Notre Dame Law Review

Volume 51 | Issue 1 Article 6

10-1-1975

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COMMENTARY

CHICANOS IN THE SCHOOLS: AN OVERVIEW OF THE PROBLEMS AND THE LEGAL REMEDIES

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I. Introduction

Unequal educational opportunity and segregation in American schools are commonly associated with black Americans. These problems, however, extend beyond blacks to other minorities, as the Chicanos who live in a school district like the one in Oxnard, California, know only too well:

> To implement the "principle of segregation," the minutes for November 1936 to June 1939 show how Oxnard's School Board not only established and maintained segregated schools, but also established and maintained segregated classrooms within a school. Where segregated classrooms existed within a school, the Board had the additional problem of keeping children of different ethnic groups from playing together. In addressing this problem, the Board debated the feasibility of staggered playground periods and release times. Feasibility also dictated some exceptions to the Board's general principle of segregation. In some cases the "brightest" and "cleanest" of the "Mexican children" were placed in "white classes when the white class (was) small and the Mexican class (was) too large." . . . In 1940, after considering the matter for a number of years, the Board built the Ramona Schoolhouse "for the convenience of the Mexican population." But the conveniences of the Ramona School were few. Its floor consisted of blacktop rolled over bare earth, its illumination came from a single bare bulb, its roof leaked, its toilet facilities were deplorable. Eleven years later, in 1951, to relieve Ramona's overcrowded conditions, the Board constructed the Juanita School within one block of Ramona. Before this court's remedial order went into effect, few so-called "Anglo" youngsters ever attended these two segregated barrio schools . . . . During the 1960's, a number of desegregation plans, which were administratively and educationally sound and feasible, were presented to the Board and rejected by it . . . . Ironically, during that period, the School Board did take positive action to aggravate segregation. . . . For example, in the mid 1960's, under the guise of pursuing a neighborhood school policy, the Board situated three new schools — Sierra Linda, Marina West, and Rose Avenue — within the district so that these schools were segregated on the very day they opened their doors.[1]

The 1974 case which detailed this instance of deliberate segregation, *Soria v. Oxnard School District*,[2] illustrates the deep-seated resistance in many areas of

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1 Soria v. Oxnard School Dist., 386 F. Supp. 539 (C.D. Cal. 1974).

2 *Id.*

the country to inclusion of Mexican Americans in the educational process on an equal basis with Anglos. While segregation of Chicanos has long existed in many Southwestern school districts,[3] it has not been attacked in the courts as vigorously as has that of blacks. Recently, however, the significance[4] and, in some respects, uniqueness of the Chicano situation have been increasingly recognized by the federal government, the courts, and the Chicanos themselves. Consequently, there are prospects now for greater activity in this arena of the civil rights effort.

Deliberate physical segregation is only one way Chicano pupils are denied equal educational opportunity. Since Spanish is the native tongue of these children, they often do not speak and read English as fluently as their white peers. This leads to segregation by ability grouping and special slow-learning classes, a more subtle but nonetheless serious form of segregation. Chicanos also are excluded or suspended as disciplinary problems in disproportionate numbers, and many Mexican born students are excluded from schools by the threat of deportation.

Even if these problems are overcome, the Chicano student faces an alien culture with unfamiliar values and expectations. Many teachers, ignorant of cultural differences, believe they are helping a Chicano child by asking him to ignore his native language and culture. Textbooks depict the virtues of middle-class Americanism without reference to the contributions of blacks, Chicanos, and other minorities, reinforcing the Chicano's cultural disorientation. In all these ways, the Mexican American child is denied the educational experience available to children of middle-class Anglo background. While not as susceptible to successful legal challenge as deliberate segregation, these other obstacles to equal education are being increasingly attacked, and new remedies are being considered.

II. Segregation

A. *The Current Status*

Although segregation of Mexican American children was recognized as a violation of the fourteenth amendment even before the *Brown* decision,[5] segre-

3 Ironically, the same court which condemned discrimination against Mexican Americans in Oxnard in 1974 had ruled against it 30 years earlier and, indeed, eight years before Brown v. Board of Educ. 347 U.S. 483 (1954). *See* Mendez v. Westminster School Dist., 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd,* 161 F.2d 774 (9th Cir. 1947).

