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# In Defense of Naturalization Reform Symposium: Contributions

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# IN DEFENSE OF NATURALIZATION REFORM

ARNOLD ROCHVARG\*

## I. INTRODUCTION

At the request of the Immigration and Naturalization Service (INS) and the Administrative Conference of the United States (ACUS),<sup>1</sup> I undertook, from December, 1994 to July, 1995, a study to determine the concerns persons had with the current naturalization process, and to make recommendations to the INS of what changes should be made to improve that process. After some preliminary discussions with persons experienced with naturalization, and after reading most of what little was available on naturalization, I developed a questionnaire which I hoped would help persons identify the problems they had experienced with the naturalization process, and the changes they thought appropriate. Over 200 of these questionnaires were sent, about half to advocacy groups that did not provide direct services to immigrants, with the rest divided equally among attorneys and advocacy groups that did provide services to immigrants. My assistant, Valentine Brown, at that time a law student but now a practicing attorney in Philadelphia, and I then embarked on a telephone interview process that continued over five months. One noteworthy point of our information gathering process was the agreement of those with whom we talked about what aspects of the naturalization process needed change. Although there was less agreement as to the solutions to these problems, all agreed that changes needed to be made.

In June, 1995, I submitted a preliminary draft of my study and its recommendations to the INS. In September, 1995, without having received any comment from the INS on my preliminary draft, the final report was submitted to the INS and ACUS. The full report was thereupon published in the *Georgetown Immigration Law Journal*.<sup>2</sup> On March 6, 1996, the

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\* Professor, University of Baltimore School of Law. The author would like to acknowledge Brandon Mitchell, legislative assistant to Congressman Xavier Becerra, for his work on behalf of naturalization reform.

1. ACUS from 1964-1995 was an independent federal agency which studied the efficiency, adequacy and fairness of the administrative procedures used by federal administrative agencies. It was abolished effective October 1, 1995. See C. McCarthy, *Mourning an Agency Mugged by Congress*, WASH. POST, Nov. 7, 1995, at E11.

2. Arnold Rochvarg, *Report to the Administrative Conference—Reforming the Administrative Naturalization Process: Reducing Delays While Increasing Fairness*, 9 GEO. IMMIGR. L.J. 397 (1995).

*Georgetown Immigration Law Journal* held their Symposium which discussed some of the recommendations in this report.<sup>3</sup>

The purpose of this Article is to defend the position that reform in the naturalization process is needed, and that the arguments that reform in the naturalization process should not be made at this time be rejected. The structure of the Article will be as follows. Part II will highlight and summarize the complaints which my earlier report found with the naturalization process. Part III will then briefly review the major recommendations proposed in my earlier report. Part IV will next discuss those arguments which have been presented against reforming the naturalization process. Part IV will also respond to these arguments to show why reform in the naturalization process is necessary and appropriate.

## II. PROBLEMS WITH THE CURRENT PROCESS

Perhaps the simplest way of highlighting the problems with the current naturalization process is to view the process through the perspective of a permanent resident seeking to become a citizen. I will call this person Mr. P. Although every problem discussed in this section was commonly reported, no one person reported all the problems which Mr. P. will encounter. For this discussion, however, it will be assumed that our typical applicant did encounter every problem.

Before deciding to apply for citizenship, Mr. P. would have been discouraged from seeking citizenship by others in his community who told him that the process "takes forever" (actually often over one year), and that during this time he will be treated rudely by INS officials. Mr. P. will be told by others that they cannot understand why after having lived as lawful permanent residents for over five years,<sup>4</sup> the INS seems to want to try to make it hard for them to become citizens. Despite discouragement from others, Mr. P. decides to begin the process because of his desire to become a citizen. After all, he has lived in the United States for ten years, and considers it his home. Mr. P., however, finds it difficult to obtain a Form N-400. He sees tax forms at the library, the post office, and at the mall, but no INS forms. To get a N-400, he has to travel to the INS office, which is over one-hour away. Once there, Mr. P. must wait in line for over an hour. Although Mr. P. stays in line, others do not. They must leave because of job or child care commitments. Most who leave tell Mr. P. that they will come back another day, but in fact many, frustrated by their first experience with the naturalization process, abandon their attempts to become citizens.

