

Panel Discussion and Commentary: What to Expect with Immigration Reform in the 110th Congress and the Implications for the Legal Community

ALAN L. BUTTON*

IMMIGRATION: POLICY WITHOUT BOUNDARIES

AMERICA AND CULTURE

Politicians like to talk about “law and order,” “family values,” and “jobs.” These subjects are discussed because they are matters of concern to the electorate. But because they are matters of concern to the general public, they get talked about in many settings, not just by vote-seekers, but by disc jockeys, poultry farmers, and lawyers as well. The particular contexts for such discussions are many – and they are many because issues of security, family, and business are issues of culture. They are issues that go to who we are as a society. They go to what it means to live in America. It is no surprise, therefore, that such matters are raised not only in debates about war, taxes, the judicial system, the environment, or the role of the media, but also in debates about immigration. Jeanne Butterfield and Mark Krikorian focused on these and other matters in their discussion on February 16, 2007, at the Cardinal Club in Raleigh, North Carolina.

Culture is a function of many variables, including language, religion, history, the arts, geography, and law. And in a democracy, where the people govern and where they are permitted to associate with others of like mind and experience, the culture is inevitably affected by changing demographics. The question that needs to be answered before responsible immigration policy can be implemented is: “What would we have America be?”

There is a tendency for parties to a debate on immigration to ignore, minimize, or otherwise avoid the question. To be fair, limita-

* Professor Button served as litigation counsel for Bausch & Lomb and as a judicial clerk for the Honorable Donald S. Russell, United States Court of Appeals for the Fourth Circuit, before joining the law faculty in 1989. He is a graduate of Cornell University, earned his J.D. from Washington and Lee School of Law, holds an LL.M. from the University of Cambridge, England, and is a Fulbright Scholar who taught in Slovenia in 1998. Professor Button served as moderator for this panel discussion at the symposium.

tions imposed by time impel most every debate on virtually every subject to proceed at least in part on unarticulated assumptions. In an ideal world, those assumptions would be identified and parties in dialogue seeking to resolve a problem would seek common ground as a point of beginning—wherever that might be. That the Butterfields and Krikorians of the nation could find a common starting point, however, is by no means a given. Still, it would be a step in the right direction at least to agree on the question: “What would you have America be?” or, as North Carolina State Senator Phil Berger put it earlier, “What does it mean to be an American?”¹

In the immigration context, to answer the question, perhaps common ground would lie in something like “one Nation under God, indivisible, with liberty and justice for all.”² More elaborately, the Constitution provides that “the People of the United States” have come together “to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.”³ In what has become for some the equivalent of scripture, the Declaration of Independence asserts that certain truths are self-evident.⁴ The Gettysburg Address affirms that we are a self-governing people—Lincoln urging resolve in honor of the dead “that government of the people, by the people, for the people, shall not perish from the earth.”⁵ Even the USA PATRIOT Act implies that there is an America that is separate from and greater than its individual citizens and unique among nations—the “USA” in the title is derived from the phrase “Uniting and Strengthening America.”⁶

1. Phil Berger, N.C. State Senator, North Carolina Policy Panel: The Future of Immigration Law and Related Issues in the N.C. General Assembly and the Consequences for North Carolina Lawyers at the Campbell Law Review Symposium: Immigration Law: A Practical Guide for North Carolina Practitioners (Feb. 16, 2007). Representatives from both sides of the political aisle during this panel discussion asserted that the “survival of the nation” may be at stake in the debate on immigration.

2. 4 U.S.C. § 4 (2000) (pledge of allegiance); *see also* 36 U.S.C. § 302 (2000) (“‘In God we trust’ is the national motto.”).

3. U.S. CONST., pmb.

4. THE DECLARATION OF INDEPENDENCE paras. 1-2 (U.S. 1776) (invoking “the Laws of Nature and of Nature’s God” and appealing to “the Supreme Judge of the World,” the colonists declared: “We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.”).

5. Abraham Lincoln, U.S. President, Gettysburg Address (Nov. 19, 1863).

6. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, 115 Stat. 272 (codified in scattered sections of the United States Code) (2001).

These are uniquely American elements. In the hearts of generations of Americans and in the minds of people around the world, this holy American writ is by implication incorporated by reference in the words of Emma Lazarus, preserved on a plaque in the pedestal of the Statue of Liberty, the “Mother of Exiles.” She bids “world-wide welcome,” crying, “Give me your tired, your poor, Your huddled masses yearning to breathe free, The wretched refuse of your teeming shore; Send these, the homeless, tempest-tost to me, I lift my lamp beside the golden door!”⁷

But immigration necessarily anticipates future possibilities—and compassion can be misplaced or ill-conceived.⁸ It is one thing to define the American culture as it is or has been. It is an entirely different matter, looking forward, to advocate—and then to legislate—either its protection or its modification.

AVOIDING THE QUESTION?

Whether Butterfield and Krikorian agree on a standard for identifying and defining “the problem” is not exactly clear. Regardless, it seems apparent that their visions of the America of the future do not coincide.

Butterfield explains that her “starting point is that the immigration system is broken.” She goes on: “[T]hen the question is what is it going to take to fix this broken system? And I think that’s where our paths . . . will quite markedly diverge.”

Among other things, she observes that there are “twelve million undocumented people” in the United States. But is the system “broken” because “twelve million” is too many—or too few? Is it because they are “undocumented” rather than documented? Are they “undocumented” or “illegal”? Are these millions just “people,” or are they “immigrants” or “aliens” or “criminals”?

Krikorian, with a nod in the direction of the politics of word choice, when asked what “the problem” is, responds in part as follows: “[O]bviously, illegal immigration is a problem because it’s illegal.” He makes pretty clear that part of his “problem” with the “twelve million” is the adjective “undocumented.” For him, they are more accurately

7. Emma Lazarus, *The New Colossus* (1883), available at <http://www.nps.gov/stli/historyculture/upload/new%20colossus%20for%20displaypage2.pdf>.

8. No reasonable person would argue that the United States can absorb all those who would like to enter, or even a substantial percentage of that number. Perhaps, therefore, the potential for our nation’s greatest service to the rest of the world lies in its capacity and willingness to demonstrate - to model - how a society might be free and prosper at the same time.

described as “illegal.” But he explains further that “the more important problem” is “mass immigration,” legal or not, something he says is “fundamentally incompatible with the goals and characteristics of a modern society.”

Butterfield disagrees: “[I]t’s . . . immigration that has fueled this great nation and brought not only hard work but also vision, entrepreneurship, [and] talent [that] have made this country the dynamic and vibrant society that it is. And I think that continues to be true.” But instead of then exploring the cultural implications, she argues macroeconomics.⁹ By the same token, Krikorian invokes “the goals and characteristics” of a “mature” society—America—without explaining exactly what they are or how they are impacted. To Krikorian’s credit, though, he details some of his concerns, contending that “a mature society does not only not need immigration but is actually on net harmed by massive ongoing immigration—whether it is the effect on government services, the effect on reducing incentives for modernization, technological advances in parts of the economy that use low-skilled labor, whether it’s with regard to assimilation, security, etc. . . .”

