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Cover art: *POBREZA - LA PERRA ENTRE LA RAZA* by CARMEN LOMAS GARZA of Kingsville, Texas.

## IN THIS ISSUE

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## IN THIS ISSUE

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ARMAND SANCHEZ	THE DEFINERS AND THE DEFINED: A MENTAL HEALTH ISSUE . . . . .	4
CHARLES ORNELAS	BOOK REVIEW: <i>The Mexican-American People: the Nation's Second Largest Minority.</i> BY LEO GREBLER, JOAN W. MOORE, AND RALPH GUZMAN . . . . .	12
MANUEL RAMIREZ III	THE RELATIONSHIP OF ACCUL- TURATION TO EDUCATIONAL ACHIEVEMENT . . . . .	21
FRANK ORTEGA	SPECIAL EDUCATION AND MEXICAN AMERICANS . . . . .	29
GUADALUPE SALINAS	MEXICAN-AMERICANS AND DESEGREGATION . . . . .	36
GUADALUPE SALINAS	MEXICAN-AMERICANS AND DESEGREGATION A Special Supplement . . . . .	59
CARMEN LOMAS GARZA	PORTFOLIO . . . . .	70

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THE DEFINERS AND THE DEFINED

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A Mental Health Issue

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Armand J. Sanchez

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“We have passed the point of no return in our long journey from a helter-skelter system of mental health services divorced from community life,” concluded Robert H. Felix, chief architect of the community mental health program.<sup>1</sup> These words, auspicious and monumental in implication, were enunciated about two years ago and presumably ushered in a new era in the mental health field. And notwithstanding the auspiciousness of the words, the concepts of mental health and mental illness continue to be used and implemented programatically in the old and traditional way. According to Dr. Jahoda, “As far as we can discover, there exists no psychologically meaningful and, from the point of view of research, operationally useful description of what is commonly understood to constitute mental health. Yet the establishment of some criteria by which the degree of mental health of an individual can be judged is essential if one wishes to identify social conditions conducive to the attainment of mental health.”<sup>2</sup>

However, recent articles have pointed out the irrelevancy of mental health services, specifically as they concern the Chicano community. Dr. E. Fuller Torrey, M.D., in a paper delivered at the meeting of the American Orthopsychiatry Association, which paper is appropriately titled “The Irrelevancy of Traditional Mental Health Services for Urban Mexican-Americans,” states: “The irrelevancy began at a higher level. It began at the very conceptualization of the Community Mental Health Centers. It began when the architects of the Act unconsciously and ethnocentrically perpetuated the dominant-class, dominant-culture, dominant-caste model of mental health services as The Model.”<sup>3</sup> Obviously the concepts of mental health and mental illness have been very elusive, engendering tautological wheel-spinning at every level, particularly at the administrative level.

Addressing himself to the relevancy of mental health services specifically as they concern the Chicano community, Dr. Torrey gives six reasons for their irrelevancy. He also makes two cogent and significant suggestions: a) "The control and money for mental health services should be firmly in the hands of a board from the Mexican-American community;" and b) "The services should be delivered by those capable of doing it, not by someone with a certain number of degrees."<sup>4</sup> Dr. Torrey aptly concludes: "The services will be used when they are relevant, and they will be relevant only when they are set up by the Mexican-Americans themselves."<sup>5</sup>

In another article titled "Perception of Mental Health Illness in a Mexican-American Community," Dr. Karno and Dr. Edgerton attempt to explain an "epidemiological paradox"—the expected high incidence of mental illness in the Mexican-American population and yet the striking underrepresentation of Mexican-Americans as psychiatric patients in public outpatient and inpatient facilities throughout California. Drs. Karno and Edgerton conclude that, "The underutilization of psychiatric facilities by Mexican-Americans (at least those that reside in East Los Angeles) is not to be accounted for by the fact that they share a cultural tradition which causes them to perceive and define mental illness in significantly different ways than do Anglos."<sup>6</sup> Aside from a questionable methodology, their starting assumption is defective, namely, that Mexican-Americans share *a* cultural tradition. They fail to specify what that "cultural tradition" is, but it seems that they have bought without question the *gospel* of social scientists.\* In brief, culture is interpreted in terms of identifiable traits—a static, passive, stereotypic interpretation of culture. *En precis*, Drs. Karno and Edgerton seem to be begging the question. Although the term "mental health" was not defined by them, it seems that their definition is predictably limited to individual pathology—thus again interpreting behavior in *intrapyschic* terms, the traditional approach. It seems that Drs. Karno and Edgerton postulate internal causation—in essence assuming that "culture" causes mental illness among Chicanos.

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\*Cf. Octavio I. Romano, "The Anthropology and Sociology of the Mexican-American," *El Grito*, Vol. II, No. 1 (Berkeley: Quinto Sol Publications, Inc., 1968) Fall., & Nick C. Vaca, "The Mexican-American in the Social Sciences 1912-1970, Part I: 1912-1935," *El Grito*, Vol. III, No. 3 (Berkeley: Quinto Sol Publications, Inc., 1970) Spring.

In another article, "The Enigma of Ethnicity in a Psychiatric Clinic," Dr. Karno again bases his study on the major assumption that Mexican-Americans share a cultural tradition. He cites Saunders, Madsen, and Clark in support of this assumption. Dr. Karno concludes: "In addition to avoidance of ethnicity (by clinic personnel), there is another factor operative in the clinic which may significantly contribute to therapeutic failure with ethnic patients. This is the pervasive use of and reliance upon a model for the psychiatric historical interview which derives directly from the classical medical history. This is an information retrieving process which, to a remarkable extent, systematically ignores the socio-cultural context of the patient's life."<sup>7</sup> It is imperative to note that cultural context means cultural tradition.

In another article titled "Successful and Unsuccessful Approaches of Mental Health Services for an Urban Hispano American Population" M. J. Philippus, Ph.D., relates success and lack of success to utilization of services. The entire point of his article is that the formal traditional, bureaucratic way of delivering mental health services to the Spanish speaking population must be eliminated and an informal, personal approach with heavy emphasis on utilization of neighborhood personnel initiated. Dr. Philippus' point is that the delivery system needs to be changed but he does not address himself to the effectiveness or lack of effectiveness with respect to the psychoanalytic model. Implicitly he is saying that adjustment is the goal to strive for since his assumption is that assimilation into the majority way of life is the ultimate goal of the Mexican-American community.

In summary, although the authors of the articles mentioned above make commendable attempts to address themselves to the problem of "mental health," they fail to address themselves to the issue of mental health itself.

The authors of the articles cited above concur that Mexican-Americans underutilize mental health services. However, in another article Mr. Armando Morales takes the opposite stance. He concludes: "With regard to the existing notion that mental health problems are not as severe in the Mexican-American community as in the dominant society, direct psychiatric clinical experience in the East Los Angeles Mental Health Service Clinic is clearly disproving this notion. While the major diagnosis reported by twenty-five county health

districts is 18% 'schizophrenic' and 'other psychoses,' East Los Angeles Mental Health Service staff estimated thirty to forty percent in this category."<sup>8</sup> The other point that Mr. Morales makes is that "Contrary to the belief that Mexican-Americans would be hesitant in utilizing mental health services because of cultural factors, recent statistics reveal that while 'whites' had 23% self and family referrals and 'Negroes' 30%, 'Mexican-Americans' accounted for 50%."<sup>9</sup> Mr. Morales' entire assumption is that because East Los Angeles Mental Health services has twenty-one out of twenty-two bilingual personnel, therefore mental health for the Chicano community can be explained in terms of utilization of services through bi-lingual personnel, referrals, and a more severe diagnosis. But, to transfer mental health rhetoric from one language to another is no solution at all, for it makes very little difference whether the root assumptions are expressed in Spanish, English, Japanese, or Zulu. Therefore, *the posture to integrate Spanish-speaking personnel with no change in philosophy is assimilative in nature and avoids the central issue of what is mental health.* It is patently obvious that the application of the psychoanalytic model to a culture whose underlying philosophy is humanism will result in a high incidence of mental illness as well as a pronounced severity among the Chicano population.

In preparation for a recent Chicano Conference on Mental Health, a questionnaire was developed by Mr. Ernest Solano, M.S.W., to assess mental health resources. Although responses were not received from all counties contacted, the results were significant in pointing out the inadequacy of services, lack of bi-cultural staff, and the almost non-utilization of mental health facilities.

In short, although studies regarding the utilization of mental health services by the Chicano community are not extensive, it seems safe to conclude on the basis of Mr. Solano's questionnaire, that Chicanos do not use mental health services. Various reasons for this lack of utilization have been advanced. The sociologist, E. G. Jaco, concluded that Mexican-Americans suffer from less mental illness than Anglo-Americans on the basis that the existence of a cultural pattern of warm, supportive, extended family with strong values of mutual acceptance, care, and responsibility tend to protect Mexican-Americans against the development of major mental illnesses.<sup>10</sup> Others have asserted that Mexican-

Americans view mental health problems negatively and hence tend to tolerate them rather than seek assistance.

The major assumption in studies of utilization of services and severity of mental illness, however, is that the psychoanalytic model works with the Chicano community. *A second assumption is that the Chicano community perceives mental illness in exactly the same way that the dominant society perceives mental illness.* It must be noted that the psychoanalytic model has its basis in the sociological assimilation model which has been operative unilaterally vis-a-vis the Chicano community. Agencies and personnel still operate on the assumption that assimilation into the melting pot is the goal. Moreover, agencies are always assumed to be non-causal. Politically, the medical model lends itself well to retention of a colonialist posture, for it establishes the definer and the defined—the manipulator and the manipulated. Philosophically, the medical model assumes that it is possible to jump from the logical to the ontological; *ab posse ad esse non valet illatio.*

In the final analysis, the Chicano predicament is a problem caused by social, political and economic conditions: to force these conditions into the innerpsyche of the Chicano is detrimental to and destructive of a distinctive way of life. The result, obviously, is an intensification of social problems and “mental” problems—stress and strains in the life style of the Chicano community. It makes little sense to talk about mental health without social health. To treat the problems and neglect the issues is a disservice to the Chicano community and to society. “The concepts of mental health and mental illness are increasingly used ambiguously to include a wide range of social problems. These psychiatric definitions implicitly suggest that the individual is at fault . . .”<sup>1</sup>

Mental health for the Chicano community consists in the full awareness of itself as a distinct ontological entity with its philosophy of man, nature, and the universe. A corollary of the full awareness is the full realization of its power of self determination. Hence it is imperative for Chicanos to sustain and/or enlarge their human interrelational community services. A “system” already exists within the Chicano community. Hence the diagnosing and defining of mental illness is already done within the framework of the Chicano way of life and view of man, nature and the universe. A particular behavior is

reflective of that community's philosophy of life. At no time have "mental health services" been developed to reflect this aspect of the Chicano barrio. Hence "mental health" concepts must be developed out of the Chicano philosophy of life. However, "The fiestas patrias, the characteristic foods, the music, the sociedades mutualistas, and all of the other by-products of culture that people write about, are simply appurtenances to more profound conceptualizations regarding the nature and the existence of man."<sup>12</sup>

The starting point suggested for human development services is the assessment of a barrio's existing total human health, *for problem solving in the Chicano community is related to the Chicano community rather than to an agency.* The health of an individual and community does not exist in a vacuum; rather, it is related not only to the total environment but also to other individuals and the network of interrelationships that give life as well as a specific, unique character to a community. Hence the well being of an individual and community must be studied from within the barrio with its complex network of relationships, for, when all is said and done, the barrio is a social institution.

It is a basic concept of human well-being that a person is much "healthier" if he accepts what he is and values himself and background. Hence, again it is not basically a problem of non-utilization of "mental health" services of the Chicanos; rather, the non-utilization is the result of the failure of "mental health" agencies to acknowledge and accept the Chicano way of life as a valid, viable and dynamic expression of a philosophy of man and his existence together with a view of nature and the universe, which philosophy must form the framework for a definition of well being for Chicanos.\*

In summary, I would add that the major premise on which a policy vis-a-vis Chicano well-being and the Chicano community must be based is that of a pluralistic society founded on mutual respect, appreciation, and understanding with an increase in mutual experiences for Anglos and Chicanos. The impact of the barrio way of life on the individual and barrio, an etiological question, underlies epidemiological

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\*This is not to negate the fact that an added dimension to well-being for Chicanos must be the impact, and influence that the majority way of life has on Chicanos but it is an added dimension.

results. The first problem, therefore, is to indicate the barrio way of life in its possible relation to the individual's well-being.

To do otherwise, of course, is to perpetuate the artificial dichotomy of the defined and the definers.

### Notes

1. Connery, Robert H. *The Politics of Mental Health*. (Columbia University Press, New York, 1968) pg. 469.

2. Kotinsky, Ralph & Witmer, Helen L. (eds.) *Community Program for Mental Health*. (Cambridge: Harvard University Press, 1955) p. 298.

3. Torrey, E. Fuller, M.D. "The Irrelevancy of Traditional Mental Health Services for Urban Mexican-Americans." Paper presented at American Orthopsychiatry Association, San Francisco, March, 1970.

4. *Ibid.*, p. 16.

5. *Ibid.*, p. 17.

6. Karno, Marvin, M.D. & Edgerton, Robert B., Ph.D. "Perception of Mental Illness in a Mexican-American Community," *Archives of General Psychiatry*, pp. 233-238, Feb., 1969.

7. Karno, Marvin, "The Enigma of Ethnicity in a Psychiatric Clinic," *Archives of General Psychiatry*, pp. 516-520, May, 1966.

8. Armando Morales, "Mental Health and Public Health Issues: The Case of the Mexican Americans in Los Angeles," *El Grito*, Vol. III, No. 2 (Berkeley, Quinto Sol Publications, Inc., 1970) Winter.

9. *Ibid.*

10. Jaco, E. Gartley, "Mental Health of the Spanish-American in Texas." *Culture and Mental Health*, Marvin K. Opler, ed. (New York: The Macmillan Co., 1959).

11. Mechanic, David *Mental Health and Social Policy*. (Prentice-Hall, Inc., New Jersey, 1969) pp. 31 & 33.

12. Romano, Octavio. "The Historical and Intellectual Presence of Mexican-Americans." *El Grito*, Quinto Sol Publications, Inc., Berkeley, Vol. II, No. 2, Winter, 1969.

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BOOK REVIEW

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THE MEXICAN-AMERICAN PEOPLE: THE NATION'S SECOND LARGEST MINORITY. By Leo Grebler, Joan W. Moore, and Ralph C. Guzman. (New York: The Free Press, 1970, pp. 777. \$14.95)

Reviewed by CHARLES ORNELAS

Ever since Gunnar Myrdal's *AN AMERICAN DILEMMA*, social scientists have entertained thoughts of conducting a comprehensive study about the people of Mexican descent in the United States. Around the early sixties, competition set in among the funding giants over the right to discover the nation's second largest minority—the Mexican-Americans. The next few years saw scholars jockeying for favor before the funding institutions. Finally, the Ford Foundation assigned the sweeping project to UCLA economist Leo Grebler. The result is *THE MEXICAN-AMERICAN PEOPLE*, a product of seven years and \$400,000 (plus a supplemental grant from the College Examination Board).

Invariably, this study will be compared to the Myrdal effort. Some will go so far as to hail this book as being for the Chicanos what *AN AMERICAN DILEMMA* has been for the Blacks. Yet outside of an encompassing scope and the view that minority culture is but an offshoot of the dominant culture, the two books bear little resemblance. For various reasons, the Chicanos remain without an equivalent to Myrdal's penetrating study of the Black condition.

The key difference between the two studies is the degree to which the ethnic condition is seen in relation to American life. Myrdal felt it essential to place the Blacks within a fuller context of society. The Grebler team, relying mostly on data of census and survey, viewed the Chicanos more as an isolated encumbrance on the dominant population, as an ethnic group not yet arrived on the American scene. Though the three authors share in the growing criticism of the rural-folk narrowness of previous research on Brown people, they substitute an equally limiting urban-assimilating focus which falls far short of a comprehensive set of factors for analysis. The Browns, no less than the Blacks, cannot be properly understood or fully described without a more inclusive analysis.<sup>1</sup> Nevertheless, the Grebler team settles for describing the Chicano today, along with a predictable amount of attention to social and cultural change. The major findings are that the Brown population is mostly urban, highly bilingual, very diverse, and contrasts markedly from one

local area to another. And though this ethnic group is sharply differentiated from the general population, the trend toward sameness with other Americans is becoming more evident. As to the group's subordinate position in society, the book is interspersed with remarks-in-passing, equivocal statements, and a few postscript explanations.

An assimilationist perspective leads the research team to a reliance on cultural determinism for the interpretation of social conditions and mobility. Thus, the search is directed toward the "Mexican-American problem" and toward conflict arising out of ethnic heterogeneity. One is given the impression that the Chicanos are as much a problem to themselves as to the society at large, and that solutions will have to await further integration and assimilation. The role of the dominant society in turning cultural differences into objects of prejudice, conflict, and suppression escapes analysis.

In contrast, Myrdal found it insufficient to limit his study to the Black way of life and interracial relations. He felt it necessary to strip the veneer from the American value system, both revered and operative, as it related to the Blacks. He had the courage to pursue the Black condition to its ultimate cause—American racial ideology developing in response to the need for cheap labor, first in agriculture and then in industry. Ultimately, he defines a whiteman's problem and exposes inconsistencies in dominant values and norms.

The economic roots of the racism practiced against the Chicano population is so similar to the Black experience that one wonders why a modified paradigm was not used more extensively to explain socio-economic status. A reading of Carey McWilliams<sup>2</sup> can attest to the striking analogies between the role of the Chicano in the development of the Southwest and that of the Black in the South. The authors, instead, prefer to suggest that the Chicanos are unfortunate to have arrived on the American scene at the wrong time, wrong place, and under the wrong circumstances. Such a view seems more of an apology for the present-day internal neo-colonialism that controls the Chicano by subtle and sophisticated mechanisms of domination. Historically, of course, the direct system of exploitation deprived him of land and conferred on him a subordinate status in the manner of the more "classic" internal colonialism.<sup>3</sup>

The narrow approach of the book may be due to the ideological preference of the authors. Methodologically, it reflects a lack of compensation for the biases of census and survey data (949 adults interviewed in Los Angeles; 603 in San Antonio) which tend to over emphasize subject behavior to the exclusion of external influences. Limiting investigation largely to "description and analysis of facts is to hamper the understanding of these same facts in their broadest sense."<sup>4</sup> Impressionistic conclusions turn out to be poor substitutes for a more complete consideration of the restrictive, external factors and socio-cultural biases.

Partly as a consequence of the above methodological limitation, the project was left with insufficient flexibility to take into account the socio-political dynamics of the sixties which challenged older concepts of change that were the premise when the study began. Then the protestant ethic, civic culture, and the melting pot theory held reign in the minds of laymen and scholars. (Seymour M. Lipset and Stein Rokkan point to the impact of new social forces on the models and theories of the late fifties and early sixties, and the reappraisal of data-gathering and strategies for analysis that this is occasioning.<sup>5</sup>)

The overall result is a study with an Anglo American viewpoint toward integration, culture, and cultural pluralism. Degree of integration is measured as distance from monolingual, monocultural Anglo way of life. From that standpoint, cultural pluralism is translated as social tolerance of a once distinct ethnic group in the process of disappearing into the great American melting pot. Meanwhile, the range of biculturalism of such a population is considered but an offshoot not really qualified for separate culture status.

The main contribution of the book is ample quantitative material brought together under one cover. However, the reworking of census and education data beyond the previous efforts of others<sup>6</sup> does not produce much in the way of new information. Additionally, little explanatory value is to be found alongside much of the descriptive material. Essential questions that reasonably could have been expected as targets for investigation remained unanswered. Such is the case in the study of the education of the Chicano, a subject that appears to have involved a major investment of project time. Had the authors, for instance, assessed the effect of monocultural programs on bilingual school children, their relatively unproductive conclusions might have been avoided.