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3. The transcript of the debate is included in this Symposium at 5.

4. To be eligible to apply to become a naturalized United States citizen, a person must have resided continuously in the United States, after being lawfully admitted for permanent residence, for at least five years, 8 U.S.C. § 1427(a) (1994), or three years if married to a United States citizen, 8 U.S.C. § 1430(a) (1994).

After obtaining the N-400, Mr. P. attempts to fill out the N-400 at his home. He is somewhat discouraged by its length. Moreover, there are some questions which require him to provide information which he does not remember. For example, in Part 3, Mr. P. is asked to list every trip he has taken outside the United States since becoming a permanent resident, including the dates of departure and return, destination and reason for the trip. Because Mr. P. has visited family members for short periods in his former country, and because his job has taken him frequently out of the United States, he has great difficulty answering the question accurately and completely. Mr. P. understands that to be eligible to become a naturalized citizen he must have been physically present in the United States at least half of the time during the five years immediately preceding the date of his application, and that an absence from the United States for a continuous period of one year or more will break the continuity of residence.<sup>5</sup> Mr. P. has no problem attesting that neither of these rules disqualifies him from citizenship, but he is unable to provide the dates of all his trips out of the country with complete certainty. After many hours gathering data on his trips, Mr. P. completes this question with the knowledge that he has not listed every trip. Mr. P. also has problems with the questions about employers and residency. During his first year in the United States, Mr. P. stayed at the homes of different relatives and friends. He is unable now to provide every address and the dates of residence. Additionally, during his first year, Mr. P. held numerous temporary jobs. Again, he is unable to recall the address of each employer and the dates of employment. Part 9 of the N-400 asks Mr. P. to list "present and past membership in or affiliation with every organization, association, fund, foundation, party, club, society or similar group in the United States or in any other place" including dates of membership and location. By this point, Mr. P. decides to list a few organizations, but not to bother trying to remember them all. Other parts of the N-400 do not present any problems for Mr. P., and he might otherwise be amused by them, except for the fact that this form has taken much more than the twenty-five minutes it says it will take to complete.<sup>6</sup> For example, Mr. P. has no difficulty answering whether he was affiliated with the Nazi Party from 1933 to 1945,<sup>7</sup> because he was not born until 1958. Likewise, the question whether Mr. P. was born with or had acquired any title or order of nobility from a foreign state<sup>8</sup> is easily answerable, although he did have at one time a dog named Prince. Moreover, although Mr. P. has never been a patient in a mental

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5. 8 U.S.C. § 1427(a)(1) (1994).

6. The Paperwork Reduction Act notice on the N-400 states that "the reporting burden for this collection of information is computed as follows: (1) learning about the law and form, 20 minutes; (2) completing the form, 25 minutes; and (3) assembling and filing the application (includes statutory required interview and travel time, after filing of application), 3 hours and 35 minutes, for an estimated average of 4 hours and 20 minutes per response.

7. Question 2, Part 7 of the N-400.

8. Question 14, Part 7 of the N-400.

institution, he knows persons who have been such patients, and received appropriate care for their problems. He believes question 13 of Part 7<sup>9</sup> might discourage persons from either seeking mental health treatment or from naturalizing, both consequences he believes to be undesirable.

Although many potential citizens fail to complete the N-400 even after obtaining it because of their inability to recall the details asked by some of the questions, Mr. P. completes it to the best of his ability. He does remark to his friends, however, that the form seemed needlessly complex, as if its purpose was not to gather the relevant data, but rather to place a barrier in front of his goal of citizenship.

