The IRCA Fiasco, 1981-1986: Reform's Maiden Voyage

By Otis L. Graham, Jr.

Editor's Note: The Federation for American Immigration Reform [FAIR] opened its office in Washington, D.C. on January 2, 1979. FAIR's founding chairman was John H. Tanton, M.D., an ophthalmologist from Petoskey, Michigan. The other original board members included Sharon Barnes, who had worked with John Tanton in Zero Population Growth (ZPG) and was active in Planned Parenthood; William Paddock, another ZPG board member and a writer on population issues; Sydney Swensrud, former chairman of Gulf Oil who was active with International Planned Parenthood; and Otis L. Graham, Jr., Professor of History at the University of California at Santa Barbara (UCSB). The first executive director of FAIR was Roger Conner.

"The simple truth is that we've lost control of our borders, and no nation can do that and survive."

—President Ronald Reagan

he Hesburgh Commission (Select Commission on Immigration and Refugee Policy, chaired by Father Theodore Hesburgh, president of Notre Dame University) and task force examinations of immigration problems launched by Presidents Carter and Reagan finally nudged serious congressional deliberation. In 1982, Sen. Alan Simpson (R-WY) and Rep. Romano Mazzoli (D-KY) held separate hearings, both building upon the Hesburgh formula for controlling illegal immigration, which Simpson called "a three-legged stool" — border enforcement, employer sanctions, and an enforcement system based on a counterfeit-resistance identification system for workers. Simpson's central idea for reform on the legal immigration side was an end to fifth preference (for adult brothers and sisters of citizens and Legal Resident Aliens [LRAs]), the mechanism driving chain migration pyramids Mazzoli's was a real ceiling of 450,000 legal immigrants per year. We

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cheered both of these policy directions, and stood ready to add other proposals.

Then political forces sorted themselves into a minefield that prevented legislative resolution for five years. Simpson was first forced to yield to the pressure of liberal Democrats led by Senator Ted Kennedy and also Hispanic lobbyists, and reluctantly put a bargaining element on the table — a limited amnesty for illegals who had been in the country for a specified time. The White House could have joined most congressional Republicans and Attorney General William French Smith in rejecting an amnesty, changing the reform dynamic in ways hard to anticipate. Reagan accepted the amnesty idea from the beginning, though he expressed his concerns about the welfare costs. Simpson's bill passed the Senate in 1982 with employer sanctions and an amnesty. In the more liberal and Democratic-controlled House. other restrictionist reform measures were cut away. Mazzoli and Simpson lost their cap of 450,000 on legal immigration. As 1982 came to a close, the Democratic House leadership decided that bitter divisions and controversy made a vote in the House unwise in a year in which they all faced the electorate. Immigration reform was shoved into the next Congress.

A narrative with somewhat different details but very similar results took place in the 1983-84 session. By now it was becoming conventional wisdom that a "reform" package built around employer sanctions must include a concession to large-immigration forces in the form of an amnesty on some scale. Roger Conner (first

Executive Director of the Federation for American Immigration Reform [FAIR]) was profoundly uneasy with this pairing, and I was one of the board members inclined to reject it from the outset. Employer sanctions might pass in emasculated, unenforceable forms, while amnesties always "worked," usually more expansively largely than intended. The result would be a bargain in which restrictions didn't work and expansions did; a very uneven trade. Roger took every occasion to argue that any amnesty ought to be delayed until, and conditional upon, hard evidence that the border was under reasonable con-



Otis Graham explained key points from *Immigration Reform* and *America's Unchosen Future* at the 32nd Writer's Workshop in 2008.

trol and the flow of illegals had been drastically reduced.

Nevertheless, it is easier to devise good social policy than to participate in the legislative process, as we reformers learned who had never done either. We opposed the amnesty in principle and urged that it not be considered until sanctions had greatly cut the illegal numbers. Yet, as the amnesty idea stayed as part of "the bargain," we found ourselves entangled in efforts to limit the amnesty's numbers and the government's responsibility for welfare and social services, which almost made us appear to be acting as architects of an amnesty. We were disgruntled that Simpson had agreed to some sort of amnesty for bargaining purposes, as it forced us, if we were to be players, to lobby for smaller rather than larger amnesties, when we didn't want one at all or at least not until at least three years of sanctions proved we had the illegal numbers in a steep decline. Simpson somewhat

testily pointed out in his defense that any real reform of immigration was almost impossible to move through the legislative machinery when the President was not strongly behind enforceable limitations, and his wobbling course could be and was exploited by the Democrats in order to partisanize and sabotage various important turns in the road. Reagan's passive stance made Simpson's hand weaker. Did we want to play the real game, or let the best be the enemy of the good? What reputation did we want in Washington — rigid idealists, or pragmatic tough bargainers? In selecting Roger as director, we had already gone the second way, on the amnesty and on other matters.