Assimilation is extensively covered, though an equal endeavor is not forthcoming for ethnic culture. The authors note their lack of survey data on family visiting patterns and fictive relationships. The appraisal of culture is also hindered by the limited number of values studied. As much is admitted in statements that Chicano culture "warrants continuing intensive research," that the "all-important questions of language introduction and transition, are not adequately covered" in their study of education, and that the most critical encounters of Chicanos with government is "clearly an area of urgent need for research."

Despite assurances of a broader viewpoint, change is measured from a starting point of a Mexican culture that is rural, static, homogeneous, traditional, passive, lagging, racist, Spanish-speaking, and early 20th Century. At the end point of this scale of change is a dynamic, urban, progressive, achieving, pace-setting, English-speaking, contemporary culture. That is the essence of the time-skewed, somewhat ethnocentric continuum. The Chicano, of course, is found to fall short of this contemporary culture, and belongs to no specific location on the continuum.

Consequently, the Chicano way of life is viewed as too heterogeneous (genetically, culturally, and socially) and too achievement oriented to qualify as distinctive. That the Chicano population is heterogeneous concurs with what others have been saying for the last few years.<sup>7</sup> However, the notion of distinctiveness as used by the authors is very limiting and contradictory. Diversity does not preclude distinctiveness, though such is implied in the book. The cultural diversity of America has always been considered part of its distinctiveness. What seems more important is whether the diversity of the Chicanos is markedly different than that of other Americans. More pointedly, is there a significant portion of the Chicano population that combines genetic, cultural, and social traits sufficiently distinguishable from much of the dominant society. The authors themselves affirm that the Chicanos are sharply differentiated from the general public. But the authors become ambivalent upon discovering the Chicano "astonishingly close" to acculturation on the dimension of achievement. *The value of motivation with all its history of myth and distortion* seems a weak basis for concluding that most Chicanos are not much different than are most other Americans.

Even as defined, the ambivalent assessment on distinctiveness is indeed strange coming after the finding of a highly Spanish-speaking population (91% in San Antonio could get along comfortably in Spanish, 84% in Los Angeles; 43% in San Antonio could not get along comfortably in English, 29% in Los Angeles). On bilingualism alone the Chicanos are a distinctive group. Based on this degree of dependence on Spanish they well qualify for special attention as clients of governmental agencies, not to mention their unmet needs in the field of education. This, of course, is predicated on the assumption that the Chicanos constitute a large ethnic group with enough history and future in the Southwest to claim consideration for cultural differences and support for cultural development. Judging from the tenor of the book, the research priorities, and the chapter on education, the authors do not share this view. Rather, they seem to accept cultural suppression as the price to be paid for the right to survive in this society.

The book's interpretation of distinctive culture reflects another type of contradiction. On the one hand, the Chicanos have "exceptional diversity" and are "sharply differentiated from the general population"; on the other hand, quite a few Chicanos are "typical Americans" and there are "not many who could be said to have a truly distinctive culture." Aside from the fact that these statements do not square, it is difficult to imagine this typical American in a nation where sizeable minorities retain complex diversity and where the dominant population manifests an even greater socioeconomic range as well as rural, regional, and genetic differences, except of course, when the typical American is a striving bilingual barrio resident of Mexican parentage who has been miseducated and underpaid somewhere in the Southwest.

The weakness of linking distinctiveness to achievement values that are internally homogeneous and externally different is apparent in the book's cross-cultural examples. *Reference is made to a finding that males in Mexico City are as acculturated to "American achievement values" as Mexican-Americans!* Such an astonishing finding is enough for the authors to cast doubts on the notion of a distinctive Mexican culture. Little evidence is forthcoming to support the contention that Mexico City males are acculturated to Anglo American behavior. This author finds it hard to reach the same conclusion from preliminary analysis of his own research in both countries. While the *colonia* population in the Federal District of Mexico shares certain aspirations with barrio residents in California, they differ in what constitutes heterogeneity as well as in other attitudinal and behavioral patterns.<sup>8</sup>

No doubt intra-cultural variation taxes the social scientist in his effort to identify culture and then cross-cultural differences. But the answer is not to deny inter-cultural differences. Even after due consideration to the trend toward the cultural similarities of industrialized nations, a narrow meaning of distinctiveness serves more to disguise than to describe. Yet, the question is not whether the Chicano culture is decliningly distinct and increasingly heterogeneous (a contention still open to question), but rather what pressures in society are influencing these changes. What is missing is an analysis of the cultural suppression which so many Chicanos continue to face in schools, other institutions, and society at large. Without assessing the damaging effect of linguistic-cultural denial along with the more obvious prejudice and poverty, the authors continue their self-admitted difficulty in explaining the Chicano's low educational and economic condition. With little else to offer, the book regresses to traditional explanations: the fundamental cause of the depressed economic condition is the education gap which, in turn, is attributed to rural background, immigrant status, poverty, and "other aspects of home environment."

Such an explanation for the educational gap will comfort those who want to believe that institutionalized biases have been overexaggerated. And they can find further comfort with the prospect that the Mexican-American problem may soon fade away.

This prism of integration and assimilation that permeates much of the book was borrowed from the literature on the European immigrant. Such a comparison loses much of its value upon consideration of Southwest history; the cultural and physiological differences, the survival of core cultural aspects, the continual reinforcement (immigration, family, trips, mass media, etc.), and the contemporary Chicano socio-political activity. Furthermore, this assimilationist screen greatly reduces the attention given to aspects of suppression, repression, prejudice, exploitation and paternalism that are so much a part of life for the urban Chicano—the main interest of the study. Thus, the Chicano's "persistent general problem" of an alien and lower-class image theoretically would

be alleviated by more effective border controls, though nothing is suggested about controlling businesses that exploit illegal aliens. One might ask, in passing, why Canadians did not suffer in "image" and why they were not also repatriated during the depression, especially since their entry was at twice the Mexican rate from a country with half the Mexican population.

Not only does the reader learn about the disadvantages of the alien image, but also about the advantages of integrating. The more thoroughly socialized are the higher achievers. Socioeconomic improvement, no matter how slow, is intergenerational progress. And those who assimilate have the highest educational attainment and prestige occupations. The politically involved of earlier years were really the "urban achievers" in disguise. And even a higher voting ratio becomes an index of assimilation.

The automatic sequel to equating integration with success is a search for cultural factors that prevent others from similar attainment. This overdependence on cultural determinism results in contradictions between the suggested structures and values that produce the low-achieving Chicano and the low-achieving Black. On the one hand, *the Chicano male is too patriarchal, too clannish, with ties too strong for individual mobility to take place. On the other hand, the Blacks are too matricentric, too disorganized, and too weak to provide male roles of achievement to be emulated.* Yet, the product is the same—young men drop out of school because they are preoccupied with immediate pleasures.

Such a contradiction ought to be enough to signal the strong possibility of scholarly bias. Yet the authors feel that next time around they will find the "right" combination of values and norms of the urban lower-class minorities to explain lack of success. Many scholars find it hard to realize that fishing expeditions into culture—ethnic, lower-class, or combined—to explain low socioeconomic status are doomed to contradictory rationalizations while the effects of social structure, institutionalized biases, and human prejudice are not properly evaluated.

Not surprisingly, the myths about the causes of political ineffectiveness of poorer populations also appear in the book. Somewhat like Edward C. Banfield, *who can trace the lack of effective organization to family cohesion in one country, and to family disintegration in another*,<sup>9</sup> the authors feel that the only things holding back the Chicano politically are the internal constraints of ethnic disunity, low efficacy, and non-citizenship. Proceeding further to equate representation to political effectiveness, they are startled to find more Chicano elected officials in "Dixie" Texas than in more "liberal" California, a fact that does not support the integration/success logic.

If the purely quantitative equation of effectiveness were correct, poverty and prejudice would be on its way out in Texas. However, throughout the Southwest there has been little correlation between

Chicano success in conventional politics and social change. If the Chicanos are a stronger pressure group today, it is despite a declining potential for electing their own into office and despite greater political differences.

To assess Chicano political potential and to suggest alternative behavior requires attention to factors not touched upon in this book. Granted that some of the blatant restraints against Chicano involvement have been removed, other serious barriers for the poorer minorities in the majoritarian democracy of America remain to be examined. Without this information, the topics of ethnic solidarity, voter turnout, proportional representation, and leadership validation leave the reader in limbo. A reasonable appraisal of prospects has to address itself to such matters as the value of the Chicano vote, the limitations on electoral politics as an instrument of social change, the changing usefulness of plurality in the Chicano community, and the external factors that render ethnic representation ineffective. In short, to what extent do the conceptual ideals of plurality and participation mean the same thing for Chicanos as for others? To what extent can democracy serve the Chicano?

Throughout the book there is a curious and contradictory reference to a "Mexican-American spokesman" who seems to serve as a catch-all strawman. If the composite of the ethnic "spokesman" can be taken seriously, he is someone who initially felt threatened by the UCLA project, but soon saw the benefits of being classified by outsiders as a "national minority." He is a man of local orientation, lacking regional vision, but that does not keep him from persistently demanding the appointment of Chicanos to responsible Federal posts. He extols *La Raza* and seizes on cultural distinctiveness to urge special attention for the Chicanos, but somehow his sense of urgency about educational problems can be placated by compensatory programs. He is divorced from urban reality (or is it democratic reality?), while possessed by rural ideology and fringe issues. Somehow, this cultural lag (their term) does not prevent him from realizing the weak bargaining position of the Chicanos. These highly individualistic, competitive, hostile, locally-oriented spokesmen lead to a parochial leadership that the community feels does not represent them anyway. Yet these middle-class leaders, selected and managed by Anglos, lack a trusting relationship with government and are even now defining their problems as malfunctions of society. Such contradictions are numerous.

Correctly, the authors disassociate their work from "reform" literature (a category hardly fitting the writings of Carey McWilliams as is suggested in the introduction). Less accurate is their claim to scholarly objectivity free of ideology. Far from being apolitical, the book conveys a definite message—the only viable path for economic mobility is socio-cultural assimilation along with political accommodation. The Chicanos have a rightful claim to integration, but on Anglo terms. They must passively accept that society will offer little support for the survival of

biculturalism. They must resign themselves to the inevitable phasing out of their distinct culture.

The above logic closely parallels the integration politics that essentially failed the Chicano in the fifties. Whether the UCLA project mirrors the view of the non-Chicano personnel who saw no alternative to the absorption experience of most European immigrants, or whether it reflects the thinking of community advisors who favor integration politics, is not clear.

Another problem with a study of this size is the division of labor and the coordination of contributions. This may explain the occasionally disjointed transition from chapter to chapter, in some cases from findings to interpretations, and even between the main body of the book and the final conclusions. The resulting inconsistencies certainly will give everyone something to agree with initially. But upon closer examination, the confusion, the doubts, and the disagreements become apparent. And a nagging question will linger about this study on which the Ford Foundation spent almost a half-million dollars.

## NOTES

1. Myrdal discusses the bias introduced in studies on the Negro condition that depend on an isolated focus not sufficiently interrelated with the total economic, social, political, judicial and broadly cultural life of the nation. See Appendix 2, "Note on Facts and Evaluations," *AN AMERICAN DILEMMA*, N.Y.: Harper & Row, Publishers, Inc. 1944.

2. See Carey McWilliams, *NORTH FROM MEXICO*, N.Y.: J. P. Lippincott Co., 1961.

3. For an interpretation of how the concept of colonialism can be applied to the changing situation of the Chicano in the last 120 years, see Mario Barrera, Carlos Munoz, and Charles Ornelas "The Barrio as Internal Colony," in Harlan Hahn, ed., *URBAN POLITICS AND PEOPLE: URBAN AFFAIRS ANNUAL REVIEWS*, Vol. VI, (Beverly Hills, Calif.: Sage Publications) 1972 (forthcoming).

4. This type of narrow empiricism has been on the list of post-behavioral concerns. Such an approach "purveys an ideology of conservatism tempered by modest incremental change." For the basic tenets of the post-behavioral revolution as identified by David Easton, see "The New Revolution in Political Science," *THE AMERICAN POLITICAL SCIENCE REVIEW*, Vol. LXIII, No. 4, p. 1052.

5. See preface of Otto Stammer, ed., *PARTY SYSTEMS, PARTY ORGANIZATIONS, AND THE POLITICS OF THE NEW MASSES*, Berlin, Institut für politische Wissenschaft an der Freien Universität, 1968.

6. For example, see Julian Samora, "The General Status of the Spanish-speaking People in the Southwest," in *SUMMARY AND PROCEEDINGS OF THE SOUTHWEST CONFERENCE ON "SOCIAL AND EDUCATIONAL PROBLEMS OF RURAL AND URBAN MEXICAN-AMERICAN YOUTH,"* sponsored by the Rosenberg Foundation at Occidental College, April 6, 1963. Also, see Donald N. Barrett, "Demographic Characteristics" in Julian Samora, ed., *LA RAZA: FORGOTTEN AMERICANS*, Notre Dame, Ill.: University of Notre Dame Press, 1966.

7. Julian Samora and Paul M. Sheldon make similar statements in *LA RAZA: FORGOTTEN AMERICANS*, op. cit. Fernando Penalosa states the same in "The Changing Mexican-American in Southern California," *SOCIOLOGY AND SOCIAL RESEARCH*, Vol. 51, No. 4, July 1967. For a criticism of the literature

emphasizing a homogeneous, traditional culture of the Chicanos, see Octavio I. Romano-V, "The Historical and Intellectual Presence of Mexican-Americans," *EL GRITO*, Vol. II, No. 2, 1969.

8. Findings stem from surveys conducted in 1969-70 with 527 low to middle-income respondents in four peripheral *colonias* of the Federal District and with some 300 Chicano respondents in the Eastside of Santa Barbara, California. For indications of both inter and intra-cultural variations in the latter survey, see Charles Ornelas and Michael J. Gonzalez, "The Chicano and the War: An Opinion Survey in Santa Barbara," *AZTLAN*, Vol. 2, No. 1 (Spring 1971).

9. For Banfield's view on the restrictive nature of "amoral familism" among villagers in Southern Italy, see *The Moral Basis of a Backward Society*, The Free Press, 1958. For his explanation of the consequences of the disintegration of the Negro family, see *CITY POLITICS*, New York, Random House, Inc., 1963, chap. 20.

# THE RELATIONSHIP OF ACCULTURATION TO EDUCATIONAL ACHIEVEMENT AND PSYCHOLOGICAL ADJUSTMENT IN CHICANO CHILDREN AND ADOLESCENTS: A REVIEW OF THE LITERATURE<sup>1, 2</sup>

Manuel Ramirez III

## Introduction

Studies that attempt to relate acculturation to educational achievement and/or personality adjustment in Mexican-Americans invariably concern themselves with one central issue—is identification with the ethnic group an asset or a liability for the Chicano? Information relative to this issue is very critical at present because of the recent emergence of the philosophy of cultural democracy on the American educational scene. Thus, data relative to the effects of acculturation on education and personality will undoubtedly come to determine whether cultural democracy will replace the melting pot as the guiding philosophy of education and mental health programs designed for Mexican-Americans. Should research results show that to maintain identification with the ethnic group is detrimental to the child's educational achievement and his psychological adjustment, the emergent philosophy of cultural democracy will be called into question. Conversely, if identification with the ethnic group is found to be a necessary ingredient of academic success and a positive self-image, then, the policy of cultural relevancy must come to dominate efforts in developing experimental educational and mental health programs for Chicanos.

## Review of the Literature

### *Studies of the relationship of acculturation to education.*

The most recent study in this area (Schwartz, 1969) focused on Mexican-American and Anglo-American high school students from schools in the Los Angeles area. The experimenter administered an attitudes inventory to the subjects. The results indicated that there were substantial differences in some special value orientations between Mexican-American and Anglo American pupils from similar socio-economic backgrounds. Namely, Chicanos indicated greater acceptance of wide-scope family authority, viewed their fellow man with caution and viewed their own destiny with resignation. Schwartz found that orientation to the family was the most obvious of these value differences, i.e., more Chicanos than Anglos indicated a desire for parental

guidance and approval. Furthermore, scores based on reading tests showed that achieving Chicanos differed from their achieving Anglo counterparts chiefly in their orientation to authority, that is, in their reluctance to exercise control over others and in their lack of independence from parental authority. However, achieving Mexican-Americans indicated that they were more independent from parental control than non-achieving Mexican-Americans and also that they had greater concern for peer than adult disapproval. *In an attempt to explain these findings, the author concluded that by moving away from the strong influence of the family the Chicano pupil frees himself of the cultural ties which may inhibit his achievement.* That is, with independence from family authority, the pupil is said to be emotionally free to change his major reference group and acquire new values and behaviors. The author goes on to state, "One can conclude from this analysis that as opportunities are presented to Mexican-American youth for some acculturation to Anglo values, so are opportunities presented for greater educational achievement."

A recent study by Cordova (1969) has obtained findings which are somewhat different from those obtained by Schwartz. Spanish-American<sup>3</sup> sixth grade students from Albuquerque and from school districts in Northern New Mexico were administered a questionnaire. The results obtained show that values and beliefs in the area of politics (importance attributed to taxes, policemen, judges, etc.) and education (importance attributed to attendance, school activities, etc.) were negatively related to a general feeling of alienation and feelings that school activities were not rewarding or valuable, thus, as there is an increase in the acceptance by Spanish-American students of the values and beliefs concerning education and politics there is a decrease in their feelings of alienation. Acculturation with respect to family values was found to be related to feelings of powerlessness, i.e., the subjects felt that their behaviors could not obtain the goals and reinforcements they sought. Finally, as acculturation in the areas of family and politics increased the achievement of urban middle class students decreased. From this Cordova concluded "These findings imply that previous assumptions that acculturation is a cure-all for educational problems of Spanish-American students is not accurate."

A study by Henderson and Merritt (1968) throws some additional light on the relationship of acculturation to educational achievement. Two groups of Chicano mothers of six-year-old children attending schools in Tucson, Arizona were given an interview which attempted to assess nine environmental process variables, i.e., achievement press, language models, academic guidance, activeness of family, identification with models, range of social interaction, and perception of practical values of education. There were two groups of mothers interviewed—one group was composed of mothers of high potential children, identified as

such by their scores on the Goodenough Harris Drawing Test and the Van Alstyne Picture Vocabulary, and another group was composed of mothers of children who had scored low on these same tests (i.e., low potential group). The results showed that as expected the means on all environmental process variables were higher for the high potential group, thus, indicating that children in the high potential group were exposed to a wider variety of stimulating experiences. The most interesting finding of the study, however, was that *high potential children scored better than low potential children on a test of Spanish vocabulary*. The authors concluded, "The data seemed to refute the common assumption that children from families that are the most 'Mexican' in their behavior and outlook will have difficulty in school, it appears that high potential families may participate more fully than families of low potential children in both Anglo American and Mexican-American cultures." A study somewhat related to that of Henderson and Merritt but involving graduate students rather than elementary school children produced similar results. Long and Padilla (1971) administered a questionnaire to 50 students with Spanish surnames who had succeeded in obtaining graduate degrees at the University of New Mexico and compared their responses to those of unsuccessful Spanish surnamed students who had dropped out of the university. The results showed that 94 per cent of the successful but only 7.6 per cent of the unsuccessful students reported having been reared in bilingual homes. Most of the unsuccessful students had come from homes in which only English was spoken, thus, indicating a high degree of acculturation. On the basis of this finding Long and Padilla concluded, "The present finding of a very high rate of bilingualism in the sample of successful Spanish-American students suggests that these students may have been better able to interact readily with members of both their own culture and that of the dominant American culture. These individuals may simply be better adjusted members of both their cultures. The lack of bilingual background suggested in the sample of unsuccessful students may reflect the conflict of marginality often seen in members of ethnic minority groups . . ."

