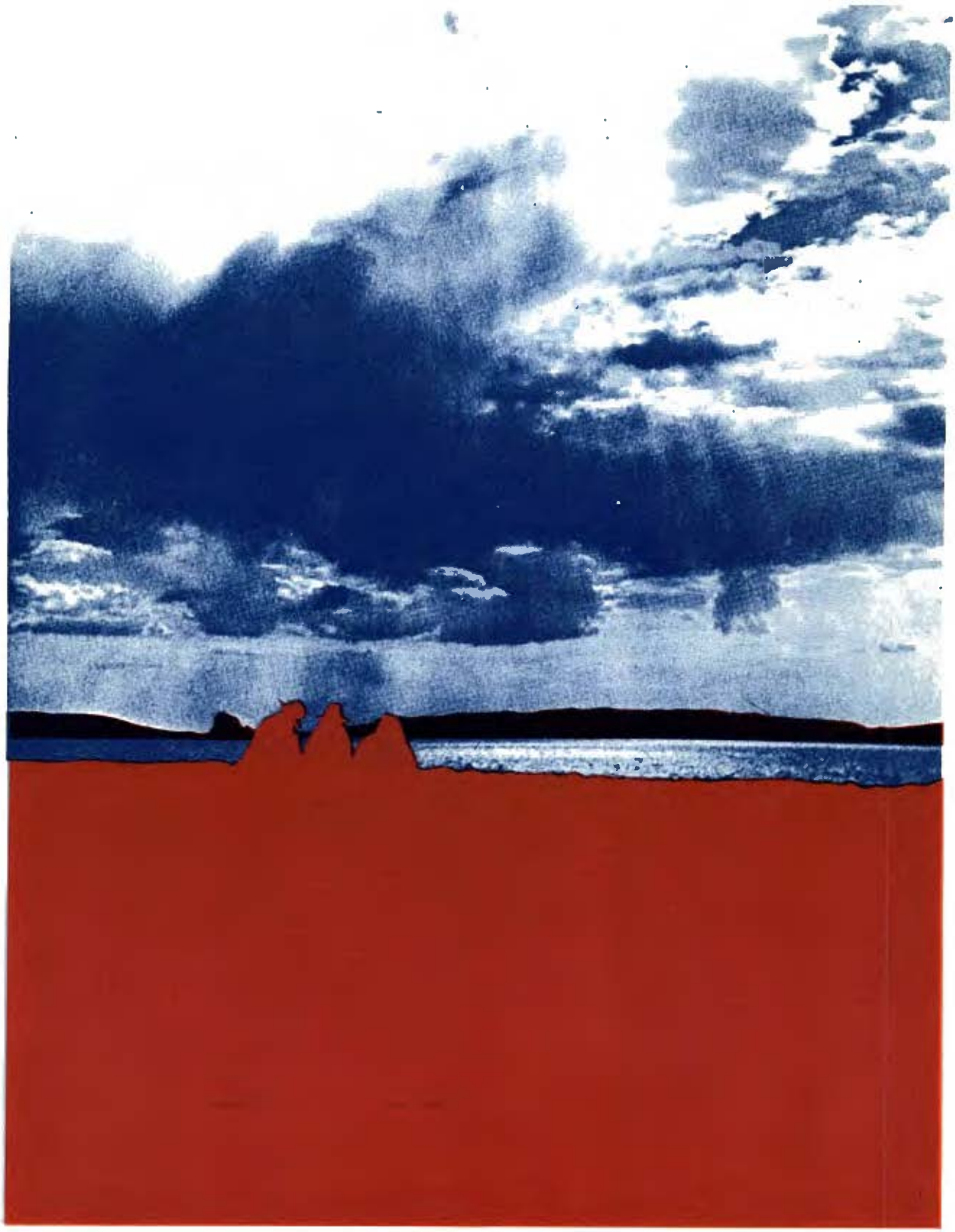
CIVIL RIGHTS DIGEST

A Quarterly of the U.S. Commission on Civil Rights/October 1972

ASSIMILATE—OR STARVE!



CIVIL RIGHTS
DIGEST

Vol. 5, No. 3, October 1972

Page

2 BARRIERS TO BLACK POLITICAL PARTICIPATION
by Vernon E. Jordan, Jr.

6 "IN THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY" . . . THE BROADCASTING INDUSTRY MEETS THE PEOPLE
by Everett C. Parker

12 SCHOOL FINANCE REFORM: THE ROLE OF THE COURTS
by R. Stephen Browning & Anthony J. Morley

20 EQUITY IN FINANCING NEW YORK CITY'S SCHOOLS: THE IMPACT OF LOCAL, STATE, AND FEDERAL POLICY
by Joel S. Berke, Robert J. Goettle, and Ralph Andrew

27 ASSIMILATE—OR STARVE!
by Joe Muskrat

35 TREATMENT OF MEXICAN AMERICAN HISTORY IN HIGH SCHOOL TEXTBOOKS
by John S. Gaines

41 AFFIRMATIVE ACTION IN LABOR CONTRACTS: SOME IMPLICATIONS FOR COLLEGE AND UNIVERSITY PERSONNEL
by North Barry Dancy

46 READING & VIEWING

47 BOOK REVIEWS

Deputy Director of Information and Publications
Joseph W. Swanson
Editor
Wallis W. Johnson
Art Direction
Del Harrod

The *Civil Rights Digest* is published quarterly by the U.S. Commission on Civil Rights as part of its clearinghouse responsibilities. Use of funds for printing the *Digest* approved by the Director of Bureau of the Budget on January 29, 1968. Correspondence related to the *Digest* should be addressed to Editor, *Civil Rights Digest*, U.S. Commission on Civil Rights, Washington, D.C. 20425.

The articles in the *Digest* do not necessarily represent Commission policy but are offered to stimulate ideas and interest on the various current issues concerning civil rights.

BARRIERS TO BLACK POLITICAL PARTICIPATION

by Vernon E. Jordan, Jr.

This Nation has been lulled into a state of complacency by the apparent success of the Voting Rights Act. However, American citizens must now be made to realize that the right to vote is being abridged by a web of antiquated regulations that discriminate against the black and the poor, a web that affects the entire country.

Because of this, the National Urban League recently launched a voter registration and education project that concentrates on moderate-size cities with relatively large black populations outside the South. This nonpartisan project is part of a long-range effort to significantly increase black participation and representation in the political process.

Most discussion of voting rights and of barriers to black voting centers upon the South, the region that historically has enforced the pattern of exclusion of blacks from the voting booth.

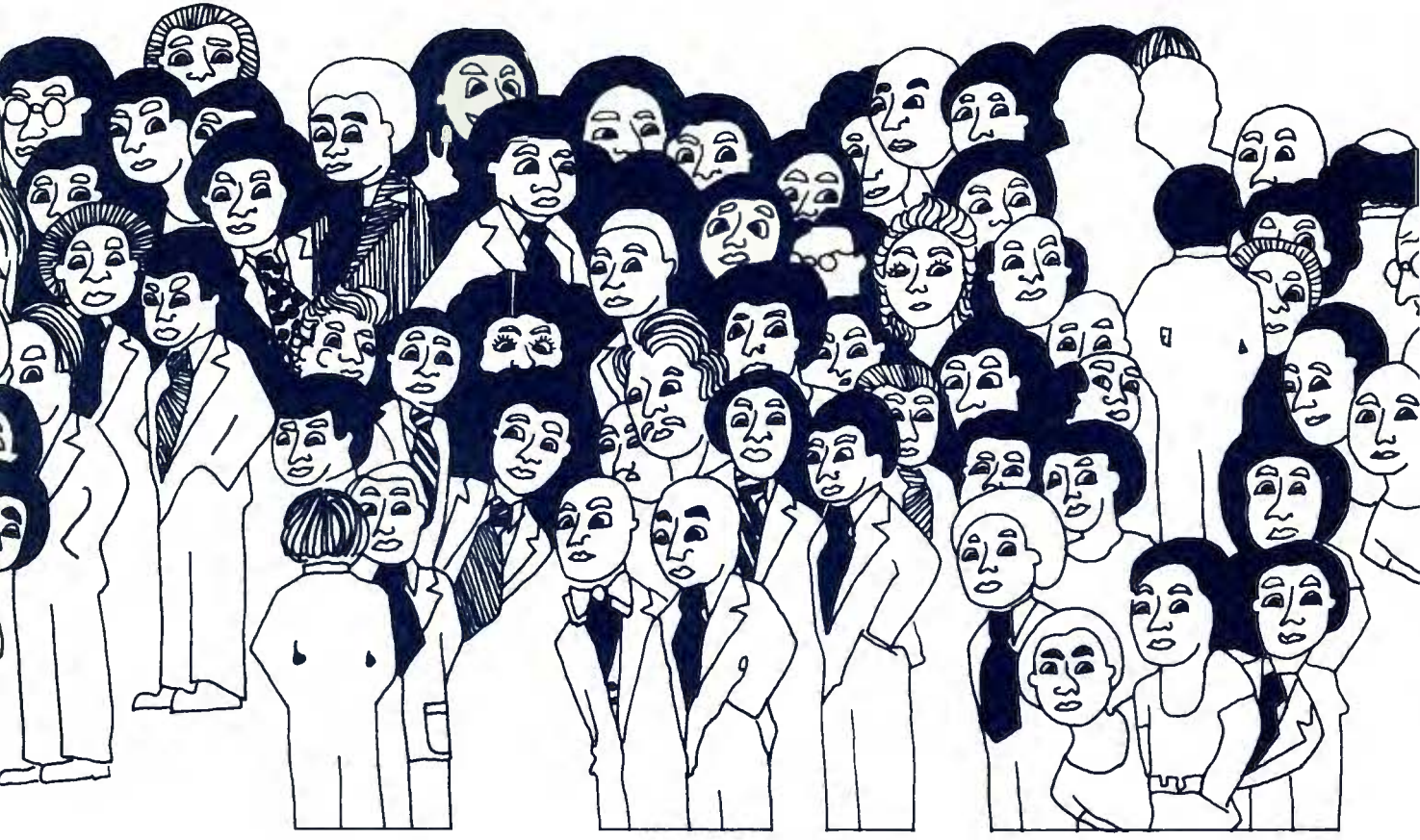
It is true that the South gave birth to the "grandfather clause" and to the white primary as methods of denying blacks a voice in the political process. And when those were ruled unconstitutional, the region took refuge in illegal means to achieve the same ends. Terrorism and violence followed. Combined with confusing regulations and capricious administrations, black citizens were robbed of the right to vote.

Consequently, any discussion of black voting rights has been filtered through a "Southern perspective." With passage of the Voting Rights Act of 1965, which removed the most blatant forms of disfranchisement, most Americans assumed that the constitutional right to vote was secure and afforded to everyone who wished to exercise it.

Voter participation in America is generally much lower than in other Western countries and is especially lower among black people, a situation that has been "explained" by their supposed apathy and disinterest in political affairs. Even many who have actively encouraged greater black participation in the political process have assumed that people do not vote because of disinterest, poverty, family and health problems, and a host of other reasons that have nothing at all to do with the actual external barriers to black voting.

The fact is that low voter participation rates among

Mr. Jordan is executive director of the National Urban League. The material for this article is drawn from *Abridging the Right to Vote*, a study prepared by the National Urban League's Research Department.



blacks and other minorities is not due to internal causes, but to the external impediments placed in their way by antiquated State and local registration procedures and regulations. Since the late 1960's, with the dramatic rise in Southern black voters, it has become apparent that the right to vote has been abridged in the North and the West, and that black people and all poor people are victims of discriminatory practices which exclude them from the democratic political process.