As for metaphors describing sound immigration policy, Butterfield sees a “new fabric” being woven. Krikorian prefers “beef stew.” To use a contemporary buzzword, Butterfield would affirm “multiculturalism,” and Krikorian would resist it.

It is difficult to discern whether they would disagree on the answer to the question, “What would you have America be?” On the other hand, it actually may be that the two of them know where their differences lie and that those differences are irreconcilable. But why not at least explore the question? Maybe the differences do not get discussed because they are too much like religious values, too personal to be aired in public fora. On the matter of the twelve million, however, Butterfield did observe: “[I]t goes fundamentally to our different definitions of the problem. If your definition of the problem is the very existence of undocumented immigrants, then making it impossible for them to function and live and work in the society and having . . . deportation by attrition is your answer. If the problem is the broken system that didn’t allow these people to apply to come here legally, but they are here living, working, contributing, then the solution is to put them on a path to legal status, bring them up from the shadows, and help them become fully functioning members of our society.”

9. In his classic, *The Tragedy of the Commons*, Garrett Hardin demonstrates that the incentives of unrestricted access to natural resources assure their depletion. 162 *SCIENCE* 1243-48 (1968). One wonders why the same would not be true of cultural “resources” in an environment of unrestricted immigration.

My guess is that if pressed for preferences, Krikorian would be more inclined to approve and preserve that which is uniquely American civil writ, and that Butterfield would be more inclined to question and modify that same heritage, offering immigrants a seat at a table where America is regularly subject to redefinition. Ironically, both would agree that immigration policy is a mechanism for satisfying their preferences.

IMMIGRATION AND CULTURE JUDGMENTS

While it has been said that the United States is “a nation of immigrants,”¹⁰ the phraseology itself connotes a distinction between the immigrants themselves and the nation of which they are said to be the constituent parts. The sum is not the same qualitatively as any one part because, given their individuality, people are not fungible.

More people do not necessarily mean, however, a change in culture. Since people are the key ingredient in the recipe that makes culture, the determining factor is how different these immigrants are from one another and from others already here. Given their worldviews, their traditions, and their manners of living, are they serving to fill in gaps within an already existing framework, or are they altering the framework? We cannot adequately assess our options in immigration policy until we come to terms with what it is we are and want to be. Do we have gaps to fill or a framework that needs adjustment? These questions entail value judgments, something for which we need not apologize. Judgments about our culture—and implicitly about other cultures—are essential to responsible and effective policy.

Judgment, of course, suggests some element of intentionality. Indeed, the American culture, as is true of every culture, has not been arrived at without direction. And that merely reflects an appropriate acknowledgment of the proposition by those in positions of influence that “different” is not value-neutral and not necessarily better. The alternative to goal-oriented policymaking is scarier. Passivity leads to drift, and drift is always more likely to lead to shipwreck than a safe harbor.

Language is an example of one of those elements of culture that may deserve, even demand, focused, forward-looking attention. Since the Tower of Babel, language has served to delineate groups of people—and to keep them humble. Slovenia is distinguished from its southern

10. See, e.g., S. 9, 110th Cong. (2007) (“[t]o recognize the heritage of the United States as a nation of immigrants . . . and to reform and rationalize avenues for legal immigration”).

neighbors in the former Yugoslavia largely by its language. Korea has its own alphabet.

In the United States, English serves both to define and to bind. Young people the world over, when afforded the opportunity, regularly choose to learn “American” English rather than “British” English. They view it as their entree into the American culture or, at a minimum, an enhancement of their credibility in whatever circles they may be seeking influence. Debates about making English the official language are important debates about how we define our culture and the extent to which that culture can or should be modified.

Religion is another example. In North Carolina, as is true elsewhere, courts and municipalities face challenges to longstanding traditions relating to oath-taking and religious invocations at meetings. The debate over the use of the Quran as an alternative to the Bible has made its way to the state legislature and the courts.¹¹

Relationships, whether business, social, or family, are yet another example. How we attend to the questions of protection and modification—the judgments we make—will affect in substantial ways the nature of our communities, the capabilities and priorities of our associations, the direction and strength of our economy, and ultimately the decision-making of our legislators and judges.

As for what the 110th Congress will do, my prediction is that it will debate—formally, informally, and loudly—what to do “about immigration.” I would also predict that there will be colorful commentary on the dire effects of taking or failing to take various courses of action.¹² That a majority will garner sufficient support to enact legislation acceptable to the President is much less certain. That prospect is less certain than the matter of debate itself because there seems to be no clear consensus on what it means to be an American—or, whatever it means, whether it is worth preserving.

It is nonetheless a debate that is inevitable. There are sufficient numbers of people who see and care about the dangers of open borders. And if borders are not to be opened wide, their relative porosity must be decided upon. Of course, impenetrable walls are a theoretical,

11. See *ACLU v. North Carolina*, 639 S.E.2d 136 (N.C. Ct. App. 2007) (addressing the meaning of “Holy Scriptures” in a statute originally enacted in 1777). The current version of the statute is: N.C. GEN. STAT. § 11-2 (2005).

12. Indeed, the debate has already begun. Introduced in late March 2007, a new House bill faces an uncertain future. Rachel L. Swarns, *Doubts Arise on Immigration Bill's Chances*, N.Y. TIMES, Mar. 23, 2007, at A13.

if not practical, possibility, but there is lots of room for discussion about the options in between.¹³

Can we—should we—choose between so-called “comprehensive” immigration reform and an “attrition-by-enforcement” regime without first deciding what defines our culture? Admittedly, the answers get personal. But maybe we could at least elevate the level of political discourse by acknowledging at the outset the heartfelt “cultural” tension shared by most Americans—the tension between Lady Liberty’s compassionate nineteenth century invitation and the realities of America’s unique position in the world of the twenty-first century.

It was my privilege to hear enough from Jeanne Butterfield and Mark Krikorian to know that they both have something significant to contribute to that kind of conversation as well.

13. Impatient with inaction on the part of the federal government, local governments across the country have acted on their own to curb illegal immigration. U.S. District Judge James Munley heard closing arguments on March 22, 2007, in a suit regarding such an ordinance enacted by the City Council of Hazleton, Pennsylvania. Erika Hayasaki, *Pennsylvania City Immigration Law is in Judge’s Hands*, L.A. TIMES, Mar. 23, 2007, at A24.

PANEL DISCUSSION TRANSCRIPT¹⁴

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The following is a transcript of a panel discussion from *The Campbell Law Review's* February 2007 Symposium, *Immigration Law: A Practical Guide for North Carolina Practitioners*. The participants on this panel were Mark Krikorian and Jeanne Butterfield. Mark Krikorian is the Executive Director of the Center for Immigration Studies (CIS) in Washington, D.C.¹⁵ Jeanne Butterfield is the Executive Director for the American Immigration Lawyers Association (AILA) in Washington, D.C.¹⁶ The moderator for this panel discussion was Alan Button, Professor of Law at the Norman Adrian Wiggins School of Law at Campbell University.