In order to file the completed N-400, Mr. P. must again travel to the INS office to file the form in person.<sup>10</sup> Once there, he again waits in line for a few hours. After paying his \$95 fee, he is told the next step is an oral interview at the INS office with an INS examiner. Mr. P. does not hear from the INS for almost a year. He is concerned that his application has been lost (he has learned that happens). He eventually does receive notice of his interview. He once again must travel to the INS office. Although he arrives ahead of his scheduled interview time, the examiner is one hour behind schedule. Mr. P. is very nervous when the examiner asks him to come to the examiner's small office for the interview. After looking at Mr. P.'s N-400, the examiner asks to see Mr. P.'s tax returns for the past three years. Mr. P. had not been told that he should bring them. The examiner tells him that without the tax returns, a decision cannot be made on whether he is eligible for citizenship. A second interview is scheduled. It will be held in a few months. Mr. P. is once again required to come to the INS office.

At the second interview, Mr. P. brings his tax returns, but he is not asked for them. When he tells the examiner he has brought them, he is told they are not necessary. The examiner is now ready to test Mr. P. on his "ability to read, write and speak words in ordinary usage in the English language."<sup>11</sup> One problem with this is that there is no understanding within the INS what is meant by "ordinary usage" English. Most examiners test English by asking the applicant to repeat his or her answers to the questions on the N-400. Because there are no guidelines as to what satisfies the English language requirement, each examiner sets his or her own standards. Mr. P. has heard that some examiners make it easy to pass the English test, while others make it difficult. He has also heard that while some examiners are respectful to applicants, some are rude and treat naturalization applicants as if they had just been apprehended for illegally crossing the border. Mr. P. is happy when he is told he has passed the English language requirement.

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9. This question asks in part whether the applicant has "ever been confined as a patient in a mental institution."

10. Not all offices require this. Many permit filing by mail.

11. 8 U.S.C. § 1423(a)(1) (1994).

At his oral interview, Mr. P. will also be tested as to his knowledge of United States history and government.<sup>12</sup> He has read the three INS texts on which the questions can be based.<sup>13</sup> The texts covered a tremendous amount of information, but Mr. P. read them all. Usually, the examiners ask questions from a list of one hundred questions, but not always. Mr. P. has heard from others that some examiners ask much more difficult questions than other examiners. Mr. P. is asked a few questions and passes. He got only one question wrong—he did not remember what was the forty-ninth state to join the United States. Despite passing, he wonders how this question is at all relevant to whether he should be a citizen. He also realizes he was lucky to get an examiner who did not ask other trivial questions.

At the end of the interview, Mr. P. is informed by the examiner that his naturalization application has been granted. The next step is the oath. Although in 1990, the INS was given the authority to offer the oath to approved applicants, because Mr. P. lives in an area where the courts have requested exclusive jurisdiction to offer the oath, Mr. P. must wait until a court has scheduled a naturalization ceremony to take the oath.<sup>14</sup> Although the statute authorizes the INS to offer the oath if a court ceremony is not held within forty-five days of the applicant's approval,<sup>15</sup> the INS has not been exercising this power, and approved applicants in some areas must wait months for a court administered oath ceremony. Even in jurisdictions where the courts have not requested forty-five-day exclusive jurisdiction, applicants who desire to change their names when becoming citizens cannot be sworn in by the INS, but must wait for court naturalization proceedings.<sup>16</sup> In general, court ceremonies are held less often than INS ceremonies. Mr. P. is concerned about the delay in the oath because he wants to register to vote. Unfortunately, he must wait three months for a ceremony.

The day of the ceremony arrives, and Mr. P.'s last step in the process is the taking of the oath. Although Mr. P. is very excited, the words of the oath fail to convey the significance of the event. Words such as "potentate" and "fidelity," and renouncing allegiance to a "foreign prince" have little meaning to him. The fact that about one-half of the oath concerns service in the armed forces also detracts from what is one of the most important days of Mr. P.'s life.

After Mr. P. has completed the entire naturalization process, the problems he has encountered pale in comparison to what he has gained—he is a United

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12. *Id.* § 1423(a)(2).

13. The texts are entitled, CITIZENSHIP EDUCATION AND NATURALIZATION INFORMATION, UNITED STATES HISTORY 1600-1987, and U.S. GOVERNMENT STRUCTURE. They are available without charge from the INS.

14. 8 U.S.C. § 1421(b)(2)(B) (1994).

15. *Id.* § 1421(b)(3)(A).