4 In purely numerical terms, the Chicano's problems are significant. Spanish-surnamed Americans are the second largest minority group in the nation, numbering 10.8 million in 1974. Over half of these, 6.15 million, are of Mexican origin ("Chicano"). Over five million Chicanos live in the Southwest (Arizona, California, Colorado, New Mexico, and Texas). *See* U.S. DEP'T OF COMMERCE, CURRENT POPULATION REPORTS: PERSONS OF SPANISH ORIGIN IN THE UNITED STATES (1974); U.S. BUREAU OF THE CENSUS, SUBJECT REPORT: PERSONS OF SPANISH SURNAME (1973).

Since the Spanish-surnamed population is younger than the general population, the percentage of Chicano children in school is even higher than these numbers indicate. Thirteen percent of Spanish-surnamed Americans are less than five years old, as compared to eight percent of the general population.

Furthermore, the second largest school district in the country, the Los Angeles Unified School District, had 148,000 Chicano students in 1972, or 24 percent of its total enrollment. The district projects that by 1977, 215,000 pupils, or 35 percent of its enrollment, will be Chicano.

5 *See* Gonzales v. Sheely, 96 F. Supp. 1004 (D. Ariz. 1951); Mendez v. Westminster School Dist., 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd,* 161 F.2d 774 (9th Cir. 1947).

gation is very much alive in the Southwest today. In many districts, it survives as a remnant of officially recognized "Mexican Schools." In Texas, for example, prior to 1954 the "Mexican School" was part of most school districts.[6] Today those identical schools, though no longer called Mexican Schools, invariably are all Chicano.[7]

In addition to these remnants of an officially created and undisguised dual system, the usual indicia of de jure policies are found in many towns and cities in the Southwest. Boundaries are drawn to segregate Chicanos; schools are intentionally located to separate the races; portable classrooms are utilized to keep students apart; student transfer programs and optional attendance zones allow Anglos to escape from predominantly Chicano schools. In addition, teachers are assigned by race, and feeder patterns are created to ensure that students in Anglo elementary schools advance to Anglo junior and senior high schools and, likewise, that Chicanos in Chicano elementary schools advance to racially similar junior and senior high schools.[8]

B. *Recent Cases*

Although desegregation has generally proceeded slowly in the Southwest, several recent cases portend increased activity. Most important among them is *Keyes v. School District.*[9] *Keyes* dismissed any lingering doubts about whether *Brown* applies to racial or ethnic groups other than blacks.

> [O]ne of the things which the Hispano has in common with the Negro is economic and cultural deprivation and discrimination. . . . [T]hough of different origins, Negroes and Hispanos in Denver suffer identical discrimination. . . .[10]

Another encouraging decision is the supplemental order filed in *Adams v. Weinberger.*[11] In *Adams,* the court ordered the Department of Health, Education, and Welfare to make certain that unlawful segregation was not being practiced in various Southern States. HEW was directed to obtain information from specified school districts, including 41 districts in Texas. If the information shows improper segregation, HEW must initiate legal action. Most of the Texas districts are Chicano-segregated districts. While the history of HEW efforts in

6 *See, e.g., Project Report, De Jure Segregation of Chicanos in Texas Schools,* 7 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 307, 313-14 (1972).

7 An example is the Aoy School in El Paso, a former "Mexican School," which today has approximately 900 elementary school students, all Chicano.

8 *See, e.g.,* Keyes v. School Dist., 413 U.S. 189 (1973); Soria v. Oxnard School Dist., 328 F. Supp. 155 (C.D. Cal. 1971), *vacated and remanded,* 488 F.2d 579 (9th Cir. 1973), *aff'd on remand,* 386 F. Supp. 539 (C.D. Cal. 1974); United States v. Texas, 342 F. Supp. 24 (E.D. Tex. 1971), *aff'd,* 466 F.2d 518 (5th Cir. 1972); Cisneros v. Corpus Christi Ind. School Dist., 324 F. Supp. 599, 617-20 (S.D. Tex. 1970), *aff'd in part, modified in part,* 467 F.2d 142 (5th Cir.), *cert. denied,* 413 U.S. 920 (1972). *Cf.* Alvarado v. El Paso Ind. School Dist., 445 F.2d 1011 (5th Cir. 1971).