This may seem an odd, perhaps even an extreme, statement to make at a time when front-page publicity is regularly given to the black bloc in Congress and to the proliferating numbers of black mayors of major cities. But minority group members are still sharply under-represented in important elected positions, and we cannot let the visibility of a few obscure the continued powerlessness of the many.

There are some 522,000 elected officials in the United States, from county school board members up to and including the President. Of these, one might expect that roughly a tenth would be black, corresponding to the approximate black share of the population. That would come to more than 50,000 officeholders. But what are the figures? There are a mere 2,264 black elected officials in this country, or 0.4 percent of the total!

Only 14 of the 535 members of the U.S. Congress are black—3 percent of the total. There is one black U.S. Senator and no black Governor in any of the 50 States. Blacks elected to State offices make up 1.6 percent of the total of State elected officials, only 0.7 percent of elected municipal officials, and 0.2 percent of the total county elected officials across the Nation.

So much for the highly vaunted black political power that has been so exaggerated in recent years. Black people do have political power, but to date it has been a latent power that must be brought to bear on a situation marked by gross under-representation of black people in the elected offices that affect their lives.

It must be pointed out that, to a degree, much of this under-representation can be attributed to the self-confessed undercount of blacks by the Bureau of the Census, which itself estimates that it missed 10 percent of the black population in each of the last two nationwide census counts. Since census figures are used as a basis of political apportionment, the Urban League estimates that black citizens lost five Congressional seats and scores of State and local legislators whose seats, given an accurate count, would be set aside for

predominately black districts. Since the undercount is the result of deficient census procedures, it is clear that unless there is an across-the-board upward revision of 10 percent in black population statistics, the census itself becomes a major institutional barrier to fair black representation in elected office.

The under-participation in registration and voting by blacks is a nationwide problem affecting all regions, but available statistics show that it is particularly acute in small and medium-size cities in the North. Fewer Southern blacks are registered and fewer vote than in the North, but their numbers are steadily increasing and reflect, to a degree, the overall regional differences in voter participation.

But the figures also show that in standard metropolitan areas of one million population and over, greater percentages of blacks vote than in those metropolitan areas of less than one million population. This phenomenon often holds true for voting figures in the population as a whole. In cities such as Detroit, Philadelphia, and Washington, for example, 1971 citywide registration percentages were reported as 78, 72, and 68, respectively. Medium-sized cities such as Dayton, Columbus, Kansas City, Hartford, and Denver, reported citywide registration percentages of only 56, 62, 60, 53, and 55 percent, respectively.

Sometimes citywide figures obscure lower black rates. Indianapolis, for example, reported 73 percent of eligible voters registered, but in a heavily black precinct, only 39 percent of the people were registered.

It was mainly for this reason that the National Urban League began its voter registration and education project. The 10 cities in which the projects are operating are: Stamford, Connecticut; Flint and Battle Creek, Michigan; Fort Wayne and Indianapolis, Indiana; Springfield, Illinois; Sacramento, California; New Brunswick, New Jersey; and Dayton and Columbus, Ohio.

In some of these cities, we will concentrate primarily on young first-time voters. This year, three million black young people become eligible to vote for the first time and a special effort must be made to insure that they register and vote. Black youth voting rates are markedly lower than the overall black rate and sharply lower than corresponding figures for white youth.

Among black youth, as in the black voting age population at large, characteristics such as lower-income, lower educational achievement, and high unemployment converge with the significant external registration barriers to produce lower rates of political involvement.

Reported Voter Participation in Standard Metropolitan Areas by Size, Race and Region November 1968

Area	Black			White		
	Percent Registered	Percent Voting	Percent Reigstered Who Voted	Percent Registered	Percent Voting	Percent Registered Who Voted
North and West	71	65	93	76	72	95
In SMSA's of 1 million or more	72	66	92	76	72	95
In SMSA's under 1 million	71	63	89	75	71	95
South	63	55	87	68	61	90
In SMSA's of 1 million or more	62	52	84	67	59	88
In SMSA's under 1 million	64	56	88	69	61	88

SOURCE: Prepared by the National Urban League Research Department from data in U.S. Bureau of the Census, *Current Population Reports, Population Characteristics*, "Voting and Registration in the Election of November 1968," December 2, 1969.

Reported Voter Participation in Standard Metropolitan Areas by Size, Race and Region, November 1970

Area	Black			White		
	Percent Registered	Percent Voting	Percent Registered Who Voted	Percent Registered	Percent Voting	Percent Registered Who Voted
North and West	65	52	80	70	60	86
In SMSA's of 1 million or more	66	53	80	70	60	86
In SMSA's under 1 million	62	47	76	69	60	87
South	56	40	71	62	46	76
In SMSA's of 1 million or more	49	38	78	59	45	76
In SMSA's under 1 million	60	41	68	64	47	73

SOURCE: Prepared by the National Urban League Researcb Department from data in U.S. Bureau of the Census, *Current Population Reports, Population Characteristics*, "Voting and Registration in the Election of November 1970," December 1971.

The major causes of the lower black voting participation are the residency and other registration qualifications that disproportionately affect lower-income individuals.

Under provisions of the Voting Rights Act of 1970,

the residency requirement for voting in presidential elections is 30 days. However more than 30 States have 1-year residency requirements. A National Urban League survey of local registrars indicates that about one-third of the areas outside the South have residency requirements of 6 months or more in order to vote in county or municipal elections, and only a third apply the 30-day Federal standard for presidential elections to local races. Last term, the United States Supreme Court, in *Dunn* vs. *Blumstein*, also indicated that the residency requirement should be not more than 30 days.

Restrictive residency requirements hit hardest at minority groups, which tend to have high mobility rates within States and cities, and so are disproportionately affected by outmoded residency requirements.

Minorities are also hit hardest by the disqualification of convicted felons in most States. Studies of police records suggest that a sizable proportion of black men in particular are ineligible to vote because of this requirement. Most ex-convicts, who have supposedly paid their debt to society, are also denied the franchise. Persons in pretrial detention and prisoners, too, cannot vote. A Report of the Freedom to Vote Task Force of the Democratic National Committee indicates the scope of this barrier to the ballot:

"In the 1960 election, approximately 200,000 were prison inmates and 1.5 million were classified as former convicts. Calculating on the basis of these figures, between 1.5 and 1.6 million people were kept from the electorate by these provisions."

The limited period and hours for registration and the relative inaccessibility of registration offices, however, loom as the largest of the many obstacles to the would-be voter.

In 1972, about half of the registration polls around the country were closed 2 months *before* the primary elections, effectively limiting participation to party stalwarts. The same situation holds true for general elections. Depending upon the region, between 25 and 40 percent of cities have registration deadlines that end 2 or more months *before* the elections. Since election campaigns create an interest in the candidates and their programs, and since issues emerge in campaigns that stimulate citizen concerns, this requirement effectively disenfranchises many people whose educational backgrounds are relatively limited and who are not aware of the limits placed on registration.

Most year-round registration sites are located far from predominately black neighborhoods. Most are an county courthouse or some other official building site average of 3 miles away from the ghetto, often in the that is either unfamiliar to most blacks, or regarded with a degree of hostility. And they are open on a 9-to 5-basis, meaning that working people must take a morning off, frequently with a loss of pay, in order to register to vote. For a typical low-income ghetto-dweller without a car who is paid on an hourly basis, a downtown registration site open only from 9-to-5 might just as well be located on the moon. The inaccessibility to sites combined with their inconvenient hours effectively discourages low-income working people of all colors from voting.

The Urban League's survey of local registrars indicates that the money, time, and effort to correct these abuses, that rob so many people of their constitutional right to vote, are not likely to be forthcoming. Although the registrars, as a group, seemed willing to make special efforts to increase minority registration, they pointed to inadequate available funds and to insensitive city officials as being among the major stumbling blocks to reforms.

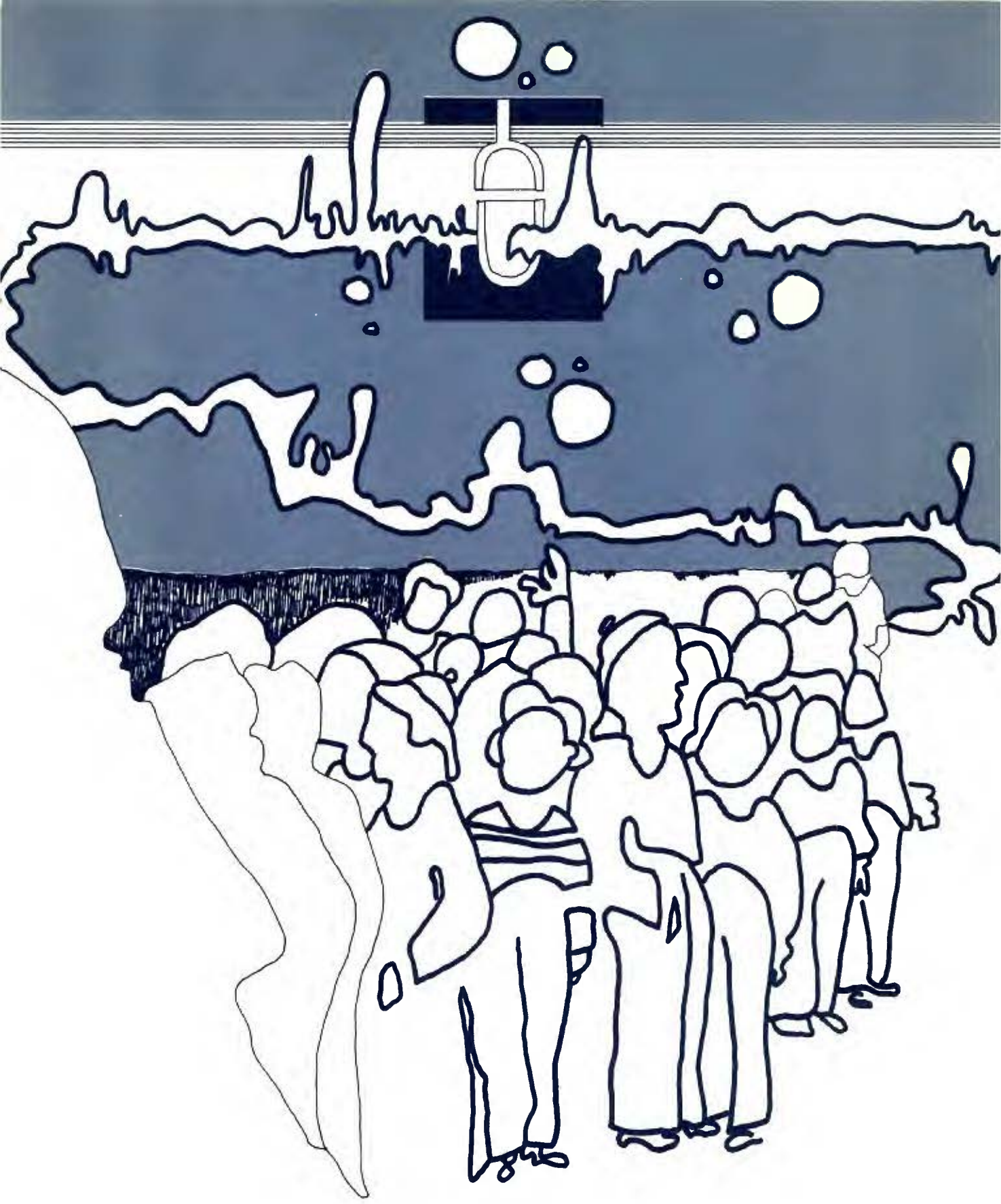
Evening and Saturday registration hours would go a long way toward making the registration process available to large numbers of people now excluded from it. But when such hours are instituted it is usually for a very short time—several days or a week—and so poorly publicized that it offers no real answer to the problem.