Simpson's package passed the Senate again in 1984, containing an elaborate amnesty (which even he began calling "legalization") in trade for employer sanctions in the weak form of a fraud-inviting system of several easily counterfeit documents. The only reform moving ahead in 1984 began to look like a border opening measure. The FAIR staff, buoyed by any signs that we were indeed players, enjoyed telling the board how frequently the organization was able to become involved in the legislation through contacts with Hill staff. This was hard for the board to confirm. We often wondered aloud whether we should be on a ship that seemed headed toward expanded immigration numbers, though under the label of reform.

Mazzoli's House negotiations reflected many of the same controversies. There were in the House, to us, several promising efforts to strengthen the worker identification system, as through a call-in phone registry based on the Social Security number. Angry denunciations of "a national identity card" depleted the shallow reservoirs of civility and tilted the legislation in the House also toward toothlessness.

By a narrow margin of six votes, the House passed a bill in June, 1984, that probably no member fully understood. Employer sanctions were still the core of the legislation. They were the only real reform element and marred by weak enforcement measures. To gain sanctions, the bill's managers had accepted an amnesty that might include three million illegals. Not only did few members understand the legislation, but almost none were enthusiastic about it, especially in a presidential election year. We reformers were still supporters of the overall package, mistaking (in retrospect) as its reform core the historic imposition of employer penalties that would be worth any number of compromises.

Ironically, opponents of sanctions also exaggerated their importance, and called in all their chips to head off the penalties on employers. As the conference com-

mittee wrangled in late 1984, the Hispanic Caucus and a group of Hispanic lobbyists went to Speaker Thomas "Tip" O'Neill's office, and in an emotional encounter reminded him of their Democratic voting record and status as mistreated minorities once again faced with the prospect of discrimination, and demanded that the bill be killed.

"They told me if this legalization were passed, they'd all be required to wear dog tags," he later explained, "and I promised them it would not pass."

The civil rights movement was a Democratic Party trophy, and it had been invoked again to trump everything else. Hispanic legislators and lobbyists claimed that bigotry was about to gain a new foothold when employers had to scrutinize new hires for their immigration status.

There was much public outcry over this when a *New York Times* reporter broke the story of O'Neill's boss tactics, since it seemed to confirm a growing sense that the Democratic Party was a tool of leftist special-interest groups spawned in the Sixties and whose language and outlook were devoid of the words and concept of the national interest. O'Neill retreated, claiming that he had only promised the Hispanics "a delay," and defended himself against the criticism by saying that "there is no constituency for this bill," beyond "environmentalists and population types." That was us.

As 1985 arrived, we pondered O'Neill's remark that "there is no constituency for this bill." For we immigration reformers, it was frustrating to move into Reagan's second term with no legislative achievements, but especially dismaying to read newspaper reports that the Speaker of the House had declared in a contemptuous tone that we represented no constituency. Worse, O'Neill's daily actions, and the votes and comments of others in this struggle, showed plainly that he and they believed that "defeating" any restrictionist reform did have a constituency, one too strong to be ignored — Hispanic lobbyists and voters, labor unions, large agricultural growers, and some church groups.

Public opinion was overwhelmingly on our side. A Gallup Poll in 1977 found 77 percent in favor of employer sanctions, and that level of support was sustained into the 1980s. Surely it was possible to turn that public anger at immigration disarray into political influence behind a decisive change.

We explored ways to embarrass the obstructionists in the Congress and White House during the 1984 presidential campaign and debates by trying simply to raise the question: "What is your position on immigration reform?" The public would then hear that one or

both were not seriously interested in or behind the issue of controlling illegal immigration, and surely a political price would be paid.