9 413 U.S. 189 (1973).

10 *Id.* at 197-98.

11 391 F. Supp. 269 (D.D.C. 1975).

this area does not inspire much hope, it is possible that the pressure of these lawsuits could finally result in enforcement of the law.[12]

Actually, most desegregation lawsuits have been brought not by HEW or other governmental agencies but by private attorneys and organizations. Currently, litigation is under way which will affect school districts in El Paso, Texas;[13] Uvalde, Texas;[14] Austin, Texas;[15] Tucson, Arizona;[16] and Los Angeles, California.[17]

III. Testing and Ability Grouping

To many teachers, the important difference about Chicanos is their language: they don't speak "American." This difference has been the basis of much discrimination against the Chicano student, and has sometimes been cited openly as the rationale for placing Chicanos in different schools.[18] Language difference was also used in the past to justify segregation by classes within a school or by groups within classes.

Language is the basis for a more subtle method of discrimination as well. Many school districts still use tests written in English to determine the aptitude of all pupils, both Anglos and Chicanos. Chicano students, who naturally do poorly on tests not in their native tongue, are then assigned to retarded or slow-learning classes (or "tracks") because of this poor performance.

In addition to language differences, cultural differences have played a part in denying equal educational opportunities to Chicano children. I.Q. tests such as the Stanford-Binet and the Wechsler, often used in assessing children's abilities, contain a strong cultural bias toward the middle-class Anglo child.[19] As stated by Judge J. Skelly Wright:

> Because these tests are standardized primarily on and are relevant to a white middle-class group of students, they produce inaccurate and misleading test scores when given to lower-class and Negro students. As a result, rather than being classified according to ability to learn, these students are in reality being classified according to their socio-economic or racial status, or — more precisely — according to environmental and psychological factors which have nothing to do with innate ability.[20]

12 These suits against the Department of Health, Education, and Welfare, and particularly against the Office of Civil Rights, are predicated upon the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) *et seq.* (1970), *amending* 42 U.S.C. § 2000(d) *et seq.* (1964). These provisions prohibit discrimination by any recipient of federal funds and require HEW to ensure that such discrimination does not occur.

13 Alvarado v. El Paso Ind. School Dist., 445 F.2d 1011 (5th Cir. 1971).

14 Morales v. Shannon, 366 F. Supp. 813 (W.D. Tex. 1973), *appeal docketed,* No. 73-3096, 5th Cir., ——, 1973.

15 United States v. Texas Educ. Agency, 467 F.2d 848 (5th Cir. 1972).

16 Mexican Americans for Equal Educ. Opportunity v. Tucson School Dist., Civil No. 74-204 (D. Ariz., filed ——, 1974).

17 Crawford v. Board of Educ., Civil No. 37750 (Los Angeles County, Cal. Super. Ct., filed ——, 1973).

18 *See, e.g.,* Mendez v. Westminster School Dist., 64 F. Supp. 544 (C.D. Cal. 1946).

19 *See* Cardenas, Bilingual Intelligence Testing (paper presented to the Education Task Force of the Mexican American Legal Defense Fund, June 6, 1975).

20 Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), *appeal dismissed,* 393 U.S. 801 (1968), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

Cultural bias due to intelligence testing occurs in several ways. A person's intelligence is not quantifiable like height and weight. It must be measured indirectly, by noting how intelligence influences behavior in certain situations. Cultural bias occurs when the tester assumes that all children faced with a certain situation will respond in the same way, depending only on their intelligence. For example, a child may be asked what he should do if a younger child hits him. While Anglo children may choose the "correct" answer ("walk away from him"), the upbringing of children from other cultures may lead them to respond differently and receive a "wrong" score.

Tests also show cultural bias by assuming that all the individuals being tested have been exposed to certain common experiences, and that intelligence can be measured by determining how much they have retained from these experiences. Obviously, if a child is ignorant of the experience being tested, he has retained nothing and will score poorly. Actually, a Chicano child has many experiences which are different from those of an Anglo, but the tests ask no questions about such experiences; consequently, Chicanos are denied a chance to demonstrate their ability to use retained knowledge.