*Studies dealing with the relationship of acculturation to personality.*

Derbyshire (1968) selected Chicano adolescents living in a low income neighborhood in East Los Angeles for study. They were given a thirty-four page questionnaire which covered personal and family history as well as subjective feelings and attitudes toward persons and values significant in their lives. The questionnaire included a series of concepts (i.e., father, mother, self, Mexican) to be rated on an Osgood Semantic Differential Scale. The results indicated that Chicanos who identified with the Mexican way of life to a greater extent were more educationally minded, more sympathetic and adaptable to deviants, main-

tained more respect for authority, and were more adaptable to conflicting situations. From these findings the author concluded, "The data indicates that the maintenance, perpetuation, and integration of the Mexican heritage and culture is important to the maintenance of a stable sense of identity while growing up in the U.S." Ramirez (1969) also studied Chicano adolescents in California. He administered a Mexican-American values inventory to two hundred Chicano adolescents in Sacramento. The ten subjects who expressed the greatest degree of agreement with these values and the ten who expressed the least degree of agreement were administered the Bell Adjustment Inventory (Student Form). The findings obtained were as follows: 1. Subjects who rejected Chicano values reported experiencing more conflicts with parents, more health problems, and more guilt and tension than those who had agreed with the values while 2. Chicano females who expressed agreement with the values scored higher on submissiveness and hostility than any of the other subgroups, and 3. males who expressed agreement with the values seemed to be best adjusted of all the sub-groups. This would seem to indicate that Chicano adolescents who rejected Chicano values experienced more difficulty in human relations than those who identified with them. Especially important appears to be the fact that subjects who rejected Chicano values reported experiencing more conflicts with their parents. This, along with the fact that they reported feeling more guilt and tension and more health problems, seems to suggest that conflict with parents resulted in tensions which in turn was expressed in the way of psychosomatic complaints. This could certainly be in line with observations made by other researchers (Cleveland and Longakre 1967) of non-Chicanos who have experienced value conflicts with their parents.

Jessor, Graves, Hanson, and Jessor (1968) studied Spanish-Americans,<sup>4</sup> Anglo Americans, and Indian-Americans in a small town in southwestern Colorado. Adults were interviewed and a variety of different instruments were used to assess the adolescents including self reports, group questionnaires, interviews, sociometrics, behavior tests, teacher ratings, and school records. The results showed that differences in values between the ethnic groups were relatively minor and that what emerged as crucially important were differences in expectation for achieving what was valued. With respect to social control and deviance proneness the data pointed to the critical role played by social controls especially with respect to Indians and Spanish-Americans. Both groups were subjected to strong pressures toward deviance yet the Spanish-Americans embedded in a persisting structure of religious, family and interpersonal sanctions contributed far less to the deviance rates than the Indians for whom the control structure was fragmented and weak. This implies that acculturation would tend to increase deviancy in Chicanos since the usual trend of acculturation is to reduce social controls of religion and family.

*Studies attempting to relate acculturation to both educational and personality variables.*

There is one study (Ramirez, Taylor, and Petersen, 1970) which attempted to deal with both educational and personality variables. The study consisted of two experiments. The initial effort involved administering an attitudes toward education inventory to junior and senior high Mexican-American and Anglo students of the lower socio-economic class in Sacramento, California. The second part consisted of administering a projective technique, a story telling procedure, to three Chicano and three Anglo sub-groups from the original sample. The three groups within each ethnic group were selected according to their score on the attitude scale as follows: 1. those who had expressed positive attitudes toward education, 2. those who had expressed negative attitudes and 3. those whose scores were close to the mean. The results of the first part of the study showed that Chicanos expressed views toward education which were significantly less positive than those of Anglos. Items which differentiated significantly between the two ethnic groups appeared to reflect differences between the value orientations of the groups. Data obtained with the projective technique in the second phase of the study revealed that Chicanos had scored higher than Anglos on need Power, and need Rejection but had scored lower on need Achievement. Again, the differences in motivational style were explained in terms of differences between value systems of the two ethnic groups and the present structure of the educational system which in many cases is alien to the beliefs and prior learning experiences of Chicanos. Furthermore, stories obtained with the projective technique seemed to indicate that Chicano students experienced more conflicts with both their parents and their teachers because they served as the carriers of values from both school and home. Since in many instances parents and teachers were ignorant of one another's values and life styles, disagreement between them with negative consequences for the Chicano student was the end result. The authors stated "to improve the chances for academic success of the Mexican-American child changes must be made in both the educational system and in some of the attitudes perceptions and behaviors of the child . . . by altering the structure of the educational system and by helping school personnel to become aware of the unique needs, perceptions, and attitudes of Chicano students most of the characteristics engendered by the Mexican-American culture in children can become an asset rather than a liability in the classroom."

## Discussion

### *Education Studies*

The studies reviewed emphasize the complexity of the acculturation issue. Schwartz (1969) found in her study of a Los Angeles sample of

Chicanos that acculturation is positively related to academic achievement, yet Cordova (1969), and also Henderson and Merritt (1968) found the opposite to be true in New Mexico and Arizona, respectively. These findings seem to indicate that the milieu plays a crucial role here. It is altogether possible for example that the schools from which Schwartz sampled in Los Angeles did not reinforce the child for his "Chicanismo," on the other hand, schools from which Cordova and Henderson and Merritt selected their subjects in New Mexico and Arizona may follow a different policy. Here there may be more reinforcement or at least less punishment for being identified with the Mexican-American value system.

The research reviewed here also suggests that socio-economic variables may be central to this issue. Cordova's results support this latter finding. He found that for the middle class Spanish surnamed students in his sample, acculturation to family values was negatively related to performance in school. What appears to be suggested here is that the relationship of acculturation (at least with respect to family values) to academic performance is linked to socio-economic class. Is it possible, then, that for Cordova's samples acculturation was negatively related to achievement in middle class students, but positively related in those of the lower class?

The fact that the middle class Chicano family, because of its greater economic resources, may be capable of maintaining its ethnic identity makes this likely. That is, the middle class family may be more capable than the lower class family of protecting some of its values from the onslaught of schools which are out to Anglicize its members. In addition, teachers may be more supportive of cultural differences in middle class Chicano children than in lower class children. In other words, the same cultural differences which they see as prestigious and interesting in middle class children they may be viewing as cultural deprivation and disadvantage in poor children. It is obvious that future studies in this area cannot ignore these variables.

The achievement test validity issue may also be critical here. In most of the studies reviewed here, degree of achievement in school was defined in terms of performance on standardized achievement tests. Unacculturated Chicano children are most likely to have performed poorly on these tests because a traditional orientation to family values is usually correlated with lack of acculturation in areas most commonly tapped by these instruments. For example: (1) the primary language of unacculturated Chicano children is Spanish, thus, they are not familiar with the English vocabulary of these tests, (2) most of these children also have never been exposed to the Anglo middle class cultural information reflected in the test items and, (3) there is nothing in their past experiences which prepares them for the testing situation itself. The achievement test data is thus, confounded by the weaknesses of the instruments used for evaluating these children.

*Personality studies.*

Results of the personality studies are much more consistent than those in education. They reveal that acculturation in the form of reducing the Chicano's identity with his ethnic group tends to result in negative consequences for psychological adjustment. The methodology of these studies, however, is not nearly as sophisticated as those reviewed in the education section. Almost all of these studies have employed paper and pencil instruments and have involved only superficial and short term study of subjects.

*Recommendations*

Almost every review of the literature ends in a call for additional research and this one is no exception. There is a great need for longitudinal studies in this area. Specifically there is need for extensive studies of how milieu, and socio-economic class interact with acculturation to affect personality and education. The Chicano is now socio-economically diverse, and is found in so many different milieus that it will be necessary to do studies in rural and urban areas and in different states of the Southwest and Midwest. Who can deny that conditions for acculturation in Texas differ from those in California, or that those in East Los Angeles differ from those in Chicago? Furthermore, there is need for studies on family dynamics. *All studies reviewed showed that the family is closely tied to the effects which the Chicano child experiences in the process of becoming acculturated, yet we have little data available on Chicano family dynamics, and especially so on urban Chicano families.*

There is, therefore, a critical need for more enlightened research relevant to acculturation of Chicanos. There is an even greater need to insure that the results of this research will be incorporated into education and community mental health programs. This is especially important since many of these programs are continuing to follow the old and inappropriate model of assimilation into the mainstream American middle-class. There is, thus, a very crucial issue at stake here—the outcome of the struggle for cultural democracy in American mental health and education.

NOTES

1. The author would like to thank Dr. Alfredo Castaneda, Chairman of Mexican-American Studies at the University of California, Riverside for his help and encouragement in the preparation of this paper.

2. This paper was written for the Southwestern Cooperative Educational Laboratory as part of a project sponsored by the Bureau of Research, U.S. Office of Education. Dr. Atilano Valencia served as director of the project.

3. Cordova's terminology.

4. Jessor's terminology.

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SPECIAL EDUCATION PLACEMENT  
AND MEXICAN AMERICANS

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Frank Ortega

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Several million Mexican American children living within a five-state area in the Southwest never will get beyond the eighth grade. Whatever their background, they are herded into classes wherein all courses are taught in English. In many cases, they are forbidden to speak Spanish in the classrooms and even on the playground. How can one determine the intellectual functioning of these children?

Thus far, in determining the intellectual functioning of Mexican American children, the principal problems appear to be:

1. The content of the intelligence tests. The Mexican American children may not have acquired the habits and tools that are tapped by I.Q. tests.
2. The inadequacy of non-verbal tests to ascertain the intelligence of Mexican American children. Non-verbal tests are as culturally biased as the verbal tests, and they cannot test what is not there. *Non-verbal performance tasks actually require verbal mediation.*
3. The use of translated tests. Even after translation, cultural factors may remain which may render the test invalid for Mexican American children.
4. The level of verbal competency of the Mexican American children taking the standardized intelligence test, especially when it is administered in Spanish. The Spanish spoken in the home may contain many dialectical variations and Anglicisms.
5. Interpretation of test scores is an important factor. Until recently, it was commonly held that I.Q. was an innate capacity fixed at birth by genetic determinants.

*Some Definitions*

EDUCABLE MENTALLY RETARDED (EMR): An educable mentally retarded child is one whose Intelligence Quotient ranges roughly between 50 and 70, and who, under favorable circumstances and adequate training, can become self-supporting and in many cases will

require little or no supervision. Educationally such a student may attain a level between the first and fourth grade.

**EDUCATIONALLY HANDICAPPED (EH):** Educationally handicapped children are minors, other than physically handicapped or mentally retarded minors, who, by reason of marked learning or behavioral problems or a combination thereof, cannot receive the reasonable benefit of ordinary educational facilities.

**TRAINABLE MENTALLY RETARDED (TMR):** A trainable mentally retarded child can be defined as one having a mentality from four to eight years of age at full maturity and who will always require supervision in performing useful tasks.

**INTELLIGENCE QUOTIENT (I.Q.):** Intelligence quotient is defined as numerical representation of level of intelligence.

### *The Problem*

In California, is there a disproportionate placement of Mexican American children in classes for the educable mentally retarded? To answer this question, the following hypotheses have been formulated:

*Hypothesis I:* With the total school population as a base, the placement of Spanish speaking and "other white" students in Special Education (EMR, TMR) will follow the normal curve.

*Hypothesis II:* With the total handicapped population as a base, the placement of Spanish speaking and "other white" students in Special Education (EMR, TMR) will follow the normal curve.

*Hypothesis III:* The placement of "other whites" in EMR and TMR classes does follow the normal distribution curve.

*Hypothesis IV:* The placement of Mexican American students in EMR and TMR classes does not follow the normal curve.

### *The Study*

The data utilized in this study (See Tables I, II, III, IV) is contained in the California State Department of Education report entitled, "A Report to State Board of Education Regarding House Resolution No. 444 Relative to Special Education." A chi square analysis was made to determine if EMR class placement in the state of California follows the theory of normal distribution. In other words, what is being looked at is the amount of discrepancy between what is expected and what is actually observed.

We know that there are vast differences in the range of intellectual ability among children. Most children, however, tend to cluster around a central point in the distribution of intelligence. This is called the mean or the average. Any given child may rank at any point from "inferior" to "very superior" from the standpoint of intelligence. From a quantitative point of view, it is important to consider how I.Q. is distributed

through the general population. The distribution depicted by Figure A is representative of many human traits, i.e., height, weight, etc.

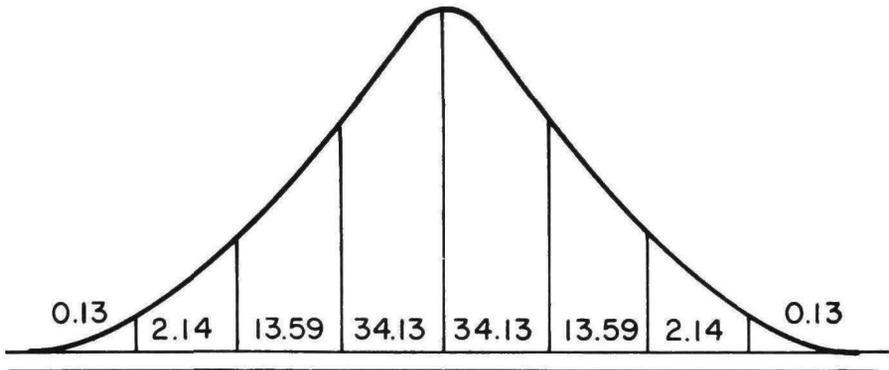


FIGURE A

### PERCENT OF CASES UNDER PORTIONS OF THE NORMAL CURVE

This curve is known as the normal distribution curve, or the curve of normal probability. It is used in plotting the distribution of intelligence in the general population. Generally speaking, the statistical average in I.Q.'s falls between 95 and 104. People who are within this range are considered to be "average" or "normal" in intelligence.

Statisticians have determined that the following relationship always holds for any normal distribution or measurement: 68.26% of the population falls between one standard deviation above and one standard deviation below the mean; 95% of all cases fall between two standard deviations above and below the mean; and 99.7% of all cases fall between points three standard deviations above and below the mean.

Although the numerical value of the mean I.Q., and the size of the standard deviation vary according to the specific intelligence test used (since any given test contains some errors of measurement), it is believed that intelligence is distributed over the total population in a similar manner, regardless of the test used for its measurement. *Any statistical or proportional deviation that suggests intelligence is not equally distributed among racial, ethnic, or socio-economic groups is completely antithetical to the basic theory of distribution.*

#### *Results of the Study*

The hypothesis that, with the total school population as a base, the placement of Spanish speaking and "other white" students in Special Education (EMR, TMR) follows the normal curve is rejected. Table I

demonstrates that special education placement did not follow the normal distribution curve for the "other white" EMR students, although placement can be considered normal for TMR classes.

The hypothesis that, with the total handicapped population as a base, the placement of Spanish speaking and "other white" students in Special Education (EMR, TMR) is rejected. Table II shows that within the handicapped population Mexican Americans made up 28.34% of the EMR population, yet only 15.22% of the total school population. "Other whites" were 72.40% of the total school population, yet they constituted only 44.27 of the EMR population. Table II also indicates clearly that Mexican American students are not being properly served in the EH program.

Hypothesis number III, that placement of "other whites" in EMR and TMR classes follows the normal distribution curve is rejected. Table III clearly indicates that "other whites" were placed in EMR programs in smaller numbers than would be expected according to the normal distribution curve.

Hypothesis IV, that the placement of Mexican American students in EMR and TMR classes does not follow the normal distribution curve is rejected. Table IV indicates that actual placement of Mexican American children did follow the normal distribution curve.

### *Summary*

The data support the contention that special education placement in California does not follow expectations according to the curve of normal probability. There is a clear lack of relationship between the Mexican American composition of classes for the educable mentally retarded and regular education classes. A clear disproportion of special classes for the educable mentally retarded are composed of Mexican American children.

Including all pupils in California schools, 1.16% of all pupils have been diagnosed as educable mentally retarded. However, among the Mexican Americans 2.14% have been so diagnosed and placed in programs for the educable mentally retarded. Only .71% of "other white" pupils have been so diagnosed! This means that fewer "other whites" are placed in educable mentally retarded classes than expected according to the normal curve.

### *Conclusions*

From the foregoing it is possible to draw several conclusions regarding the enrollment of Mexican Americans in programs for the educable mentally retarded.

First, the disproportionate representation of Spanish speaking students in programs for the educable mentally retarded is a statewide problem.

Second, it is apparent that "intelligence" in California is not stable, but dependent upon the *right* psychologists and special education per-

**TABLE I**  
**A COMPARISON OF RACIAL AND ETHNIC POPULATION**  
**PLACED IN SPECIAL EDUCATION PROGRAMS:**  
**PERCENTAGE OF THE TOTAL POPULATION**  
**USED AS A BASE**

	Spanish Surnamed	Other White	
EMR	2.14	.71	2.85
TMR	.25	.19	.44
EH	<u>.32</u>	<u>.57</u>	<u>.89</u>
	2.71	1.47	4.18

NOTE: Chi square equals 43.0423 with 2 degrees of freedom. It is statistically significant beyond the .01 level.

**TABLE II**  
**A COMPARISON OF RACIAL AND ETHNIC POPULATION**  
**PLACED IN SPECIAL EDUCATION PROGRAMS:**  
**PERCENTAGE OF THE TOTAL HANDICAPPED**  
**POPULATION USED AS A BASE**

	Spanish Surname	Other White	
EMR	28.34	44.27	72.61
TMR	18.88	66.91	85.79
EH	<u>9.42</u>	<u>79.59</u>	<u>89.01</u>
	56.64	190.77	247.41

NOTE: Chi square equals 18.3908 with 2 degrees of freedom. It is statistically significant beyond the .01 level.

**TABLE III**  
**PLACEMENT OF HANDICAPPED OTHER**  
**WHITES COMPARED WITH NORMAL**  
**DISTRIBUTION CURVE**

	Normal Probability	Actual Placement of Other Whites	
EMR	2.14	.71	2.85
TMR	<u>.13</u> 2.27	<u>.19</u> .90	<u>.32</u> 3.17

NOTE: Chi square equals 22.6991 with 1 degree of freedom. It is statistically significant at the .01 level.

**TABLE IV**  
**PLACEMENT OF MEXICAN AMERICAN HANDICAPPED**  
**COMPARED WITH NORMAL**  
**DISTRIBUTION CURVE**

	Normal Probability	Actual Placement of Mexican Americans	
EMR	2.14	2.14	4.28
TMR	<u>.13</u> 2.27	<u>.25</u> 2.39	<u>.38</u> 4.66

NOTE: Chi square equals 0.0129 with 1 degree of freedom. It is not statistically significant.

sonnel. The entire concept of intelligence in California has been completely contradictory to the basic premise upon which special classes are based.

Third, the procedure used to label students as mentally retarded, as used in California, is ambiguous. The actual problem appears to be the fact that educators have been unwilling to accept language and cultural differences in children, and to modify their curricula for the specific needs of children. They have succumbed to the easier panacea of labeling Spanish speaking children as educable mentally retarded. Thus the inferior image of the Mexican American population, accompanied by a pessimistic academic expectancy becomes commonplace in educational circles. Because of the over-representation of the Mexican Americans in the EMR programs, how many children are mislabeled for life each year in California schools?

The following article by Mr. Guadalupe Salinas originally appeared in the HOUSTON LAW REVIEW, Volume 8, 1971, pp. 929-951. (Copyright: HOUSTON LAW REVIEW). It is reprinted here with permission from the Editor of the REVIEW and the author. Although it is not the usual policy of EL GRITO to reprint articles published elsewhere, an exception is made in this case because of the significance of the subject matter, and in order to bring it to the attention of the nation's largest Chicano reading audience of Chicano literature.