PROFESSOR BUTTON: As you know, the subject is "What to Expect with Immigration Reform in the 110th Congress and the Implications for the Legal Community," and I'm hopeful that we can stay more or less on track subject-wise and time-wise. I'm told for those of you who are interested that we can take approximately an hour and I'm going to try to keep us to that. We have with us today Ms. Jeanne Butterfield, who is the Executive Director of the American Immigration Lawyers Association and Mr. Mark Krikorian, Executive Director, Center for Immigration Studies. Without further ado, we'll go with about five minutes tops for opening statements from each of them. Ms.

14. Editor's Note: The following text was transcribed from a digital recording of the panel discussion; however, parts of the recording were inaudible. The editors of *The Campbell Law Review* worked diligently to fill in the gaps whenever possible while ensuring that this transcript accurately and precisely reflected the comments made by each speaker during the panel discussion. Portions of the discussion that could not be determined are noted as such in the transcript text.

15. Mr. Krikorian has testified frequently before Congress, has published editorials and been quoted in *The Washington Post*, *The New York Times*, and the *National Review*, and has appeared on several national news programs, including *60 Minutes*, *Nightline*, and *Fox News* to discuss U.S. immigration policy. He holds a bachelor's degree from Georgetown University and a master's degree from the Fletcher School of Law and Diplomacy. Additional information about the Center for Immigration Studies is available online at <http://www.cis.org>.

16. Before joining AILA, Ms. Butterfield was the Executive Director for the Political Asylum/Immigration Representation Project (PAIR) in Boston, Massachusetts. She also currently serves on the Board of the American Immigration Law Foundation and the Board of the National Immigration Forum, appears frequently in print and media as the spokesperson for the AILA, and was the update author for the legal treatise, *IMMIGRATION LAW AND CRIMES*, for several years. Ms. Butterfield holds a Juris Doctor (J.D.) from Northeastern University. Additional information about AILA is available online at <http://www.aila.org>.

Butterfield, Jeanne, if you are prepared to go first, if you would do that, take it away.

MS. BUTTERFIELD: (inaudible portion) . . . My starting point is the same as I think all of ours is—is that our immigration system is broken. We have heard a lot of data about that already today from various panels and perhaps (inaudible portion) . . . My starting point is that the immigration system is broken and while each of us may point to different phenomenon to illustrate that, there are some main themes. We have twelve million undocumented people living and working in the country today. We have a great deal of pressure at our borders and a negative impact, especially in our border communities. And border pressure that has led to crimes and drug trafficking and human trafficking. We have an immigration system that is having a disproportionate impact on states and local governments and you heard the previous panel speak to some of that. We've had, I think, an unacceptable number of deaths at our border of people trying to cross, some more than 2,000 deaths just in a five-year period. We have extensive backlogs in our family immigration system where we allow people with green cards to unite with immediate family, spouses, and minor children, and yet we make them wait seven to ten years to do so and that, in itself, is fueling some of the illegal immigration. And our legal immigration system is not in step with our 21st century needs as a nation. We simply do not provide a legal way for workers to enter this nation and contribute in needed sectors of our economy. And I think you all have been presented with some of the facts and figures behind all of this and there is more to share I'm sure. So then the question is what is it going to take to fix this broken system? And I think that's where our paths, especially on this panel, will quite markedly diverge. I would maintain that more of the same simply will not work. Spending on border enforcement quintupled in the years from 1993 through 2004—\$740 million to \$3.8 billion. The number of border patrol agents increased three-fold in that same period—from around 4,000 to around 10,000. And during that same period, the number of undocumented immigrants in the country more than doubled—from 4.5 million to 9 million. So throwing more money at a border enforcement-only strategy simply is a prescription for failure, in my view. In order to come up with a reasonable, workable, pragmatic set of reforms that will speak to this nation's economic and social needs, we have to understand a little bit about what fuels undocumented immigration. And I don't have time in my opening statement perhaps to delve into that, but just to highlight, there are at least two phenomenon: one is the family backlogs I have spoken about, and the second is this

employment-based system that we have that simply does not provide worker visas, either temporary or permanent, for those sectors of our economy where our labor force needs are the greatest. And if you look at data from everyone from Alan Greenspan through the Bureau of Labor Statistics and look at all the economic indicators and projections, going forward, we as a nation have an aging and retiring and more highly educated workforce, and the available workers in our workforce are actually declining at the rate of about a million a year, and yet our economy continues to grow. You heard this morning, in the State of North Carolina, you have basically a full employment economy—less than four percent (4%) unemployment rate—that's reflected across the country with slight variations. And we are going to need workers, going forward, that our native-born population is not producing, and so the question has to be, in part, what do you do about that? And I think that immigration is a piece (inaudible portion) . . . So I would maintain that comprehensive immigration reform is the only viable solution. If we close our eyes and continue only to do border enforcement, we aren't addressing the underlying issues. We are crippling ourselves, as a nation, our economy. We are harming our families in this country. And that comprehensive reform has four major elements, it's a four-legged stool, and it's not going to stand up if you chop off any one of the legs. Part of that is for the integrity of the reforms, part of that is due to the bipartisan majority that's going to be needed to actually enact comprehensive legislation. And again we'll talk about that a little more. But the four elements are: security—we need to do a better job at our borders, and we can do smart enforcement and we can improve our record there. Secondly, we need to deal with the twelve million undocumented, who are here living and working and contributing, I would maintain. And thirdly, we need to project forward and look at what are our labor force needs going forward, and create a new, break-the-mold worker visa program that will allow people to come in on a temporary basis, but if they want to return to their home countries, yes—circularity that was spoken about earlier. But if they are contributing and putting down roots and showing that they have something to contribute there should be a path to legal and permanent status and eventual citizenship for those workers, so you are not creating a permanent underclass of indentured servitude. And fourthly, the fourth element on the four-legged stool, has to be to deal with our family immigration system so that we allocate some additional visas and don't recreate the situation where spouses and minor children are forced to wait seven, eight, nine, ten years to reunite.

PROFESSOR BUTTON: Jeanne, if I may interrupt there, in light of time. You'll have occasion to focus on each of those subjects as we go through. . .

MS. BUTTERFIELD: Exactly. Just in conclusion, then, of my opening, we need immigration reform. It has to be comprehensive. The President has called for it, the country needs it, the public supports it, and Congress has to act. Thank you.

PROFESSOR BUTTON: Thank you. Mark?