Finally, I.Q. tests assume that the child being tested has certain mechanical test-taking skills. The Chicano child, besides being linguistically limited in an English-language test, may also not have been in school as long as his Anglo counterpart, and may lack the skills assumed for a child of his age or grade.

Grouping based on testing only reinforces the differences between Chicanos and Anglos. Whites are assigned to the academic and commercial courses, Chicanos to shop and homemaking ones. Similarly, schools built in the Anglo sections of town contain chemistry and physics labs; in the Chicano section, there are wood and auto shops.[21]

Despite the language barrier, should a Chicano youngster score high on intelligence and achievement tests, he is still often channeled into shop courses on the benevolent theory that since his parents cannot afford to send him to college, it is cruel to give him expectations that cannot be met. Yet Chicanos assigned to shop classes are still better off than those with lower test scores who

21 One way to show this is to consider the following courses offered at Bowie High School, El Paso (97.6 percent Mexican American), and compare those offered at Coronado High School (12 percent Mexican American) during the 1971-72 school year. Courses offered at Bowie but not at Coronado included: Art IV — Fine Arts, Bookkeeping II, Business Communications, English Lab IV, English IV (M), Int. Language Dev., Portuguese I, Portuguese II, Portuguese III, Beginning Band, Beginning Orchestra, Music History, Literature, Biology I (M), Physical Science (M), Economics, Mexican American Studies, CVAE Cooperative I, CVAE Cooperative II, CVAE—Boys (General Mechanical Trades), CVAE—Girls (Home & Community Services), Distributive Ed. II, Homemaking II, Industrial Cooperative Training I, Industrial Cooperative Training II, Vocational Office Ed. (The CVAE designation represents a special vocational program.)

The following courses were offered at Coronado and not at Bowie: Business Org. and Mgt., English I (E), English II (E), English III (E), English IV (E), Language Advancement, Speech IV, Drama I, Drama II, Drama III, German I, German II, German III, Latin I, Latin II, Latin III, Spanish I, Spanish II, Spanish III, Spanish IV, Spanish V, Horticulture, Machine Drafting I, Machine Drafting II, Pre-Engineering Drafting, Analysis, Alg. I (E), Alg. II (E), Geometry (E), Trig., Prob. and Stat., Music Theory I, Advanced Science, Aerospace, Biology I (E), Biology II, Geology, Physical Science (E), American History (M), American Indian Studies, Anthropology, World History (M), Sociology, Philosophy, World Geography, and Child Development Lab.

are assigned to classes for the mentally retarded—children whose language and cultures are so different from those of the test and the tester that they are relegated to an education of playing with clay and simple toys.

A legal challenge to such testing and class assignment was brought by Chicano parents in *Arreola v. Santa Ana Unified School District.*[22] The plaintiffs alleged that the defendant school district violated the equal protection and due process clauses of the fourteenth amendment of the Constitution in that Mexican American pupils were denied an equal educational opportunity on the basis of faulty, biased, and discriminatory testing. They contended that the tests and testers were geared to a different language and culture than Chicano test subjects. The plaintiff children were retested by bilingual psychologists using a variety of tests; it was found that children assigned to mentally retarded classes were of normal and in some cases above normal intelligence. The suit ended in a stipulated settlement.

While the *Arreola* suit was pending, the California Legislature revised its statutes dealing with mentally retarded classes. The new law[23] requires that the psychological evaluation be conducted in the primary home language of the pupil and administered by a certified psychologist fluent in the pupil's language. The statutes also require written consent of the parent in the parent's own language before the child can be placed in retarded classes.

Other suits[24] have been brought in California and other Southwestern States. In San Diego, a challenge similar to that in *Arreola* was brought on behalf of both Chicano and black children alleging that the tests were culturally biased against both groups of children.