In the SUPPLEMENT, which immediately follows the original article, the author discusses more recent developments that concern segregation-desegregation and Mexican-Americans. The SUPPLEMENT was written by Mr. Salinas especially for EL GRITO. —The Editors

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— MEXICAN-AMERICANS AND THE DESEGREGATION —  
— OF SCHOOLS IN THE SOUTHWEST —

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Guadalupe Salinas

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#### I. INTRODUCTION

On June 4, 1970, Federal District Judge Woodrow Seals, in *Cisneros v. Corpus Christi Independent School District*,<sup>1</sup> held that Mexican-Americans are an "identifiable ethnic minority group" for the purpose of public school desegregation.<sup>2</sup> Because Mexican-Americans are an identifiable group and have been subjected to discrimination in the Corpus Christi, Texas area, Judge Seals stated that Mexican-Americans are entitled to the same protection afforded Negroes under the landmark decision of *Brown v. Board of Education*.<sup>3</sup> The court found that the school district segregated Mexican-Americans, as well as Negroes, to such an extent that a dual school system resulted.<sup>4</sup> The parties were then asked to submit a desegregation plan which considered the three major ethnic groups: Negro, Mexican-American, and Anglo, that is, other whites besides Mexican-Americans.<sup>5</sup>

*Cisneros* is unique in that it is the first case in which a court officially recognized Mexican-Americans as an *identifiable ethnic minority group* for the purposes of public school desegregation. Before proceeding with a discussion of the significance of being an *identifiable ethnic minority group*, a definition of the phrase may be conducive to a better understanding of the court's holding. Mexican-Americans are considered by some to be a non-white racial group. However, the predominant view is that Mexican-Americans are white, even though many are *mestizos* (a hybrid of white and Indian). Nevertheless, like other white nationality groups who have been victims of discrimination, for example,

the Jewish and Italian-Americans, Mexican-Americans have inherent characteristics which make them easily identifiable and susceptible to discrimination. Among these characteristics are brown skin color, a Spanish surname, and the Spanish language. The fact that this group is of Mexican descent and has certain inherent characteristics makes it an *identifiable ethnic group*.

Judge Seals characterized Mexican-Americans as an ethnic *minority* group. Mexican-Americans definitely are a numerical minority in the United States, representing about 2.5 percent of the population.<sup>6</sup> In Texas, this ethnic group comprises 14.5 percent of the population.<sup>7</sup> In Corpus Christi, where *Cisneros* arose, Mexican-Americans comprise 35.7 percent of the population.<sup>8</sup> However, Judge Seals does not rely on mere numbers to determine whether an ethnic group is a minority group. His principal test is whether the group is discriminated against in the schools through segregation, a discrimination facilitated by the group's economic and political impotence.<sup>9</sup> Thus, Mexican-Americans are an *identifiable ethnic minority group*, even in areas where they are the majority since many are economically and politically disadvantaged.

The court's holding, that Mexican-Americans are entitled to the protection given Negroes by *Brown*, is significant because it introduces a new group into the desegregation process. Federal courts should consider Mexican-American students in determining whether a unitary school system is in operation. More importantly, the court's recognition of Mexican-Americans should serve as a restraint on school districts which utilize the Mexican-American's classification of white by integrating them with Negroes to satisfy court desegregation orders. Further discussion about the mixing of Negroes and Mexican-Americans in minority schools is presented in parts IV and VI-B.

This comment seeks to analyze whether Mexican-Americans should be considered an identifiable ethnic minority group for purposes of public school desegregation. After providing a brief history of the American of Mexican descent, the writer will discuss various civil rights problems encountered by Mexican-Americans and, more importantly the evolution of the desegregation doctrine as it pertains to Mexican-Americans.

## II. HISTORICAL BACKGROUND OF THE MEXICAN-AMERICAN

Mexican-Americans are the second largest minority group in the United States.<sup>10</sup> In the Southwest (an area including Arizona, California, Colorado, New Mexico, and Texas), where 87 percent of this minority group resides, Mexican-Americans are the largest minority group.<sup>11</sup>

In the 1500's the Spanish began to settle this area, many years before the English established the first settlement at Jamestown in 1607. This early Spanish influence is evidenced in the number of States, cities,

and rivers with Spanish names.<sup>12</sup> These Southwestern States came under Mexican rule after Mexico won her independence from Spain in 1821.

However, the vast Mexican nation encountered internal problems when Texas seceded in 1836 and again when the United States Congress voted in 1845 to allow Texas to enter the Union. Mexico had warned that admission into the Union would be equivalent to an act of war. In spite of Mexico's relative military weakness compared to the United States, the two countries engaged in armed conflict. The result was the defeat of Mexico and the signing of the Treaty of Guadalupe Hidalgo on February 2, 1848.<sup>13</sup> By the terms of the treaty, Mexico acknowledged the annexation of Texas and ceded the rest of the Southwest to the United States. In addition, the treaty guaranteed civil and property rights to those who became American citizens.<sup>14</sup>

Approximately 75,000 Mexicans decided to remain and receive American citizenship.<sup>15</sup> These Mexican-Americans were later supplemented by vast emigrations from Mexico. The first influx, precipitated by the social revolution in Mexico, began in 1910. A second wave of immigrants resulted in the increase of the Mexican-American population by nearly one million from 1910 to 1930. During and after World War II, attracted by the agricultural labor market, a third group of Mexicans came to the United States.<sup>16</sup> In addition, about 3500 Mexicans immigrate to this country each month, thus continuing the steady growth of the Mexican-American population.<sup>17</sup>

With the increase of the Mexican-American population, there was an increase in the prejudice of the predominant Anglo society. For example, Mexican-Americans, as well as Mexican nationals, were deported during the Great Depression to reduce the welfare rolls.<sup>18</sup> This prejudice resulted in the "largest mass trial for murder ever in the United States."<sup>19</sup> Such prejudice also led to the so-called "zoot suit" riots of 1943 in Los Angeles. The riots began when city police refused to intervene while over a hundred sailors roamed the streets for nearly a week beating and stripping Mexican-American youths in retaliation for the beating some sailors had received earlier from a gang of "zoot suiters."<sup>20</sup>

As a result of these and similar discriminatory practices, Mexican-American interest groups began to organize in order to defend *La Raza* (the race), as Mexican-Americans call themselves. In 1927 the League of United Latin American Citizens (LULAC) was formed in Texas. Shortly thereafter LULAC helped fund the first challenge against the segregation of Mexican-American school children.<sup>21</sup> In 1948, a Mexican-American war veteran, Dr. Hector P. Garcia, founded the American GI Forum for the purpose of protecting Mexican-American veterans from discriminatory practices which they "were being subjected to in the areas of education, employment, medical attention and housing..."<sup>22</sup> The American GI Forum, which now has many chapters throughout the United States, has also helped support civil rights litigation.

In spite of the successes which LULAC and the GI Forum have accomplished, many Mexican-American youths have not been satisfied. Unlike their elders, Mexican-American youth activists, or *Chicanos* (the term is a derivation of *mejicano*, which is the Spanish term for Mexican), as they like to be called, refuse to be satisfied with justice on the installment plan, that is, gradual social progress. Instead, this new breed demands justice and equality for *La Raza* now.

In order to promote the advancement of Mexican-Americans, *Chicanos* throughout the Southwest have organized in recent years, mainly on college campuses.<sup>23</sup> For example, the Mexican-American Youth Organization (MAYO), which was founded in 1967 by San Antonio college students,<sup>24</sup> is currently organized at the two largest universities in Texas, The University of Texas and the University of Houston. In addition, MAYO chapters are active in the *barrios* (neighborhoods where the Mexican-American population is predominant).

The Mexican-American Legal Defense and Educational Fund (MALDEF), a *Chicano* (the term is not limited in its application to the youth activists) civil rights organization which was created in 1968,<sup>25</sup> is even more effective than these political groups. The previous lack of a legal defense organization perhaps best explains why Mexican-Americans have not been too active in civil rights litigation. In fact, the Supreme Court of the United States has decided a *Chicano* civil rights issue on only one occasion.<sup>26</sup> However, legal activities of MALDEF prompted a newspaper to note that "[m]ore legal attention has been focused on the problems of Texas' nearly two million Mexican-Americans during the past 11 months than during the entire history of *La Raza* in Texas."<sup>27</sup> This statement is applicable as well to the rest of the Southwest.<sup>28</sup>

### III. THE MEXICAN-AMERICAN—AN IDENTIFIABLE ETHNIC MINORITY GROUP

#### A. *The Mexican-American*

Mexican-Americans, as a group, have been widely discriminated against. As a result, many Mexican-Americans have easily been able to identify with *La Raza*. On the other hand, there are many Mexican-Americans who have never personally experienced an act of discrimination and thus, find it difficult to empathize with the civil rights movement. Many of these adamantly assert that they are Americans and fail to identify with Mexican-Americans. In many cases, a light-skinned complexion has helped make life more "American" for them.<sup>29</sup> In addition, there are some who feel a stigma or a handicap if the term "Mexican" is used to describe them and who prefer a euphemistic label like Latin American or Spanish-speaking American. Finally, there is a group who, because of their ancestry of early Spanish colonists, call themselves Spanish-Americans and Hispanos. Nevertheless, in spite of

what Spanish-surnamed Americans of the Southwest prefer to be called, the name Mexican-American is perhaps the best designation which can be applied objectively. Regardless of what they call themselves, one fact is clear—either they or their ancestors, including the Spanish colonists, came “north from Mexico.”<sup>30</sup>

## B. *Discrimination in Areas Besides Education*

### 1. *Employment*

Mexican-Americans, like Negroes, have encountered discriminatory practices by employers in hiring and promotion. What is worse, is that much of this discrimination is subtle. Employers often use the “high school diploma” or “we’ll call you” tactics since they can no longer discriminate openly with impunity. As a result, it is often difficult to maintain a civil rights action. Since the Civil Rights Act of 1964<sup>31</sup> was passed, at least one Mexican-American has been successful, and many more cases have been filed. The one successful claim is the agreement reached in the case of *Urquidez v. General Telephone Co.*<sup>32</sup> The suit, a class action, resulted from the fact that Urquidez applied for employment, passed the tests, and had more job-related experience and education than several Anglo applicants who were subsequently hired. The settlement agreement acknowledged that Urquidez had a prima facie case of discrimination, awarded him \$2,000, and provided that General Telephone would take definite steps to remedy past discriminatory practices.

In spite of the unusually small number of cases in the field of employment discrimination, the statistics and evidence indicate that discriminatory practices are very prevalent. For example, considering the Southwest alone, the unemployment rate among Mexican-Americans is double the Anglo rate—a statistic which understates the severity of the situation since farm workers are not included in unemployment statistics.<sup>33</sup> In addition, in 1960, 79 percent of all Mexican-American workers held unskilled and semi-skilled jobs.<sup>34</sup>

While some of the employment problems facing Mexican-Americans are attributable to their relatively low educational attainment,<sup>35</sup> there are indications of discrimination to offset much of that argument. For instance, in comparing the income of Mexican-Americans and Anglos who have completed the same number of school years, the income of Mexican-Americans is only 60 to 80 percent of the Anglo income.<sup>36</sup> Since passage of the Civil Rights Act of 1964, employers have resorted to more subtle practices, such as promoting Anglos before Mexican-Americans, even if the former are less educated and less skilled. Many employers, when questioned about such practices, rationalize that Anglo workers will not take orders from Mexican-Americans.<sup>37</sup> Consequently, the Mexican-American is denied the equal protection of the laws as

guaranteed him by the Constitution of the United States<sup>38</sup> and by the Civil Rights Act of 1964.

As previously stated, many employment discrimination cases have been instituted, mostly by MALDEF-assisted plaintiffs. Two of these cases were delayed by motions to dismiss which have been denied,<sup>39</sup> and the cases are set for a hearing on the merits. MALDEF lists 15 additional pending cases.<sup>40</sup> Among the grounds urged for relief are: (1) refusal to hire because of national origin; (2) failure to promote over less-educated and less-experienced Anglos; (3) hiring Mexican-Americans only for low-paying positions; (4) paying different wages to Mexican-Americans and Anglos; and (5) underemployment while Anglos with less seniority are allowed more work time.<sup>41</sup>

One pending case, *Quiroz v. James H. Matthews & Co.*,<sup>42</sup> challenges some of the subtle, covert practices employers commonly use to deny Mexican-Americans equal opportunity. Quiroz alleges violation of his equal employment rights under Title VII of the Civil Rights Act of 1964.<sup>43</sup> The plaintiff, who had 16 years' experience, was replaced by an Anglo who had less job-related experience. Furthermore, Quiroz contends that the defendant pays Mexican-American employees less than fellow Anglo employees receive for doing the same kind of work.<sup>44</sup>

## 2. *Spanish and Mexican Land Grants*

Mexican-Americans have also suffered unjustly in the area of Spanish and Mexican land grants, an issue encountered generally in New Mexico and Colorado. The issue is whether Mexican-American land grantees or the heirs of these grantees, who by some means were defrauded of their land by various state officials, are entitled to compensation.

This issue was raised in *Vigil v. United States*,<sup>45</sup> a class action filed for those descendants of Spanish-surnamed Americans who lived in areas ceded to the United States by Mexico in 1848. The plaintiffs sought \$1 million actual damages and \$1 million punitive damages for each individual who was part of the class. However, the court held that the vague allegations in the complaint failed to satisfy the Federal Tort Claims Act and that there was no claim against the United States under the Civil Rights Acts for deprivation of property.

Although that complaint was vague, one *Chicano* writer has been more specific.<sup>46</sup> He claims Mexican-Americans have lost nearly four million acres of land.<sup>47</sup> This loss has occurred even though Article VIII of the Treaty of Guadalupe Hidalgo provides:

The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States.<sup>48</sup>

The writer argues that the shift from the Mexican legal system, where grant lands were immune from taxation and titles were unregistered, to

the Anglo legal system of land taxation and title recordation was the major factor in the land losses which Mexican-Americans suffered.<sup>49</sup> Many landowners were divested of title by wealthy Anglo ranchers purchasing deeds at tax sales or by recording a claim to the property before the true owner.<sup>50</sup> Perhaps federal courts will grant relief to these aggrieved heirs of the land grantees when and if the complaints are clarified.

### 3. *Public Accommodations*

Mexican-Americans have been excluded from public accommodations. Fortunately the practice has subsided since the 1940's when Mexican-Americans were segregated from restaurants, theaters, and swimming pools.<sup>51</sup> Nevertheless, prejudice and overt acts of discrimination have contributed to making Mexican-Americans an identifiable ethnic minority group.

In 1944 Texas upheld the right of a proprietor to exclude any person for any reason whatsoever, including the fact that the person was of Mexican descent.<sup>52</sup> However, that same year a federal court in California held that Mexican-Americans *are* entitled to public accommodations such as other citizens enjoy.<sup>53</sup> In spite of this ruling and the Civil Rights Act of 1964, a federal court in 1968 found it necessary to enjoin the exclusion of Mexican-Americans from public swimming pool facilities.<sup>54</sup>

### 4. *Administration of Justice*

Mexican-Americans also face serious discrimination in the administration of justice. This discrimination, as well as the personal prejudice of police officers, often leads to physical and psychological injury to Mexican-Americans.<sup>55</sup> However, Mexican-Americans, like other minority groups, have encountered difficulty in getting grand juries to return indictments against police officers who use excessive force and insulting, derogatory language.<sup>56</sup> In one case a Mexican-American woman won a civil damages suit against a police officer.<sup>57</sup> The plaintiff claimed she had suffered physical and mental damages because of being forcefully undressed by two policewomen and two policemen to see if she had any concealed narcotics. Earlier, when the officers had entered the plaintiff's residence without a search warrant, the plaintiff demanded respect for her constitutional rights, but one officer told her to "go back to Mexico."<sup>58</sup>

Besides the treatment received from law enforcement officials,<sup>59</sup> Mexican-Americans are often inadequately represented on juries. Consequently, the juries hearing cases involving Mexican-American defendants are not "impartial"<sup>60</sup> juries since they fail to represent the community. These inequities still occur frequently, even though the United States Supreme Court held in *Hernandez v. Texas*<sup>61</sup> that "[t]he exclusion of otherwise eligible [Mexican-Americans] from jury service

solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment.”<sup>62</sup> The Court stated that the absence of a Mexican-American juror for 25 years in a county where this ethnic group comprised 14 percent of the population “bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner.”<sup>63</sup>

Prior to *Hernandez*, Texas courts refused to recognize the Mexican-American as a separate class—distinct from other whites—for purposes of determining whether there was an unconstitutional exclusion from juries.<sup>64</sup> The Texas courts limited the application of the equal protection clause to two classes, whites and Negroes. Since Mexican-Americans were legally considered white, the equal protection clause did not apply.

Nevertheless, this weak argument was overruled by the Supreme Court in *Hernandez* when it held that Mexican-Americans are a separate class, distinct from whites. The Court noted that historically “differences in race and color have defined *easily identifiable* groups which have at times required the aid of the courts in securing equal treatment under the laws.”<sup>65</sup> Since *Hernandez*, courts have recognized Mexican-Americans as an identifiable ethnic group, although they have not always found discrimination.<sup>66</sup>

Recently, the Fifth Circuit overturned the 1942 rape conviction of a Mexican-American in El Paso County, Texas, because the juries that indicted and convicted him had excluded persons of his ethnic group.<sup>67</sup> Only 18 of the 600 grand jurors who served from 1936 to 1947 were Mexican-Americans, even though the county population was 15 to 20 percent Mexican-American.<sup>68</sup> The court stated that these figures “cry out ‘discrimination’ with unmistakable clarity.”<sup>69</sup>

Although the discussion of discrimination toward Mexican-Americans dealt only with the issues of employment, land grants, public accommodations, and the administration of justice, this in no way limits the areas in which Mexican-Americans encounter injustices.<sup>70</sup> The issues discussed were selected to justify the holding in *Cisneros*, that Mexican-Americans are an identifiable ethnic minority group entitled to the protection of the 14th amendment in the area of school desegregation in the Southwest.

### C. *Non-Judicial Recognition*

The Mexican-American has been recognized as a separate, identifiable group not only by the courts but also by other governmental institutions. For instance, the Civil Rights Act of 1964, by use of the term “national origin,”<sup>71</sup> impliedly includes Mexican-Americans and other “national origin” minority groups such as Puerto Ricans. Furthermore, recognizing the problems facing many Mexican-American school children, Congress passed the Bilingual Education Act<sup>72</sup> which seeks to facilitate the learning of English and at the same time allow the Spanish-

speaking child to perfect his mother language and regain self-esteem through the encouraged learning of Spanish.<sup>73</sup> In addition, Congress created a cabinet committee whose purpose is to assure that federal programs are reaching Mexican-Americans and all other Spanish-speaking groups.<sup>74</sup> Also, through the creation of the United States Civil Rights Commission in 1957, Congress and the public have become better informed as to the injustices Mexican-Americans endure.<sup>75</sup> Other governmental agencies have researched the living conditions of the Mexican-American.<sup>76</sup> Finally, the Department of Health, Education, and Welfare (HEW) has issued regulations which prohibit the denial of equal educational opportunity on the basis of English language deficiency. The regulations apply to school districts accepting federally assisted programs and having at least 5 percent Mexican-American enrollment.<sup>77</sup>

#### IV. THE CHICANO SCHOOL CASES

Since all three branches of government recognize Mexican-Americans as a minority group, the question which must be answered is whether *Chicano* students have been discriminated against by school districts to such an extent as to warrant their inclusion as a separate ethnic group in the desegregation plans for public schools in the Southwest. In other words, does the history of Mexican-American school children in the predominantly Anglo school systems of the Southwest demand recognition of this educationally disadvantaged group as being separate and distinct from whites?