MR. KRIKORIAN: (unintelligible portion) . . . And the false choice is that those are the options: amnesty or mass round-ups. In fact, neither of those can work—both of them are guaranteed to not work. We couldn't deport twelve million people if we wanted to. Last year we deported, actually deported from inside the United States, 40,000 people. That's it. And they weren't even all illegal aliens. A lot of them were legal immigrants who had committed crimes and made themselves illegal, made themselves deportable because of their crimes and were removed that way. We don't, if you're an illegal alien and you're not arrested for anything else, you pretty much have a zero percent chance of ever being detected. So if we triple or quadruple deportations, and we probably should, it's still not going to solve the problem. Amnesty isn't going to solve the problem either. We tried that already. 1986—we tried pretty much exactly what everybody is now talking about and it was a supercharged illegal immigration. It's the reason we have double the illegal population we have now. The only thing that can work is the third way, the middle way, that actually the House of Representatives tried to pursue last year, which is what I call "attrition through enforcement." The illegal population isn't some monolithic whole. It is churned—people come and go, people stop being illegal because they get green cards, or some people give up and go home because it's not what they thought it was. So there's always this turnover. Something like 400,000 people stop being illegal aliens every year. The problem is 900,000 new illegal aliens move here and settle every year so the illegal population goes up every year. Enforcement, real enforcement, something contrary to what Jeanne suggested, we have never attempted to do. Only at the border have we increased resources, and even there, our effort at the border is laughably inadequate, even now. But with real enforcement, not machine guns and land mines, normal enforcement—we can reverse the relationship so that more illegals leave than enter every year and we can generate a decline through self-deportation as well as regular deportation of the illegal population. And then, after seven or eight years of that, maybe then we can talk about what do we do about the remaining illegal pop-

ulation. We've actually modeled that we can probably reduce the illegal population by half in five years with regular law enforcement techniques but applied consistently, rather than the way we've done it up to now. And this isn't a pipe dream—we've actually seen it work in small instances because illegal immigrants are neither supermen nor *untermenchen*, they're regular people, they respond to incentives. We are sending the wrong incentives. We have been telling illegal immigrants, "We're going to make it a little harder for you to get across the border, but once you're across the border, you're home-free." We need to change the incentives and illegal immigrants, like any other people, will respond to those incentives and you will see that over time, we can shrink this problem and then decide—do we want to pursue an amnesty or just live with it as a manageable nuisance. The point is it's a real-world solution, not the result of the magical thinking that the President and Ted Kennedy, I think, have fallen victim to. That we can sort of fix this problem with some magical, comprehensive wand that will eliminate it. It took us years to get into this problem, this pickle, and it's going to take us a number of years to back out of it. But there's only really one way to do it and that is to demonstrate a real commitment to actually enforce whatever rules we decide to apply to immigration.

PROFESSOR BUTTON: Thank you, Mark. You used a number of times the word "problem," and I'd be interested in having both of you comment on what the problem is. If you'd define the problem for us. Mark, let's start with you—just for a minute, and then we'll hear from Jeanne.

MR. KRIKORIAN: There's two problems. The first one is the one that people talk about usually and that's the illegality of immigration, but to me that's the less important one because obviously, illegal immigration is a problem because it's illegal. Sonny Bono, when he was a Congressman, you sort of forget, "Congressman Sonny Bono" still sort of strikes me as funny, but he was a Congressman from Palm Springs, California. And he used to say, "What part of 'illegal alien' do people not understand?" Clearly that's a problem and that's what gets a lot of activists or ordinary citizens who aren't even activists really worked up and concerned, and legitimately. But the more important problem is not the legal status of immigrants, because about half of immigration is illegal and half of it is legal now. The problem is mass immigration as such, regardless of legal status, is fundamentally incompatible with the goals and characteristics of a modern society. In fact, my basic disagreement here with Jeanne is not so much over legal status, because I think Jeanne would agree that people shouldn't sneak in ille-

gally as well. The real disagreement is: does a modern society need the massive, ongoing infusion of people from abroad? And I would submit that, for a whole variety of reasons, a modern society and a mature society does not only not need immigration, but is actually on net harmed by massive, ongoing immigration—whether it is the effect on government services, the effect on reducing incentives for modernization, technological advances in parts of the economy that use low-skilled labor, whether it's with regard to assimilation, security, etc.—a modern society and mass immigration don't go together in a way that wasn't the case 100 or 200 or 300 years ago.

PROFESSOR BUTTON: Got it. Thank you. Jeanne, what's the problem?

MS. BUTTERFIELD: That really goes to the crux of it because I believe the problem is that our twenty-first century needs are not in sync with our twentieth or nineteenth century perhaps immigration laws. We are a nation of laws and a nation of immigrants, and it's exactly immigration that has fueled this great nation and brought not only hard work but also vision, entrepreneurship, talent that have made this country the dynamic and vibrant society that it is. And I think that continues to be true. I think there are needs going forward, some of which I have pointed to, in our economic sphere, that you can't just close the doors, put up the walls, put up the barriers, reduce immigration, and pretend that everything will be OK and that we're going to remain a vibrant competitor in the world market. I think you need protections—we need wage and hour protections, we need workforce protections—I'm not talking about bringing in a migrant workforce that we exploit and take advantage of, but I'm talking about assimilation—keeping the doors open with orderly and legal and numerically limited numbers that meet our very real needs. Again, we're talking about just like other advanced, industrial countries, an aging workforce, not a replacement workforce. Baby boomers like myself are going to start retiring, hopefully, in the next few years in greater and greater numbers. We have a more highly educated workforce. It's no accident, I think, that in the same period, the last decade, when we have had unprecedented levels of immigration, not relative to our population—it's still a less percent of our population than it was at the turn of the century—but in gross numbers, yes, quite healthy, numbering about a million to a million and a quarter a year, at that same period in the last decade we have had economic growth, economic vitality, and low unemployment. So to suggest somehow that we don't have this need anymore or somehow that immigration is a threat to our nation, I take exactly the opposite view. So the problem

is: how do we bring our 25 mile-an-hour speed limit that is our nation's immigration laws into reality and into conformity with our very real twenty-first century needs?

PROFESSOR BUTTON: Good. Thank you. Let me shift gears just slightly but pick up on something that I think is related. Tell us how you feel about the metaphors that are often used to describe these problems. One being a tossed salad—the American culture being a tossed salad—as opposed to a melting pot. Do those metaphors describe different visions of America that impact this question of immigration reform and what's appropriate? Jeanne, if you want to start.

MS. BUTTERFIELD: Yeah, I think they do suggest an opposite vision but I think . . . the vision I like is of a very rich, colorful woven fabric. It is neither a melting pot that makes everybody a carbon copy of each other, nor is it a tossed salad, which keeps everyone distinct and different. That it is really a synergy, an integration, an assimilation that allows us each to affirm our particularity, our cultures, our heritage, our religion, our faith, any number of things, and yet to function effectively as something new—as a new fabric, as a new nation. And becoming American, and having programs and resources that support that process for new immigrant communities, is critically important to that fabric remaining strong and working well together. I think those who point, as some of the legislators did this morning, at: “Well, they're not learning English, and that's a problem. And the ballots are in Spanish.” They're not looking at immigrant communities coming here who want to learn English. And all of the studies after studies after studies show that by second generation, immigrants overwhelmingly have lost their native language in great numbers. And understand that what it takes to succeed here is to be conversant and skilled in English. And we as a nation don't take responsibility for helping people attain that skill. Our English as a Second Language classes are way over-subscribed. Try to get into one and you are on waiting lists in most parts of the country. We need an Immigrant Integration Bureau at the federal level, I think, to support that very real work that has to be done.

PROFESSOR BUTTON: Thank you. Mark?