Another means of increasing citizen participation is to use community organizations and minority individuals as deputy registrars. This seems a logical step that would bring the electoral process closer to the community at very low cost, since volunteers might be used. But two-fifths of the registrars polled indicated they would not use this approach.

While officials are fully aware of the problem of inaccessible registration sites, an overwhelming majority—three-fourths—do not intend to use mobile units.

It is clear then, that black voters face institutional barriers to voting that limit their right to full participation in the political system. It is also clear that it will take a concentrated campaign to win the necessary legislative reforms and to sensitize State and local officials to the need for change.

The time has come to move beyond the surface appearances of equal access to the political process and to recognize that the reality of registration procedures and regulations have closed the doors of the political system to millions of Americans. ■



"IN THE PUBLIC INTEREST, CONVENIENCE, AND NECESSITY"... THE BROADCASTING INDUSTRY MEETS THE PEOPLE

by Everett C. Parker

For 7 days in March 1964, curious neighbors watched as 25 men and women filed in and out of a comfortable house on a tree-lined street in Jackson, Mississippi. They could be seen, in the living room and on the patio, glued to television sets for hours at a time, taking some kind of notes.

It later turned out that the notes they were taking mounted up to fill 12 cartons of monitoring records of the week's programs, meticulously kept, second by second, minute by minute, of both picture and sound, from 7:00 a.m. until 1:00 a.m. the next day.

It was the opening gun of consumerism in broadcasting which was to have far reaching results.

The 25 Jackson volunteers were out to test the contention of the Office of Communication of the United Church of Christ (UCC) that the broadcasting facilities of the community were not serving blacks, who made up 45 percent of the viewing audience.

Like the Office of Communication, the volunteer monitors took seriously the assertion that since the airwaves are owned, under law, by the public, they ought to be used to serve the public—all of it. Jackson area blacks weren't getting much out of their ownership. On the local TV screens they were either ignored altogether or singled out in a biased and demeaning way.

In April 1964, on the basis of the volunteers' findings, the Office of Communication and Dr. Aaron Henry and Rev. Robert L. T. Smith, representatives of the black community in Jackson concerning this issue, filed petitions with the Federal Communications Commission (FCC) to deny license renewal to the two commercial television stations in Jackson on grounds of racial discrimination. (Later, the case was narrowed to one station—WLBT–TV.)

The Reverend Dr. Parker is director of communication for the United Church of Christ in New York City.

It was a shot heard around the world of broadcasting. The ultimate victory of the Office of Communication, after 5 years in the courts battling the FCC every inch of the way, came when a U.S. Court of Appeals ordered the Federal Communications Commission to vacate the WLBT license. The case set an historic precedent that gave a legal voice to the public in determining the services they are to receive from local radio and television stations.

Who Makes Broadcasting Policy?

In order to see the WLBT case in the proper perspective it is necessary to look at the elements which set the stage for it: an increasingly centralized and unresponsive broadcasting industry with network control of virtually all programming, a steady deterioration in public service, a growing emphasis on profits to the exclusion of "quality of life" values, and an ineffective Government regulatory agency.

Three parties are involved in the American system of broadcasting. The Federal Communications Commission regulates the broadcasting industry and a broad array of other forms of mass communication. Its seven members are appointed by the President, with Senate consent, and serve 7 years. Second are the broadcasters, who are granted temporary 3-year licenses by the FCC to use the public's airwaves on condition that they serve the public interest. Third is the public itself.

One would hope that this impressive triumvirate collectively might have the imagination and concern to achieve a system of broadcasting that could entertain, educate, and ventilate the American mind. Such, it need hardly be pointed out, is not the case.

The legislators who formulated the Communications Act of 1934 had a fairly lofty vision of the potential of

broadcasting, seeing it as, among other things, a brilliant technological forum for exchanging ideas among the American people. Carefully written into their law was the provision that the broadcaster must operate his station "in the public interest, convenience, and necessity."

The FCC was set up to pass on the fitness of applicants for broadcasting licenses, to assign frequencies and to police engineering standards, and to examine periodically—at license renewal time—the overall performance of each licensee, particularly as to the quality of service being rendered to the public. The Communications Act specifically forbids censorship of program content by the FCC.

In spite of the intentions of Speaker Sam Rayburn and Senator Clarence Dill, the chief architects of the Communications Act, there has never been any serious effort either by the Congress or, especially, the FCC to enforce the public interest provisions of the law. For more than 30 years the FCC has been handing down statements of principles concerning program service in the public interest and has followed them with specific rule-making on such matters as commercialization, editorializing, and fairness in the treatment of controversial issues of public importance. Yet in all that time, the Federal Communications Commission itself has never moved to deny license renewal to a station that has flagrantly violated the public service requirements of the act. Only when ordered by the appellate court to do so—after the FCC staff and a majority of the Commissioners had ignored or brushed aside overwhelming evidence of wrongdoing—did the Commission vacate the WLBT license, the first such action ever taken.

As the court pointed out:

> *We cannot fail to note that the long history of complaints against WLBT beginning in 1955 had left the Commission virtually unmoved in the subsequent renewal proceedings, and it seems not unlikely that the 1964 renewal application might well have been routinely granted except for the determined and sustained efforts of Appellants at no small expense to themselves.*

It is the dollar sign that has marked the demise of most of the early dreams that broadcasting would be a great positive force for improving the quality of life in America.

The broadcast licensee is in business to make a profit. His return on investment is the highest of any American businessman. The responsibility to serve the public interest is seldom of primary importance to him. His sole rule of operation is to get the largest possible audience, so that he can sell the most possible advertising at the highest possible price. Television is particularly culpable for sacrificing taste, creativity, honesty in advertising, and public interest requirements to the pursuit of maximum profit. It is a disheartening comedown from the dramatic moment during the first successful commercial demonstration of television from the New York World's Fair on April 30, 1939, when the industry's visionary David Sarnoff declared, "Television is a creative force we must learn to utilize for the benefit of all mankind."

Thirty-three years later, the most apparent creativity we see is by Alka-Seltzer.

How to Protect the Public Interest

The FCC has been almost totally ineffective in counterbalancing the broadcasters' voracious appetite for profits, and, until recently, the public did not know about its rights and responsibilities with respect to the operation of stations. But a growing number of citizens are becoming more aware and it is they who are beginning to pave the road to better broadcasting.

Awareness and access might be called the twin bywords of the United Church of Christ Office of Communication's brand of consumerism in broadcasting. In 1964 the black community of Jackson not only did not have access to the airwaves it owned, it was not aware that it was entitled to such access. This ignorance of the rights of the public under the law is still widespread. It particularly handicaps minority groups who may lack information and opportunities more readily available to others. Yet, today, informed minority citizens are among the most successful proponents of the public's rights in television and radio.

Oddly enough, until the WLBT decision, the public was in the curious situation of owning airwaves but having no legal voice in judging whether or not they were used effectively. The public was in a position analogous to a man who owns a chain of grocery stores but has nothing to say about the stock.

Since that decision, the UCC's Office of Communication, funded by the Ford Foundation, has helped citizen groups in more than twoscore communities improve the programming and employment practices of their local stations. The starting point of such action is a request to the Office for aid by a citizen group interested in improving the performance of one or more local broadcasting stations. Groups asking for aid are advised to form a coalition of individuals and

organizations that is broadly representative of the community.

The members of the coalition then meticulously observe the programming of each station for 1 or 2 weeks, while also studying employment policies and practices. The Office of Communication furnishes technical and legal advice to the citizen group, but does not seek to influence its decisions. If the coalition determines that one or more of the stations is derelict in its programming or its employment of minorities and women, suggestions for improvement are compiled and the group engages in negotiations with station management. If the management refuses to talk or if negotiations break down, the citizen group may file a petition with the FCC calling upon the Commission to deny renewal of a station's license. But such legal action is a last recourse.

The paramount policy of the Office of Communication is to bring citizen groups and broadcasters together in an amicable agreement without the necessity of filing petitions to deny renewal of station licenses. The practice is illustrated by agreements reached last summer when the Coalition for a Free Flow of Information, 17 community groups in Dallas–Ft. Worth, signed contracts with the five leading radio and television stations without a petition being filed. Better representation of minority groups on the air was guaranteed and 60 jobs were made available to blacks, Chicanos, and American Indians.

Nearly all of the agreements reached between broadcasters and citizens have fostered improved program service not only for the minority groups who brought them about, but for the entire community. In Texarkana, Texas, black organizations not only negotiated for and received from station KTAL–TV assurance of access to the air and fair employment practices, but they also arranged for KTAL to provide services to the white community that had been unsuccessfully sought by the Texarkana Junior Chamber of Commerce.

In most communities the citizen groups challenging local broadcasting stations represent a substantial segment of the population. In some cases, they represent a majority, as in Paradise and Concord, California, and in the challenge against KPLO–TV and KELO–TV by the Indian tribes, ranchers, and farmers of central South Dakota.

There are those who contend there is danger in what they call "community control" or the "regulation by private contract" of broadcasting.* The word "control" is a misnomer. The public has both a right and a responsibility to observe and judge the performance of broadcasting stations, and to express its judgments and its service preferences to the licensees and, if necessary, to the FCC. Chief Justice Warren E. Burger, then serving as an appellate court judge, was clear and explicit about this in his WLBT decision in 1966:

> *[E]xperience demonstrates consumers are generally among the best vindicators of the public interest. In order to safeguard the public interest in broadcasting, therefore, we hold that some 'audience participation' must be allowed in license renewal proceedings.*

Furthermore, such participation is necessitated by the failure of the Government and the broadcasting industry to do what they are required to do by law. Many of the terms of the agreements reached between citizen groups and broadcasters are the very actions already required, but not enforced by the FCC at license renewal time.

The desirability of public participation in broadcasting has been noted even by the FCC itself. After the 13 community groups in Texarkana, aided by the UCC Office of Communication, negotiated a 13-point agreement with KTAL–TV representatives, the FCC hailed the action, saying that "cooperation at the community level should prove to be more effective in improving local service than would be the imposition of strict guidelines by the Commission."

And Chief Justice Burger, in the WLBT decision, said that this Nation has "a national tradition that public response is the most reliable test of ideas and performance. . . . [W]e have traditionally depended on this public reaction rather than on some form of government supervision or censorship mechanism."

Why Citizen Action?

Action by community groups on the local level can help foster three concepts of better broadcasting which at present enjoy, at best, a minor role on the Nation's airwaves—diversity, localism, and balance in dealing with news and controversial issues.

The UCC Office of Communication conducts its campaign for improving public service in broadcasting on three fronts. One is with the FCC itself. For example, in 1967 the Office of Communication, supported by numerous civil rights and church organizations, peti-

* See "Broadcast Regulation by Private Contract," by Richard W. Jencks, President of CBS/Broadcast Group, *Civil Rights Digest*, Spring 1971 (Vol. 4, No. 2).

tioned the FCC to issue a rule which would require broadcasters to follow fair employment practices in staffing radio and television stations. In 1969 the Commission did establish the rule. Enforcement of its directive is another matter, however, but at least the rule *is* on the books, and the public is now free to force FCC action.

A second front is working with local representative community groups to negotiate with their broadcasting stations for better programming and fair employment practices. A third is being initiated in the field of cable television in hopes that the mistakes of over-the-air television may not be repeated and that the interests of many publics will be truly represented in cable TV.

Community battles waged and won on these three fronts are well-marked in the annals of broadcasting. In each gains have been made which break ground for the next.

First, of course, is the trail-blazing WLBT case. In the interim until the FCC grants a new license for the station, WLBT is being operated by Communications Improvement, Inc., an integrated, nonprofit community group which has already brought about significant changes in programming beneficial to the entire Jackson area. This spring when William H. Dilday, Jr. was named general manager of the station, he was the first black appointed to the top post in a U.S. television station.