16. INS Memorandum, Sept. 15, 1991, *reprinted in* INTERPRETER RELEASES Oct. 7, 1991, at 2, 5, and attachment #4, Petition for Name Change.

States citizen. Unfortunately, the problems with the present naturalization process result in many eligible persons not becoming citizens.

### III. PROPOSALS TO IMPROVE THE NATURALIZATION PROCESS

The previous section highlighted the major problems identified by my INS-ACUS study previously published in this law journal by tracing the steps of a fictional applicant, Mr. P., through the naturalization process. This section will highlight some of the proposals made in my earlier study by again focusing on our fictional applicant.

At the time he became a permanent resident, Mr. P. was provided a naturalization kit by the INS. This kit included a Form N-400 (as revised) and an explanation of the requirements of naturalization. For example, Mr. P. was informed of the effect of absences from the United States on his ability to naturalize,<sup>17</sup> and told to keep records of all trips outside this country. The kit also instructed Mr. P. to keep records of all residences and employers. It also informed him that in order to naturalize, he must be able to pass an English language test and a United States history and government test. Mr. P. was pleased to receive this kit. Early education of the requirements for naturalization should make it easier for him to qualify when he becomes eligible in five years. Moreover, when new permanent residents are educated early as to the need to know English, they can enroll in English as a second language courses. The same is true for history and government classes.

Five years after becoming a permanent resident, when Mr. P. was eligible to file for citizenship, he would attend a citizenship workshop organized by a community group. At this workshop, volunteers would help him complete the N-400. This N-400 would be shorter than the current one. It would require only the information that was relevant to determine Mr. P.'s eligibility to be naturalized. For example, instead of being asked to list the dates, destination and purpose of each trip out of the United States since becoming a permanent resident, Mr. P. would only be asked to list continuous absences from the United States of over six months, and whether during the past five years, he had spent more time outside the United States than inside the United States. These two questions accomplish the goal of determining eligibility under the relevant statute without unduly creating a burden on him to remember and list numerous short trips out of the country. Despite the fact that he is not required to list all trips on the N-400, Mr. P. does have records of all his trips (he dutifully followed the instructions in the naturalization kit), and if asked of such trips by the INS, he is prepared with the relevant documentation.

At the citizenship workshop, Mr. P. would also be interviewed by volunteers, including attorneys rendering pro bono service, about his ability to

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17. See 8 U.S.C. § 1427(b) (1994).

speak and read English and about his knowledge of United States government and history. If any problems were discovered that might lead to Mr. P.'s application not being approved, he would receive advice on how to rectify these problems before submitting the N-400 to the INS. When it was determined by persons at the citizenship workshop that Mr. P. was ready to apply, his application would be submitted to the INS, perhaps through an electronic filing system. Within one week, Mr. P. would be scheduled for an interview which would be held within one month of his filing. The INS interview would be held not at the INS offices, but at a community facility. The purpose of this interview would not be to review every issue of Mr. P.'s eligibility, but to focus on problem areas spotted by the automated processing system developed by INS. Moreover, Mr. P. would not be tested orally on his knowledge of English language or United States history and government at the INS interview. Before the interview, Mr. P. would be required to pass a standardized test on English and a standardized test on history and government which had been developed by the INS in consultation with experts. These tests would be administered by outside entities such as community colleges. The standardized English test focuses on matters that relate to daily life for which it is important to know English. The standardized history and government test does not test historical trivia, but focuses on an applicant's understanding of history and constitutional principles so that the new citizen can more readily identify with his or her new country, and understands what it means to "support and defend the Constitution" as required by the oath of allegiance.

As an alternative, rather than taking the standardized tests, Mr. P. might be eligible for a waiver by attending an English as a second language course and a history and political science course at facilities approved by the INS. Other waivers would be available, for example, for persons who graduated from high school in the United States.

Because of the pre-interview education, counseling, and standardized test taking, Mr. P.'s interview with the INS examiner will take less time than is currently required; thus the INS can handle more applicants. The relationship between the INS examiner and the applicant should also be less adversarial.