It was easy to strategize about using public opinion on immigration to punish or reward politicians. I should have recalled Shakespeare's lines: "I can call spirits from the vasty deep."..."But will they come when you do call for them?" We broke through the silence only once, and then with the help of a knowledgeable journalist who came to the topic from our angle of view, Georgie Anne Geyer. She was appointed to the panel of questioners for one of the presidential debates between President Reagan and Democrat Walter Mondale. Roger provided her with a memo suggesting ways to raise the immigration issue. "Gigi" took up the challenge at once, declared immigration a foreign policy issue, and asked both candidates what was their position on illegal immigration. Both floundered a bit. Mondale said he was "against it," and Reagan endorsed the employer sanctions. Then the issue slipped back into political obscurity.

A determined Simpson saddled up again in May, 1985, submitting legislation with a vitally important new element. An amnesty would proceed only if a special commission concluded that the effort to control the borders had curtailed the flows. This had been part of the Hesburgh report, and we were enthusiastic about it. However, Ted Kennedy and the Hispanic lobby had strong feelings the other way, and within months Simpson retreated to a guarantee that an amnesty would wait no longer than three years. We felt that the contingency provision was a critical part of a workable reform plan, and our hearts sank.

Then Sen. Pete Wilson (R-CA) introduced an agricultural guest worker plan that allowed an unlimited number of foreign workers to enter sectors of U.S. agriculture and work for nine months, presumably returning to their native countries thereafter. We had done our homework on guest worker programs, the Bracero experience here in the U.S. and the European programs, and were stunned that the Senate would consider another one. The Hesburgh Commission had looked hard at guest worker programs, and firmly rejected the idea. Simpson, too, was angrily negative about Wilson's proposal. This "open-ended guest worker program" would "repeat the most serious errors we have ever made in immigration policy," and "is not immigration reform." Wilson was defeated on a close vote, and at once came back with a revised version allowing 350,000 workers annually over a three-year period, which squeaked through a Senate vote in September. These low-wage workers would be free at the end of their contract to migrate to cities, leaving room for 350,000 more, all of whom would have families in Mexico or elsewhere ready to migrate up the chain in their turn. This slipped through the Senate in September 1985, Simpson calling it "exploitation deluxe." Now, at a late hour, immigration reform legislation contained a new version of this perennially bad idea.

House maneuvers were complex and intense. The new guest worker issue further splintered any elusive majority that seemed momentarily to be forming, and forced the maneuvering deep into 1986. That summer, Rep. Charles Schumer (D-NY) put together the votes in the House for a new and double mistake — a Special Agricultural Worker program which was a combination of an amnesty for current farm workers and a replenishment program offering new visas for agricultural workers willing to work for a specified period, after which they could leave the fields and settle legally anywhere in America.

Is There a Pig in That Poke?

In July, the FAIR board met at Airlie House in rural Virginia. We had no illusion that our decisions in later summer, 1986, would decide the fate of IRCA, but we certainly were positioning the organization in the eyes of its membership, donors, and anybody in immigration policy circles who might by paying attention.

We had strongly opposed amnesty and guest worker programs from the beginning, and what looked like two amnesties and one or two guest worker programs moved forward with the only reform element that survived — employer sanctions in what was clearly an unenforceable form. Could Alan Simpson, if this mess ever got to conference, make at least the main amnesty conditional on border control, and eliminate the agricultural guest worker program now attached to this complex legislation? It did not seem likely. Had the time come to denounce the entire package as irredeemably flawed, or were we best advised to remain players and hope for victories in the conference committee? If we bailed out before the end, would Alan Simpson or any other legislative leader (or president) ever work with us again?

Arriving at Airlie, we learned that the FAIR staff was seriously split, and consumed with internal argument. Roger led the half that wished to remain players and stay behind IRCA even in its mangled, border-opening form. K.C. McAlpin, a smart young Texas businessman who had taken a cut in income to join the FAIR staff, spoke for the other half of our work force in Wash-

ington.

"Our knowledgeable members around the country," he said, "are already communicating outrage that we had not already denounced this smelly bag of compromises, branding it as unsalvageable and in anything like its current form deserving of defeat and a fresh start some other day."

Roger's rejoinder was that the Senate might slip into Democratic hands as a result of the November elections, making Ted Kennedy Chairman of the Immigration Subcommittee, and our window of opportunity would have slipped away.