It is unusual for a citizen group to seek operation of a station even on an interim basis. Communications Improvement, Inc. did so because its members wished to provide Jackson viewers with improved television service—at no profit to themselves—during the years which may be required for the FCC to select a new permanent licensee for the station.

Following WLBT came the KTAL, Texarkana case, which broke its own historic ground. Complaints concerning the station's service had been brought to the Office of Communication by church leaders in Texarkana with urgent appeals for help. The entire community was concerned over the fact that KTAL had moved its main studios and offices to Shreveport, Louisiana, 70 miles away, because Shreveport is a bigger market area. Blacks complained that KTAL ignored them altogether.

The Texarkana Junior Chamber of Commerce had filed a petition with the FCC to deny license renewal to KTAL, but had been persuaded not to pursue the fight. A group of black leaders, joined by some whites, filed a petition with the FCC to deny license renewal with the help of the Office of Communication, and stuck with it.

The petition, pointing out that one-third of the population in the viewing area is black, charged that KTAL never consulted any broadly representative black leadership concerning their tastes, needs, and desires. The blacks charged that the station rarely, if ever, presented public service announcements for black or integrated groups and that black persons were rarely, if ever, presented on local public affairs programs.

A unique feature of the settlement the community groups eventually reached with KTAL was that the agreements on more balanced programming and fair employment were actually written into the station's license renewal application, which gave real teeth to the pact and set a valuable precedent for future citizen groups. Since settlement the black groups have expressed satisfaction with the efforts of the station to develop new programs to serve all its viewers.

The same case made history, too, in a court decision expected to have a far-reaching effect on the public interest law movement and its ability to finance its lawsuits.

After reaching a settlement with the black groups, KTAL voluntarily agreed to reimburse the local committee and the Office of Communication for their out-of-pocket costs. The FCC, however, while approving the settlement reached, refused to approve the reimbursement on grounds that such a precedent would not advance the public interest and could foster a rash of actions by public interest groups just for the money they could make. Strong dissents ably defending the right of public groups to recover expenses were filed by FCC Chairman Dean Burch and Commissioners Kenneth Cox and Nicholas Johnson.

Interestingly, the Communications Act of 1934 explicitly permits such reimbursements in cases between competing broadcasters. Often a buy-off of a competitor costs a broadcaster hundreds of thousands of dollars. The FCC has always routinely approved such deals without holding the required hearings. The requested reimbursement in the KTAL case was $15,000.

When the UCC Office of Communication appealed the FCC decision to the U.S. Court of Appeals, the Department of Justice entered the case on the side of the church agency, in opposition to the FCC.

In an unanimous decision reversing the FCC ruling, Chief Judge David L. Bazelon of the Court of Appeals for the District of Columbia called the KTAL case "a compelling example of the obvious benefits to the

public interest" that can result from first filing a challenge, then negotiating, settling the complaint, and withdrawing the challenge.

In recent years, the judge wrote, "the concept that public participation in decisions which involve the public interest is not only valuable but indispensable has gained increasing support."

"When such substantial results have been achieved, as in this case," the court declared, "voluntary reimbursement which obviously facilitates and encourages the participation of groups like the church in subsequent proceedings is entirely consonant with the public interest."

The upshot of the decision is that it makes it economically, as well as legally, possible for public interest groups to defend citizen rights. A citizen group with limited funding can tackle its particular public interest cause with the knowledge that after an agreement has been reached, it may be voluntarily reimbursed for its expenses by a broadcasting station, public utility, or other regulated industry.

Protecting the Top 50 Markets

In a classic example of David and Goliath, the Office of Communication and the Citizens Communication Center of Washington, D.C. recently helped Mexican American groups in five cities challenge two of the country's biggest corporations, forcing them to adhere to the FCC's existing, but unenforced, "top 50 market" policy which limits ownership in the biggest market areas to two VHF stations and one UHF station.

McGraw-Hill, Inc. had contracted to buy the five television stations licensed to Time-Life, Inc.: KERO–TV, Bakersfield, and KOGO–TV, San Diego, California; KLZ–TV, Denver, Colorado; WOOD–TV, Grand Rapids, Michigan; and WFBM–TV, Indianapolis, Indiana. The three latter cities are in the top 50 markets.

Chicano groups in each of the five cities filed petitions with the FCC opposing sale of the stations by Time-Life to McGraw-Hill on the ground that the block transfer would violate FCC policy and perpetuate monopoly ownership of television licenses. The petitions also charged that proposed programming and employment policies of McGraw-Hill were inadequate to serve the interests of minorities and the public generally.

In the out-of-court settlement McGraw-Hill agreed to purchase four instead of five television stations from Time-Life, Inc., to guarantee 15 percent minority employment, and to set up national and local minority councils to advise on programming.

The company will establish a training program for minority people and will "select and provide training each year for three minority persons in each of the three larger markets and two minority persons in Bakersfield."

What of the Future?

Increased citizen interest and citizen participation in broadcasting is essential to the health of television and radio and to the maintenance of an informed public. Just as a community is concerned with the quality of education that is offered in its schools, the quality of police and fire protection, the health care available in its hospitals, so should it concern itself with the television and radio fare that is served into its homes. Broadcasting cannot be expected to function for the betterment of private and public life unless there is vigilance on the part of the public and active participation in establishing the policies, standards, and practices of the stations and networks.

Readers who want detailed information about citizen rights in broadcasting and how to act for improvement of services in television, radio, and cable television may write to the Office of Communication, United Church of Christ, 289 Park Avenue South, New York, N.Y. 10010 for these pamphlets (one copy free):

Guide to Citizen Action in Radio and Television
How to Protect Citizen Rights in Television and Radio
Racial Justice in Broadcasting
A Short Course in Cable

Broadcasters must expect to see, hear, and to pay attention to more people in the future than they have in the past. As Chief Justice Burger has pointed out:

> *After nearly five decades of operation the broadcast industry does not seem to have grasped the simple fact that a broadcast license is a public trust subject to termination for breach of duty.*

Broadcasters are not likely to have an easy time in the days ahead, unless they will abandon their insufferable smugness and pay heed to the causes of the mounting dissatisfaction with television and radio that is triggering aggressive action against broadcasting. The people, now more and more beginning to understand their rights in broadcasting, will not be quiescent. ■

SCHOOL FINANCE REFORM: THE ROLE OF THE COURTS

by R. Stephen Browning and Anthony J. Morley

This Nation has entered a critical period regarding the financing of its public schools, a period marked by a complex prelude and indications that no feasible solution will come easily. One thing is certain, however: the issue will be resolved chiefly in the State legislatures under the watchful eye of the courts. The future is uncertain but a close analysis of past events will clarify the reasons for the present dilemma and the movement for school finance reform.

Referred to as the *adequacy* problem and the *equity* problem, the two basic factors in the current school crisis are closely interwoven: there is not enough money for the schools, at least not as much as the educators say is required; and what money there is is neither raised nor distributed fairly, at least not fairly enough to satisfy some courts.

Obviously, in terms of traditional American values, the equity problem is the more serious this country can make do with less money; it cannot make do with less justice. In reality, however, the two problems aggravate each other. When money is short, unfair ways of raising and spending it seem even more offensive than in times of plenty. Yet, practically speaking, it takes new money to redress old inequities. Thus we are confronted with a dilemma: how to provide new money for equitable school finance, when there is already too little existing money for adequate school finance.

R. Stephen Browning is an attorney with the Lawyers' Committee For Civil Rights Under Law in Washington, D.C. Anthony Morley is the director of an alternate high school in the Minneapolis Experimental Schools Program.

Inadequacy in School Funding

At the root of the fiscal inadequacy problem is the fact that school expenditures have been growing much faster than the economy as a whole, and that therefore school costs have begun to outstrip the ability of traditional taxes to cover them. Between 1949 and 1967 school costs rose at an annual rate of 9.8 percent. In the same period the yearly increase in the gross national product was only 6.4 percent. To make up the difference public school spending had to absorb a steeply increasing proportion of the gross national product—from 2.3 percent in 1949 to 4 percent in 1967.

Measuring the cost-climb for schools against growth in personal income tells the same story: expenditure per pupil grew nearly three times as fast as income per citizen. Therefore, taxpayers have had to try harder, increasing State and local school revenues from 4 percent of personal income in 1961 to 4.9 percent 10 years later.

During most of the 1960's taxpayers paid these higher taxes with only the normal grumbling that social custom dictates. After all, schools were a "good thing" in any community, the country was prosperous, and who could really object to new buildings for expanded enrollments or better salaries for underpaid teachers? But with the coming of the 1970's this happy picture began to change drastically.

For one thing, there were signs of a striking shift in public attitude toward the schools. Optimism about

their fine work was often undermined by disappointing results, appalling dropout rates, and documented charges that many high school students could barely read. The image of the American school as a place of order and industry, transmitting a stable culture, was challenged by reports of "student unrest," rejecting traditional values rather than learning them. Reverence for educators as dedicated professionals suffered from suspicion that teachers were becoming one more pressure group with a hand on the public purse. Assurance that schools were insulated from controversy and animosity was shaken by the discovery that they could become focal points for bitter contention over race, class, morality, and even foreign policy.

These shifts of attitude were not uniform or consistent but they began to add up. They helped erode the earlier assumption that what the schools say they need, the taxpayers should provide.

Another problem, less philosophical, was that schools faced strong competition for the local tax dollar. Especially in large cities and metropolitan centers, the costs of other public services were also skyrocketing. Welfare, police and firemen, hospitals, sanitation, and public transit were all at least as indispensable as schools in the quest for urban survival, and all could persuasively press their claims.

To pay for those local claims, both State and local taxes had to increase, which they steadily did. State support could come from varying mixes of income and sales taxes, the former usually withheld by employers, the latter paid in hundreds of deceptively small and seemingly painless installments. At the local level, however, there had to be almost total reliance on the property tax, which renters could feel with every increase, and which homeowners could see in stark three or four figure totals on their annual mortgage statements. Ninety percent of school districts levy their own taxes, and in those which do not the proportion of total property tax which goes for schools is usually clearly stated. In other words, unlike the costs of bombers or crop supports or new streetlights, there was nothing invisible about the pricetag on education.

Not surprisingly, the growing resistance to high taxes has focused on particular objection to school taxes. Feelings of taxpayer revolt have been effectively expressed in the numerous local referenda which must be held to approve construction bond issues and even operating budgets. The results are clear and sobering. In case after case voters simply refuse to allow school budgets to rise any higher. Later figures show that in fiscal 1971 fewer than half[46.7 percent] of the school construction bond issues in the country won approval at the polls—down from 89 percent in 1960 and 75 percent in 1965. Schools have suffered in the area of operating budgets as well, especially in urban centers such as Detroit, Los Angeles, and Cincinnati, where teachers have been laid off, class sizes increased, school time curtailed, or experimental programs dropped. The day of easy money for public education is simply a day of the past.

Inequity in School Funding

If belt-tightening were all that was involved, the cries of "crisis" in school finance might well be taken with a grain of salt. It might even be argued that a spell of stringency would be healthy in education, compelling educators to pay attention to essential priorities and efficient management after a decade of getting whatever they asked. Unfortunately the matter is not that simple. Another question has been raised, more fundamental and of even greater practical consequence than the generosity or skimpiness of school budgets in general. It is the question of *equity*. When public revenue is raised for the schools, is it raised fairly? And when public money is shared among the schools, is it shared fairly? These questions have been increasingly brought before the courts throughout the past 4 years.