Ability grouping (or "tracking") is still prevalent in many school districts, and perpetuates a caste system the effects of which last far beyond the school years. Most challenges[25] have attacked the basis of "tracking": the testing devices which determine what level of education a student is capable of. Psychological tests are vulnerable to legal challenge only when there is sufficient evidence to show that they are unfair and discriminatory toward the non-English-speaking. There have been no challenges to the more subtle, undemocratic aspects of ability grouping per se. Nevertheless, various courts have placed school districts under a heavy burden of educational justification when there is a showing of racial segregation.[26] This is a hopeful sign that courts are beginning to look at the realities behind educational labels.

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22 Civil No. 160-577 (Orange County, Cal. Super. Ct., filed June 7, 1968).

23 CAL. EDUC. CODE § 6902-085 (West 1975).

24 *See* Covarrubias v. San Diego Unified School Dist., Civil No. 70-394-S (S.D. Cal., filed Aug. 21, 1972); Guadalupe Organization, Inc. v. Tempe Elementary School Dist., Civil No. 71-435 PHX (D. Ariz., filed Jan. 25, 1972); Diana v. State Bd. of Educ., Civil No. C-70 37 REP (N.D. Cal., filed June 18, 1971).

25 *See, e.g.*, Hobson v. Hansen, 269 F. Supp. 1101 (D.D.C. 1967), *appeal dismissed,* 393 U.S. 801 (1968), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

26 McNeal v. Tate County School Dist., 508 F.2d 1017, 1020 (5th Cir. 1975). *See also* P. v. Riles, 343 F. Supp. 1306 (N.D. Cal. 1972); Moses v. Washington Parish School Bd., 330 F. Supp. 1340 (E.D. La. 1971), *aff'd,* 456 F.2d 1285 (5th Cir.), *cert. denied,* 409 U.S. 1013 (1972); Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), *appeal dismissed,* 393 U.S. 81 (1968), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

IV. Teachers and Their Understanding of Chicano Culture

When a Chicano child first enters an American classroom, he meets a foreign environment that minimizes his chances of success. The most foreign element is often the teacher. Until very recently, even in predominantly Mexican neighborhoods, almost all teachers were Anglo. While some inroads have been made, the small number of Chicano teachers remains vastly disproportionate to the number of Chicano students. For instance, in *Aguilar v. Los Angeles City Unified School District*,[27] now pending in a federal district court, plaintiffs allege that only six percent of the district's teachers are Spanish-surnamed, as compared to 30 percent of its pupils. This district has been "educating" more Chicanos than any other district in the country, and has the benefit of several state universities and colleges in the area which train local people to serve the community. Other districts fare much worse in their ratio of Spanish-surnamed teachers to Spanish-surnamed students.

Moreover, the various civil rights acts and regulations prohibiting discrimination and requiring affirmative action plans have not substantially increased the number of Chicano teachers.[28] One major reason Chicanos are not being hired is the use of testing and certification devices which tend to keep minorities out; however, there have recently been some successful challenges to the use of these devices.[29]

While Anglo teachers can be effective with Chicano pupils, the majority, because they bring to their teaching stereotypes of the Chicano, are not. White middle-class values are different from those of the Chicano, and Anglo teachers generally are ignorant of a Chicano child's cultural background. They try to "Americanize" the child, and consequently Chicano children are often criticized for exhibiting "foreign" traits.

> Children are provided with examples of the social roles they are expected to play. They are frequently shown that Anglos are best in everything and Mexicans are worst. Mexican American children are rewarded in school . . . when they look and act like Anglos and punished (or ignored) if they look and act like Mexicans.[30]

27 Civil No. CV7434-WMP (C.D. Cal., filed Sept. 2, 1974).

28 In Texas, 20.1 percent of the students are Mexican American, compared to 4.9 percent of the teachers. The comparable figures for the other Southwestern states are: California, 14.4 percent Mexican American students, 2.2 percent Mexican American teachers; New Mexico, 38 percent Mexican American students, 16.2 percent Mexican American teachers; Arizona, 19.6 percent Mexican American students, 3.5 percent Mexican American teachers; Colorado, 13.7 percent Mexican American students, 2.3 percent Mexican American teachers. U.S. COMM'N ON CIVIL RIGHTS, ETHNIC ISOLATION OF MEXICAN-AMERICANS IN THE PUBLIC SCHOOLS OF THE SOUTHWEST 43 (1971) (Report I of the Mexican-American Education Study). The percentages grow even starker as one goes higher up the ladder to principal and superintendent.