MR. KRIKORIAN: Yeah it's a good question. I love these analogies—tossed salad and melting pot, some that use mosaic, a tapestry. One's I haven't heard yet are meatloaf, pecan pie, and I don't know what yet. The one I use is a stew, beef stew, where the ingredients are added and they retain some integrity but they're cooked down. And the problem is that we're adding too many ingredients too quickly and

the heat isn't turned up enough. And there's two parts to that: the adding the ingredients and the turning up the heat. The first part is—I don't know if I'm stretching this analogy but I think it works—and these are the differences with the past. This is sort of my same theme about how modern society and modern conditions are incompatible with successful mass immigration. The first difference from the past is transnationalism is now possible in a way that was never possible in the past. Communications and transportation technology make it such that you can live in two countries at the same time for all intents and purposes. You don't leave the old country behind in the way that you did in the past. Now, even in the past, some people, Italians especially, moved back and forth—there was a good deal of emigration after there was immigration—but even there it was sequential. Somebody would come to New York, work for a few years, and then go home and that was it. Now, you have not only Mexican immigrants, but Dominican and Korean and anything else who are able to maintain intimate, ongoing relationships with the home country, not only for the immigrants but also for their children. Now, this isn't a bad thing, this is a natural thing. I am of Armenian descent. I actually studied in Armenia for two years, lived in then-Soviet Armenia for two years. I understand the attraction to it. You can see why people would want to maintain ties with that which is familiar to them—it is sort of a natural thing. The problem is that in the past, it was hard to do that. There was, I don't know how many of you have ever seen, there was a movie called *The Pioneers*, I think. It was based on Max von Sydow—it was about Swedish immigrants to the Midwest in the 19th Century. And it's based on a series of books, sort of the Swedish version of "Roots." And the last volume in that book is called *The Last Letter Home*¹⁷ because people were communicating by letter and eventually it sort of tapered off, it atrophied, because they couldn't keep the contact up. There is no "Last Letter Home" anymore. There doesn't have to be because of technology. The point here is not that immigrants are bad, it's that technology has changed entirely the context of assimilation. The second part, quickly I'll mention and this is turning the heat up on the stew, is that in modern societies, elites lose their self-confidence and their insistence on assimilation of newcomers. The fact is that—and this is expressed sort of in shorthand as multiculturalism—in the past, immigrants were perfectly welcome to keep going to whatever church they went to and all that stuff, I mean that's the model of Amer-

17. Vilhelm Moberg wrote *THE LAST LETTER HOME* in 1959, which was the final installment in his four-part suite entitled, *THE EMIGRANTS*.

ican pluralism is that you do whatever the heck you want to at home, but in public life you had to become American. The fact is now, and this is where Spanish ballots, for instance, are relevant, is that now the state and the non-government institutions in general, whether it's the banks or anybody else, are giving formal sanction to the idea of permanent cultural maintenance. And that is a basic ideological difference that didn't exist in the past and affects the course of assimilation.

PROFESSOR BUTTON: Thank you. Let's get a little less abstract. One of the subject areas that we want to spend a few minutes on, and that has been part of the discussion earlier today, is the subject of employment and employers in particular. What can you tell us about the needs and challenges that employers face, with respect to skilled or unskilled workers, and what we might expect from Congress in that area, if anything? Jeanne?

MS. BUTTERFIELD: Well, I think last year, the Senate passed a piece of legislation, S.2611, which spoke to employers' needs and workforce needs in a pretty comprehensive way. And as you heard earlier today from the study that Mr. Gordon spoke about, employers at the high end of the labor force continue to need high-tech, high-skilled individuals with particular talents in particular fields and in particular market niches, and our immigration system currently caps that temporary visa, H1-B visa, at 65,000 a year, and that's not adequate to the need. In the last couple of years, that visa category was frozen for a whole year and a half—employers simply could not get the talent they needed because we reached the quota before the fiscal year even began. So one of the proposals on the table is to raise that cap, and then to have market adjustments in it depending on need. When the cap was higher, sometime in the last five years it was up about 120-150,000 in a couple of recent years, and when there was a downturn in the software industry out in Silicon Valley, employers didn't use the numbers. It was market-regulated, but imposing the artificial cap is crippling us in terms of that talent pool at the high end. At the low end, we're in much more dire straights because, as I said and a lot of the American public has not fully understood this, there simply is no visa category for the so-called "unskilled" workforce, what I call "essential workers." If you look at key sectors of our economy, and you talked about some of that here state-specific, but in agriculture, fifty-eight percent (58%) of the workforce is undocumented currently, twenty-five percent (25%) in private household services, seventeen percent (17%) in business services, nine or ten percent (9-10%) in restaurants, and at least six (6%) if not ten percent (10%) in construction. And in all of those fields, talk to any employer, there simply is no way to bring a worker in

legally. And in many of these industries at the national level, the U.S. Chamber of Commerce and the trade associations that are industry-specific here, the National Restaurant Association, etc., they're not talking about wanting to bring in a workforce that they can exploit. They're talking about wanting a workforce that is legal, that enjoys labor protections, that is not vulnerable to immigration raids and exploitation and abuse, and they are willing and have written into the legislation requirements that people have to be paid the prevailing wage. So with labor protections, you get the unions on board. With the obvious workforce needs you have the employers on board. And that's why there is a strong coalition in favor of addressing these very real employment needs and why the Senate overwhelmingly, nearly seventy votes, voted to enact legislation that includes these elements. And that's what we need going forward. So the House, we're waiting for the House to step up to the plate, and I think we can get this done this year.

PROFESSOR BUTTON: Thank you. Mark?

MR. KRİKORIAN: I don't think it is going to happen this year, precisely because the House is closer to the people. And the farther away you get from the electorate, the more the elite preferences for loose immigration controls hold sway. I would actually, unsurprisingly, reject the whole premise of Jeanne's comments. The whole idea of gauging your immigration policy based on the needs or supposed needs for specific skills or specific occupations is basically reflective of a command society mindset. If bureaucrats were able to know how many roofers should be let into the Southeast in 2008, the Soviet Union would still be around. That's not the way things can work because the logic of what Jeanne and others are talking about is that all immigration limits have to be eliminated so that the market completely determines the importation of foreign labor, and that's called "open borders." The economy can work that way. The economy will get bigger that way. You add people, the economy gets bigger. I mean that's the way things work. The question is: is there a need, whatever that means, is there a need for foreign labor, skilled or unskilled? And the answer is no. A labor shortage is just a market signal that says that employers need to change the way they are attracting or training labor. A 300 million person, continent-spanning economy with a highly mobile labor force, the third most populous country in the world, doesn't have the need for any foreign workers in any kind of objective sense. What would happen with a smaller supply of foreign labor? And we're not talking about magically—this is the strawman's "well you know if every twelve million illegal aliens disappeared tomorrow,

the economy would fall apart.” Well it wouldn’t anyway, but the fact is that’s not going to happen. It would be disruptive. Maybe in *The Wizard of Oz*, twelve million illegal aliens could disappear tomorrow, but what we’re talking about is a gradual constriction of the illegal labor force—a reduction in future foreign labor flows. And what would happen is two things, employers would respond in two ways, and I know this is true because Adam Smith explained it to me: employers will on the one hand increase—to increase the supply of labor they can pick from—they’ll increase wages, improve benefits, change working conditions. The first two, the wages and benefits are easy to understand, but the working conditions part is something that’s important. For instance, farmers can plant semi-dwarf apple trees instead of full-sized so that older people and women and others who can’t pick apples on a ladder with a bag hanging around their neck could do so. My point is you expand the effective labor force that way. The other thing they do, and I’ll finish in just a minute, is that they reduce the need for the labor and they do that in two ways: one, through mechanization. The fact is that labor-saving technologies have not been implemented or even developed in a lot of industries where low-skilled labor is reducing the incentives for that kind of development. And also, in some cases, imports—I mean if you can’t grow strawberries in the United States without foreign labor, then we should probably have them grow the strawberries at home and just buy the strawberries. And of course trade associations are going to want more labor. How many employers don’t want more people fighting over the same job? I would too if I were them. So the point is the National Restaurant Association wants immigrant labor, that’s not news to me.

