

A Blueprint for Immigration Reform Revisiting the Jordan Commission Report

By David North

Those interested in or advocating “comprehensive immigration reform” should examine the thoroughly researched, well-documented findings of a federal commission that spent more than five years — and numerous hearings — dealing with exactly that subject.

This was the U.S. Commission on Immigration Reform, created by Congress as part of the Immigration Act of 1990.¹ The Commission had impressive credentials, access to millions in federal funds, and was served by a highly competent staff. It had four Democratic appointees and four Republican ones, and with three chairs who were, in turn, a then-member of the College of Cardinals, a former member of the U.S. House of Representative, and a former member of the president’s cabinet.

It was generally known as the Jordan Commission, named for the late Barbara Jordan, the powerful woman who served the longest period as the Commission’s chairwoman. The Jordan Commission, unlike the current White House, took its time to do its work, and decided, unanimously, that there was no need for an alien legalization program. Its work was summed up in these words:

The credibility of immigration policy can be measured by a simple yardstick: people who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave.²

The detailed and thoughtful recommendations in the Commission’s 1997 final report,³ called for the nation to:

- **Integrate** the immigrants now in the United States more thoroughly;
- **Reduce** the total number of legal immigrants to about 550,000 a year;
- **Rationalize** the nonimmigrant visa programs and regulate them;
- **Enforce** the immigration law vigorously with no further amnesties; and
- **Re-organize** the management of the immigration processes within the government.

Most of the recommendations were unanimous. There was a single dissent on the second and fifth group of proposals by one of the commissioners, the former executive director of the American Immigration Lawyers Association.

This *Backgrounder* provides more detail on the Commission’s recommendations, and speculates on why such a rational package should have emerged.

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Integrate. The title of the final report, *Becoming an American: Immigration and Immigrant Policy*, makes it clear that the Commission's concerns were broader than the matter of alien admissions. *Immigrant* policy is that which focuses on the role in society played by the immigrants after they have been admitted, while *immigration* policy deals with who should be admitted and in what numbers.

The Commission, and its chairwoman, called for a new and positive emphasis on "Americanization" a term that she said had "earned a bad reputation when it was stolen by racists and xenophobes in the 1920s. But it is our word, and we are taking it back."⁴

The Commission wanted the government to "renew its commitment to the education of immigrant children" and called for the "rapid acquisition of English" (p. ix) as well as to provide civics education in all grades. It accepted the existing basic rules for naturalization, but wanted the language of the oath to brought up to date (including such lines as "abjure all allegiance and fidelity to any foreign prince or potentate").

Reduce. Central to the Commissions' recommendations was the "redefinition of priorities and reallocation of existing admissions numbers to fulfill more effectively the objectives of our immigration policy." (p. xvii)

The Commission wanted to make some transitional arrangements for alien relatives in the waiting lines and thereafter produce a system with admissions of "about 550,000 a year, comparable to those of the 1980s". (p. xvii) The report showed that the actual admissions in the fiscal years 1992-1996, a period of five years, averaged about 822,000 (those numbers included some dependents of the IRCA amnesty grantees, but none of the IRCA direct beneficiaries.) So the Commission was calling for a lowering of the immigrant admissions by almost 33 percent from the then-current levels. Impressive.

More specifically, the Commission wanted to eliminate the categories for unskilled workers, and people from recent immigrants' "extended families" and focus the available slots on more needed workers and members of nuclear families. Members of nuclear families, in the eyes of the commission, were spouses and young children of U.S. citizens in a first priority, parents of U.S. citizens in a second priority, and spouses and young children of legal immigrants in the third proposed priority.

This distinction between nuclear and extended families is a major contribution to the immigration policy dialogue. Too often, the definition of family in the verbiage of the more-migration people tends to be all-inclusive and imprecise.

This meant the Commission advocated dropping the Diversity Visa lottery completely, as well the existing preferences for adult children of citizens, and for the siblings of citizens (who are mostly adults, too.) That this last preference category included the siblings-in-law of citizens, and the young nieces and nephews, was not discussed *per se*. (There is nothing in the current law indicating that the citizen uncle or aunt must have even laid eyes on the arriving nieces and nephews.)

The Commission, in general terms, wanted to leave the refugee and asylum admissions policies about as they found them.

One cannot argue that this package of proposals does not constitute "comprehensive immigration reform" but it clearly is not the reform that the current White House has in mind.