See also U.S. COMM'N ON CIVIL RIGHTS, TEACHERS AND STUDENTS 17 (1973). This report, fifth in the series, outlines the subtle within-class discrimination which takes place. It was found, for example, that teachers are 35 percent more likely to praise or encourage an Anglo student than a Mexican student, and 40 percent more likely to accept or use his ideas. Conversely, it was found that a teacher was 5.5 percent more likely to criticize Mexican American students, or to justify the use of authority in disciplining them.

29 *See* Morgan v. Hennigan, 379 F. Supp. 410 (D. Mass. 1974); Baker v. Columbus Municipal Separate School Dist., 329 F. Supp. 706 (N.D. Miss. 1971). *Cf.* Chance v. Board of Examiners, 330 F. Supp. 203 (S.D.N.Y. 1971), *aff'd*, 458 F.2d 1167 (2d Cir. 1972).

30 T. CARTER, MEXICAN AMERICANS IN SCHOOL: A HISTORY OF NEGLECT 82 (1970).

Even the speaking of Spanish was for many years cause for disciplinary action in many Southwestern schools. Often, then, the child learns that to be Mexican is to be a failure while to be American means success.

Well-meaning Anglo teachers may also create a negative image of the Chicano child's culture by some of their attempts to help. Some teachers tell their pupils that a good breakfast consists of orange juice, cereal, eggs, and bacon (the ideal American breakfast), and that a breakfast of coffee, beans, and tortillas is bad. Although the teacher means well by such advice, it in fact causes deterioration of the child's view of himself, his parents, and his culture. Likewise, when a teacher criticizes large families, or slick, greasy-appearing hair, the Chicano child's chances of attaining a healthy, positive self-image is unwittingly subverted.

V. Textbooks

In addition to coping with teachers who do not understand his culture, the Chicano child must read textbooks that ignore his cultural identity. According to many history books, for instance, the white man alone discovered this country and by his hard labor made it great. In other textbooks, the Chicano student reads about and sees pictures of the normal white, middle-class family: father goes to work in a suit while mother bakes cookies. Seldom, if ever, is the Chicano culture portrayed. In fact it is only recently, due in part to legislative mandates[31] and public pressure, that textbook writers have started to portray the contributions of Native Americans, Asians, Mexicans, blacks, and other minorities.

While textbook challenges are difficult to sustain due to first amendment problems, at least one case has had an impact in this area. In 1972, Chicanos filed suit in California under a state law which prohibited textbooks from incorrectly portraying ethnic groups.[32] A preliminary injunction was obtained which prohibited the California Department of Education from signing contracts with the books' publishers. Although the injunction was ultimately dissolved, it put publishers on notice that they could no longer ignore the concerns of minority groups.

VI. Disciplinary Methods

Recent studies have shown minority students are more frequently the objects of school discipline than their Anglo counterparts.[33] While most documentation

31 Section 9240 of the California Education Code requires that instructional materials "accurately portray the culture and racial diversity of our society, including . . . . [t]he role and contributions of American Indians, American Negroes, Mexican Americans, Asian Americans, European Americans, and members of other ethnic and cultural groups. . . ." Section 9243 prohibits instructional materials which contain "[a]ny matter reflecting adversely upon persons because of their race, color, creed, national origin, ancestry, sex or occupation." CALIF. EDUC. CODE §§ 9240, 9243 (West Supp. 1974).

32 Gutierrez v. State Bd. of Educ., Civil No. 221086 (Sacramento County, Cal. Super. Ct., filed Dec. 15, 1972).

33 *See, e.g.*, CHILDREN'S DEFENSE FUND, CHILDREN OUT OF SCHOOL IN AMERICA (1974); SOUTHERN REGIONAL COUNCIL & THE ROBERT F. KENNEDY FOUNDATION, THE STUDENT PUSHOUT, VICTIM OF CONTINUED RESISTANCE TO DESEGREGATION (1974).

on this question has concerned black students, attorneys working with Chicanos have noted a lack of due process when Chicanos are expelled or suspended from school.