PROFESSOR BUTTON: Thank you, Mark. Jeanne, would you like to take about sixty seconds to say anything in response?

MS. BUTTERFIELD: Sure. I think Mark is laying out a vision of a shrinking economy. He’s ignoring the real population demographic that the Bureau of Labor Statistics and others point to, and he’s ignoring the very nature of our thriving economy. I don’t share that vision, and I think all of the experts that I would commend you to—that was in the materials that I provided—disagree and say otherwise. . .

MR. KRIKORIAN: I get sixty seconds too, I gotta say. The demographic issue is important. . .

PROFESSOR BUTTON: We’re going to do it the same way with the next subject. . .

MR. KRIKORIAN: The demographic thing is important. Yes, our birthrates have fallen. . . Oh, I’m sorry I thought that was an “OK.”

MS. BUTTERFIELD: He said, “No.”

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MR. KRIKORIAN: Oh, OK, go ahead, I'll make the demographic point later. . .

PROFESSOR BUTTON: I guess I have to be more direct.

MR. KRIKORIAN: Go ahead.

PROFESSOR BUTTON: Let's shift gears again and look at family-based immigrants with challenges related to them as it pertains to effective law and so on. Mark, we'll let you get started. What can you tell us about family-based immigration? And let me add another little twist. I did a little research, and I think I came across a subject on which maybe the two of you agree. . .

MR. KRIKORIAN: A little. Maybe. A little.

PROFESSOR BUTTON: It has to do with increased fees. I read a report that both of you tend to think that's not a good idea. Go ahead, Mark. We'll let you take it. . .

MR. KRIKORIAN: Well let me talk about sort of the broader issue of family hmm. . . well let me deal with the fees first. They're raising fees for citizenship and a whole bunch of other things—ludicrous—it's almost \$600 to apply for citizenship. And part of the reason that is, the bureaucrats aren't at fault here, there's this thought because Congress says that the Immigration Services Agency—the one that does the green cards and all that stuff as opposed to the enforcement—they are completely self-funded, funded through fees. Congress gives them no money at all, so that they can't modernize their computer systems because Congress doesn't appropriate money even for that kind of capital investment. They've got to make it up, all of it, through fees. So they've got to charge money today to try to modernize their computers, which they can't do because they're spending the money today on processing people's applications. It's a Mickey Mouse way to run a railroad, and it's reflective of an idea that we can do mass immigration “on the cheap.” If you're going to have a policy of mass immigration, it's going to cost you billions of dollars forever. And Congress is sort of unwilling—they want to have their cake and eat it too—they want to satisfy business constituents by saying, “OK, I'm going to give you all the servile labor you want,” and they also then want to be able to tell the public, “Oh, well this isn't costing us anything.” But the family-based immigration is sort of conceptually more important, I think. Much of the discussion on family immigration is a misnomer—we talk about family reunification. Well there's two kinds of family reunification: one is you let the relatives of the immigrant in, one is the immigrant goes home and back to his family. Family reunification doesn't have to mean people come to the United States. But obviously there's a family component—there has to be—to immigration. And no one dis-

putes that someone who gets a green card, if he's married and has children, should be able to bring those people in—minor children. Because that's the way it is now, that's the way it's always been, the way it's always going to be. You get a green card for some other reason—say you're a refugee or you get some employment-based green card—if you're married and you have two little toddlers, all those people get green cards. So that counts as four green cards, not just yours. The question is beyond that: should we give special immigration rights to people, to adult people, with their own lives just because they have a sibling who is a citizen, or an adult child who is a citizen, or they are adults themselves and they have a parent who is a citizen? And my argument is “no.” I mean, the only people who should be getting special immigration rights are the spouses and minor children of U.S. citizens. If you are an American, and you go study abroad and marry somebody, you have the right to expect your fellow citizens to give you the OK—delegate to you the authority to decide that person is going to immigrate—because that's essentially what we're talking about, delegating to the individual Americans who's going to immigrate to the United States. If you adopt a baby from China, again, you're an American citizen, you have the right to expect that your fellow citizens are going to say, “OK, that's your call”—as long as it's legitimate, you get to pick who's moving to the United States. Beyond that, I don't think there's any rationale for family immigration at all. The only thing that we might agree on a little bit is spouses and minor children of non-citizens, that's an important issue that I think actually Jeanne was referring to, those are people who got green cards when they were unmarried, and then before they became a citizen, got married and petitioned under a numerically limited category. I would actually, for people who are already married and in the queue, let them in and abolish that category subsequently because if you want to determine who's going to immigrate to the United States, join us, become an American, and then it's your call. Until you're a citizen, you're a guest here, and you don't get to bring in subsequently a spouse or children.

PROFESSOR BUTTON: Thank you, Mark. Jeanne?

MS. BUTTERFIELD: Again, I think we have fundamentally different notions of what constitutes a family, and I would also point you to the rhetoric on the other side here that Mark uses. We do not have a system, I believe, of “mass immigration”—that's a scary kind of misnomer. We have a rational immigration system that tries to take account of three primary needs: family unification, employment-based immigration, and refugee protection, which is part of the fundamental value of our country. And on family, the numbers have been stagnant and

static for way too long, and that has led to backlogs that are unreasonable and that keeps families separated and that causes people to make the choice, the difficult choice, to come or stay illegally because they want to be with that spouse or family member. Now family units, the definition of what is the family unit, varies from culture to culture. But I would maintain that immediate relatives in our immigration system should be protected and should be allowed to be together—and that is spouses, minor children, and parents of citizens; of green card holders, the spouses and minor children, whether they were married after or before they get their green card; and then some limited number of adult children and brothers and sisters. Right now, we limit brothers and sisters to some 65,000. There is a big backlog. A lot of that would be taken care of if we had other employment-based ways for people to immigrate because these people are not coming simply to hang on and be a satellite family. They are coming to work and contribute and to strengthen that family unit, and I think that strengthens America. So in the Senate bill, again, that I would point you to from last Spring, the Senate bill raised that family cap from where it is now, at roughly 500,000, and would add about 250,000 new visas a year to our family system. I think that's eminently reasonable.

PROFESSOR BUTTON: Mark, sixty seconds?

MR. KRİKORIAN: Do I get my sixty seconds?