The practice of maintaining separate schools throughout the Southwest was never sanctioned by any State statute, although in California, a statute allowing separate schools for "Mongolians" and "Indians" was interpreted to include Mexican-Americans in the latter group.<sup>78</sup> Generally, the segregation of Mexican-Americans was enforced by the customs and regulations of school districts throughout the Southwest. Nevertheless, the segregation was de jure since sufficient State action was involved.

The struggle by Mexican-Americans against separate and unequal schools has been lengthy. In 1930 a Texas appellate court held in *Independent School District v. Salvatierra*<sup>79</sup> that school authorities in Del Rio, or anywhere else, have no power to segregate *Chicano* children "merely or solely because they are [Mexican-Americans]."<sup>80</sup> However, the school district successfully argued that the children's language deficiencies warranted their separate schooling, even though the superintendent conceded that "generally the best way to learn a language is to be associated with the people who speak that language."<sup>81</sup> The Attorney General of Texas later supported this holding by justifying education of the linguistically deficient in separate classrooms and even in separate buildings if necessary.<sup>82</sup>

The first federal district court decision in this area was *Mendez v. Westminster School District*<sup>83</sup> in 1946. The court held that the equal protection of the laws pertaining to the public school system in California is not met by providing "separate schools [with] the same technical facilities"<sup>84</sup> for Mexican-American children—words which are strikingly similar to the Supreme Court's holding in *Brown* 8 years later that "[s]eparate education facilities are inherently unequal."<sup>85</sup> The court observed that "[a] paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage."<sup>86</sup>

On appeal, the Ninth Circuit affirmed *Mendez*, finding that the school officials had acted "under color of State law" in segregating the Mexican-American students.<sup>87</sup> The appellate court reasoned that since the California segregation statute did not expressly include Mexican-Americans, their segregation denied due process and the equal protection of the laws.<sup>88</sup>

Following the landmark ruling in *Mendez*, a federal district court in Texas, in *Delgado v. Bastrop Independent School District*,<sup>89</sup> held that the segregation practices of the district were "arbitrary and discriminatory and in violation of [the 14th amendment]"<sup>90</sup> In addition, the court's instructions to Texas school districts stipulated that separate classes for those which language deficiencies must be on the same campus with all other students,<sup>91</sup> thereby denying school officials the power to justify completely separate Mexican-American schools by use of the language deficiency argument.

Nevertheless, the *Delgado* requirement did not prevent the creation of evasive schemes in order to maintain segregated school facilities. For example, in *Driscoll*, Texas, school authorities customarily required a majority of the Mexican-American children to spend 3 years in the first grade before promotion to the second.<sup>92</sup> After the *Delgado* case, *Driscoll* abandoned the maintenance of separate schools for Anglos and Mexican-Americans. However, the school district exploited the *Salvatierra* doctrine by drawing the line designating who must attend the language deficiency classes on a racial rather than a merit basis.<sup>93</sup> In *Hernandez v. Driscoll Consolidated Independent School District*<sup>94</sup> a Mexican-American child who could not speak Spanish was denied admission to the Anglo section until a lawyer was contacted. The court held that abusing the language deficiency of the Mexican-American children is "unreasonable race discrimination."<sup>95</sup> In a situation similar to *Driscoll*, Judge Seals, who later wrote the *Cisneros* opinion, enjoined the Odem Independent School District from operating and maintaining a separate school solely for Mexican-American children.<sup>96</sup>

After *Brown v. Board of Education*<sup>97</sup> the *Chicano* school cases began to assume a new dimension. Since Mexican-Americans were generally classified as whites, school districts began to integrate Negroes and Mexican-Americans while Anglos were assigned to all-Anglo schools. As a

result, two educationally disadvantaged minority groups have been prevented from having maximum interaction with students of the predominant Anglo group. For example, in 1955 Negro and Mexican-Americans sued the El Centro School District in California for alleged "ethnic and racial discrimination and segregation by regulation, custom and usage."<sup>98</sup> In a rather narrow reading of *Brown*, the district court stated that *Brown*, which involved constitutional and statutory provisions, did not apply in situations where only customs and regulations were alleged. The court dismissed the complaint, claiming that where no specific regulation was set forth, plaintiffs must seek construction of the regulation in a State court.<sup>99</sup> On appeal, the Ninth Circuit reversed and remanded the case,<sup>100</sup> holding that when the complaint alleged segregation of public school facilities on the basis of race or color, a federal constitutional issue had been raised, requiring the district court to exercise its jurisdiction. Instead of going to trial, the case apparently was settled out of court, but the segregation of Negroes and Mexican-Americans has continued in most of the Southwest.

Whether integrating Negroes and Mexican-Americans produces a unitary school system was the issue raised in *Keyes v. School District Number One*.<sup>101</sup> In *Keyes*, the court questioned the permissibility of adding the number of Negroes and Hispanos (as Mexican-Americans are referred to in Colorado) to reach a single minority category in order to classify the school as a segregated school.<sup>102</sup> Nevertheless, the court stated that "to the extent that Hispanos . . . are isolated in concentrated numbers, a school in which this has occurred is to be regarded as a segregated school, either *de facto* or *de jure*."<sup>103</sup> Failing to find *de jure* segregation, the court held that where the *de facto* segregated schools exist, they must provide equal educational opportunity, or a constitutional violation may exist.<sup>104</sup> As a result, the *Keyes* court revived the separate-but-equal doctrine<sup>105</sup> as to *de facto* segregated schools.

While *Keyes* did not answer whether mixing Blacks and *Chicanos* satisfies constitutional requirements, *Cisneros* did, holding that placing Negroes and Mexican-Americans in the same school did not achieve a unitary system.<sup>106</sup> However, *Keyes* involved *de facto* segregation, whereas *Cisneros* involved *de jure* segregation in the form of (1) locating schools in the Negro and Mexican-American neighborhoods; (2) bussing Anglo students to avoid the minority group schools; and (3) assigning Negro and Mexican-American teachers in disproportionate ratios to the segregated schools.<sup>107</sup>

In *Ross v. Eckels*<sup>108</sup> the Fifth Circuit appears to have disregarded the arguments advanced by Mexican-Americans and Negroes that mixing these minorities does not provide the equal educational opportunity of a unitary school system. In *Ross* the court implemented a pairing plan for the elementary schools of Houston, Texas, resulting in merging predominantly Negro schools with predominantly Mexican-American schools. Judge Clark, dissenting, relied on *Cisneros* in stating:

I say it is a mock justice when we "force" the numbers by pairing disadvantaged Negro students into schools with members of this equally disadvantaged ethnic group [Mexican-Americans].<sup>109</sup>

*Ross* is an important case. First, *Ross* involves the sixth largest school district in the United States, having approximately 235,000 students.<sup>110</sup> Second, *Ross* involves a Southwestern city which, like Corpus Christi, has a tri-racial rather than a bi-racial student population. This tri-racial situation was recognized by the Houston school board when they voted unanimously to appeal the *Ross* case to the United States Supreme Court.<sup>111</sup>

Another case involving segregation of Mexican-Americans, *Perez v. Sonora Independent School District*,<sup>112</sup> held that the Sonora, Texas schools were operating in a "unitary, nondiscriminatory, fully desegregated school system."<sup>113</sup> MALDEF had offered evidence to show that in 1938 the Sonora school board passed a resolution enrolling Mexican-American children in the "Mexican School."<sup>114</sup> *Perez* is an important case for Mexican-Americans and the desegregation of schools in the Southwest in that it is the first desegregation case in which the Justice Department has intervened on behalf of Mexican-Americans.<sup>115</sup>

Since *Salvatierra* in 1930 the Mexican-American desegregation struggle has progressed slowly, considering the injustices which resulted first, from almost total segregation by the regulations of the various school districts, and second, from exploitation of the classification of Mexican-Americans as white. As *Brown* held, it is unconstitutional to segregate Blacks in the public school systems. Similarly, cases from *Mendez* in 1947 to *Perez* in 1970 have held that it is a violation of the equal protection clause of the 14th Amendment to maintain by "custom or regulation" segregated schools for Mexican-Americans. Consequently, assigning Negroes and Mexican-Americans to the same schools and excluding Anglos accomplishes an end that is exactly opposite to the goal desired by the educationally disadvantaged, that goal being the social encounters and interactions between the identifiable minority groups and Anglo-Americans. As a result, the desegregation or assignment plans, which school districts in the Southwest formulate in tri-racial situations, should include the three ethnic groups on a more or less proportionate basis. The necessity for this can perhaps be demonstrated by an analogy from criminal law:

1. If it is a crime to commit *A*, and
2. If it is a crime to commit *B*, then
3. One cannot commit *A* and *B* simultaneously and be absolved of the crimes.

The same applies to school districts which continue to segregate Negroes and Mexican-Americans from predominantly Anglo schools on the theory that a unitary school system is achieved by integrating the two

minority groups, merely because one is technically classified as white. Actually the public school system remains a dual one with identifiable white schools and identifiable minority schools, thus justifying intervention of courts in situations where either identifiable minority group seeks relief.

Forty-one years have passed since Mexican-Americans first sought an equal educational opportunity by attendance at racially integrated schools. In many cases this goal has not been realized, even though Mexican-Americans have been successful in almost every case since *Mendez*.<sup>116</sup> Consequently, an affirmative answer is required for the question whether the history of the Mexican-American school children in the predominantly Anglo school systems of the Southwest demands recognition of them as an identifiable ethnic minority group.

## V FACTORS LEADING TO THE SEGREGATION OF MEXICAN-AMERICAN CHILDREN

### A. Residential Segregation

Residential segregation, whether resulting from economic necessity or discriminatory racial covenants, is a substantial factor in the de facto school segregation of Mexican-Americans. The residential segregation of Mexican-Americans ranges from a low of 30 percent in Sacramento, California to a high of 76 percent in Odessa, Texas.<sup>117</sup> The *Chicano* school cases can be compared to the amount of residential segregation in the areas where the cases arose, perhaps establishing a correlation between the residential segregation and allegations of unequal protection in the public school system:

Cases	Areas	Percentage of Mexican-American Residential Segregation <sup>118</sup>
<i>Mendez</i> (1946)	San Bernardino, California	67.9
<i>Delgado</i> (1948)	Austin, Texas	63.3
<i>Gonzales</i> (1951)	Phoenix, Arizona	57.8
<i>Keyes</i> (1970)	Denver, Colorado	60.0
<i>Cisneros</i> (1970)	Corpus Christi, Texas	72.2
<i>Ross</i> (1970)	Houston, Texas	65.2
<i>Perez</i> (1970)	San Angelo, Texas	65.7

This table reflects a positive correlation between de jure segregated schools and substantial racial segregation. This should be sufficient to shift the burden of proof to the defendant school districts in cases where de facto segregation is alleged.

Furthermore, *Dowell v. School Board*,<sup>119</sup> which holds that a neighborhood school policy is invalid when superimposed on residential segregation which was initiated by State enforcement of racial covenants, should be an aid to the Mexican-American's quest for an equal

educational opportunity. There is support for the view that Mexican-Americans have been denied access to homes and apartments in predominantly Anglo areas.<sup>120</sup> These denials are aggravated by the economic reality that when one settles for a home in a residentially segregated neighborhood, the home is usually retained for some time.<sup>121</sup>

In 1948 *Shelley v. Kraemer*<sup>122</sup> held that State enforcement of private racial covenants is unconstitutional. As a result, State courts in California<sup>123</sup> and Texas<sup>124</sup> refused to enforce racial covenants which provided that “[n]o person or persons of the Mexican race or other than the Caucasian race shall use or occupy any buildings or any lot.”<sup>125</sup> The patterns that developed prior to *Shelley* have not receded. School districts in the Southwest should not be allowed to allege that school segregation is merely de facto if there has been State action in pre-*Shelley* days. A plaintiff should not be required to prove any specific act of residential discrimination where a pattern of segregation appears. Requirements of actual proof allow unjustifiable delay in the immediate transformation to unitary school systems, an issue the Supreme Court considers to be of “paramount importance.”<sup>126</sup>

#### B. Ability Grouping

Like residential segregation, ability grouping (grouping students according to their talents and aptitudes) often leads to segregated education. However, unlike residential segregation, a factor external to the public school system, ability grouping is practiced within the school system. In schools that are to some extent desegregated, the tests and guides which are used indirectly lead to classes in which many Negroes, Mexican-Americans, or both are grouped into segregated classrooms. The results are by no means attributable to any inherent inadequacy on the part of minority group children. Instead, ability grouping which leads to ethnic and racial segregation can be traced to the nature of the social and environmental conditions which minority group children experience. When their aptitude is measured by a standardized national test, which is geared to represent the average white middle class student, the results are inherently biased against children who are culturally different from whites.<sup>127</sup>

In *Hobson v. Hansen*,<sup>128</sup> Judge Skelly Wright held that the school district’s track system, a method of ability grouping, must be abolished because “[i]n practice, if not in concept, it discriminates against the disadvantaged child, particularly the Negro.”<sup>129</sup> Judge Wright did not condemn all forms of ability grouping. However, he did question ability grouping when it unreasonably leads to or maintains continuous racial or socioeconomic segregation. In cases of such segregation, the effect is unreasonable and discriminatory because it fails to accomplish its aim—the grouping of pupils according to their capacities to learn. Because

minority group children have had an educationally disadvantaged experience does not mean they must be permanently restricted to low achievement.

*Hobson* may contribute much to the fall of the track systems employed in the Southwest. After all, when tests are given which result in highly disproportionate numbers of Mexican-Americans in the retarded or below average category, the classification is constitutionally suspect. The Supreme Court's language in *Hernandez* applies by analogy to the discriminatory effects of ability grouping in the Southwest:

"The result [of an overrepresentation of Mexican-Americans in the below average category] bespeaks discrimination, whether or not it was a conscious decision on the part of any individual [school official]." <sup>130</sup>

Besides the language deficiency argument, other devices result in the segregation of Mexican-Americans, even in racially mixed schools. For example, standardized tests fail to judge accurately the Mexican-American's innate capacity to learn. The national tests may ask the *Chicano* child to match a picture with a word that is foreign to him but may be quite common to the middle class white child, who may have encountered its use within his environment. One must realize that these tests are geared to measure the average middle class white American. Consequently, *Chicano* children continue to score very low and to be placed in the lower intelligence sections, from which escape is practically impossible. <sup>131</sup>

An even more damaging practice is common in California. Mexican-American children, many of whom come from homes where Spanish is spoken daily, are given tests in English to determine their group level. Consequently, the language obstacle hinders the Spanish-speaking child and contributes to his lower score. As a result, many children score low enough to be classified as "Educable Mentally Retarded" (EMR). Once a child is placed in a special education class, his chance of escaping is minimal. In the San Diego, California school district, Mexican-Americans have challenged the unfair testing schemes which are employed and which result in disproportionate numbers of *Chicanos* in the EMR classes. <sup>132</sup>

In order to realize how examinations such as these deny equal protection to the Mexican-American student, one must perceive the discrepancy which results when the *Chicano* child is tested under varying conditions. Using the Wechsler Intelligence Scale for Children, 44 scored below 80 when tested in English. But when the test was administered to the same group in Spanish, only 20 scored below 80. <sup>133</sup> Consequently, when applied to children with a limited background in English, these tests are inadequate since they are unable to measure a child's capacity to learn and thus result in harmful discrimination to the Mexican-American child in the public schools of the Southwest.

## VI. MEXICAN-AMERICAN DESEGREGATION—THE FUTURE

### A. *The Southwest Generally*

Overall, there are many areas of the Southwest where segregated schools should be challenged as denying the equal protection of the laws. For example, Del Rio, Texas, the scene of the *Salvatierra* case in 1930, although it is a rather small town, has two school districts within the city limits: The Del Rio Independent School District, which is predominantly Anglo, and the San Felipe Independent School District, which is almost entirely Mexican-American.<sup>134</sup> Since the Del Rio schools are much better, the Anglo children from a nearby Air Force base are bussed at State expense to the Del Rio district schools, even though the base is located in the San Felipe district.<sup>135</sup> Although there are two technically separate school districts in Del Rio, they should be treated as one for purposes of school desegregation. The obvious reluctance of the Del Rio district to accept Mexican-Americans is evidenced by the fact that this school district's accreditation was questioned in 1949 for failure to integrate Mexican-American students.<sup>136</sup> This may support a claim of unconstitutional State action. However, assuming the Del Rio public school system is segregated on a de facto basis, the *Keyes*<sup>137</sup> separate-but-equal formula may play a decisive role in the desegregation of these schools. *Keyes* demands that segregated schools offer equal educational opportunity if they are to be constitutionally allowable. However, both physically and academically, the Del Rio district schools are superior. Besides being newer, Del Rio High School (mostly Anglo) offers 75 to 100 courses. On the other hand, San Felipe High School (Mexican-American) offers only 36 courses and cannot afford a vocational program.<sup>138</sup>

San Antonio, Texas, which is nearly 50 percent Mexican-American, employs a similar public school system. There are 13 school districts in and around the San Antonio area, of which five are predominantly Mexican-American and eight are predominantly Anglo-American.<sup>139</sup> Ninety percent or 82,000 of the Mexican-American students attend school in five predominantly Mexican-American districts. Because of the financial and educational inequities which result from having various independent school districts, residents of a nearly 100 percent Mexican-American school district have sued all the school districts in the San Antonio area.<sup>140</sup> The plaintiffs allege the Texas system of school financing, which allows each school district to collect taxes for use exclusively within that particular school system, violates the constitutional rights of children in the poorer districts to an equal educational opportunity. In a case of this type, *Hobson*, which also held that school boards cannot discriminate on the basis of poverty,<sup>141</sup> may be controlling, since the financing scheme does result, whether intentionally or not, in an unreasonable discrimination against the poor.

Ethnic isolation or concentration, as it exists in the Del Rio and San Antonio, Texas systems, is similar to that found throughout the Southwest, although it is least serious in California and most serious in Texas.<sup>142</sup> It is interesting to note that there is an inverse relationship between the educational level of Mexican-Americans in these two States.<sup>143</sup> In other words, where the ethnic segregation increases, the educational level decreases, and vice versa. This reaffirms the accepted view in desegregation cases that segregated educational facilities fail to offer an equal educational opportunity.<sup>144</sup>

#### B. *Ross v. Eckels—The Houston Situation*

As previously mentioned *Ross v. Eckels*<sup>145</sup> is a Fifth Circuit case in which a pairing order was issued for some Houston, Texas elementary schools. The result was the pairing of 27 predominantly Black and *Chicano* schools, whose segregated facilities resulted mostly from the de jure segregation of pre-1954 years and from the de facto segregation which developed as a result of the high rate of residential segregation in Houston. In many areas of the city, Negro neighborhoods are adjacent to Mexican-American *barrios*. Consequently, much of the neighborhood school "integration" which Houston does have is black-brown integration, lacking the white student population necessary in order to make the school system responsive both politically and educationally to the needs of the minority group population of Houston.

In the Southwest more than 50 percent of the Mexican-American students at the elementary school level attend predominantly Mexican-American schools.<sup>146</sup> For this reason, and since the *Ross* pairing order involved only elementary school children, this discussion will be limited to the elementary schools in Houston.