The board closed the doors for executive session, and we found ourselves equally split. I leaned toward K.C.'s analysis, appalled by the amnesties (there were three in the bill). We moved ahead on Roger's track, with deep misgivings. At stake wasn't the legislation, which we lacked the strength to derail, but our reputations — with the Washington policymaking establishment, as responsible players, and with our membership, who wanted us to point them in a direction more forward than backward.

A bill passed the House in October with the Schumer amendment in it — a new agricultural guest worker program that had not even been scrutinized in hearings. The conference committee couldn't agree, and IRCA seemed fated to die on the runway, again. Then a change in Reagan's travel schedule overseas gave weary conference members more time to cobble together an agreement. Probably nobody, certainly not general manager Simpson, believed that this package of inconsistent compromise was defensible public policy, but increasingly it seemed to both parties that the American people wanted some sort of result. They might blame everyone concerned, or whoever seemed to be responsible, if the futility was extended. A conference report came together and cleared both houses in early November, and the president signed IRCA on the sixth in a small room in the White House chosen by staff opponents of the measure in order to minimize attendance and TV coverage. Reagan made a brief, shameless statement about how big and fine a reform it was.

Assessing IRCA

U.S. law now imposed penalties on employers who hired illegal immigrants, with a verification system accepting any two of a lengthy list of easily forged documents as proof of citizenship. For the fraud-inviting system, Congress had traded four amnesties, one for those in residence since January 1, 1982, another for illegal ag-

ricultural workers who had worked at least three months in 1985-86, one for a group of Cuban/Haitian refugees of the Mariel era, and one by moving the "registry date" (after which the Attorney General could adjust the status of any foreigner) from 1942 to 1972. It had also included, as a trade for enforcing the law through a penalty on employers of those illegally in the country, a new agricultural guest worker program, which all knowledgeable people knew would increase illegal immigration and keep agricultural wages low. Some 3.1 million illegals were removed from that category by IRCA's amnesties; 70 percent were Mexicans with a seventh-grade education. A mid-90s study by the congressionally appointed Jordan Commission found that the two main amnesties

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of 1986 brought in an additional 8 million relatives living abroad — 5.2 overseas relatives per amnestied alien.

We were stunned when the full extent of the expansionist features began to come into view, all traded for penalties on employers based on an unenforceable system of verification. When legislators are tired and confused, at least on immigration matters, we learned that the frenzy of trading at the end of the process gives the advantage to the openers of loopholes, not the closers. In the hectic last days, no one seems to have noticed or objected to Section 314, allocating by lottery 5,000 visas to "qualified immigrants" from the top thirty-six nations "adversely affected" by the 1965 law — meaning a country that had not used more than 25 percent of its 20,000 quota (some countries were ruled ineligible, i.e., the top ten sending countries throughout American history). Senator Ted Kennedy had in mind only the Irish, whose falling quotas over the years prompted him to add this element to IRCA. The State Department named the thirty-six countries, most from Africa and Europe, and the first lottery in 1987 produced 1.4 million applications in the first week. What did this have to do with the employment needs of the U.S., or with family reunification — the cornerstones of our system of selection? This irrational new visa category had strong ethnic support in Congress, which expanded the "Diversity Lottery" visa pool to 40,000 between 1990–1994, and reserved 40 percent of these to the Irish. Discriminatory national origins considerations had crept back into American immigration policy. When the reform train begins to move, strange cargo is smuggled aboard.

Illegal border crossing along the U.S.-Mexican border, as measured by arrests, eased a bit for several months while potential migrants waited to see if the government of El Norte was serious about arresting them if they entered the U.S. Since it wasn't, the magnet of American jobs still pulled Third World labor, which resumed its flow northward after less than a year of lower pressures. Illegal immigration surged again, building momentum through the 1990s, reaching annual totals of 500,000 at the opening of the next century. The number of illegals in the country by 2002 was estimated at 10 to 11 million. The problems had been made worse. Historian Reed Ueda correctly called IRCA "the most generous immigration law passed in U.S. history." This "generosity," a misleading word with a nice ring, was directed toward foreigners who had broken our laws to enter. They broke them every day they remained, butting in line in front of those at home on the waiting list for visas.

How to assess what had happened?