PROFESSOR BUTTON: You do indeed.

MR. KRİKORIAN: These backlogs are, in fact, ridiculous. Barbara Jordan's Immigration Commission,¹⁸ more than ten years ago, specifically identified the enormous backlogs, and there's several different backlogs, as a real, systemic problem. But the reason we have the backlogs is because we over-promise and under-deliver. One solution is to do what Jeanne suggests, which is to increase immigration—substantially increase immigration—and a quarter of a million increase will not be sufficient. Six years, seven years from now, you'll end up hearing calls for another half-million increase. There is no real limit to the demand for immigration to the United States, absolutely none. Mathematically there is because there is only six billion other people in the world, but in the real world, there is no limit whatsoever to the demand for immigration into the United States. But what Barbara Jordan's Commission suggested was defining what kinds of people we want to let in more narrowly and then just letting all of them in. What we do now is over-promise and under-deliver. We say, "OK,

18. Barbara Jordan was the chair for U.S. Commission on Immigration Reform in 1994, and she testified before the U.S. House of Representatives about the findings of the U.S. Commission on Immigration Reform in 1995.

you're a brother or sister of an American citizen, you're a Filipino citizen. You can apply. There's a category for siblings, but you're going to have to wait for forty years to get in, because that's how long the waitlist is." That's the longest waitlist for that particular category from that particular country. But the point is people sort of figure, "Well, I'm OK—it's just that I'm in a line. Why don't I just skip ahead and come to the United States early? It's not really cheating, is it, it's just sort of, they OK'd me already." The point is, get rid of the categories all together and define narrowly who we want to let in, and then let in everybody who fits that definition every year, so you have systemically abolished the problem, or the possibility, of backlogs.

PROFESSOR BUTTON: OK. Thank you. Jeanne, if you would, address for us, to get us started, the subject of illegal immigrants presently in the United States and how they should be dealt with—what the approach should be, what the law should say about that. And I'd be interested in any comments along the way about banks like Bank of America, based in Charlotte, giving credit cards to illegal immigrants. Go ahead.

MS. BUTTERFIELD: Sure. I think that the undocumented, the illegal population here today, numbering some twelve million by best estimates, is the result of a flawed immigration policy for the last several decades. A part of it consists of people who have come to work and who are filling these niches in our economy in the different sectors I spoke about. Part of them are family members—when we did a legalization program back in 1986 under President Reagan, one of the flaws of that program was that it did not include immediate family members, and so you had people who legalized but whose spouses and children could not legalize with them. That contributed both to the backlogs we're seeing and to some measure then of undocumented immigration. So the question is, and I think not as Mark said earlier—deport versus legalize and he advocates some long-term, seven to eight-year attrition program—the view I subscribe to is to look at: who are these people, what are they doing, and how are they contributing here? And what do we do to fix the broken system? So I do not advocate just taking twelve million people, put them on a path to legal status, and then go on with the same set of restrictive laws. I've talked about the fact that you need a new worker visa, in order not to recreate this same problem into the future, and you need some adjustment of the family categories. But for the twelve million already here, I think you put them on a path to legal status based on them earning that right and privilege and paying a penalty for the violation of law that they have committed. It's not a giveaway, it's not an amnesty, it's not a forgiveness. It's an opportu-

nity to earn legal status and become full, participating members of the society and if they don't qualify through the various requirements of these legalization programs that have been crafted, then the full force and effect of the law kicks in and they will have to leave the country. Now there have been numerous proposals, but how do you do that? How do you take twelve million people and what kind of requirements do you put in place? And again, I would point to some of the work that the Senate did last year because they engaged in a very thoughtful and deliberative debate and looked at a lot of different models. The bill they came up with, I think, is flawed, because what it did it took the twelve million and divided them into three groups. And it said if you've been here longer than five years, you can get on a path to legal status, and you have to work for six more years, you have permission to do that, and you have to pass all the security requirements and pay a big fine, and at the end of the six years, you can apply for and get permanent legal status, a green card, and then after five more years, you can apply for citizenship. So that's about a twelve-year minimum process to become a full citizen. But I think those requirements are reasonable—a prospective work requirement—I may differ with how many years one has to show, certainly security and background checks, and then, as our system provides, green card/lawful permanent status, and then application for citizenship following. But the bill last spring took a second group of the twelve million, those who have been here more than two years but less than five years, and it said for those people, they can't go on a prospective, earned legalization path, they have to work for at least three more years, and during that time they have to go home, "touch base," and come back. And that's the penalty that they pay for having been here illegally. I think that's silly. I think it doesn't accomplish anything, except put further pressure on the border or on the consulates back home or wherever it is you're going to run people through that process. I think it makes more sense to allow them to apply, like the more-than-five-year people, perhaps give them a longer work requirement, but do the paperwork, do the security check, and allow them to continue to work and contribute because that's why they're here. And then the proposal from last spring said that if you've been here for less than two years, you're out of luck, and you're going to either be deported or you can leave and then you can try to come back with one of these new, temporary work visas. And again, that might be OK if you allocated those temporary work visas in sufficient numbers to allow it to meet the demand of the less-than-two-year undocumented population, but the law didn't. It limited the new work visas to 200,000. You've got at least two million

people here less than two years, and so you have another prescription for a bottleneck. But I think the general concept that I subscribe to is the twelve million people who are here are working—if they are working, if they are paying taxes, if they have not committed serious crimes, if they can pass the background and security checks—they should have the opportunity to make good, to come out from the shadows, to earn permanent legal status and eventual citizenship.

PROFESSOR BUTTON: And credit cards are OK?

MS. BUTTERFIELD: Well, I think the whole issue of credit cards and driver's licenses and all of that, those are not evidence of legal status. You can do anything you want with them—you can give them, you can deny them, whatever—but you're not dealing with the underlying issue. The underlying issue is an undocumented population that we didn't give any legal means to come here and we need to fix that. Then let's have the conversation about credit cards.

PROFESSOR BUTTON: Thank you. Mark?

MR. KRIKORIAN: At least we agree that the Senate bill was a Mickey Mouse piece of legislation, there's no question about that. . .

MS. BUTTERFIELD: I didn't say that. No, that's not my view. . .

MR. KRIKORIAN: Let me just touch on a couple of things before I get to the bank account issue. One is, even if you define amnesty more narrowly the way Jeanne seems to, there is no question that the bill the Senate passed and any bill that would be passed is an amnesty. For instance, the Senate bill only required people to pay three years' worth of back taxes. If you're a business and the IRS says we're going to only make you pay three years of back taxes but not the years before that, then that's a pretty good deal, frankly. I don't see how anybody could define that as anything other than an amnesty. The majority of illegal aliens who work, work on the books with a fake or stolen social security number. . .

MS. BUTTERFIELD: So they are paying taxes. . .