Judge Clark, in his dissenting opinion in *Ross*, denounced the pairing order as "mock justice" because it paired Negroes with another educationally disadvantaged group. An analysis of the school populations may prove Judge Clark's dissent to be more consistent with the prior development in the desegregation cases involving Blacks and *Chicanos*.<sup>147</sup>

The elementary grade level students in the Houston public schools number approximately 143,400.<sup>148</sup> Of these, 66,612 are Anglo; 53,875 are Negro; and 23,000 are Mexican-American. The respective percentages of each group in relation to the total student population in the elementary schools are 46.5 percent Anglo, 37.5 percent Negro, and 16 percent Mexican-American. Comparing the Anglo with the combined minority groups, Black and *Chicano* students comprise 53.5 percent of the student population. In addition, in 23 of the 170 elementary schools, the Mexican-American student population exceeds 50 percent, thus leading to ethnic imbalance. This does not include the many other schools where the combined minority group population greatly exceeds

the 53.5 percent this combined group represents. In these 23 elementary schools, Mexican-Americans account for 74.9 percent of the total enrollment (13,300 out of a total of 17,750). In comparison to the entire Mexican-American school population, the 13,300 students in these ethnically concentrated schools account for 57.8 percent of the total *Chicano* population in elementary schools. As a result, Houston is typical of the elementary school segregation norm in the Southwest: Over 50 percent ethnic isolation.

Of the 27 schools involved in the *Ross* pairing order, only one was predominantly (50 percent or more) Anglo. It appears that the desegregation order excluded any meaningful integration of the Anglo student with the other identifiable groups in Houston. Overall, there were 2,368 Anglo, 6,233 Mexican-American, and 14,942 Negro students involved in the pairing plan. Consequently, 21,175 of the total 23,543 students, or 89.9 percent, were children of educationally disadvantaged backgrounds. The purpose of the desegregation cases, which is to establish unitary school systems and thereby provide meaningful social and educational encounters between students of all racial backgrounds, is not achieved by the *Ross* pairing order.<sup>149</sup>

## VII. CONCLUSION

Throughout the Southwest, the approximately 1.4 million Mexican-American students represent 17 percent of the total enrollment. Thus, *Chicanos* constitute the largest minority student group in this part of the United States.<sup>150</sup> These students have been neglected, both educationally<sup>151</sup> and legally. The low educational levels of Mexican-Americans imply that the school systems have failed to deal with this bilingual, bicultural group. Legally, the past failure of courts to require total disestablishment of dual school systems, such as in Del Rio, Texas after *Salvatierra*, has provided much support to the publicly-elected school boards in their attempt to maintain the segregation of Mexican-Americans.

As a result, Judge Seals' landmark ruling in *Cisneros* is cause for much optimism on the part of the Mexican-American population in the Southwest regarding the educational future of their children. In all respects, the holdings in *Brown* and its progeny apply to Mexican-Americans as well as to any other identifiable minority groups.

*Cisneros* is consistent with prior judicial development. Historically, Congress and the courts have granted Mexican-Americans protection from unreasonable discrimination in housing, employment, public accommodations, voting, the administration of justice, and in the field of equal educational opportunity. This protection has resulted from a recognition that Mexican-Americans are an identifiable ethnic minority group, whether because of physical characteristics, language, predominant religion, distinct culture, or Spanish surname<sup>152</sup> and are

entitled to equal protection of the laws in the area of public school desegregation.

## NOTES

1. Civil Action No. 68-C-95 (S.D. Tex., June 4, 1970) [hereinafter cited as *Cisneros*], noted, 49 TEX.L. REV. 337 (1971).
2. *Id.* at 9-10.
3. 347 U.S. 483 (1954). See also *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 91 S.Ct. 1267 (1971).
4. *Cisneros* at 13-14.
5. *Id.* at 20-21.
6. See THE NEW YORK TIMES ENCYCLOPEDIA ALMANAC 35, 288 (2d ed. 1970).
7. *Id.* at 245, 288.
8. *Cisneros* at 10 n.34.
9. *Id.* at 8 n.28.
10. L. GREBLER, J. MOORE, & R. GUZMAN, THE MEXICAN-AMERICAN PEOPLE 14-15 (1970) [hereinafter cited as GREBLER, MOORE, & GUZMAN]. The authors cite the Mexican-American population in 1960 as 3.8 million and estimate the 1970 count to be 5.6 million.
11. *Id.* at 15.
12. *E.g.*, States: Arizona, California, Colorado, Texas; cities: San Antonio, Del Rio, San Francisco, Santa Fe, Pueblo; rivers: Rio Grande, Brazos, Guadalupe.
13. 9 Stat. 922 (1848).
14. *Id.* at 929-30, art. VIII.
15. C. McWILLIAMS, NORTH FROM MEXICO 52 (1948) [hereinafter cited as McWILLIAMS].
16. L. F. HERNANDEZ, A FORGOTTEN AMERICAN 8 (1969).
17. U.S. BUREAU OF THE CENSUS, WE THE MEXICAN AMERICANS 2 (1970).
18. McWILLIAMS 193.
19. R. DANIELS & H. H. L. KITANO, AMERICAN RACISM 74 (1970). The authors refer to *People v. Zammora*, 66 Cal. App. 2d 166, 152 P.2d 180 (1944), in which 17 Mexican-American youths were indicted and convicted for murder, without any tangible evidence, in the death of another youth who was killed in a gang fight. The California appellate court reversed and remanded all the convictions.
20. *Id.* at 77. The name "zoot suiters" was derived from the gaudy clothing worn by some of the *Chicano* youths.
21. See *Independent School Dist. v. Salvatierra*, 33 S.W.2d 790 (Tex. Civ. App.—San Antonio 1930), *cert. denied*, 284 U.S. 580 (1931).
22. AMERICAN GI FORUM, 21st ANNUAL CONVENTION, July 4, 1969. The incident leading to the creation of the GI Forum was the refusal in 1948 of Anglo citizens in Three Rivers, Texas to have a deceased Mexican-American veteran buried in the city's cemetery. The soldier, Felix Longoria, was buried with honors in Arlington National Cemetery. *San Angelo Standard-Times*, July 6, 1969, § 1, at 1, col. 1.
23. Judge Seals listed MAYO, LULAC, and the GI Forum as products of discriminatory practices. *Cisneros* 12.
24. Steiner, *Chicano Power*, THE NEW REPUBLIC, June 20, 1970, at 17.
25. The Texas Observer, April 11, 1969, at 6, col. 1. MALDEF is operating under an 8-year, \$2.2 million Ford Foundation grant.
26. See *Hernandez v. Texas*, 347 U.S. 475 (1954). The Supreme Court found that Mexican-Americans had been discriminated against in the selection of jurors in

Jackson County, Texas. *See also* Tijerina v. Henry, 48 F.R.D. 274 (D.N.M.), *appeal dismissed*, 90 S. Ct. 1718 (1969) (Douglas, J., dissenting).

27. The Texas Observer, April 11, 1969, at 6, col. 1.

28. As of December 1969, MALDEF had filed civil rights suits against discrimination in hiring and promotion, the enforcement of the laws, voting rights, public accommodations, and education. *See* MALDEF Docket Report (Dec. 1969) [hereinafter cited as Docket Report].

29. One author contends that the "brown skin color" of most Mexican-Americans makes them susceptible to Anglo prejudice against darker-skinned persons. *See* Forbes, *Race and Color in Mexican-American Problems*, 16 J. HUMAN REL. 55 (1968).

30. McWILLIAMS.

31. 42 U.S.C. § 2000e-2 (1964).

32. Civil Action No. 7680 (D.N.M., Sept. 24, 1969), discussed in 1 MALDEF Newsletter 1, Nov., 1969.

33. H. ROWAN, THE MEXICAN AMERICAN 38, (Paper prepared for U.S. Comm'n on Civil Rights 1968).

34. *Id.* at 39.

35. The median school years completed by Mexican-Americans is 8.1, much lower than the 12.0 years achieved by Anglo students. GREBLER, MOORE, & GUZMAN 143.

36. W. FOGEL, MEXICAN AMERICANS IN SOUTHWEST LABOR MARKETS 191 (U.C.L.A. Mexican-American Study Project: Advance Report No. 10, 1967).

37. H. ROWAN, THE MEXICAN AMERICAN 45, U.S. Comm'n on Civil Rights (1968).

38. U.S. CONST. amend. XIV provides: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Justice Department has sued an Arizona copper company for job opportunity discrimination against Mexican-Americans and Indians. Arizona Daily Star, Mar. 4, 1971, § B, at 1, col. 6.

39. *See* Vigil v. American Tel. & Tel. Co., 305 F. Supp. 44 (D. Colo. 1969); Pena v. Hunt Tool Co., 296 F. Supp. 1003 (S.D. Tex. 1968). In another employment case, Moreno v. Henckel, 431 F.2d 1299 (5th Cir. 1970), the plaintiff was fired for circulating a petition of grievances concerning dissatisfaction with the rate of promotion for Mexican-American workers. The case was remanded since the district court incorrectly dismissed the case.

40. *See generally* Docket Report, Tit. 2, Job Discrimination. The Justice Department has sued an Arizona firm and some unions for job opportunity discrimination against Mexican-Americans and Indians. Arizona Daily Star, Mar. 4, 1971, § B, at 1, col. 6.

41. *Id.*

42. Civil Action No. 69H-1082 (S.D. Tex., filed Nov. 4, 1969).

43. 42 U.S.C. § 2000e-2 (1964) makes it unlawful for an employer to discriminate because of race, color, religion, sex, or national origin.

44. Docket Report, Tit. 2, at 7.

45. 293 F. Supp. 1176 (D. Colo. 1968).

46. Valdez, *Insurrection in New Mexico*, 1 EL GRITO 14 (Fall, 1967).

47. *Id.* at 19-20.

48. 9 Stat. 922, 929-30 (1848).

49. Valdez, *Insurrection in New Mexico*, 1 EL GRITO 14, 20-21 (Fall, 1967).

50. *See* McWILLIAMS 76-78, *supra* note 15.

51. For actual cases of ethnic discrimination in Texas see A. PERALES, ARE WE GOOD NEIGHBORS? 139-227 (1948) [hereinafter cited as PERALES].

52. *Terrell Wells Swimming Pool v. Rodriguez*, 182 S.W.2d 824 (Tex. Civ. App.—San Antonio 1944, no writ); *cf. Lueras v. Town of Lafayette*, 100 Colo. 124, 65 P.2d 1431 (1937).

53. *Lopez v. Seccombe*, 71 F. Supp. 769 (S.D. Cal. 1944).

54. *Beltran v. Patterson*, Civil Action No. 68-59-W (W.D. Tex. 1968), cited in Brief for MALDEF as Amicus Curiae at 3, *Ross v. Eckels*, 434 F.2d 1140 (5th Cir. 1970).

55. U.S. COMM'N ON CIVIL RIGHTS, MEXICAN AMERICANS AND THE ADMINISTRATION OF JUSTICE IN THE SOUTHWEST 2-6 (1970) [hereinafter cited as ADMINISTRATION OF JUSTICE].

56. *Id.* at 4 n.15.

57. *Lucero v. Donovan*, 258 F. Supp. 979 (C.D. Cal. 1966).

58. *Lucero v. Donovan*, 354 F.2d 16, 18 (9th Cir. 1965). Mrs. Lucero was a native-born citizen of the United States.

59. For an insight into the distrust of the Texas Rangers by South Texas *Chicanos*, see ADMINISTRATION OF JUSTICE 16-17.

60. *See* U.S. CONST. amend. VI.

61. 347 U.S. 475 (1954).

62. *Id.* at 479.

63. *Id.* at 482.

64. *Hernandez v. State*, 160 Tex. Crim. 72, 251 S.W.2d 531 (1952); *Sanchez v. State*, 156 Tex. Crim. 468, 243 S.W.2d 700 (1951); *Salazar v. State*, 149 Tex. Crim. 260, 193 S.W.2d 211 (1946); *Sanchez v. State*, 147 Tex. Crim. 436, 181 S.W.2d 87 (1944).

65. 347 U.S. 475, 478 (1954) (emphasis added).

66. *See* *United States v. Hunt*, 265 F. Supp. 178 (W.D. Tex. 1967); *Gonzales v. State*, 414 S.W.2d 181 (Tex. Crim. App. 1967); *Montoya v. People*, 345 P.2d 1062 (Colo. 1959).

67. *Muniz v. Beto*, 434 F.2d 697 (5th Cir. 1970).

68. *Id.* at 703.

69. *Id.* at 702.

70. *E.g.*, Voting rights: *Mexican-American Federation v. Naff*, 299 F. Supp. 587 (E.D. Wash. 1969), *rev'd*, 39 U.S.L.W. 3296 (U.S. Jan. 12, 1971) (English literacy requirement upheld by the lower court); *Castro v. State*, 2 Cal. 3d 223, 466 P.2d 244, 85 Cal. Rptr. 20 (1970) (English literacy requirement held unconstitutional). Housing: *Valtierra v. Housing Authority*, 313 F. Supp. 1 (N.D. Cal. 1970), *rev'd sub nom.* *James v. Valtierra*, 91 S.Ct. 1331 (1971). Judicial prejudice: *Judge Gerald S. Chargin Speaks*, 2 EL GRITO 4 (1969). In this juvenile court proceeding, Judge Chargin denounced a *Chicano* youth, who was charged with incest, and the "Mexican people" for acting "like an animal" and for being "miserable, lousy, rotten people." Chargin also stated that "[m]aybe Hitler was right" about having to destroy the animals in our society.

71. 42 U.S.C. § 2000(a) (1964).

72. 20 U.S.C. § 880b (Supp. V, 1970).

73. The Mexican-American student has suffered serious emotional scars because of the "No Spanish" rule, whose violation by speaking Spanish on school grounds often has led to scolding and/or detention after school as punishment. The rule was probably derived from Tex. Laws 1933, ch. 125, § 1, at 325 (repealed 1969), which required all school business, except foreign language classes, to be conducted in English.

74. 42 U.S.C. § 4301 (Supp. V, 1970).

75. For example, the following reports have been published: U.S. COMM'N ON CIVIL RIGHTS, MEXICAN AMERICAN EDUCATION STUDY, REPORT I: ETHNIC ISOLATION OF MEXICAN AMERICANS IN THE PUBLIC SCHOOLS OF THE SOUTHWEST (1970); U.S. COMM'N ON CIVIL RIGHTS, MEXICAN AMERICANS AND THE ADMINISTRATION OF JUSTICE IN THE SOUTHWEST

(1970); H. ROWAN, *THE MEXICAN AMERICAN*, U.S. Comm'n on Civil Rights (1968); U.S. COMM'N ON CIVIL RIGHTS, HEARING HELD IN SAN ANTONIO, TEXAS, DECEMBER 9-14, 1968 (1968).

76. U.S. BUREAU OF THE CENSUS, *WE THE MEXICAN AMERICANS (1970)*; F. H. SCHMIDT, *SPANISH SURNAMED AMERICAN EMPLOYMENT IN THE SOUTHWEST (1970)* (A Study Prepared for the Colorado Civil Rights Comm'n under the auspices of the Equal Employment Opportunity Comm'n).

77. Pottinger, Memorandum to School Districts with More Than Five Percent National Origin-Minority Group Children, May 25, 1970. Memorandum on file in Univ. of Houston Law Library. See also 35 Fed. Reg. 13442 (1970). The Department of Health, Education, and Welfare suggested to the Houston school district that Mexican-Americans be appointed to the district's biracial committee. *Houston Chronicle*, Dec. 18, 1970, § 1, at 1, col. 8.

78. T. I. EMERSON, 2 *POLITICAL AND CIVIL RIGHTS IN THE UNITED STATES 1734* (3d ed. 1967), citing NATIONAL ASS'N OF INTERGROUP RELATIONS, *Public School Segregation and Integration in the North*, J. INTER-GROUP REL. 1 (1963).

79. 33 S.W.2d 790 (Tex. Civ. App.—San Antonio 1930), cert. denied, 284 U.S. 580 (1931).

80. *Id.* at 795.

81. *Id.* at 793.

82. TEX. ATT'Y GEN. OP. No. V-128 (1947), reported in J. C. HINSLEY, *TEXAS SCHOOL LAW 1109* (4th ed. 1968).

83. 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947).

84. *Id.* at 549.

85. *Brown v. Board of Educ.*, 347 U.S. 483, 495 (1954).

86. 64 F. Supp. at 549.

87. *School Dist. v. Mendez*, 161 F.2d 774, 779 (9th Cir. 1947), *aff'g* 64 F. Supp. 544 (S.D. Cal. 1946).

88. *Id.* at 781.

89. Civil Action No. 388 (W.D. Tex., June 15, 1948) (unreported); *accord*, *Gonzales v. Sheely*, 96 F. Supp. 1004 (D. Ariz. 1951).

90. *Id.* at 1.

91. *Id.* at 2.

92. See *Hernandez v. Driscoll Consol. Ind. School Dist.*, 2 RACE REL. L. REP. 329 (S.D. Tex. 1957).

93. *Id.* at 331.

94. 2 RACE REL. L. REP. 329 (S.D. Tex. 1957).

95. *Id.* at 331-32.

96. *Chapa v. Odem Ind. School Dist.*, Civil Action No. 66-C-92 (S.D. Tex., July 28, 1967) (unreported).

97. 347 U.S. 483 (1954).

98. *Romero v. Weakley*, 131 F. Supp. 818, 820 (S.D. Cal.), *rev'd*, 226 F.2d 399 (9th Cir. 1955).

99. *Id.* at 831.

100. 226 F.2d 399 (9th Cir. 1955).

101. 313 F. Supp. 61 (D. Colo. 1970). (This opinion deals only with the issue of segregation in the school.)

102. *Id.* at 69.

103. *Id.* On the issue of the desegregation plan, the court expressed that apportionment of the three ethnic groups was desirable but not required. *Id.* at 98.

104. *Id.* at 82-83. For another de facto case involving *Chicanos* and Blacks, see *United States v. Lubbock Ind. School Dist.*, 316 F. Supp. 1310 (N.D. Tex. 1970).

105. See *Plessy v. Ferguson*, 163 U.S. 537 (1896). The separate-but-equal doctrine was repudiated as to de jure school segregation by *Brown v. Board of Educ.*, 347 U.S. 483 (1954).