A much-contested law had finally been signed after five years of political horse trading, and expectations seemed generally restrained. The media did not report any euphoria from the parties involved. Reagan signed the legislation quickly and without ceremony. He didn't invite Senator Simpson, Congressman Mazzoli, or anyone else from the Hill. Simpson, who was sought by the press, had almost nothing to say. Roger cautiously told reporters that time would tell. To me he wrote, quoting Churchill: "This is not the end. This is not even the beginning of the end. This is just the end of the beginning."

I don't know if there were huge parties on November 6, 1986, in the offices of Senator Ted Kennedy, over at La Raza, among lobbyists who represented southwestern and southern growers, among immigration lawyers, and in the Mexican Embassy. There should have been. Celebratory parties were justified in those places where ethnic aggrandizement and cheap labor were the only goals, and "immigration reform and control" were exactly what was not wanted. The reform and control hopers, backed by a broad and thin public opinion, had

taken a good run at the immigration status quo, and the status quo had not only fended off restriction, but rewarded law-breaking and expanded the incoming numbers through the same flawed system of selection.

A year or two later, it was obvious that, in a head-to-head encounter between American political institutions and a sustained, peaceful, but illegal human invasion across undefended borders, those institutions pardoned most of the lawbreakers and set up workplace checks that were an international joke. We reformers sometimes asked and were asked why we had not at some point gotten off that train with a public statement that it deserved to be derailed and a fresh start made.

This second-guessing deserves a second look. I have already pointed out that Alan Simpson's emergence from Hesburgh Commission member to Chair of the Senate Immigration Subcommittee appeared to open an unprecedented historic reform opportunity. His knowledge of the issue and his determination to bring improvements to a fundamental breakdown in a nation-shaping system of population replenishment had not been matched since "Pat" McCarran (another mountain state immigration reformer) shored up and improved the national origins system in the early 1950s. Simpson was both more talented and more congenial.

This helps account for how long our enthusiasm persisted, even into 1986, when so much bad policy had been woven into the package. In retrospect, Alan Simpson did not have the power to maneuver a restrictionist reform measure through our system in the 1980s. Our hope that he might pull this off reflected an immature understanding of the country's political system, culture, and the place of this issue within both. We moved slowly up a steep learning curve.

The Hispanic lobbies were the real spoilers who wanted to defeat everything and preserve a broken system

"Did I get trapped," Roger mused in his memoir, "[by a desire to be] a Washington insider?"

Most of the staff felt so, he admitted, and perhaps they were right to a degree.

"We were swept up in the momentum of the public support we had created."

Roger returned to the role of Simpson. No one could have predicted that the senator and his chief aide, Dick Day, would become exhausted in the final hours of negotiations. Simpson failed to press hard for a list of improvements in important details of the legislation that we and others had discussed with him. The Wyoming senator has not published any memoir of these events, but surely he would point out that a passive and prob-

ably uncomprehending president in the White House allowed mixed signals to go out to the end. Attorney General Ed Meese refused to back Simpson on the crucial "legalization commission," empowered to decide if sanctions were working well enough to trigger the amnesty or not, even though INS Commissioner Alan Nelson supported this "conditional amnesty" provision. With the White House signaling that Simpson was on his own on this one, several Republican senators voted against the conditional amnesty, allowing the amnesty to proceed before sanctions had been tested. All of this happened very fast at the end. We gambled on Simpson in conference, and we were not sufficiently aware of the weak hand of cards he held.

Still, the view that nothing of real value came with IRCA, and that it was a mistake to go down to the end with it, may be too harsh on FAIR, the only organized lobby behind it. Employer sanctions in the final package rested upon a list of easily counterfeited documents inviting massive fraud. The law provided what looked like a corrective mechanism. The present was empowered to sponsor pilot experiments in the states toward a single national identification document, a ladder of improvement upward. No one could know that Reagan, and after him, Bush and Clinton, would show no interest in this. They left this policy experimentation authorized by IRCA unexplored. The legislation outlined a path toward strengthening the sanctions, and who could have outlined a path toward strengthening the sanctions, and who could have known that subsequent presidents would squander that opportunity?