HISTORY OF THE SCHOOL FINANCE LITIGATION MOVEMENT

The exact origins of the current school finance litigation movement are hard to pinpoint. In 1965 Dr. Arthur Wise's seminal article presented an appealing analogy between the inequalities inherent in a State's malapportioned legislature and the disparities in pupil expenditures among selected school districts.* A year or so later Professor Harold Horowitz published his provocative law review article that outlined certain constitutional theories which could be used to challenge school finance inequities.** At about the same time Judge J. Skelly Wright, in a Federal court decision, ordered the District of Columbia School administration to equalize per pupil expenditures among the Washington, D.C. public schools. All of these had two

* Wise, A. E., "Is Denial of Equal Education Opportunity Constitutional?," XIII Administrators Notebook, No. 6 (University of Chicago, February 1965).

** Horowitz, Harold, "Unseparate But Unequal—The Emerging Fourteenth Amendment Issue in Public Education," *UCLA Law Review*, 15:787 (1968).

points in common: first, they were concerned with the lack of educational resources available to poor school children; and, second, they suggested ways in which courts could correct these inequities.*

It should come as no surprise, then, to learn that the first lawsuit dealing with school finance reforms, which was filed in February 1968, concentrated on both these areas. The suit, *The Detroit Board of Education v. Michigan*,** complained that poor school children in Detroit lacked the quality of educational resources available to wealthier suburban school children. The plaintiffs requested the court to require the State of Michigan to develop a more equitable system for financing its public schools.

Before the Detroit case had gone very far, its basic concepts were borrowed and employed in a similar suit, *McInnis* v. *Shapiro*, filed in June 1968 in Federal court in Illinois. The *McInnis* plaintiffs were also concerned about the educational plight of poor children. It was their belief that any State system of funding schools that did not provide compensatory education for educationally disadvantaged children was unconstitutional under the Equal Protection Clause of the 14th Amendment to the U.S. Constitution. This allegation has since become known as the "educational needs theory" which would require States to fund education on the basis of the individual needs of students.***

The *McInnis* suit was dealt with in short order, when the court dismissed the complaint of the poor school children with the pronouncement that an "educational needs" standard—although perhaps a worthy guide for legislative policymakers—is an unworkable directive for courts. The court's attitude toward plaintiffs' claims is contained in the following passage from an earlier U.S. Supreme Court opinion which it quoted:

> *To be able to find fault with a law is not to demonstrate its invalidity. It may seem unjust and oppressive, yet be free from judicial interference. The problems of government are practical ones and may justify, if they do not require rough accommodations—illogical, it may be, and unscientific.*
>
> *Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void under the Fourteenth Amendment. (Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69–70.)**

An appeal to the U.S. Supreme Court brought no relief to the plaintiffs, for the High Court summarily agreed with the lower court's decision.**

A second nail in the coffin of school finance reform was driven by another three-judge Federal court in the case of *Burruss* v. *Wilkerson*. In this case, which challenged the methods of funding public schools in Virginia, plaintiffs charged that the State was constitutionally obligated to provide equal educational opportunity. They also claimed that Virginia had violated this obligation by funding schools at vastly different per pupil expenditure rates, which had no apparent relationship to the educational needs of the students.

The lower court in *Burruss* recognized the inequities complained of by the Virginia school children, but—like the lower court in *McInnis*—finding no "judicially manageable standard" upon which to grant relief, dismissed the case.*** On appeal to the Supreme Court, the lower court's dismissal was summarily affirmed.****

SERRANO V. PRIEST—A TURNING POINT

Thus, by mid-1970, the school finance reform movement, which had begun to generate so much energy during the latter half of the 1960's, appeared to have suffered an early demise. The stultifying effect of the *McInnis* and *Burruss* decisions was readily observable among the dozen or so school finance cases pending at that time throughout the country. Some were dismissed with the courts relying on the Illinois and Virginia decisions. Others were dismissed voluntarily by the plaintiffs, apparently in the belief that the Supreme Court had foreclosed the issue. Still others hung on, seemingly believing that effective relief was still possible.

The hope expressed by those that hung on was not in vain. Indeed, the early defeats—or threat of defeats—for the school finance movement had caused three legal scholars, Coons, Clune, and Sugarman, to concen-

---

* *Hobson v. Hansen*, 269 F. Supp. 401 (D.D.C. 1967), affirmed sub nom. *Smuck v. Hobson*, 408 F. 2d 175 (D.C. Cir. 1969), *Hobson v. Hansen*, 327 F. Supp. 844 (D.D.C. 1971).

** *The Board of Education of the School District of Detroit, et al. v. The State of Michigan*, General Civil No. 103342 (Cir. Ct. Wayne County, Michigan, filed Feb. 2, 1968). The complaint was dismissed for lack of prosecution in 1969; however, in early March 1972, it was refiled by the Detroit School Board.

*** Coons, J. E., Clune, W. H., & Sugarman, S. D., *Private Wealth & Public Education*, Cambridge: Harvard University Press, pp. 311–315 (1971).

* *McInnis v. Shapiro*, 293 F. Supp. 327, 33 (N.D. Ill. 1968).

** *McInnis v. Olgilvie*, 394 U.S. 332 (1969).

*** *Burruss v. Wilkerson*, 301 F. Supp. 1237 (W.D. Va. 1969).

**** *Burruss v. Wilkerson*, 397 U.S. 44 (1970).

trate their research efforts on the development of a constitutional theory that would be both more comprehensible and more manageable in a judicial context.* Out of this research effort emerged their proposed constitutional standard—"fiscal neutrality." According to their reading of the Equal Protection Clause of the 14th Amendment, States in establishing financing systems for providing public education must be fiscally neutral. Or, in their words, the "quality of public education may not be a function of wealth, other than the wealth of the State as a whole."

The problem confronted by the standard of fiscal neutrality is the condition now existing in 49 States in which school districts, funded partly by local property taxes, have widely differing tax bases available for students' expenditures. Thus, wealthy school districts can raise sums so huge that poor districts, even at dramatically higher tax levies, can never hope to equal them.

The fiscal neutrality theory asserts that State financed public education must be based on the collective wealth of the State and not on the vastly unequal tax bases of school districts. This "collective wealth" or "collective poverty" standard (that is, rich or poor school districts, as measured by the property tax base per pupil) is quite different from the standard of personal wealth and personal poverty that started the school finance reform movement in the early months of 1968. (The significance of this difference will become more apparent as the legal theories of the various cases are explored).

The usefulness of the Coons, Clune, and Sugarman analysis was apparent to many attorneys who had school finance challenges pending in the courts when the Illinois and Virginia cases were decided adversely. In California, the attorneys in *Serrano* v. *Priest* adopted the principle of fiscal neutrality in arguing their case, and this was the principle the California Supreme Court announced in ruling that the *Serrano* plaintiffs had stated a claim (which they have yet to prove in the trial court below) that challenged the constitutionality of the California system for funding public schools.** In the words of the court:

> *We have determined that [the California] 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.*

The language of this decision has been echoed and embellished in subsequent favorable decisions in Minnesota, Texas, Arizona, and New Jersey.* Of these, the Texas decision, *Rodriguez* v. *San Antonio Independent School District*, is perhaps the most significant since it will be the first post-*Serrano* case to be decided by the U.S. Supreme Court. However, at this point it may be more useful to discuss generally the range of school finance cases now pending throughout the country.

As of July 1, 1972 there were more than 40 school finance cases in process in at least 30 States.** These suits, filed in State and Federal courts throughout the country, can be categorized in a variety of ways—two of which are by type of plaintiffs, and by type of legal theory relied upon by plaintiffs.

PLAINTIFFS

Most of the suits are being brought on behalf of *public school children*. Usually, the children come from poor families, although that is not always the case. A few of the cases are brought by plaintiffs who come from middle-income families and who attend school in very poor school districts. Similarly, many of the students who are plaintiffs come from racial minorities, although again, that also need not be the case.

In many of the suits *taxpayers* are plaintiffs. The legal significance of these plaintiffs is less clear than the student plaintiffs. For example, in the *Serrano* decision, the court focused almost exclusively on the importance of education and on the inequalities to students caused by the California system of funding schools. Little, if anything, was said of the inequities caused to taxpayer plaintiffs. Significantly, the only

---

* Coons, J. E., Clune, W. H., & Sugarman, S. D., "Educational Opportunity: A Workable Test for State Financial Structures," *California Law Review* 57:305 (April 1969).

** *Serrano v. Priest*, 5 Cal. 3d 584, 487 P. 2d 1241 (1971).

* *Van Dusartz v. Hatfield*, 334 F. Supp. 870 (D. Minn. 1971). *Rodriguez v. San Antonio Independent School District*, decided December 23, 1971. *Hollins v. Shofstall*, N. C253652, (Super. Ct. Maricopa County, Ariz.), motion to dismiss denied Jan. 16, 1972; Summary Judgment granted on behalf of plaintiffs, June 1972. *Robinson v. Cahill*, 118 N.J. 223, 287 A. 2d 187, decided Jan. 19, 1972.

** Suits are in process in Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Hampshire, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Virginia, Washington, and Wisconsin.

adverse school finance decision since *Serrano* was a New York case where only taxpayers were plaintiffs.*

The *school boards* form another important set of plaintiffs. Their appearance as plaintiffs, although not as common as the two other types, is becoming increasingly frequent. Moreover, their decision to serve as plaintiffs considerably enhances the prospects for these suits, because of their respectability and because of the additional resources they can devote to the litigation.

Mayors, city councilmen, and other important *Government executives* are also beginning to serve as plaintiffs in a few school finance suits. In fact, in one suit a governor and a State attorney general are serving as plaintiffs.**

LEGAL THEORIES

Fiscal Neutrality

The majority of the school finance cases are patterned after the *Serrano* case. As such, they allege that the system of financing schools in their States is unconstitutional in that the quality of education is a function of wealth—the wealth of the local schools district; not the wealth of the State. In some cases, this argument is grounded not only upon the equal protection clause of the U.S. Constitution, but also upon similar provisions in their State constitutions.

State Constitutional Arguments

All State constitutions contain language specifying that education is the responsibility of the State. Although the wording of these provisions varies from State to State, some remarkable similarities are found. For example, many State constitutions provide that the State has the responsibility of administering "a system of common public schools." The *Serrano* court, when faced with a provision of this sort, concluded that the current system of financing schools did not violate that particular section of the California constitution. However, whether other States with similar provisions will reach the same conclusion depends primarily on the case law in those States.

Another common State constitutional provision is the requirement that the State provide "a thorough and efficient system of public schools." Like the term "common," the adjectives "thorough" and "efficient" do not provide the kind of operational constitutional standard that courts can deal with comfortably. After all, at what point does a system become efficient? Yet it seems clear that one can find some desperately poor school districts which are by any measure neither thorough nor efficient. This was the exact holding of a recent New Jersey decision.*

Still another type of State constitutional provision has to do with the State's responsibility for financing public education. In Illinois, for example, the constitution provides that the State has the "primary responsibility for financing public education." The belief that this provision requires the State to bear at least half of the cost of public education for each school district has prompted three separate school finance suits in Illinois.**

Equal Protection—Racial Discrimination

A few of the school finance suits have asserted that a State's system of financing schools discriminates on the basis of race. For example, in the successfully prosecuted Texas case, *Rodriguez v. San Antonio In-*

The Texas School Finance System's Relationships Between District Wealth, Race and School Revenues [1]

Market Value of Taxable Property Per Pupil [2]	% Minority Pupils [3]	State & Local Revenues Per Pupil [4]
Above $100,000 (10 Districts)	8%	$815
$100,000–$50,000 (26 Districts)	32%	544
$50,000–$30,000 (30 Districts)	23%	483
$30,000–$10,000 (40 Districts)	31%	462
Below $10,000 (4 Districts)	79%	305

[1] From Affidavit submitted in the *Rodriguez* case by Joel S. Berke.