106. *Cisneros* at 13.
107. *Id.* at 14-15.
108. 434 F.2d 1140 (5th Cir. 1970).
109. *Id.* at 1150 (dissenting opinion).
110. *Id.* at 1141.
111. Houston Chronicle, Sept. 15, 1970 § 1, at 1, col. 1.
112. Civil Action No. 6-224 (N.D. Tex., Nov. 5, 1970). Sonora, Texas, had a "Mexican" elementary school which was 2 percent black and an all-Anglo elementary school.
113. *Id.* at 2.
114. Plaintiff's Motion for a Preliminary Injunction at 4, *Perez v. Sonora Ind. School Dist.*, Civil Action No. 6-224 (N.D. Tex., Nov. 5, 1970).
115. Houston Chronicle, Nov. 6, 1970, § 1, at 9, col. 7. The United States has also objected to the adoption of a desegregation plan in Austin, Texas whereby Blacks and *Chicanos* were integrated to the exclusion of Anglos, thus maintaining ethnically and racially identifiable schools. *United States v. Texas Educ. Agency*, Civil Action No. A-70-CA-80, (W.D. Tex., filed Aug. 7, 1970), cited in Brief for MALDEF as Amicus Curiae at 14, *Ross v. Eckels*, 434 F.2d 1140 (5th Cir. 1970).
116. One case where Mexican-Americans and Negroes were denied relief is *United States v. Lubbock Ind. School Dist.*, 316 F. Supp. 1310 (N.D. Tex. 1970), where the court found the segregation to be de facto.
117. GREBLER, MOORE, & GUZMAN 274, *supra* note 10. Zero percent segregation connotes a random scattering throughout the population; 100 percent represents total segregation.
118. *Id.* at 275.
119. 244 F. Supp. 971 (W.D. Okla.), *aff'd sub nom.* *Board of Educ. v. Dowell*, 375 F.2d 158 (10th Cir. 1965), *cert. denied*, 387 U.S. 931 (1967).
120. PERALES 139-46, *supra* note 51.
121. Kaplan, *Segregation Litigation and the Schools—Part II: The General Northern Problem*, 58 Nw. U.L. REV. 157, 212 (1964).
122. 334 U.S. 1 (1948).
123. *Matthews v. Andrade*, 87 Cal. App. 2d 906, 198 P.2d 66 (1948).
124. *Clifton v. Puente*, 218 S.W.2d 272 (Tex. Civ. App.—San Antonio 1948, writ ref'd n.r.e.).
125. 87 Cal App. 2d 906, 198 P.2d 66 (1948). The language in *Clifton* was similar to that cited here.
126. 396 U.S. 19, 20 (1969). See generally Wright, *Public School Desegregation: Legal Remedies for De Facto Segregation*, 16 W. RES. L. REV. 478 (1965).
127. *Hobson v. Hansen*, 269 F. Supp. 401, 484-85 (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).
128. *Id.*
129. *Id.* at 515; *accord*, *Dove v. Parham*, 282 F.2d 256, 261 (8th Cir. 1960).
130. *Hernandez v. Texas*, 347 U.S. 475, 482 (1954).
131. A suit has been filed in Texas against a district alleging segregation resulting both from design and from a rigid system of ability grouping. *Zamora v. New Braunfels Ind. School Dist.*, Civil Action No. 68-205-SA (W.D. Tex., filed Aug. 28, 1968), cited in Docket Report, Tit. 3, Education, at 1.
132. *Covarrubias v. San Diego Unified School Dist.*, Civil Action No. 70-394-T (S.D. Cal., filed Dec. 1, 1970).
133. M. WEINBERG, *DESEGREGATION RESEARCH: AN APPRAISAL* 265-66 (2d ed. 1970).
134. U.S. COMM'N ON CIVIL RIGHTS, HEARING HELD IN SAN ANTONIO, TEXAS, December 9-14, 1968, at 295-304 (1968).
135. *Id.* at 304.

136. *Id.* at 305.
137. 313 F. Supp. 61 (D. Colo. 1970).
138. 2 Civil Rights Digest 16, 20 (1969).
139. U.S. COMM'N ON CIVIL RIGHTS, MEXICAN AMERICAN EDUCATION STUDY, REPORT I: ETHNIC ISOLATION OF MEXICAN AMERICANS IN THE PUBLIC SCHOOLS OF THE SOUTHWEST 26 (1970) [hereinafter cited as ETHNIC ISOLATION].
140. *Rodriguez v. San Antonio Ind. School Dist.*, 299 F. Supp. 476 (W.D. Tex. 1969) (issue here limited to whether a three-judge panel should hear the case).
141. 269 F. Supp. at 513.
142. ETHNIC ISOLATION 30.
143. See GREBLER, MOORE, & GUZMAN 144, *supra* note 10.
144. A Connecticut Department of Education study shows that children bussed to suburban classrooms from inner-city schools accelerate their reading ability as much as 18 months ahead of their urban counterparts who remain behind. *Houston Chronicle*, Nov. 8, 1970, § 1, at 2, col. 7.
145. 434 F.2d 1140 (5th Cir. 1970).
146. ETHNIC ISOLATION 35.
147. *E.g.*, *Cisneros v. Corpus Christi Ind. School Dist.*, Civil Action No. 68-C-95 (S.D. Tex. June 4, 1970); *Keyes v. School Dist. Number One*, 313 F. Supp. 61 (D. Colo. 1970); *Romero v. Weakley*, 131 F. Supp. 818 (S.D. Cal.), *rev'd*, 226 F.2d 399 (9th Cir. 1955). These three cases involved segregation of Negroes and Mexican-Americans into minority schools.
148. *Houston Chronicle*, oct. 1, 1970, § 1, at 13, col. 1-2. All figures and percentages used in the analysis of the Houston elementary schools were derived from this article.
149. *Ross v. Eckels*, 434 F.2d 1140 (5th Cir. 1970) was appealed to the Supreme Court of the United States by the Houston Independent School District because the court pairing order integrated two minority groups. *Houston Chronicle*, Sept. 15, 1970, § 1, at 1, col. 1. A motion to stay the pairing order was denied by the Supreme Court. *Houston Chronicle*, March 1, 1971, § 1, at 1, col. 1.
150. ETHNIC ISOLATION 89.
151. See T. P. CARTER, MEXICAN AMERICANS IN SCHOOL: A HISTORY OF EDUCATIONAL NEGLECT (1970).
152. *Cisneros v. Corpus Christi Ind. School Dist.*, Civil Action No. 68-C-95, at 10-11 (S.D. Tex. June 4, 1970).

## MEXICAN-AMERICANS AND THE DESEGREGATION OF SCHOOLS IN THE SOUTHWEST — A SUPPLEMENT

by Guadalupe Salinas

### I. INTRODUCTION

Since the original publication of this writer's article in the *Houston Law Review*, there have been additional cases of interest in the Chicano civil rights field. Also, there are some cases which the writer omitted but desires to discuss in this supplement.

## II. HISTORICAL BACKGROUND OF THE MEXICAN-AMERICAN

One year after the Treaty of Guadalupe Hidalgo in 1848, those Mexicans who remained in the United States became American citizens. However, this did not clear up the citizenship problem for Chicanos. In the late 1890's Ricardo Rodriguez, a legal United States resident, filed an application to become a naturalized citizen. The United States denied it because *the law restricted naturalization to whites and persons of African descent*. The contention, therefore, was that Rodriguez was neither white nor black. In fact, the opposing lawyers described him as having "chocolate brown skin."<sup>1</sup> As a result, Rodriguez took his claim to court where the issue presented was, "Is Rodriguez ineligible for citizenship because he is not a 'white' person and apparently belongs to the Indian or red race?"<sup>2</sup>

*In re Rodriguez*<sup>3</sup> held that Rodriguez was entitled to citizenship, even though the court recognized that anthropologically, Rodriguez "would probably not be classed as white."<sup>4</sup> Consequently, *this case verifies that historically the Chicano has been viewed as a separate group, distinct from whites, for generations.*<sup>5</sup>

## III. THE MEXICAN-AMERICAN AN IDENTIFIABLE ETHNIC MINORITY GROUP

### A. *The Mexican American*

### B. *Discrimination in Areas Besides Education*

#### 1. *Employment*

Of enormous importance to Chicanos, Blacks, and Indians alike is the case of *Griggs v. Duke Power Company*,<sup>6</sup> where the United States Supreme Court said:

If an employment practice [e.g., aptitude test] which operates to exclude Negroes [Chicanos and Indians] cannot be shown to be related to job performance, the practice is prohibited.<sup>7</sup>

This case implies employers can no longer deny jobs because they fail a test, lack a high school diploma, or are unable to speak fluent English *unless* the employer can show the requirement is related to the job. For example, one does not have to pass an English vocabulary test to be qualified for a job as a telephone installer. Such a test merely serves to weed Chicanos out from many of these jobs. Therefore, Raza lawyers should study *Griggs* closely.

#### 2. *Spanish and Mexican Land Grants*

Of significant legal and historical value in the land grant area are the Supreme Court cases of *United States v. Rio Arriba Land and Cattle*

*Company* (1897),<sup>8</sup> *United States v. Sandoval* (1897),<sup>9</sup> and *United States v. Santa Fe* (1897).<sup>10</sup> These cases are considered the "bulwark against the property rights of the impoverished Indo-Hispano (Chicano) of the Southwest."<sup>11</sup>

### 3. *Public Accommodations*

In the case of *In re Rodriguez* the Chicano was described as belonging to the Indian race. Apparently this view is still current in Arizona. In June, 1971, a Chicano friend of the writer, his family, and some friends went to the Grand Canyon on their vacation. On the way they stopped for breakfast at a restaurant in Cameron, Arizona. They sat down and waited . . . and waited. Meanwhile, the other customers were being served. After thirty minutes, they asked what they had to do to obtain service. The waitress, an Indian girl, told him that it was not the policy of the management to serve Indians! After a few demands, the Chicanos were served, but the rude manner in which the food was served amounted to a denial of services. The Department of Justice is currently investigating the incident.<sup>12</sup>

### 4. *Administration of Justice*

In *Tate v. Short*,<sup>13</sup> Peter Sanchez Navarro, a Chicano lawyer then with the Houston Legal Foundation, convinced the Supreme Court that one should not be confined to jail to work off a traffic fine. This case should serve as a basis for the release of a large number of Chicanos who remain jailed merely because they are too poor to pay the fine imposed.

### 5. *Social Welfare*

In *Graham v. Richardson*<sup>14</sup> the Supreme Court ruled that State statutes which deny welfare benefits to resident aliens or to aliens who have not resided in the United States for a specified number of years violate the equal protection clause of the 14th Amendment. *Graham's* enforcement in Texas is currently being sought by a Mexican alien who has resided in the United States for 54 of her 60 years.<sup>15</sup>

### 6. *Voting*

In *Garza v. Smith*<sup>16</sup> a federal district court ruled that the Texas Election Code denies illiterate voters equal protection because the Code allows assistance in the voting booth only to those that are physically handicapped and by implication, denies it to the "mentally" handicapped. The court said that the illiterate "is just as surely disabled as the blind or physically incapacitated voter, and therefore equally in need of assistance, yet the statutes forbid anyone to help him."<sup>17</sup>

### 7. *Migrant Workers*

In October, 1971, a federal district court in Michigan ruled that migrant workers are entitled to basic civil rights just as any other person. The facts were that a Chicano named Folgueras, representing a

federal program designed for migrant workers, tried to enter Hassle's property to visit some migrants. However, Hassle beat Folgueras and got two deputy sheriffs to arrest him for criminal trespass. Folgueras recovered a money judgment against the three as well as a constitutional rule that property rights are subordinate to the farm workers' civil rights.<sup>18</sup>

#### IV. THE CHICANO SCHOOL CASES

##### A. California

Although Texas leads in the quantity of recent Chicano school cases, California leads in the quality of the legal reasoning. For example, in *People v. San Diego Unified School District*<sup>19</sup> a State appellate court held that the school district must take reasonably feasible steps to alleviate racial imbalance in the schools because it resulted from racially motivated State action perpetuating a previously existing imbalance whatever may have been its initial cause. The suit was brought by the attorney general on behalf of Mexican-American, Black, Oriental, and American Indian students.

Another important Chicano case is *Soria v. Oxnard School District*.<sup>20</sup> This federal district court case held that "separate education for the Mexican American and Negro American students in the Oxnard Elementary Schools is inferior to education in racially balanced schools within the district."<sup>21</sup>

Perhaps the most far-reaching case since *Brown* in 1954 is *Serrano v. Priest*,<sup>22</sup> decided on August 30, 1971, by the California Supreme Court. *Serrano* held that the State's financing of the public school system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the equal protection clause. The Court said:

[T]his funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors.<sup>23</sup>

##### B. Colorado

Unlike the vigorous duty required by California courts to overcome racial and ethnic imbalance, the Tenth Circuit, which includes Colorado, has reversed *Keyes* and ruled that in de facto cases, the school district is not required to develop a desegregation plan unless the imbalance resulted from racially motivated conduct.<sup>24</sup>

##### C. Texas

###### 1. Houston

In Houston *Ross v. Eckels*, which calls for the pairing of Black and Chicano children, is still the law. On May 24, 1971, Judge Ben C.

Connally threw La Raza out of court. The Mexican-American Education Council (MAEC) was seeking, through various Chicano parents, to intervene in the Houston school case.

Before the Houston school district was given serious orders to desegregate, Anglos went to white schools, Blacks went to black schools, and La Raza went to the brown schools. To some extent there has been white-brown integration. After the district received orders to desegregate the dual school system, the residentially segregated Blacks and Chicanos were paired into their neighborhood schools. As a result of being *used* as whites and not *treated* as whites, the Houston Chicanos boycotted the schools in September, 1970 and opened their own Huelga Schools. These Huelga Schools are presently operating with the assistance of volunteer teachers.

During the boycott, the school superintendent recognized Chicanos as an identifiable ethnic minority group. However, it was not binding unless Judge Connally could be convinced that Chicanos have been and are a separate ethnic group. The Judge, in his opinion on the motion to intervene, displayed his ignorance of Chicano history and of the Texas Chicano school cases in saying:

The Houston Independent School District (*as I believe has been true generally for school purposes throughout this state*) has always treated Latin-Americans as of the *Anglo* or *White* race.<sup>25</sup>

First, Judge Connally disregards reality when he claims Chicanos have always been treated as Whites in Texas schools. Generally, the documentation this writer has presented refutes that statement. More specifically, *Salvatierra, Delgado, Hernandez, Cisneros, Perez*, and many other cases are legal proof that Chicanos have been discriminated against because of their race and/or color. Second, the Judge grossly exaggerates when he states that Latin-Americans have always been treated as of the *Anglo* race.

Judge Connally then implicitly accuses Chicanos of being racists:

Content to be "White" for these many years, now, when the shoe begins to pinch, the would-be Intervenors wish to be treated not as Whites but as an "identifiable minority group." *In short, they wish to be "integrated" with Whites, not Blacks.*<sup>26</sup>

What worries this writer is that Judge Connally never cited legal authority for his conclusions. Instead, his decision appears to reveal more of an individual personal opinion. The truth of the matter is that whenever MAEC presented official demands, one of them always called for a *tri-ethnic* desegregation plan, including Anglos, Chicanos, and Blacks. Nevertheless, the only relief Chicanos and Blacks can hope for is from the Fifth Circuit, the court which will soon rule on *Cisneros v. Corpus Christi Independent School District*.<sup>27</sup>

## 2. *Austin*

In *United States v. Austin Independent School District*<sup>28</sup> the central issue was whether Chicanos had been segregated by acts of the school district. Austin is 64.6% Anglo, 20.4% Chicano, and 15.1% Black. Judge Roberts conceded that even the most casual examination of Chicano culture discloses Chicanos are a separate ethnic group. Nevertheless, the court added:

But the mere existence of an ethnic group, regardless of its racial origin, and standing alone, does not establish a case for integrating it with the remainder of the school population. Rather the plaintiff (HEW) must show that there had been some form of de jure (official) segregation against the ethnic minority.<sup>29</sup>

Judge Roberts held the Austin district had never segregated Chicanos, but he did note the inequity of integrating Blacks and Browns only:

[T]here will be little educational value in a plan which merely integrates one socially and economically disadvantaged group, the blacks, with another, the Mexican-Americans.<sup>30</sup>

## 3. *Dallas*

*Tasby v. Estes*,<sup>31</sup> the Dallas school case, is a class action filed by the Dallas Legal Services on behalf of Black and Chicano school children. The court held that Chicanos, although they constitute a clearly separate and identifiable ethnic group, failed to show official segregation by the Dallas school district. However, the court directed that any desegregation plan would take Chicanos into account. In addition, the court called for the creation of a tri-ethnic rather than a bi-racial committee and named five citizens from each of the three groups.

The plan in *Tasby* is unique in two ways. First, it encourages desegregation by providing a four-day week for students who volunteer to transfer from schools where they are the majority to schools where their race is the minority. Second, the plan substitutes physical contact among the different groups with a simultaneous two-way oral and visual communication on television.<sup>32</sup> The case is currently on appeal to the Fifth Circuit.

## 4. *Bryan*

When the original school suit was filed in Bryan in 1961, it was filed by Blacks. This year the United States intervened, contending that Bryan operated 14 schools, three attended exclusively by Blacks and one attended predominantly by Chicanos. The district is 26.5% Black and 13.4% Chicano. The court found that 40% of the district's Chicano children attended a school where their race is in a large majority. Consequently, the court ordered Bryan to abstain from discriminating on

the basis of race, color, or *ethnic origin*, thereby implying that Chicanos had been segregated officially by the district.<sup>33</sup>

#### 5. *Victoria*

Not all school desegregation requires court action. The Department of Health, Education and Welfare (HEW) can order the submission of a plan whenever it feels discriminatory conditions exist in a school district. This is what occurred in Victoria with regard to three elementary schools. The school board feels these schools are integrated, but as a MAYO member told the board, "All you have to do is to go to those schools to see that they are mostly Black and Chicano."<sup>34</sup> The status of the action in Victoria at the present time is unknown.

#### 6. *Weslaco*

HEW also filed a civil rights "non-compliance" notice against the Weslaco school district. The district, whose student composition is 85.7% Chicano, has only 78 or 27.2% Chicano teachers. Another alleged violation is that four of the six elementary schools are nearly 100% Chicano.<sup>35</sup> To keep their federal funds, Weslaco adopted a single-grade campus, *i.e.*, each elementary school has only one grade.

#### 7. *San Antonio*

In *Rodriguez v. San Antonio Independent School District*,<sup>36</sup> the Chicano plaintiffs are seeking to invalidate the property tax system of school financing as California Chicanos did in *Serrano v. Priest*. However, Judge Spears has purposely delayed hearing the suit to wait for the Texas Legislature to remedy the situation.<sup>37</sup> Even though the legislature failed to act, the case has yet to be heard.

Another legal issue arising in San Antonio is the location of a new school. The NAACP claims that the construction of a new school in a particular location will result in the incorporation of two "handicapped groups"—Blacks and Chicanos—with only a small percentage of white students.<sup>38</sup>

#### 8. *Del Rio*

This writer urged in his previous article that the Del Rio and San Felipe school districts should be treated as one for desegregation purposes.<sup>39</sup> In *United States v. State of Texas*<sup>40</sup> Judge Justice accomplished this by consolidating these two districts. The action arose after the Texas Education Agency refused to accept Anglo transfers to Del Rio from an Air Force base located within the San Felipe district. The refusal was based on the theory that allowing Anglo school children to escape attending an ethnically imbalanced school impedes the desegregation of the districts.<sup>41</sup> The district is now known as the San Felipe Del Rio Consolidated Independent School District.

### 9. *El Paso*

In *Alvarado v. El Paso Independent School District*<sup>42</sup> the Fifth Circuit reversed a lower court's dismissal of a Chicano class action desegregation suit alleging racial and ethnic discrimination. The lower court judge said the plaintiffs had "failed to allege any specific act of discrimination which specifically affects any one of the Plaintiffs."<sup>43</sup> On the other hand, the Fifth Circuit held that "the complaint clearly states a cause of action," citing a few cases as authority "*and other cases too numerous to list.*"<sup>44</sup>

*Alvarado* is important for the Texas school cases because it is the first time the Fifth Circuit has addressed itself *directly* to a Chicano school desegregation issue. The court did not rule on the legal questions involved, but it still recognized the identifiability of Mexican-Americans.

The Fifth Circuit first had occasion to deal with the Chicano issue in *Ross v. Eckels*, the Houston case. However, the reason the court allowed the pairing of Black and Chicano schools probably was because the issue was not ripe for decision. The court lacked the value of legal argument by an interest group like MALDEF (Mexican American Legal and Defense Education Fund). And more crucial, there were no Chicano plaintiffs (and there still are none) in *Ross*. This did not prevent Judge Clark from denouncing the Black-Brown integration as "mock justice." Any further developments in this field will be determined by the Fifth Circuit's decisions in the Corpus Christi, Austin, Dallas, El Paso, and Houston cases.

### 10. *Uvalde*

In *Morales v. Uvalde Independent School District*,<sup>45</sup> the district court dismissed a suit which is similar to the allegations made in *Alvarado*. The court said that any segregation in Uvalde schools was *de facto*, *i.e.*, based on voluntary, residential patterns. In addition, the court claimed it could not allow "any and all groups of private individuals to institute suits to revamp and revise an entire school system which has been elected under the democratic process by the people."<sup>46</sup> Because of the similarity to *Alvarado*, the court has decided to delay the Uvalde case until *Alvarado* is finally decided by a higher court.