MR. KRIKORIAN: . . . and they are going to be essentially given a pass on what would land you or me in jail. So it is, even by the much more narrow definition, an amnesty. But what do we do about the twelve million people? I've talked about that in my intro, but let me get more specific about what an attrition policy would mean. Our immigration enforcement has three levels: overseas at our consulates, at our borders, and inside the country. At the consulates and the borders we have physical chokepoints—immigrants have to go to a particular place and get some kind of permission to pass through. Inside the country there isn't any kind of physical chokepoint like that, that's why we need what I describe as "virtual chokepoints." In other words, events

that are important enough in a life of a person in a modern society that you really can't get by without them, but not so common that it's going to tie up everyday life. What you do is that you require proof of legal status at those, what I call, "virtual chokepoints." You don't require proof of legal status when somebody cashes a check at the grocery store, or somebody goes to the 7-11 and buys a stick of gum—it's not possible, it's not practical. But the places where you do it, and all I'm really describing is what our strategy, in a sense, already is at, for instance, employment. That's the whole reason Congress prohibited in 1986 the employment of illegal immigrants. Before that it was explicitly permitted to employ illegal immigrants. It's been illegal for twenty years. The administration and Congress have done everything they can to prevent the enforcement of that provision, of that law. But the fact is the idea of preventing illegal immigrants from getting jobs is central to any enforcement effort—any effort to prevent illegals from embedding themselves in society. Driver's licenses: the driver's license system, the state driver's licenses, are our national I.D. system. We have a national I.D. system, it's just a distributed system, a decentralized system. That's why almost all D.M.V.'s issue non-driver I.D.'s as well, to people who don't want a driver's license they just want a photo I.D. to cash checks. Banks, and this is where banks come in, having a bank account, checking account, whatever—some kind of relationship with a financial institution—is an important part of life in a modern society. Here, the federal government has actually explicitly given the OK to banks to accept the Mexican government's illegal alien I.D. card, the *matricula consular* card, for purposes of identification for opening bank accounts. The IRS has issued what they call "ITINS," individual tax I.D. numbers—they're sort of ersatz social security numbers—to illegals. They acknowledge they give them to illegals. That's what the credit card thing is—the Bank of America is saying if you have an ITIN and put up a hundred bucks as sort of a deposit, you get a five hundred-dollar line of credit, and if you pay it off, you get a credit card. Again, the IRS is essentially giving the specific OK to Bank of America, for all intents and purposes, to do this. And the other area is regular, local law enforcement—traffic stops and what have you—because the 700,000 state and local police around the country encounter illegal immigrants every day. And all of those "virtual chokepoints," as I described them, are important ways of preventing illegals from embedding and forcing them to self-deport—to give up and go home. And it can and will work for millions of the illegals who are already here, and then we can talk about what to do about the rest of them later.

MS. BUTTERFIELD: Well, it goes fundamentally to our different definitions of the problem. If your definition of the problem is the very existence of undocumented immigrants, then making it impossible for them to function and live and work in the society and having, sort of, deportation by attrition is your answer. If the problem is the broken system that didn't allow these people to apply to come here legally, but they are here living, working, contributing, then the solution is to put them on a path to legal status, bring them up from the shadows, and help them become fully functioning members of our society.

PROFESSOR BUTTON: Good. Thank you. In light of our time, I'd like to have each of you, if you would, take sixty seconds or two minutes just to make any closing comments that you'd like to make, and if you could just say something briefly about your expectations as to what Congress might do and what the legal implications might be for those practicing law. Mark?

MR. KRIKORIAN: I pulled this on Tomarsh. I got the last word, now you get the last word. Anyway, I don't think anything is going to happen. I don't think that anything is going to reach the President's desk this year. Now, maybe I'm wrong, but I don't think so. The Senate will pass something, the House may even pass something, but I actually think that the Democratic leadership in the House understands—they've made it clear—that they see themselves as on probation. Nancy Pelosi's job is to get re-elected as Speaker in January of 2009, and passing an amnesty makes that enormously more difficult. Rahm Emmanuel, her sort of "muscle guy" in the House, has said in print that the only way he thinks the Democrats can get enough political cover to vote for an amnesty is if eighty or ninety Republican house members vote for it. It's not going to happen, and he knows it's not going to happen, which is why he set that bar so that they would be able to say, "Well, listen, we tried." They will be able to tell La Raza and the other advocacy groups that they tried and, you know, "Look, the Republicans just stopped this. We don't have a big enough majority." They will, however, I think, try to pass smaller measures, like something called the Dream Act, which is an amnesty for illegal aliens who graduated from American high school. Or maybe even something called Ag-JOBS, which is still big but a more narrow, focused amnesty for illegal alien farm workers. That could happen, it may not, but it might. I don't see the bigger, more comprehensive amnesty bill actually, finally being signed into law this year.

PROFESSOR BUTTON: Thank you. Jeanne?

MS. BUTTERFIELD: Well, I'm an optimist . . .

MR. KRIKORIAN: (*laughing*) So am I . . .

MS. BUTTERFIELD: . . . and I think all indicators are that we will see comprehensive immigration reform. We made good headway in the Senate, that bipartisan coalition is still holding, and I think, as Mark even agrees, that they will pass a bill this spring. But the House, I think, also will come on board. I point to two things there: all of the backdrop on the data I've talked about is beginning to get through to people, and the public knows that more of the same won't work, and poll after poll after poll, and I commend you to the materials in the packet here, demonstrate that when presented with a pragmatic, workable, reasonable solution, like the one I have been outlining and speaking to today, seventy-five percent (75%) of those polled support that kind of a solution. They know you can't deport twelve million people, they know the system is broken, they know the federal government has not stepped up to the plate and taken responsibility, and when asked, "Do you think the people who are here illegally but working, paying taxes, contributing, passing background checks and security checks, should be able to earn legal status," they overwhelmingly, seventy-five percent (75%), say yes. That lesson is not lost on the politicians, and it bore fruit in this last election cycle in 2006. There were fifteen very closely contested races that some of us watched around the country where immigration was made a hot-button issue. The restrictionist, hard-liners on immigration tried to paint their opponents as being "soft on enforcement, soft on illegal immigration." Most of those people who were being accused of that had embraced a comprehensive immigration reform approach. And in twelve of those fifteen races, the hard-liners lost, and the comprehensive immigration reform supporters won. Now not every race turned only on immigration, but I think it was a big wake-up call for the leadership of the Republican party, and look who they put at the head of their Republican Congressional Campaign Committee, Mel Martinez. And it was a signal to Rahm Emmanuel and those Democrats who are a little bit shaky on this and fearful and concerned about the 2008 election that they don't have to be afraid of this issue. I think the Democrats are going to come forward and realize that if they don't do something this year that they will be painted in 2008 as the "do-nothing Congress," and I think that bodes well. But the window of opportunity is limited—it's gotta take place this spring and summer because by next fall, we are going to be heavily into Presidential campaign season. The partisan bickering and polarization will get very, very intense. The Republicans will want to paint the Democrats as the "do-nothing Congress." They are going to be less willing to cooperate. The Democrats may get gun-shy and not want to be painted into a box, and I think our window will close. So,

my prediction: better than a 50/50 chance that we will see comprehensive immigration reform by next fall.

PROFESSOR BUTTON: Thank you. Questions?¹⁹

19. Editor's Note: The question-and-answer portion of this panel has been omitted from this transcript.