At other times, cultural differences make ostensibly equal treatment unequal. Typically, a white middle-class boy and a Chicano boy caught fighting are both told that they are suspended until they come in with their parents. The white parents come in the next day. The Chicano parents, who speak little or no English, and who are afraid of the authorities, may never show up. These feelings may be based on the very real history of discrimination inside and outside the school. Fortunately, requests made by attorneys for hearings, other due process procedures, and disciplinary standards have had some limited results.[34] In some instances, legislatures and school boards have amended procedures for exclusion and suspension of students to conform with due process standards.

VII. Bilingual-Bicultural Education

The Supreme Court in *Lau v. Nichols* stated:

> Basic English skills are at the very core of what the public schools teach. Imposition of a requirement that before a child can effectively participate in the educational program he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.[35]

The *Lau* decision, based upon Title VI of the Civil Rights Act of 1964,[36] was merely one step, albeit an important one, in the quest for bilingual-bicultural education for Chicanos.[37] Without specifying a remedy, the Court held that the failure to give special attention to English language deficiencies constituted national origin discrimination.

Many advocates of bilingual education see it as more than a device to overcome language "deficiencies." Indeed, they argue that while a child should be taught English, it is imperative that he receive instruction in his native language while he is learning English so that he can compete with English-dominant children on a substantive level, and receive instruction in the history and culture of his people so that he can know and appreciate his origins. Some would argue further that children should be given the option to study in their native language throughout their school years and that a bilingual-bicultural education should be provided to all children of Mexican heritage, irrespective of English language "deficiencies."

Although some of these positions might appear extreme to those who have not studied the educational programs for Chicanos, they are gaining more and more credence among those who have. One need only look at the small per-

34 Goss v. Lopez, 95 S. Ct. 729 (1975).
35 414 U.S. 563 (1974).
36 42 U.S.C. § 2000(d) (1970).
37 For a historical picture of the efforts to secure bilingual education, see Gonzales, *Coming of Age in Bilingual/Bicultural Education: A Historical Perspective*, 19 INEQUALITY IN EDUC. 5 (1975).

centage of Chicanos graduating from high school to realize that there is something terribly wrong with the education they are receiving. One leading Chicano educator has identified what he considers to be "incompatibilities" between middle-class Anglo and Chicano children.[38]

> Black and Mexican-American children have not enjoyed the same success in school as that of the typical middle-class American. The Cardenas-Cardenas Theory of Incompatibilities is a tested belief that the failure of such children can be attributed to a lack of compatibility between the characteristics of typical instructional programs.[39]

He believes that these incompatibilities can only be alleviated by a true bilingual-bicultural program.

While *Lau* mandates, at a minimum, some form of instruction in English as a second language, several courts have ordered true bilingual-bicultural programs. In *Serna v. Portales Municipal Schools,*[40] the district court ruled that it was a denial of equal protection to educate Spanish-speaking children in English. As a remedy, the court rejected the school district's program of English as a second language and ruled, after hearing expert testimony, that a bilingual program would more effectively overcome past discrimination. This ruling was upheld by the Tenth Circuit,[41] with the court basing its decision on Title VI rather than on equal protection. It ruled that the trial court's broad equitable discretion to correct legal wrongs was not abused by requiring adoption of a bilingual program.

The "Cardenas Plan" for full-scale bilingual-bicultural education was also ordered on a pilot basis in *Keyes v. School District.*[42] The court, in adopting this plan, called it "a very sensible method" for meeting the educational needs of the Chicano population.[43] Whether the district court exercised discretionary power or fulfilled a mandatory duty to adopt a bilingual approach as a response to prior de jure segregation is a question that will likely be decided in the near future; the adoption of the "Cardenas Plan" has been appealed to the Tenth Circuit.[44]

While the bilingual movement is gaining momentum[45] through court orders and legislation, it can be argued that the cart has been placed before the horse. The majority of Chicanos in the Southwest speak English sufficiently well to

38 Cardenas & Cardenas, *Chicano—Bright-Eyed, Bilingual, Brown, and Beautiful,* TODAY'S EDUCATION, February 1973, at 49. Dr. Cardenas also prepared a plan to provide a remedy in Keyes v. School Dist. 380 F. Supp. 673 (D. Colo. 1974).