[2] Policy Institute, Syracuse University Research Corporation, Syracuse, N.Y.

[3] Directory of Public Elementary and Secondary Schools in Selected Districts, Office of Education, HEW.

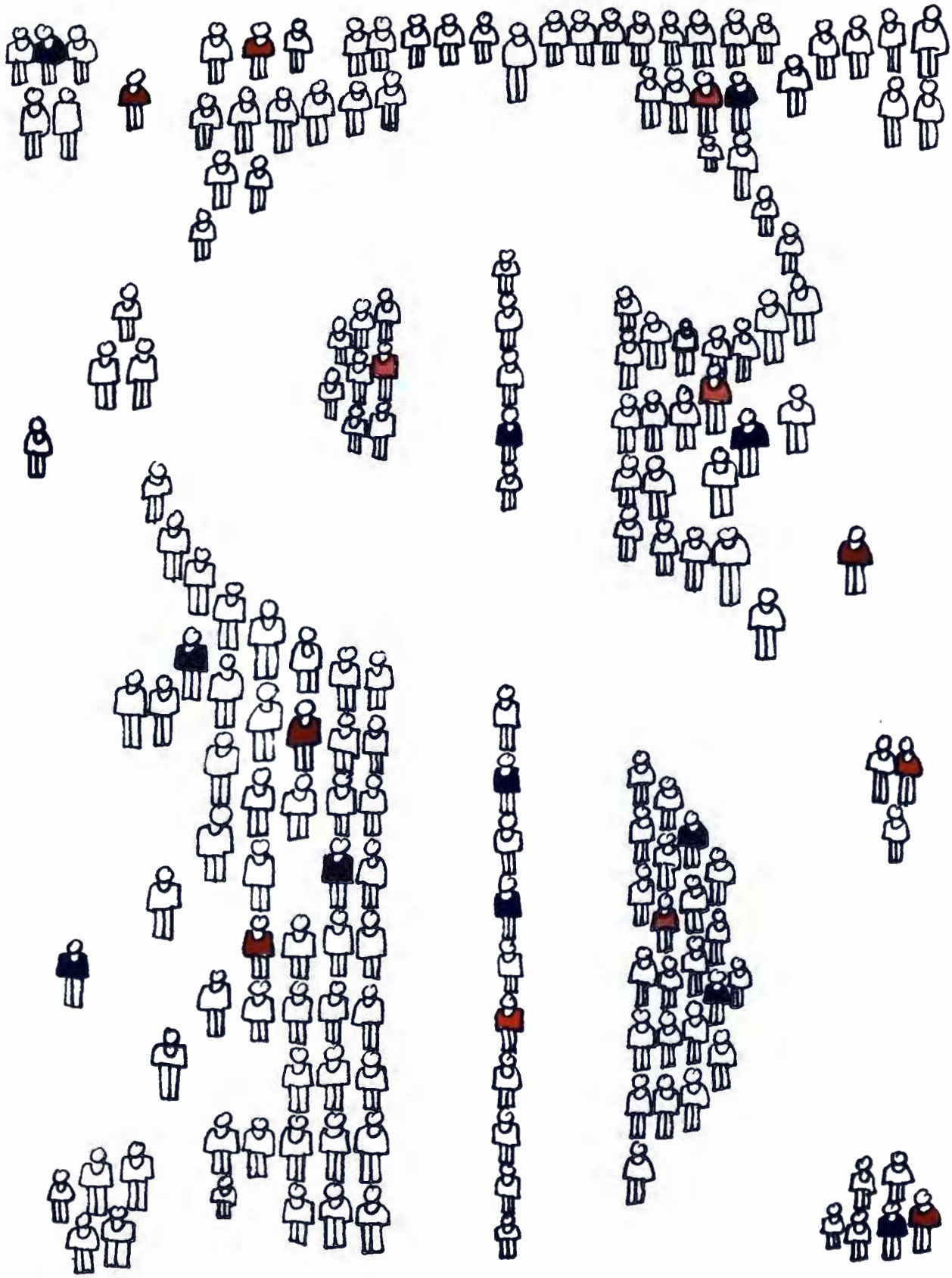
[4] Op. cit., SURC.

* *Spano v. Board of Education of Lakeland School District #1*, (Supreme Court of New York, Westchester County), complaint dismissed, Jan. 19, 1972.

** *Milliken v. Green*, No. 13664-C, (Cir. Ct. Ingham County, Michigan), filed Oct. 15, 1971.

* *Robinson v. Cahill*, slip opinion, pp. 54–61.

** *Blase v. Illinois*, No. 71 L 11007 (Cir. Ct. Cook County, Illinois), filed September 1971; *Sbarboro v. Illinois* (Cir. Ct. Cook County, Illinois), filed Oct. 5, 1971; *Martwick v. Illinois*, No. 72-297, (Cir. Ct. Cook County, Illinois), filed Jan. 19, 1972.



*dependent School District,** the plaintiffs offered proof (see chart below) which indicated that as the proportion of minority enrollment in any school district increased, the per pupil expenditures decreased. The claim that a State has been racially discriminatory in its distribution of educational resources among its school districts has not been frequently pressed before the courts because it is a difficult, if not impossible, evidentiary burden in most States. At least this was the conclusion drawn by Coons, Clune, and Sugarman.

> *Until the recent [school finance] litigation all attacks upon financial discrimination had been based upon an alleged relation between race and underfinancing. . . . [T]he present litigation is understood by many of its close supporters as a racial struggle. The fact is otherwise. There is no reason to suppose that the system of district-based school finance embodies racial bias. Districts containing great masses of black children ordinarily also contain great masses of white children. . . . No doubt there are poor districts which are basically Negro, but it is clear almost by definition that the vast preponderance of such districts is white.***

Unequal Assessments—Due Process and Equal Protection

State administered school aid in many States appears to be inversely related to the wealth of local school districts. That is, the wealthier the school district (as measured by per pupil assessed valuation of real property), the less the State aid. This may look like an equitable system of funding school districts. Yet such a conclusion should not be drawn in any State until a close examination is made of its assessment practices.

In many States, assessment ratios (i.e., the relationship of assessed value to actual value) vary widely among municipalities. For example, in Alabama a typical urban school district will have an assessment ratio in excess of 20 percent, while a typical rural school district will have a ratio of less than 10 percent. It is precisely these variations that have led some plaintiffs to challenge the constitutionality of certain State's systems of collecting and/or distributing revenue for public education.*

Equal Protection Arguments

The initial focus of the school finance reform movement, as discussed earlier, was on the large concentration of disadvantaged school children who attend classes in our Nation's large city schools. The concern for these children was, quite simply, that they are doubly shortchanged—first, they do not receive resources equal to those received by their peers in affluent suburban school districts; and, second, they are deprived of the additional educational resources needed for them to overcome their educational and cultural handicaps.

Although the initial focus of the school finance movement had shifted somewhat after the *McInnis* defeat—from personal poverty (i.e., wealth of the pupil) to collective poverty (wealth of the pupil's school district)—it was widely believed by most observers of the movement that both urban students and their school districts would be the direct beneficiaries of a successful outcome of the so-called "fiscal neutrality" theory. Accordingly, when the Supreme Court of California announced its decision in *Serrano v. Priest*, big city mayors and officials hailed it as a great victory for urban education.

However, more extended reflection indicated that the *Serrano* line of cases may pose a threat to some central-city school districts.** in that these cases could conceivably cause an increase in urban taxes accompanied by an absolute reduction in per pupil expenditures.*** This paradoxical prospect might occur under the following circumstances: many urban school districts have per pupil expenditures higher than their State's average; central city school districts frequently have a lower tax rate for education than their State's average (although their total tax rate—for educational and noneducational municipal services combined—is commonly near the top in each State); the most frequently discussed financing scheme for satisfying the fiscal neutrality standard is for the State first to as-

* For a detailed discussion of school financing in Texas, see "Mexican American Education in Texas: A Function of Wealth," August 1972, a statutory report of the U.S. Commission on Civil Rights.

** Coons, Clune, & Sugarman, *Private Wealth and Public Education*, Cambridge, Mass.: Harvard University Press, 1970, pp. 356–7.

* See, for example, the recent Federal court decision in Alabama [*Lee v. Boswell*, CA. No. 2877-N, M.D. Ala. June 29, 1971], in which the State was required to develop a uniform system of assessment practices.

** Myers, P., "Second Thought on the Serrano Case," *City*, pp. 38 41, (Winter 1971).

*** Berke, J. S. & Callahan, J. J., "Serrano v. Priest: Milestone or Millstone for School Finance," *Journal of Public Law*, Spring 1972.

sume the entire cost of education and then to fund it with an equal expenditure for every student in the State. Under such a scheme, urban school districts almost assuredly would suffer higher taxes and lower per pupil expenditures than they now have.

This anomalous prospect has led a number of lawyers to file suits based on new theories of equal protection. These suits concentrate on the unique features of urban school districts—their municipal overburdens, their high costs, and their high concentration of disadvantaged children.* The holding of the *Serrano* case serves as the basis for these recently filed suits:

> *We have determined that this 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.*

The urban suits pick out certain key phrases in the above quoted *Serrano* standard and request the courts to examine them in light of the unique problems of urban school districts. For example, in measuring the "wealth of his parents and neighbors," urban proponents suggest that per capita income and not per capita property tax valuation is a better indicator of ability to fund education. Or, when discussing "the quality of a child's education" the urban suits place emphasis on the need for *equal educational offerings* for similar children, rather than equal expenses for similar children.** This distinction is necessary, they contend, because comparable educational services cost more in urban areas—that is, land costs more, teachers cost more; indeed, they argue, all goods and services tend to cost more.*** Finally, in examining the "funding scheme," urban school supporters argue that courts should examine the entire system for funding municipal services (i.e., noneducational as well as educational municipal budgets). In short, they ask the court to establish some standard to insure that State legislatures, when reshaping the systems for financing schools, will make good faith efforts to acknowledge the municipal overburdens borne by large city school districts.

SCHOOL FINANCE & THE COURTS: THE IMMEDIATE FUTURE

In the fall of 1972 *Rodriguez v. San Antonio Independent School District* will be heard by the Supreme Court, and thus is likely to become even more familiar than *Serrano* itself. In the argumentation there is special emphasis on the discriminatory effect of Texas' school finance structure against poor children, rather than simply poor districts. The conclusions of the court are the same, however, namely, that the State's "tax more, spend less system" is unconstitutional and must be changed. In this case the judges gave the legislature a deadline. Barring reversal in the higher Court, Texas legislators must act to change their system by the school year 1973–74.

If the lower court's decision in *Rodriguez* is upheld by the U. S. Supreme Court, State systems of financing public schools will be dramatically altered. However, as to exactly how they must be altered the court may not say. Indeed, no court decision so far, and none that anyone anticipates, attempts to spell out what the new laws must say. Momentous though the judges' rulings may be, they all take the negative and modest route of identifying what a school finance statute may not do, rather than positively prescribing any features which it must include. Judge Miles Lord put it most forcefully in his decision in *Van Dusartz v. Hatfield*:*

> *. . . It is the singular virture of the Serrano principle that the state remains free to pursue all imaginable interests except that of distributing education according to wealth. . . . Neither this case nor Serrano [nor any subsequent ruling] requires absolute uniformity of school expenditures. On the contrary, the fiscal neutrality principle not only removes discrimination by wealth, but also allows free play to local effort and choice, and openly permits the state to adopt one of many optional school funding systems which do not violate the equal protection clause.*

That leaves legislators and governors with the responsibility for policy in school finance, and with very broad latitude for thinking through what the policy should be. More particularly, it means that elected State officials have the initiative (and the burden) for practical definition of what is equitable and what is adequate. These two problems, as we pointed out earlier, are the basic ingredients of our Nation's school finance crisis. Now that the courts have forced legislatures to begin looking at these questions, we can soon expect legislative responses to them. ■

---

* e.g., *Dade County Classroom Teachers Association v. State Board of Education of Florida*, No. 71-1687, (Cir. Ct. of Leon County, Fla.) see also the Detroit School Board suit.