Rationalize. The Commission calls nonimmigrant visas "limited duration admissions" (LDAs) and that may be a linguistic improvement. The commissioners called for a "re-organization of the visa categories for limited duration stays in the United States to make them more coherent and understandable" (and thus easier to manage). (p. xxiv)

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Among the specific recommendations were these:

- *Protection of U.S. workers from unfair competition [from the nonimmigrants] and of foreign workers from exploitation and abuse; and*
- *Appropriate attention to LDA provisions in trade negotiations to ensure future immigration reforms are not unknowingly foreclosed. (p. xxiv)*

The Commission remains opposed to implementation of a large-scale program for temporary admission of lesser-skilled and unskilled workers. (p. xxix)

The Commission also recommended various ways by which the government can make sure that LDA workers are paid appropriately and that resident workers are not displaced by the arriving LDAs.

In retrospect, I wish that the Commission had spent a little more time on H-1B and L nonimmigrant programs, the first having feeble labor market controls, and the second, none at all.

Enforce. The section of the final report dealing with the illegal alien population is entitled “Curbing Unlawful Migration” (pp xxxiii-xl) and it carries no suggestions that a further amnesty should be extended to that population.

The main components of the program to reduce unlawful migration, the Commission’s term, are these:

- An effective border-management policy that accomplishes the twin goals of preventing illegal entries and facilitating legal ones;
- Reducing the employment magnet is the linchpin of a comprehensive strategy to deter unlawful migration;
- Restricting the eligibility of illegal aliens for publicly-funded services or assistance, except those made available on an emergency basis; and
- Strategies for addressing the causes of unlawful migration in source countries.

On that last point the United States has been persistently at fault for never using its massive leverage with the Mexican government to try to force a more equitable distribution of income within that country; moving in that direction would bring more income to the lowest level of Mexican workers, and that would encourage those workers to stay home. The trouble is that elites, on both sides of the border, negotiate with each other, and neither group worries much about either illegal aliens or the lives of Mexican nationals back home.

I suspect that, at least for a long time, those negotiators on both sides of the border were considerably paler than either of their two populations, generally, and certainly paler than the unskilled workers in both countries. This is a factor that is never mentioned.

Reorganize. One of the principal worries of the Commission was what it regarded as the clumsy bureaucracy of the Immigration and Naturalization Service. An (often neglected and underfunded) arm of the U.S. Department of Justice, INS had most of the immigration-management functions.

It doled out immigration benefits within the United States (with the State Department handling the visa-issuances overseas). It had both the Border Patrol agents and the investigators for law enforcement at the edge of the nation and it its interior. The ports of entry were largely manned by INS inspectors. It also handled the naturalization program. It worked fitfully with the Labor Department on some labor standards issues vis-a-vis some immigrant and some nonimmigrant programs.

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Further, it was generally a low-prestige agency, unlike say the Foreign Service, the Bureau of Labor Statistics, or the FBI. Practically no one started with a career in INS and then wound up in the Senate, or as an ambassador, or a federal judge. No one-time INS Commissioner has ever been tapped for higher office. Its clientele were always poor people (except for a few largely exploitative corporations) and the poor people were strangers to the United States and often lawless strangers. I do not know the extent to which these messy considerations impacted the commissioners, but they were always at least in the background.

Instead of trying to help INS out of this long-term problem, the commissioners set about to abolish it, which, with a little help from the repercussions from 9/11 they more or less accomplished several years later when the Department of Homeland Security was created. DHS was given three (really four) immigration management agencies: U.S. Citizenship and Immigration Services (USCIS, which grants benefits), Immigration and Customs Enforcement (ICE, which enforces the immigration and customs laws within the country), and Customs and Border Protection (CBP, which uses Border Patrol agents and port-of-entry inspectors to handle a number of edge-of-the-country immigration and customs duties). There is also the Office of Immigration Statistics, a useful little agency that is not part of the three big ones listed above.

Also in the immigration business are Justice, which has the Office of Immigration Review (EOIR), an appeals agency; Labor, which continues to do some labor market regulation with immigrants; and State, which still issues the visas.

That's the current situation. The Commission had a different suggestion. It wanted to put law enforcement in Justice, labor market regulation in Labor, all the various appeals boards in a separate agency, and all the visa and immigration benefit agencies in State, with the immigration system there headed by an Undersecretary of State (a rather loftier title than INS Commissioner).

I am not sure tearing up INS was a good idea, but what the Commission suggested looks more rational than the current situation. This set of recommendations I regard as marginal, but the rest of them were solidly in the nation's interest.

Why Did This Come to Pass? There were three variables — over and above what I regard as the facts of the matter — that helped the Commission come up with its useful, practical approaches to the festering challenge of the nation's immigration policy.

The **first reason** was the selection procedure itself.

The centrist, sensible approach of the Commission reflected the sensible way that the commissioners were appointed. They were appointed by five power centers and each appointive authority had only two selections — just one in the case of the White House.

The party leadership on each side of the aisle in the House and in the Senate got to name two members, eight in all. The president chose the chair.