After being approved by the INS examiner, Mr. P. would be scheduled for an oath ceremony organized by the INS in cooperation with a community organization. Such ceremonies should be held as frequently as necessary, perhaps even once a week. The person administering the oath could be a judge or INS official. The oath recited by Mr. P. at the ceremony would not be full of words such as "potentate" and "fidelity," but it would impress upon him that he is renouncing his allegiance to his former country, and that he is freely declaring his support for and willingness to defend the Constitution and laws of the United States. From the time Mr. P. became eligible for citizenship, it took two months for him to become a citizen.

#### IV. IN DEFENSE OF NATURALIZATION REFORM

The preceding section has highlighted how some of the recommendations that my report proposed would work. These recommendations, if adopted, would resolve the problems which exist with the current process. Alternative solutions to these problems exist, and they are also set forth in my report.

The persons who were interviewed for my study all agreed that changes to the naturalization process were necessary. Arguments have been presented, however, subsequent to my study (at the Symposium and elsewhere) questioning the need for reform in the naturalization process. This last section will address this issue.

One argument that has been presented to me is that the call for naturalization reform is based on convenience (mostly getting rid of backlogged files), rather than on principle. I disagree. The need for reform in the naturalization process is based on the belief that persons who are eligible for citizenship, persons who, to use the popular phrase, have "played by the rules," should be able to obtain the reward which they have earned, i.e. citizenship, in a timely manner. Naturalization reform is based on the principle that we cannot set requirements for citizenship, and then when those requirements are met, tell aspiring citizens that the benefits of citizenship cannot be granted for over one year. A process which treats aspiring citizens unfairly and arbitrarily is a deterrent to persons wanting to become citizens. It is in the national interest for persons to become citizens, and an unfair naturalization process is inconsistent with that national interest.

Another argument is that it is already "easy" to become naturalized, and that changes need not be made to make it easier. There are a few responses to this. Whether it is easy to become a naturalized citizen depends upon the background of the applicant. For English speaking persons who attended school in the United States, who have never left the United States, and have had few residences and few jobs, the process is not a difficult one. But for the majority of applicants whose native language is not English (and whose native language alphabet may be different from the alphabet used by English), and who did not attend school in the United States, much effort is required to become a citizen. It is legitimate to require such efforts for persons seeking to become citizens; it is not legitimate to place artificial barriers to defeat the enjoyment of the fruits of those efforts.

Opponents of reform argue that the history and government test is already so easy that there is no need for change. But the concern is not that the test is difficult, but rather that it tests irrelevant matters, and is administered in an unfair manner that can lead to discriminatory treatment of applicants. By emphasizing irrelevant matters, the current history and government test does not act as an incentive for aspiring citizens to learn what a new citizen should learn. Most new citizens do in fact learn about the history and government of the United States because they are interested in learning about their new

country. The naturalization test should encourage such learning, not discourage it.

None of the proposed naturalization reforms “make it easier” to become a citizen by loosening any substantive requirements. For example, although my study recommends changes in the question on the N-400 regarding absences, there is no suggestion that the substantive requirement relating to absences be changed. Likewise, my report does not suggest eliminating the English language requirement; it only recommends that the examination be standardized so that all applicants are fairly tested. The reform proposals in my report in fact are aimed at better enforcement of the English and history and government requirements than what currently occurs.

Another argument that I have heard against naturalization reform is that the reason permanent residents want to naturalize is their desire to bring relatives into the country, and not because of any patriotism or desire to participate in American society. Therefore, it is argued, there is no obligation to make the naturalization process fairer or simpler. There are a few responses to this. First, a *USA Today/CNN/Gallup* poll in 1995 found that forty-eight percent of legal residents become citizens because they consider the United States their home.<sup>18</sup> Thirty percent cited gaining the right to vote as the reason to naturalize.<sup>19</sup> Secondly, as long as the immigration laws are such that there is a long wait for a permanent resident to be able to bring in a family member, but there is no backlog for immediate relatives of United States citizens, I see nothing improper in someone wanting to become a citizen in order to be united with family. Family unification has long been accepted as an important goal of our immigration policy.