** *Cf.* Silard, J., White, S., "Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause," *Wisconsin Law Review*, 1:1970, p. 26.

*** *Cf.* The President's Commission on School Finance, *Schools People & Money: The Need for Educational Reform*, p. 35, U.S.G.P.O. 1972, #0-456-808.

* *Van Dusartz v. Hatfield*, 334 F. Supp. 870, 876· U.S. District Ct. (D. Minn., Oct. 12, 1971).

EQUITY IN FINANCING NEW YORK CITY'S SCHOOLS
The Impact of Local, State, and Federal Policy

by Joel S. Berke, Robert J. Goettel, and Ralph Andrew

The authors of this article believe that systems of educational finance should be judged on the basis of the degree to which they encourage or discourage equality of educational opportunity. For us, perhaps the primary goal of public education in America has been its role as a vehicle for social mobility. The goal has been to equip children of moderate means and status with the skills needed to compete on equal terms in the search for a good life with children of higher station and greater wealth.

While, as a personal matter, education may well be seen as an end in itself, as a public service, education is a means to a number of civic and economic ends, chief among them being equal opportunity in the competition of life. Equal educational opportunity should be intended to serve that larger goal, and, as our society has come to place increasing emphasis on credentials, degrees, and technical training, the role of education has become even more important in determining life chances.

Meaningful equal educational opportunity, therefore, must equip children from any background to compete on equal terms with children from any other level of society.

The implications for public policy that spring from this understanding of the goal of equal educational opportunity are clear: more services must be focused on those with disadvantages in their ability to succeed in school so that when their basic education is completed, children from differing racial and economic groups, as nearly as possible, stand on an equal footing in terms of educational attainment with children who began school with greater advantages. Individual differences in achievement there must always be, but equal educational opportunity requires that educational resources should be distributed to offset societal and inherited impediments to success in life. In short, equal educational opportunity means that services, and thus expenditures, should be related to educational need as defined above.

None of the authors of this article would minimize the practical difficulties in implementing this view of equal educational opportunity. We are well aware of the questionable results of previous large-scale efforts at compensatory education, like Title I of ESEA and some of the large local programs like New York's More Effective Schools. We know that educating the children of the poor and of racial minorities is one of the things American schools do worst. We are not unaware either of the evidence of the apparent impotence of schooling in comparison with out-of-school influences on children. And we have had the opportunity in previous research of developing techniques for identifying educational need, both on the basis of admittedly imperfect achievement tests and on the basis of social and economic indexes of need. Yet with all the problems associated with it, allocating resources in proportion to educational need seems to us an indispensable and an effective prerequisite of a meaningful public policy designed to further equality of educational opportunity.

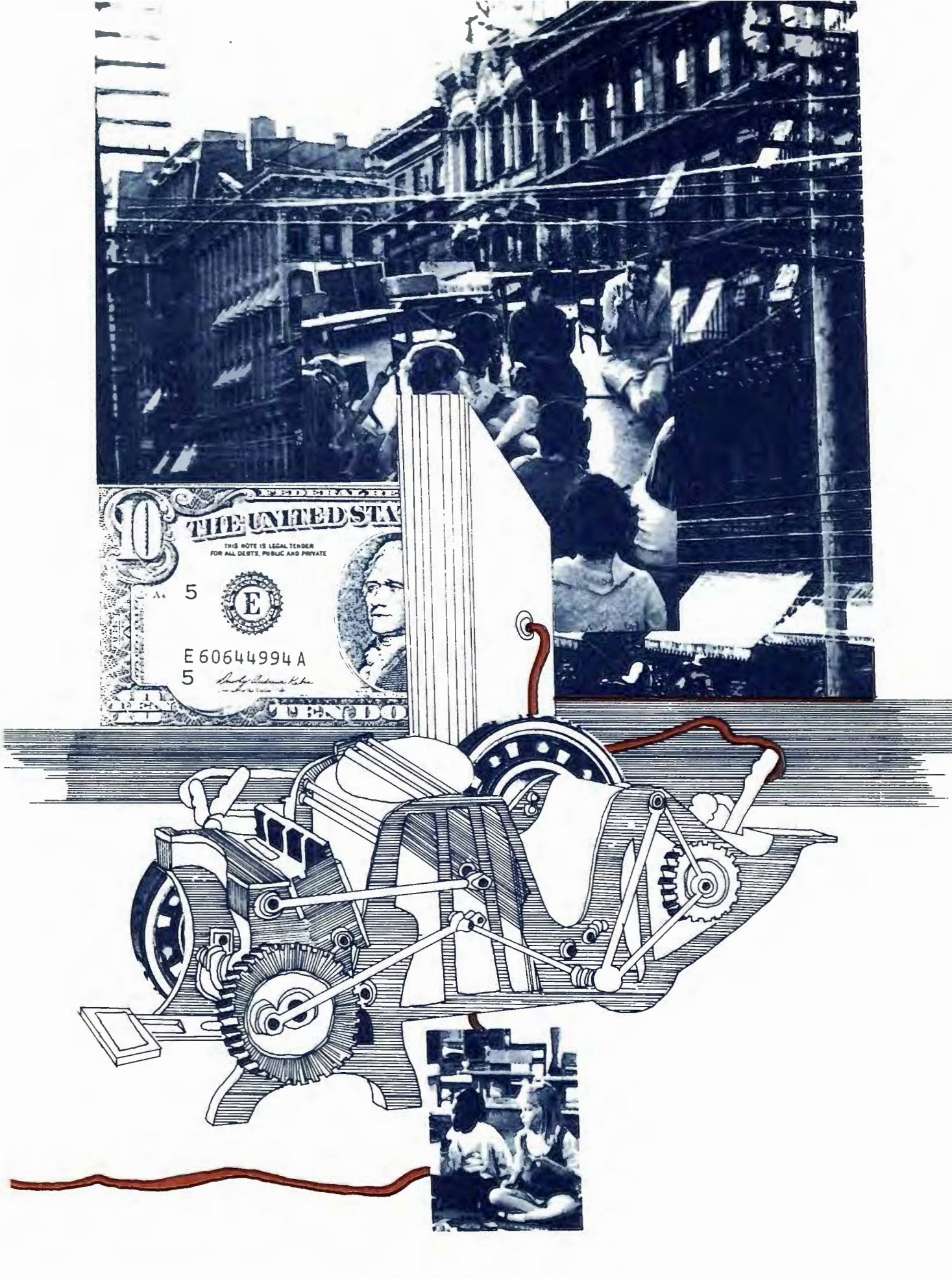
As the focus of this paper shifts to the workings of local, State, and Federal policy as they affect equity in the schools of New York City, we shall return to this attitude toward the distribution of aid and propose a specific approach—the use of statewide achievement tests—for the distribution of State funds in proportion to educational need.

EQUITY IN FINANCING THE SCHOOLS OF NEW YORK CITY

New York State has long had a concern with equity in financing public education. Many of the reforms of the previous half-century were first developed or adopted here—for example, the proposals of Cubberly in 1905, of Strayer and Haig in the 1920's, and of Paul Mort from the 1920's through the early 1960's. As a result, New York's general aid formula,* which distributes more than 70 percent of the State's aid to

This condensation of "Equity in Financing New York City's Schools: The Impact of Local, State, and Federal Policy," is reprinted from *Education and Urban Society*, Vol. 4, No. 3 (May 1972), pp. 261 291, by permission of Sage Publications, Inc.

* The balance of State aid is distributed as categorical aid for transportation, incentive reorganization, size correction, construction purposes, and special urban programs, among others.


THE UNITED STA
THIS NOTE IS LEGAL TENDER
FOR ALL DEBTS, PUBLIC AND PRIVATE
E 60644994 A

education, has strong equalizing tendencies: the wealthier a district is in terms of property value per pupil, the less aid it receives. In fact, a recent study of the National Education Finance Project ranked New York 14th out of the 50 States in the extent to which its aid funds are intended to equalize tax burdens among districts. Table 4 illustrates some key features of that aid system.*

But if New York State has such an effective equalization system in comparison to other States, why is it consistently criticized from so many quarters? Specifically, why do problems of inequalities in tax burdens and per pupil expenditures continue to plague local districts?

Although State aid is distributed in inverse relationship to fiscal capacity, wealthier districts still spend more to educate each pupil. With the exception of the least wealthy, the districts exerting increasingly greater efforts—i.e., that tax themselves at higher rates—have lower expenditures per pupil. Furthermore, an analysis of the additional taxes per $1,000 of full valuation that would have to be raised locally in order to increase expenditures to the level of the wealthiest districts shows that the poorest districts would almost have to increase their local property tax rate nearly three times. In short, as local property taxes for education increase, the rich get richer and the poor get comparatively poorer.

These inequities exist because of two structural shortcomings in New York's general State aid formula. First, there is a ceiling on expenditures beyond which the State will not equalize.* That ceiling is typically about $200 lower than the average per pupil expenditure. The vast majority of districts in the State spend more than the ceiling, and these additional expenditures must be raised from the local property tax. Virtually every school district in the metropolitan New York City area spends above the ceiling, some spending more than twice the ceiling. If there were no ceiling, aid would be distributed to local districts up to their expenditure level at the same ratio as it is distributed below the ceiling. The tax rate generated by just such a remedy is also reflected in Table 4.

The result is that the lower four groups of districts would have essentially the same school tax rate. The more important factor to consider, however, is that any increase in the aid ceiling, and certainly the elimination of the ceiling altogether to create a true percentage-equalizing formula, means that the State's proportion of total expenditures for education increases substantially. While practically speaking this means a dramatic shift from the local property tax to income and other statewide taxes, it also means that high-expenditure districts, be they rich or poor, benefit more than low-expenditure districts. In any event, the legislature has consistently resisted substantial increases in the aid ceiling as a means of reducing the burden on local taxpayers.

The other shortcoming or limitation to the basic equalizing tendency of the New York State formula is the flat grant provision. Each school district in the State is guaranteed a minimum amount of aid per pupil, no matter how wealthy the district. In 1967–1968. there were almost 100 districts receiving flat grant money. Without the flat grant, some would have received no general aid; due to their exceptional wealth, a very few should actually owe money to the State from the local property tax. Again looking at Table 4, the flat grant provision permits the wealthiest districts to have a tax rate almost $5 per thousand less than all other districts under a true percentage-equalizing formula.

Here we have the classic situation of disparities

TABLE 4
Selected Data for 119 New York State School Districts Rank Ordered in Groups by District Wealth, 1967–68

	Full Value Taxable Property Per WADA				
	$48,000 and Above (n=9)	$45,938-36,340 (n=12)	$35,396-24,150 (n=38)	$23,610-12,190 (n=56)	$11,741 and Below (n=5)
Average full value taxable property per WADA	$58,918	$41,103	$28,291	$17,971	$9,927
School tax rate	16.23	18.43	18.71	18.24	14.96
Total tax rate	33.91	38.34	34.73	36.60	43.21
Additional taxes to raise to top expenditures per WADA	—	3.04 (1.82)[a]	8.65 (4.14)[a]	17.54 (5.26)[a]	29.22 (4.96)[a]
Total aid	274.0	279.5	410.6	534.0	633.59
Total expenditures	1,305	1,184	1,069	995	1,014
Percentage low achievement	19.5	20.5	17.7	18.1	18.4
Percentage AFDC	6.6	8.7	4.7	4.3	3.0

[a] Additional taxes required to raise expenditure level of wealthiest group of districts assuming no aid ceiling.