39 *Id.*

40 351 F. Supp. 1279 (D.N.M. 1972).

41 Serna v. Portables Municipal Schools, 499 F.2d 1147 (10th Cir. 1974).

42 380 F. Supp. 673 (D. Colo. 1974), *modified,* Civil Nos. 74-1349-51 (10th Cir., filed Aug. 11, 1975). The Tenth Circuit ruled that the record below concerning discrimination on the basis of language was insufficient to justify the massive bilingual remedy which the district court had prescribed.

43 380 F. Supp. at 692.

44 *See* note 42 *supra. See also* United States v. Texas, 342 F. Supp. 24 (E.D. Tex. 1971), *aff'd,* 466 F.2d 518 (5th Cir. 1972) (bilingual education ordered in a desegregated context in San Felipe Del Rio District).

45 In addition to the litigation mentioned, various states have adopted some form of bilingual legislation. *See, e.g.,* CAL. EDUC. CODE §§ 5761-5764.6 (West Supp. 1974); TEXAS CODE ANN. §§ 21.451-.460 (Supp. 1974). *See also* MASS. GEN. LAWS ch. 71A, § 5 (Supp. 1975) (the first and most expansive bilingual legislation).

understand the curriculum offered, but because of the incompatibilities observed by Cardenas—the curriculum, the ethnic composition of faculties, and other factors—the distinctive cultural needs of these children are still not being met. Litigation concerning this lack of cultural education might be possible on a theory that imposing a middle-class Anglo curriculum on a Chicano population constitutes national origin discrimination under Title VI.

VIII. The Illegal Alien

No discussion of Chicano educational issues is complete without mention of the illegal alien. Driven by the poverty of Mexico and drawn by the affluence of the United States, hundreds of thousands of Mexicans cross the imaginary line between Mexico and this country without legal permission. Although these Mexicans are here illegally and subject to deportation if apprehended, few are actually deported. The Immigration and Naturalization Service estimates that over four million illegal aliens live in the Southwest.[46] They live and work here, and have their families—including school-aged children—with them. Because their parents accept any job available, many children come from migrant farm families. Even those aliens who live in the cities are also migrant, moving constantly, following one temporary job to another. A teacher in Los Angeles lamented that the class picture taken in September is seldom bought by the children when it comes in December because most of those in it have left the school.

Coming from the poorest of the poor, speaking no English or even the *patois* of the Chicano, these children have all the disadvantages of the Chicano multiplied many times. They are resented by school authorities and politicians, who feel that tax-supported schools should not be used by "aliens." Some school districts actually refuse to admit such children, and it is estimated that thousands of these children never attend school.

The most common device for excluding children of illegal aliens from school is the district residency requirement. A school district can argue, with sound legal but questionable moral merit, that a child in the United States illegally cannot establish legal residence in the district. California has recently passed legislation that requires school districts to admit illegal aliens, but also requires that they be reported to the Immigration and Naturalization Service.[47] In this ironic situation, children are admitted to the schools only to be deported from the country.

While legal challenges to these practices are difficult, if not impossible,[48] to sustain, it does seem a ripe area for federal legislation. Excluding these children from school is a terrible waste, for the country as well as the children themselves.

46 Statement of Attorney General William B. Saxbe, estimating that four to seven million and possibly 12 million illegal aliens reside in the U.S. *See* L. A. Times, Oct. 31, 1974, at 6, col. 3.

47 CAL. EDUCATION CODE §§ 6950, 6957 (West Supp. 1974).

48 The implementation of the California statute is being challenged in one district. The challenge, a highly technical one, and applicable only to an aberration in that district, is primarily based upon the recently adopted Family Educational Rights and Privacy Act, 20 U.S.C.A. § 1232 g (Supp. 1975).

IX. Conclusion

Although the Chicano constitutes a significant part of the American scene, he is still educationally deprived. If he is to participate equally in the opportunities of American life, he must have access to the quality of education available to the Anglo majority. The courts and the legislative bodies can and should be the catalyst for progress toward this goal.