It is also easy to forget important parts of the contemporary setting. The pressure on the government, and all the stakeholder groups, to reach agreement and pass some sort of immigration package, was enormous. A major theme in the policy discourse around this issue was the fear that government ineptitude at border control would unleash a wave of national hysteria against immigrants. Lawrence Fuchs (a political science professor at Brandeis University, who directed the work of the Hesburgh Select Commission) and Father Hesburgh himself spoke of this frequently, and with urgency. Cope with the illegal problem, they said, or face a backlash from the American public, which has, history tells us, even if contemporary evidence is lacking, a strong xenophobic streak just beneath the surface.

A lot of intelligent people shared this fear of a sudden outburst of popular "nativism." Immigration historian John Higham in 1984 wrote that at the beginning of the twentieth century, "the inescapable need for some national control over the volume of immigration in an increasingly crowded world was plain to see, then as now," and he scolded the "unvielding resistance from the newer ethnic groups," along with business interests, for blocking any reform. It allowed the problem to "fester and grow until a wave of national hysteria" seemed inevitable. Passing a deeply flawed reform law seemed preferable to deadlock and inaction — the apparent alternatives. Richard Lamm (former Governor of Colorado) put together a public announcement in major newspapers in early 1986, signed by former Presidents Ford and Carter, among major political figures, urging all participants to salvage Simpson-Mazzoli. These political heavyweights thought there was an important opportunity for averting a popular backlash. Virtually every large newspaper in the country, led by The New York Times and The Washington Post, praised the legislation when it arrived on Reagan's desk. They urged him to sign it, and welcomed it as an improvement when it became law.

Recalling this context helps us understand the widespread, touching faith in the Simpson-Mazzoli experiment with employer sanctions that we reformers shared with others, even as the crippling compromises piled up.

The Positive Side of Defeat

Real reform had lost, but our team on the field for the first time in a century had been a "responsible player," giving the benefit of the doubt to the promises of legislators and administrators proposing the "Grand Bargain." When the government failed over the next two decades to carry out the promises of the bargainers, that "trust me" tactic was discredited, and Simpson's preference for "enforce first and verify" had many adherents in the critically important policy fights ahead of us in the Bush years, 2001-2009.

When the IRCA marathon was over, two things were true. The national interest and we reformers had lost, as the law we had worked to shape almost immediately made things worse, and illegal immigration resumed at rising levels. Yet institutionally, we New Restrictionists were still in the game, still players, even if we were far behind after the first inning.

The credit for this must be broadly spread around. John Tanton (co-founder of FAIR) insisted from the beginning on a moderate tone and image, and invented phrases such as "alarmed but not alarmists." Much cred-

it goes to the reform movement's first celebrity or recognized national figure, Colorado Governor Dick Lamm. This three-term, liberal-environmentalist Democrat, courageously and at considerable personal career risk, spent his own political capital to reach out for immigration reform allies in the higher political circles that none of us could contact. One example was the large-scale newspaper ads in which Lamm brought together former Presidents Ford and Carter, Father Hesburgh, and other Americans of stature to urge responsible action to curb illegal immigration. He joined the FAIR board in 1982, his armed bodyguard sitting quietly in the hallway while we deliberated. Apart from his astute political and policy judgment, Dick Lamm's involvement opened doors and got phones answered, which built institutional strength even while we were handed a bad first-inning score.

In a lengthy and influential essay, "Immigration," by respected journalist James Fallows and appearing in the venerable *The Atlantic Monthly* in November 1983, Roger Conner was described as "a compact, sandy haired lawyer, thirty-five years old, with a puckishly all-American look," whose mother had taken in ironing and did domestic work. Fallows reported Conner as committed to immigration limitation because "immigration was the biggest environmental question of all," in that it drove American population numbers relentlessly upward with no end in sight. Beyond this, "the victims of immigration are the marginal workers, with low education," most especially African-Americans — a point forcefully made by two other people associated with FAIR, and quoted in the article, Cornell economist Vernon Briggs and T. Willard Fair, head of the Miami Urban League. In Fallows' survey of all the arguments and players in the rising battle over rising immigration, FAIR's Roger Conner projected an image of an environmentalist with a keen sympathy for the lower rungs of the American workforce who were competing with cheap foreign labor.

A Washington Post story in November that year conveyed the same image. Speaking at Howard University in Washington, Roger told his black audience that Americans were losing jobs to immigrants, and "the applause was spirited. It was an effective performance Conner has repeated many times. Conner delivers his position in an envelope of traditionally liberal concerns."

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