### 11. *Corpus Christi*

*Cisneros v. Corpus Christi Independent School District* is the landmark case that set off the current rash of Chicano school cases. Briefly, Judge Seals ruled that Chicanos are entitled to the protection of *Brown* and every other school case regarding Blacks since. Also, he held that integration of Blacks and Chicanos fails to produce a unitary school system.

*Cisneros* is tentatively set to be heard on November 16, 1971. It was originally decided in June, 1970. In October, 1970, Judge Seals allowed the Department of Justice and HEW to intervene, even though

an anti-bussing group was denied. The reason for the differing treatment is that the national policy was then one favoring integration.

On July 2, 1971, Judge Seals issued his decision to bus 15,000 students in order to desegregate Corpus Christi, basing this remedy on *Swann v. Charlotte-Mecklenburg Board of Education*.<sup>48</sup> This decision was appealed by the school district to the late Justice Black, who granted a stay. Justice Black said the Corpus Christi situation is "very anomalous, new and confusing."<sup>49</sup> Also, the Department of Justice said there was a "serious question" that there had been discrimination against Chicanos.<sup>50</sup>

On October 7, 1971, the Fifth Circuit voted against hearing *Cisneros* as a full court (16 judges), even though serious questions are involved.<sup>51</sup> Judge Bell, the only one in favor of having the entire court hear the case, stated that:

[w]e have here a Mexican-American and Anglo segregation problem in a school district where school segregation between the two groups has never been required by law.<sup>52</sup>

Judge Bell fails to recognize that "law" includes not only State legislation and constitutions but also school board customs, regulations, and practices. It was school board practices that Judge Seals found had segregated Mexican-Americans from Anglo children. Nevertheless, it remains for the Fifth Circuit to rule on this question in *Cisneros*.

## V. FACTORS LEADING TO THE SEGREGATION OF MEXICAN-AMERICAN CHILDREN

### A. Residential Segregation

### B. Ability Grouping

In *Diana v. State Board of Education*<sup>53</sup> the plaintiff Chicano children contended that California's administration of intelligence tests resulted in a disproportionate number of Chicanos in Educable Mentally Retarded classes. The reason for this was that the tests 1) stress verbal skills and 2) are culturally biased since they are geared to measure the average middle class white child.

As a remedy, the court order and agreement requires, among other things, that all children whose primary home language is other than English from now on must be tested in both their primary language and in English with tests which put less stress on verbal skills.

## VI. MEXICAN-AMERICAN DESEGREGATION—THE FUTURE

### A. The Southwest Generally

As previously mentioned, the Del Rio, Texas school case is apparently settled with the consolidation of the Del Rio and San Felipe school districts.

In San Antonio, no decision has been rendered in *Rodriguez*, but *Serrano*, the California property tax case, is extremely relevant.

B. *Ross v. Eckels—The Houston Situation*

For the *Ross* discussion, see IV (C) (1) above.

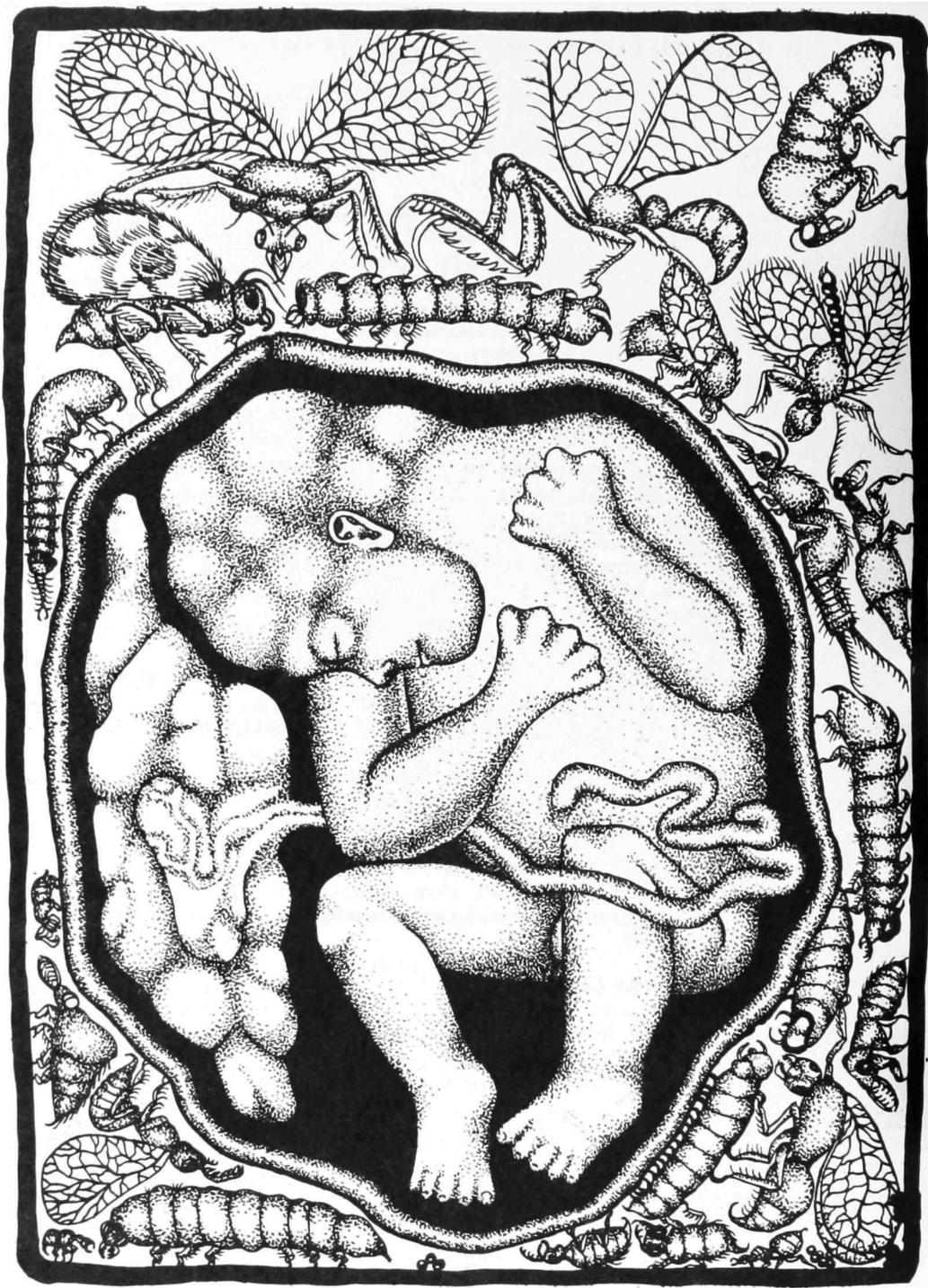
## VII. CONCLUSION

It is hoped that this supplement will offer the reader an insight into the ramifications *Cisneros* could have on the public schools of the Southwest. In addition, the supplement hopefully serves to inform the reader of other recent cases involving the civil rights of Mexican-Americans. The overall objective, however, is to convince the American judicial system that La Raza—Mexican-Americans, Chicanos, Hispanos, Latinos—has been treated unjustly educationally and legally, therefore requiring the intervention of the judiciary in areas of interest to La Raza. Otherwise, the constitutional rule of equal protection of the laws will be nothing more than an empty, unenforcible promise for Chicanos.

## NOTES

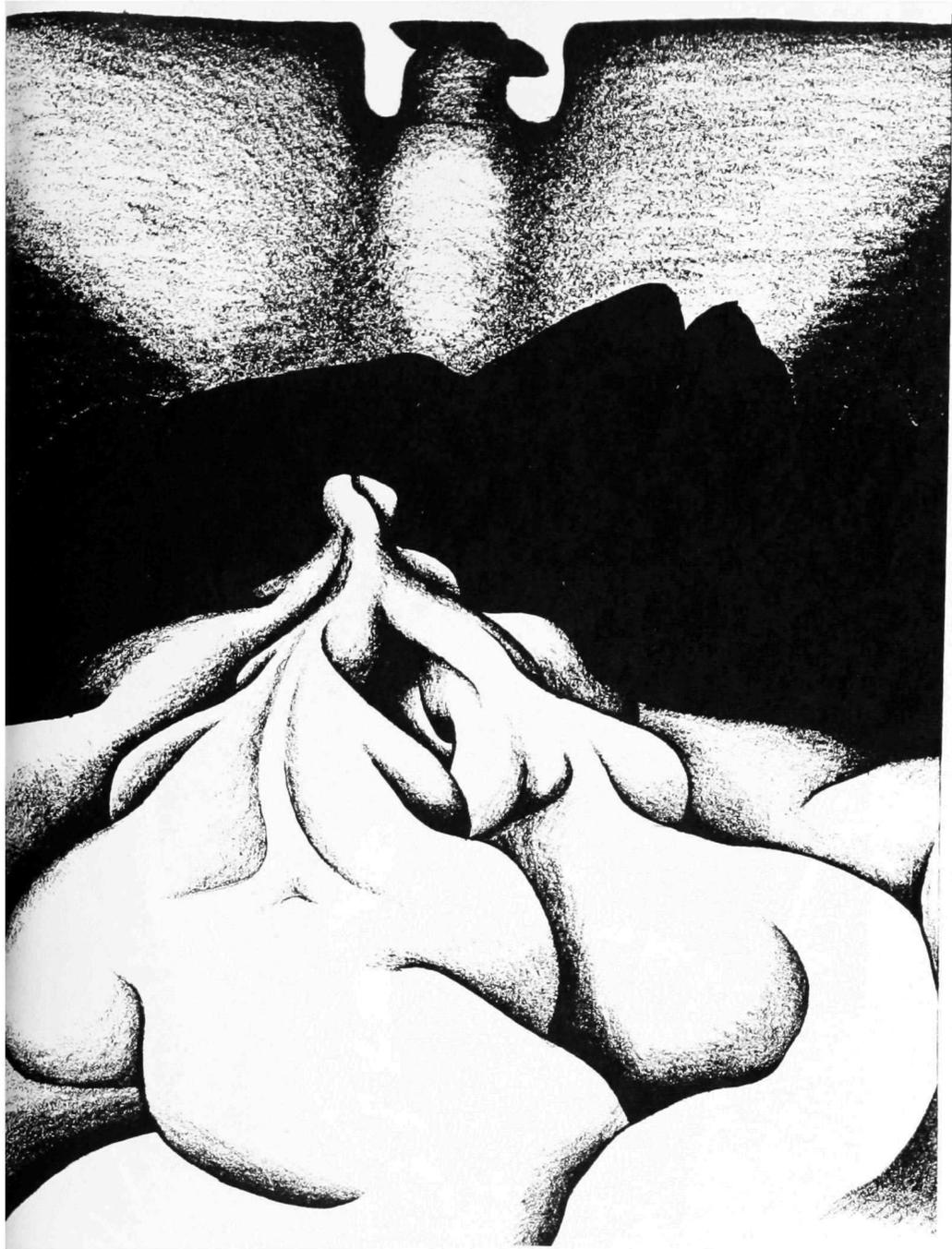
1. In re *Rodriguez*, 81 F. 337, 345 (W.D. Tex. 1897).
2. *Id.* at 340.
3. 81 F. 337 (W.D. Tex. 1897).
4. *Id.* at 349.
5. See also Sanchez, *Pachucos in the Making*, 4 COMMON GROUND 13 (1943), where Dr. George I. Sanchez of the University of Texas theorizes that discrimination has a causal relationship to the development of pachucos.
6. 401 U.S. 424, 91 S. Ct. 849 (1971).
7. 91 S. Ct. 849, 853 (1971).
8. 167 U.S. 298 (1897).
9. 167 U.S. 278 (1897).
10. 165 U.S. 675 (1897).
11. Letter from William L. Higgs to the United States Supreme Court, February 21, 1971.
12. Interview with Jesse Cruz, July, 1971.
13. 401 U.S. 395 (1971).
14. *Graham v. Richardson*, 403 U.S. 365, 39 U.S.L.W. 4732 (U.S. June 14, 1971).
15. *Perez v. Hackney*, Civil Action No. 70-H-1398 (S.D. Tex., filed July 16, 1971). See Comment, *State Discrimination Against Mexican Aliens*, 38 GEO. WASH. L. REV. 1091 (1970).
16. 320 F. Supp. 131 (W.D. Tex. 1970).
17. *Id.* at 137.
18. *Houston Chronicle*, Oct. 4, 1971, § 1, at 11, col. 1. See also *Gomez v. Florida State Employment Service*, 417 F.2d 569 (5th Cir. 1969), where a migrant worker was allowed a civil rights action for damages.
19. 96 Cal. Rptr. 658 (Cal. App. 1971).
20. 328 F. Supp. 155 (C.D. Cal. 1971).
21. *Id.* at 157.

22. 96 Cal. Rptr. 601 (1971). *See also* Rodriguez v. San Antonio Ind. School Dist., 299 F. Supp. 476 (W.D. Tex. 1969).
23. *Id.* at 604.
24. Keyes v. School Dist. No. 1, 445 F.2d 990 (10th Cir. 1971), *rev'g* 313 F. Supp. 61, 313 F. Supp. 90 (D. Colo. 1970).
25. Ross v. Eckels, Civil Action No. 10444, at 6 (S.D. Tex. May 24, 1971) (emphasis added).
26. *Id.* at 7 (emphasis added).
27. Cisneros is scheduled for argument on November 16, 1971.
28. Civil Action No. A-70-CA-80 (W.D. Tex. June 28, 1971).
29. Corpus Christi Caller, June 29, 1971, § A, at 2, col. 3.
30. *Id.* at col. 4. The Fifth Circuit Court of Appeals has decided to allow the NAACP and MALDEF to intervene. The groups felt the government would not adequately represent the Black and Chicano school children's needs. San Antonio Express, Aug. 25, 1971, § A, at 16, col. 1.
31. Civil Action No. 3-4211-C (N.D. Tex. Aug. 2, 1971).
32. *Id.* at 7, 17.
33. Thomas v. Bryan Ind. School Dist., Civil Action No. 13850, at 3-6 (S.D. Tex. July 23, 1971).
34. Corpus Christi Caller, June 25, 1971, § D, at 16, col. 4.
35. The McAllen Monitor, July 28, 1971, § A, at 1, col. 2.
36. 299 F. Supp. 476 (W.D. Tex. 1969).
37. San Antonio Express, Sept. 2, 1971, § A, at 1, col. 2.
38. San Antonio Express, July 18, 1971, § D, at 2, col. 2.
39. 8 HOUST. L. REV. 929, 948 (1971).
40. Civil Action No. 5281 (E.D. Tex. Aug. 26, 1971).
41. *See* United States v. State of Texas, 330 F. Supp. 235, 243 (E.D. Tex. 1971).
42. 445 F.2d 1011 (5th Cir.), *rev'g* 326 F. Supp. 674 (W.D. Tex. 1971).
43. 326 F. Supp. 674, 675 (W.D. Tex. 1971).
44. Alvarado v. El Paso Ind. School Dist., 445 F.2d 1011 (5th Cir. 1971) (emphasis added).
45. Civil Action No. \_\_\_\_\_ (W.D. Tex. June 1, 1971).
46. San Antonio Express, June 25, 1971, § A, at 1, col. 2.
47. 324 F. Supp. 599 (S.D. Tex. 1970).
48. 402 U.S. 1 (1971). *See generally* Exelrod, *Chicano Education: In Swann's Way?*, INEQUALITY IN EDUCATION 28 (1971).
49. San Antonio Express, Aug. 20, 1971, § A, at 1, col. 3. Earlier, Judge Cox, a federal district court judge, issued a stay of Judge Seals' bussing mandate. The Fifth Circuit reversed.
50. *Id.*
51. No. 71-2397 (5th Cir. Oct. 7, 1971).
52. *Id.* at 2.
53. Civil Action No. C-70-37 RFP (N.D. Cal. Feb. 3, 1970).



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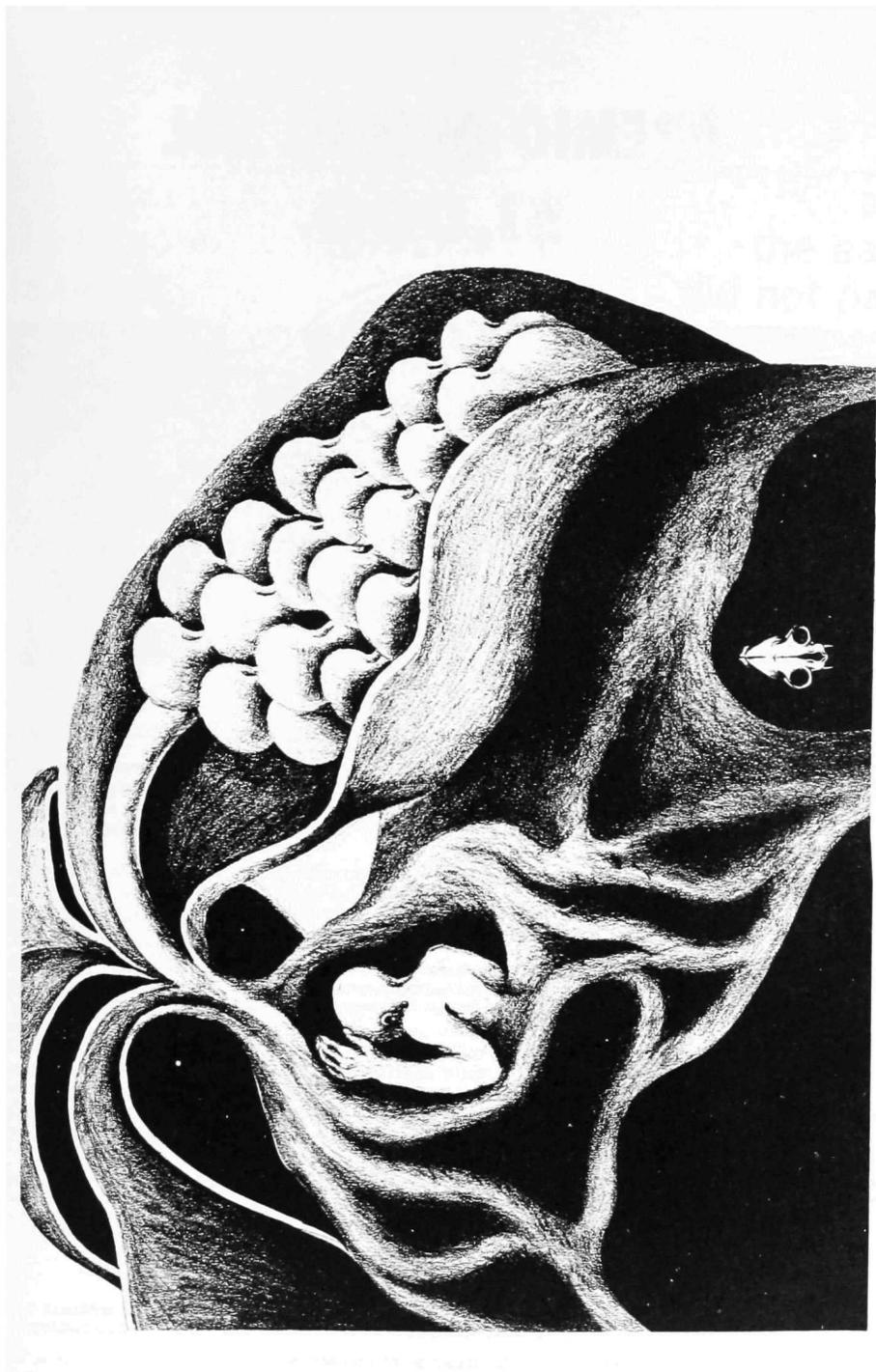
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