Another argument presented against naturalization reform is that because citizenship is the “highest gift” a government can give to an individual, applicants have no right to complain about delays, inconvenience or even unfair treatment. Because there is no right to be naturalized, there can be no complaints about the process. My response is that as long as non-native born persons are eligible to become citizens, they must be treated with dignity, respect and fairness. A person’s earnestness to become a citizen should not be tested by her or his willingness to endure delays and unfair treatment. The present process creates distrust in the government, and conveys to the applicant that he or she is not welcome as a citizen. This is not how aspiring new citizens should be treated. It should again be noted that applicants for citizenship are legal residents who have resided in the United States for at least five years and have been required to prove their good moral character. The population naturalizing has proven itself worthy of better treatment than many of its members receive from the present naturalization system. Very

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18. See, e.g., Lydia Sald, *The Immigrant Story: As Immigrants Tell It*, 6 THE PUBLIC PERSPECTIVE 9 (Aug./Sept. 1995).

19. *Id.*

few applicants are denied naturalization for reasons of fraud or bad moral character. Persons who naturalize are the best and most successful of the immigrant population. Although fraud and illegality exist within the permanent resident population, persons with such problems do not attempt to naturalize out of fear that their prior misdeeds will be discovered and they will be deported. It is misplaced therefore to treat every applicant as if he or she has fraud in his or her background, and that the naturalization process is the last chance to unearth such misbehavior. Persons concerned about illegal immigration should be in favor of a streamlined, efficient naturalization process which relies on private community organizations so that more resources would be available to deal with illegal immigration.

My study recommended that the exclusive jurisdiction of the courts to administer the oath of allegiance be abandoned, and that the INS should coordinate all naturalization ceremonies. Those that criticize such a proposal because it would detract from the solemnity and significance of the ceremony should attend an INS-sponsored ceremony. On March 7, 1996, at the Cannon Caucus Room in Washington, D.C., the INS held a citizenship ceremony in cooperation with the Congressional Hispanic Caucus, Congressional Asian-Pacific Caucus, Indochinese Community Center, Korean American Alliance, Spanish Catholic Center, and the Daughters of the American Revolution as well as other organizations. This INS ceremony was a wonderful celebration of citizenship which I doubt could be matched by any judicial ceremony. Many new citizens have expressed the view that a ceremony co-sponsored by a local organization in a local community is more meaningful than one held in a downtown courthouse. Reform will not cheapen naturalization ceremonies, but will enhance them.

Even persons who favor naturalization reform have argued that it should not be attempted because of the possible backlash resulting from anti-immigrant sentiment. In recent debate over immigration legislation, there have been attempts to limit legal immigration because of animus towards illegal immigrants. To extend this thinking to naturalization would be extremely unfortunate. The issues relating to illegal immigration have absolutely nothing to do with naturalization. Naturalization reform concerns only permanent residents legally in the United States for at least five years who have learned to speak and read English and who have shown a commitment to the ideals of the United States by learning about its history and government. Any linkage between illegal immigration and naturalization is nonsensical.

There have been important first steps already made in naturalization reform. For example, the INS has a group working on redrafting the N-400, and is working more closely with community groups on naturalization issues. It seems clear that the current leadership of the INS is committed to improving the naturalization process. In Congress, Congressman Xavier Becerra has introduced a bill, entitled the "Proud To Be An American Citizen

Act of 1996” which is an excellent first step to improving legislatively the naturalization process. Especially praiseworthy are provisions in the proposed bill that seek to reduce the time an approved applicant would have to wait to be sworn in as a citizen; that seek to enhance the integrity of the English and history requirements; and that direct the INS to work closely with community-based organizations. Congressman Becerra and his staff should be applauded for taking this first step toward naturalization reform.

#### V. CONCLUSION

In the conclusion to my report to the INS and ACUS, I wrote that “in light of the tremendous increase in the number of applications for citizenship, doing nothing to change the present process is not an option.” The issue is more than a matter of moving files. Naturalization reform is necessary because the present process treats eligible applicants, those who have played by all the rules, unfairly, and discourages others from seeking citizenship. Reforms need to be made to address these problems.