Each appointing authority sought to appoint what it regarded as fair-minded people and each sought expertise as well as good judgment, rather than seeking out advocates for any given position; and each (save the President) had only two choices. If there is a single source of appointments — such as the White House — there is a tendency to see to it that all interest groups are represented, as well as the middle, but that was not part of the thought process when this commission was appointed; one does not have the luxury of covering all the bases if one is appointing just two people.

With this in mind it may be useful to look at the 11 appointees (three chairs and eight members), first as a group, and then individually.

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While the dominant figure at the commission was former Rep. Barbara Jordan (D-Texas), she was not its only chair. President George H.W. Bush appointed Cardinal Bernard Law (of Boston) to that position. He was in office for only a short time when a new president was elected, Bill Clinton.

The talk at the time was that Clinton neither wanted to do much with the immigration issue, nor to continue the Cardinal in office, nor, on the other hand, to fire the Cardinal, so he did nothing. The Cardinal eventually got the message that he was not going to be re-appointed as the chair, so he resigned, and after a while Clinton appointed Barbara Jordan to the position.

Jordan, a black lawyer, had served in both the Texas State Senate and the U.S. House of Representatives. She presided over the Commission during its most productive, middle years. She died on January 17, 1996, but the work of the agency continued, with Commissioner Lawrence Fuchs serving as the acting chair until September 16 of that year when President Clinton named former Secretary of Education Shirley M. Hufstедler (she had served under Carter) to replace Ms. Jordan in the chairmanship.⁵

Meanwhile, although there were three chairs of the Commission, the eight members of it all stayed together throughout the life of the entity, from their appointments in early 1992 to its termination at the end of 1997. Four were appointed by the Democratic leaders in the House and the Senate, and four others were appointed by the comparable Republican leaders.

The group of eight included three lawyers, two academicians, a journalist, a social worker, and a business executive. There were Catholics, Protestants, Jews, and Hispanics. Two of the eight had held elective office, as had two of the three chairs. Most of the eight, but none of the chairs, had substantial immigration experience, but only one of the members, Warren Leiden, former executive director of the immigration lawyers' association, had been a full-timer in the field.

What was more important was who they were not. With the single exception of Leiden, none of the members, and none of the chairs, represented an interest group with strong views on immigration matters. There were no union or corporation representatives, no executives of either more-migration or less-migration organizations. The Chamber of Commerce and the AFL-CIO were both missing. In short, they were a group of knowledgeable centrists at the start of the process, and an even more knowledgeable group at the end of the process.

The eight members, listed by their sponsors were:

Senate Republicans. Michael S. Teitlebaum, a PhD demographer and, at the time, a program officer at the Sloan Foundation. A researcher on immigration issues, he was elected by the four Republican commissioners as their group's Vice Chair. He is now with the Harvard Law School.

The late Richard Estrada, a Hispanic and Associate Editor of, and a columnist for, the *Dallas Morning News*. Estrada, who played a brief role in the founding of the Center for Immigration Studies, was not enthusiastic about mass migration largely because of what he regarded as the negative impacts of it on the resident low-income populations of the United States.

Senate Democrats. Lawrence H. Fuchs, Jaffe Professor of American Civilization and Politics, Brandeis University, was elected by the Democratic commissioners as their Vice Chair. He had been staff director of the previous immigration policy commission, the one chaired by Father Theodore Hesburgh, which recommended policies that led to the Immigration Reform and Control Act of 1986, and its amnesty.⁶

Nelson Merced, a social worker of Puerto Rican ancestry and the first Hispanic to be elected to the Massachusetts House of Representatives. He did not seek re-election to the House after his appointment to the Commission. He was presumably named with the support of the late Senator Ted Kennedy (D-Mass.).

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House Republicans. The late Harold Ezell, a California businessman and, as a political appointee, a Regional Commissioner of the Immigration and Naturalization Service (INS) in the Reagan years; he was an enthusiastic supporter of the IRCA amnesty in his INS job, but took some restrictionist positions after leaving the agency.

Robert Charles Hill, an attorney who held a series of middle-level political positions in the Reagan administration, including some work in the refugee field. He has subsequently become a Washington-based immigration lawyer, specializing in visas for celebrities and athletes.

House Democrats. Former Rep. Bruce Morrison (D-Conn.), a lawyer and a one-time chair of the House immigration subcommittee. He left the House to run for governor, but lost to Lowell Weicker in 1990. He is now an immigration lobbyist.

Warren Leiden, another attorney, and long-time executive director of the American Immigration Lawyers' Association (AILA), now in private practice as an immigration lawyer. He, alone, signed a dissent to the Commission's reports, notably objecting to its support of reduced levels of legal immigration.

I would suggest that the **second reason** for the nature of the report was Ms. Jordan; a strong chairwoman, dedicated to working out a unanimous position on a variety of often contentious matters, she led the Commission to a result that might have been different had someone else been in charge.

