ward pointed out that the current law does not prevent a student from obtaining multiple I-20 forms, the documents that make it possible for a student to get a student visa. A dishonest student obtaining this clearance for a visa from more than one institution would have a supply to meet the demand for such documents on the black market.<sup>23</sup>

If U.S. embassies and consulates issued the crucial I-20 forms, it would be more feasible to limit the number of such forms to one per student. Ward testified, "We believe the best way to accomplish this goal is to stop giving I-20s directly to students. Therefore, when a student is accepted, we propose to send the I-20 to a U.S. embassy or consulate identified by the potential student.... If a visa were issued, the embassy or consulate would return a copy of the I-20 to the sending institution to alert the college to expect the student."<sup>24</sup>

To recapitulate, the following three measures would greatly reduce or eliminate potential damage to American higher education while enhancing national security more than the current provisions of the USA PATRIOT law:

Authorize INS to continue paper applications in countries whose technological resources are limited.

Either fully fund the tracking program from the federal budget or allow INS to institute a sliding scale for fees based on ability to pay.

Have U.S. consulates and embassies, not universities, give foreign students the crucial forms they need to obtain visas.

This hybrid proposal retains all the elements incorporated in the USA PATRIOT Act meant to safeguard national security. It also overcomes, to a large extent, the pre-September 11 objections posed by educational leaders. It reduces the barriers that could lead to a reduction in foreign student enrollment in U.S. institutions allowing the United States to compete and maintain its strong position in the globally mobile student market. It helps retain the economic impact of the hundreds of thousands of mainly full-pay students and, perhaps most important, it ensures continued cross-cultural educational encounters for foreign and domestic students alike, paving the way for mutual understanding and a more peaceful and secure future for the United States and the world. 

# ENDNOTES

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- 3 Ibid.
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- 7 Michael Becraft (testimony), U.S. House Subcommittees on 21st Century Competitiveness and Select Education, *Tracking International Students in Higher Education—Policy Options and Implications*, 31 October 2001. Available online at [www.ins.gov](http://www.ins.gov). Accessed 2 December 2001.
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- 15 Richard Riley, "Educational Diplomacy is Link to World Peace," *USA Today*, 13 November 2001. Available online at [www.aubrun.edu/other/international\\_education/sevp/111301usatoday.htm](http://www.aubrun.edu/other/international_education/sevp/111301usatoday.htm). Accessed 2 December 2001.
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- 17 Sara Hebel, "Rules on Foreign Students"; Beth McMurtrie, "Foreign Enrollments Grow in the U.S., But So Does Competition from Other Nations," *The Chronicle of Higher Education*, 16 November 2001.
- 18 American Council on Education.
- 19 NAFSA: Association of International Educators.
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