She also saw to it that the Commission's own hearings, and the work of its staff, were buttressed by major research efforts by other organizations, such as the study by the National Academies of Science dealing with the overall economic impacts of immigration. That study was entitled *The New Americans: Economic, Demographic and Fiscal Effects of Immigration*.⁷

Ms. Jordan brought gravitas to the table when the organization was dealing with other federal entities. It is called the "Jordan Commission" for a good reason.

The **third reason** for this sensible report, and here I am speculating, would seem to be that this group of eight, working largely with Ms. Jordan, had a major, formative, extended common experience. We know that they had ample opportunities over a period of five years to study immigration matters and to discuss various approaches. There were, among other activities, dozens of hearings on various aspects of immigration, held all over the country. The Commission and its staff also paid attention to what other democracies had done with their immigration policies. My sense is that this was a meaningful and, for some, a mind-changing process.⁸

Supporting this view is the somewhat parallel outcome of the Commission on Agricultural Workers (CAW), established by IRCA. It held a series of hearings from 1989 through 1993. The purpose of CAW was to make sure that agri-business had the workers it needed, and CAW was to recommend an expanded guestworker program to the Congress if it found a labor "shortage".

I played a peripheral role to CAW, as I did with the Jordan Commission, testifying before one of its hearings, listening to others, doing contract research for it (on the apple harvest in upstate New York) and lunching from time to time with a key staff member. My reaction to the CAW's final report was something like that of Garry Geffert, a lawyer for migrant workers, who wrote the following:

What everyone already knew — working and living conditions for farmworkers in the United States are abysmal — is stated by ... CAW in its 1992 Report The Commission found that there is an oversupply of workers, the real wages of farmworkers have declined, that the fresh fruit and vegetable industry has not adopted modern labor management techniques ... None of this is new. However, the findings are remarkable given the composition of the Commission: an absolute majority of the eleven-member commission were growers or well-paid apologists for growers... (Emphasis added.)⁹

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Geffert criticized CAW for not recommending more corrective action for the farm workers and he was right. My reaction, however, also was one of relief; given the composition of the entity (with Delores Huerta of the farmworkers union alone speaking for the workers) I was sure that CAW would call for an expanded guestworker program, a larger, “streamlined” version of the H-2A program. It did not do so.

I asked my friend on the staff why this occurred. He said that the cumulative impact of all the fact-finding had convinced the CAW majority that it really could not make an argument for more guestworkers, given the abundant farm labor population at the time — one expanded by the IRCA legalization of more than one million Special Agricultural Workers (SAWs).

Something comparable probably happened to the members of the Jordan Commission who were clearly a much more centrist group as they began their task than were the members of CAW.

End Notes

¹ P.L. 101-649.

² [U.S. Immigration Policy: Restoring Credibility, Executive Summary](#), 1994. This was an interim report on immigration enforcement.

³ The final report was entitled *1997 Report to Congress: Becoming an American: Immigration and Immigrant Policy*. The quotations cited in this paper are from its [Executive Summary](#).

⁴ See the Executive Summary of the 1997 Report at p. vi. Hereafter page citations will be in the text.

⁵ See the [White House announcement of the appointment](#). She had also served, earlier, as an elected state court judge in California, and as an appointed one on the U.S. Ninth Circuit Court of Appeals.

⁶ For more on the work of the Hesburgh Commission, and similar bodies, see this report by my CIS colleague, Otis Graham, [National Commissions on Immigration, 1907-1997](#); and for another view of the Jordan Commission, see Vernon M. Briggs [The Report of the Commission on Immigration Reform \(i.e. the Jordan Commission\): A Beacon for Real Immigration Reform](#), Cornell University IRL School, 1-1-2009.

⁷ [The New Americans: Economic, Demographic, and Fiscal Effects of Immigration](#), James P. Smith and Barry Edmonston, eds., Washington, D.C.: National Academy Press, 1997.

⁸ I watched the work of the Commission from the middle-distance during this time; I testified before it, completed some contract research for it (on the refugee resettlement program), and late in its operations I persuaded the Commission to do some field research on how the Commonwealth of the Northern Mariana Islands, then in control of its own immigration policy, managed its huge (for the islands) guestworker program; this was at the time that the Marianas’ garment sweatshops were in the news. The delegation came back from the islands appalled at what they saw. I was with the Office of Insular Affairs (OIA) of the Department of the Interior at the time and OIA was supportive of the delegation’s trip to the islands.

⁹ See his article [“The Bias of a Majority of the Commission on Agricultural Workers Led to Recommendations Which Ignore the Factual Findings”](#) *In Defense of the Alien*, Vol. 16 (1993), New York: Center for Migration Studies. Also see the text of the [CAW final report](#).