* Tables 1 thru 3 were deleted in the condensation of this article.

* In 1967–1968, the year for which our data apply, the ceiling was $660 per pupil. Currently, it is $860.

among local school districts in terms of property tax burdens and expenditures for educational services. If the remedy to be applied to this condition (following *Serrano* and *Van Dusartz*) is a leveling up by some type of percentage- or power-equalizing mechanism, poor districts could have their condition dramatically improved as long as the State is prepared to foot the bill. But who are the "poor" districts in this conceptualization of wealth and "fiscal need"? Are they those districts with the pervasive educational problems? Specifically, how would a revision in New York State's school finance system that focuses exclusively on the wealth of local districts independent of the educational needs or the fiscal needs generated by other municipal services affect the cities, particularly New York City?

NEW YORK CITY: A SPECIAL CASE

Put very bluntly, the problem facing the cities, and particularly New York City, is that they appear to be exceedingly wealthy on a property value per pupil measure and thus appear to have the capacity to support whatever educational services may be required to meet educational needs. For example, New York City is near the top of our second most wealthy group of districts. It is joined in that group by Rochester and Syracuse. Albany, due to its low enrollment ratio—half the school-age children attend nonpublic schools—is in the wealthiest group. Buffalo and Binghamton are in the middle group. The poorest districts in our sample are located in rural areas of the State (see Table 5).

A pattern can be seen by comparing New York City to the other five large cities in the State. New York's wealth is exceeded only by Albany's, and, on all other variables, the State's largest city is number one.

Indeed, one of the most impressive observations about New York City in educational finance is the extent to which it dominates the State by virtue of having approximately 30 percent of the State's enrollment. As we shall see later in this paper, modifications in the State aid formula that tend to benefit New York mean that the city gains aid at the expense of almost every other district. It is certainly easy to see why when the only criterion by which change is judged is "who wins and who loses," rather than fundamental notions of fairness or concepts of need, New York City will be hard-pressed to obtain additional funds.

Adding to this apparently rosy picture of New York City in comparison to the rest of the metropolitan area is the fact that New York receives the lion's share of the State's ESEA Title I and urban aid funds, a State compensatory aid program. On the other hand, from other Federal programs, New York receives far less than its proportion of pupils would seem to entitle it. Perhaps more important, New York City has 74 percent of the State's children on AFDC and 65 percent of those scoring below minimum competence levels on

TABLE 5
Selected Data for 119 New York State School Districts City and Noncity Within Cohort Wealth Groups 1967–68

	Full Taxable Property Value Per WADA (city-noncity)									
	$48,000 and Above		$47,999-36,000		$35,999-24,000		$23,999-12,000		$11,999 and Below	
	City (n=1)	Noncity (n=8)	City (n=4)	Noncity (n=8)	City (n=9)	Noncity (n=28)	City (n=8)	Noncity (n=48)	City (n=0)	Noncity (n=5)
School property tax rate	$11.84	$16.78	$16.23	$19.53	$16.43	$20.12	$15.79	$18.64	—	$14.96
School and municipal total tax rate [a]	37.15	34.18	45.57	34.73	37.80	35.02	40.93	35.88	—	39.37
Total state education aid per WADA	351	315	356	383	463	493	567	630	—	739
Approved operating expenditures per WADA	785	1,067	859	901	795	887	768	780	—	712
Local, state and federal expenditures per WADA	1,187	1,321	1,146	1,203	1,011	1,127	964	1,000	—	1,014
Percentage low achieving pupils [b]	34.0	17.8	31.5	15.0	27.8	15.2	22.0	17.5	—	18.4
Percentage of pupils from families receiving AFDC payments	15.0	5.6	17.3	4.5	12.7	2.4	8.3	3.7	—	3.0

[a] Includes all local taxes and assessments.
[b] Percent below twenty-fourth percentile on statewide reading test.


SCHOOL BUS

statewide achievement tests.

In sum, as long as the needs of New York City—indeed, the needs of all large cities and even some smaller metropolitan centers—are viewed only in education finance terms the apparent wealth of urban areas will create an unreal and incomplete picture. The fiscal condition in which education occurs must include (1) differential educational needs among districts and (2) the total condition of municipal finance. Put more directly, cities, and particularly New York City, have significantly larger proportions of students who require more costly educational services, and, they have more extensive municipal services to provide for their own residents as well as nonresidents which place demands on local taxpayers.

EDUCATIONAL NEED: SOME ALTERNATIVES

One sure way to generate an extended and probably heated debate among any group of citizens interested in school finance is to suggest that State aid should be distributed on the basis of a criterion that includes some measure of "educational need." The debate is typically not directed at the theory, but rather at the selection of a need measure.

The most critical variable in a State aid formula is the number of students to be educated, and this is where different concepts of need first come into play. New York State does not simply count the number of pupils enrolled in a school district. Rather, a measure called weighted average daily attendance (WADA) is used. The average daily attendance portion of the measure was incorporated at a time when it was widely believed that school districts would do a more thorough job of getting youngsters to school if their attendance at school meant additional State aid for the district. The weighting portion was designed to reflect the additional costs associated with educating secondary school students. Hence, pupils in grades seven to 12 are counted one-quarter more than pupils in grades one to six.

From the viewpoint of the cities, it is worth noting that the WADA measure for counting pupils was instituted in New York State as a means of meeting the differential educational needs of urban areas. Early in this century, city school districts were the models held up as examples to all educators. Secondary schools were commonly found in urban centers before suburbs or rural areas, hence the weighting factor. In addition, city youngsters attended school more frequently and for longer periods in the school year, hence the average daily attendance component.

Today the WADA measure not only fails to meet the special educational needs of cities, it actually discriminates against them. Cities typically have enrollments greater than WADA while suburbs and rural districts have enrollments less than WADA. In short, the particular measure of educational need employed to count pupils for State aid purposes has a pronounced effect on the aid available to districts.

Since New York City has by far the highest ratio of enrollment to WADA, the choice of measure is particularly critical. The shift from WADA to enrollment would mean a 13 percent increase in aid to the city.

THE EDUCATIONALLY DISADVANTAGED: MEASURING NEED

When we turn to the incidence of pupils in the regular school program who require more intensive educational services the reduced effective fiscal capacity of cities becomes most pronounced—and the concept, as well as the measure of need to be employed, becomes most hotly debated. There are two fundamental approaches to measuring need: (1) the poverty approach, which focuses on cultural or economic disadvantage, and (2) the achievement test measure, which emphasizes educational disadvantage.* The achievement test measure we shall discuss is comprised of the percentage of pupils scoring two or more years below grade level on statewide reading and math batteries administered to pupils in grades three, six, and nine.**

Whichever needs measure is used, it is clear that cities in general, and New York City in particular, have the highest percentages of disadvantaged pupils. Table 5 has cities separated from noncity school districts on a number of critical variables. When an achievement test measure of need is used, the cities within each wealth group have approximately twice as many disadvantaged pupils as noncity districts. When AFDC is use, cities have three to six times the proportion of pupils needing more intensive services.

Using 1967–1968 data and the basic State aid system still in effect, the effects of a number of different

* In New York State the number of children from families receiving aid to families with dependent children (AFDC) payments is the poverty measure employed to distribute 90 percent of ESEA Title I funds to local school districts.

** The achievement measure is already used to identify districts eligible for Urban Aid.

means of counting pupils were computer-simulated for the New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education (the Fleischmann Commission). For those simulations, we weighted disadvantaged pupils double the value of other pupils. Thus, the total number of pupils in the State counted for aid purposes was increased, as well as the totals in each district. Where the number of disadvantaged was large, the total pupil count for a district increased dramatically. The result is that the effective fiscal capacity of districts such as New York City is reduced in comparison with the State average.

How would the inclusion of an achievement needs measure affect New York City? Given the existing system of State aid to education using data for the 1967–1968 school year with the $660 aid ceiling that was in effect that year, operating expense aid would increase by 25 percent using WADA as the measure of counting pupils. If the flat grant provision were removed and the enrollment measure had been used, New York City's aid would have increased by 49 percent when achievement tests were used rather than the pure enrollment measure. The increase over aid actually received in 1967–1968 would be $88. Such an increase in aid would put New York City's expenditures at $1,207 per WADA, a level that exceeds those of Suffolk, Nassau, and Rockland Counties.

MUNICIPAL OVERBURDEN

We have already looked at the first two corners of the triangle that represents the total fiscal climate in which education exists: educational need and fiscal need. The third corner is the degree to which a school district's tax base must support noneducational municipal services. Cities typically devote approximately 35 percent of total expenditures to education while suburban and rural districts spend close to 60 percent.

One way to view the overburden faced by urban areas and other population centers is to examine the taxes paid by residents of school districts for municipal services other than education. Since school districts rarely have the same jurisdictional boundaries as towns and villages, this is not information that is readily available. We mapped the 119 school districts in our sample and undertook the arduous task of assigning all local taxes including property, sales, special district, and assessments to each school district. The results appear in Table 5, where the total tax rates are presented with cities separated from noncity areas. Though city property taxes for education are consistently lower than other districts, municipal taxes are consistently higher and, in turn, total taxes are higher. With the exception of the least wealthy group of districts, the cities have total full-value tax rates from 8 percent to 33 percent higher than noncity districts of comparable apparent fiscal capacity.

New York City has by far the highest total tax rate in New York State at $58.82 per $1,000 full valuation (1967–1968). The State average was $48.34, but since New York City's was so extremely high, only six other of our 119 districts were higher than that rate. Indeed, New York City was 21 percent above the State average. Therefore, when education aid to New York is adjusted to compensate for municipal overburden represented by total tax rate, aid is increased by that 21 percent difference.

A second way to compensate for the additional services that cities are required to provide is to distribute education aid on the same basis as all other State aids: by per capita (population) rather than per pupil. The justification for this measure is, of course, that education, like other public service, is of benefit to all members of the community, not just those who are currently in the schools. This approach would permit cities, particularly New York and Albany, to take advantage of their lower enrollment ratios. Since a larger number of persons are divided into the full-value taxable property, the relationship of the city to the State is diminished.

CONCLUSION

When the study focused on the case of New York City, it examined the operation of the current aid system, noting the problems caused by its inappropriate measures of fiscal capacity, effort, and need. Two approaches were proposed to remedy those problems, first by better measures of educational need, and second by correcting for heavier costs New York City must bear for noneducational public services. Both approaches—the recognition of educational need and the correction for municipal overburden—could substantially redress the current inequities in the State's system of educational finance as it affects New York City. In addition, it appeared that particularly in the use of the test measure of educational need, a basis for a political coalition cutting across urban-suburban-rural differences might be found to support new approaches to school finance that might provide greater equality of educational opportunity, not only for New York City but for all areas of the State. ■

ASSIMILATE—OR STARVE!

by Joe Muskrat

Assimilate or starve! This has been the choice offered the American Indian by the dominant society, a choice based on the fundamental misunderstanding of Indians, their needs, and aspirations. It is why today he is the poorest of the poor—poorer than the American black, poorer than the Appalachian white. Worse than the Indian's physical poverty is his psychological poverty which is manifest by an astounding rate of suicide, fratricide, patricide, incest, child abandonment, and alcoholism.

The American Indian population is small, representing only one-fourth of 1 percent of the total population. However, contrary to myth, Indians are not vanishing. Actually they represent the fastest growing minority group in the United States.

When it has not been genocidal, the traditional approach to the American Indian has been to seek his assimilation into the larger society, an attitude based on feelings of cultural superiority. The resiliency of the Indian culture and the depth of its differences from the white civilization have not been considered. Unlike the European, the Indian is a tribal person who has neither experienced life in a peasant-social system nor moved into a post-peasant system.

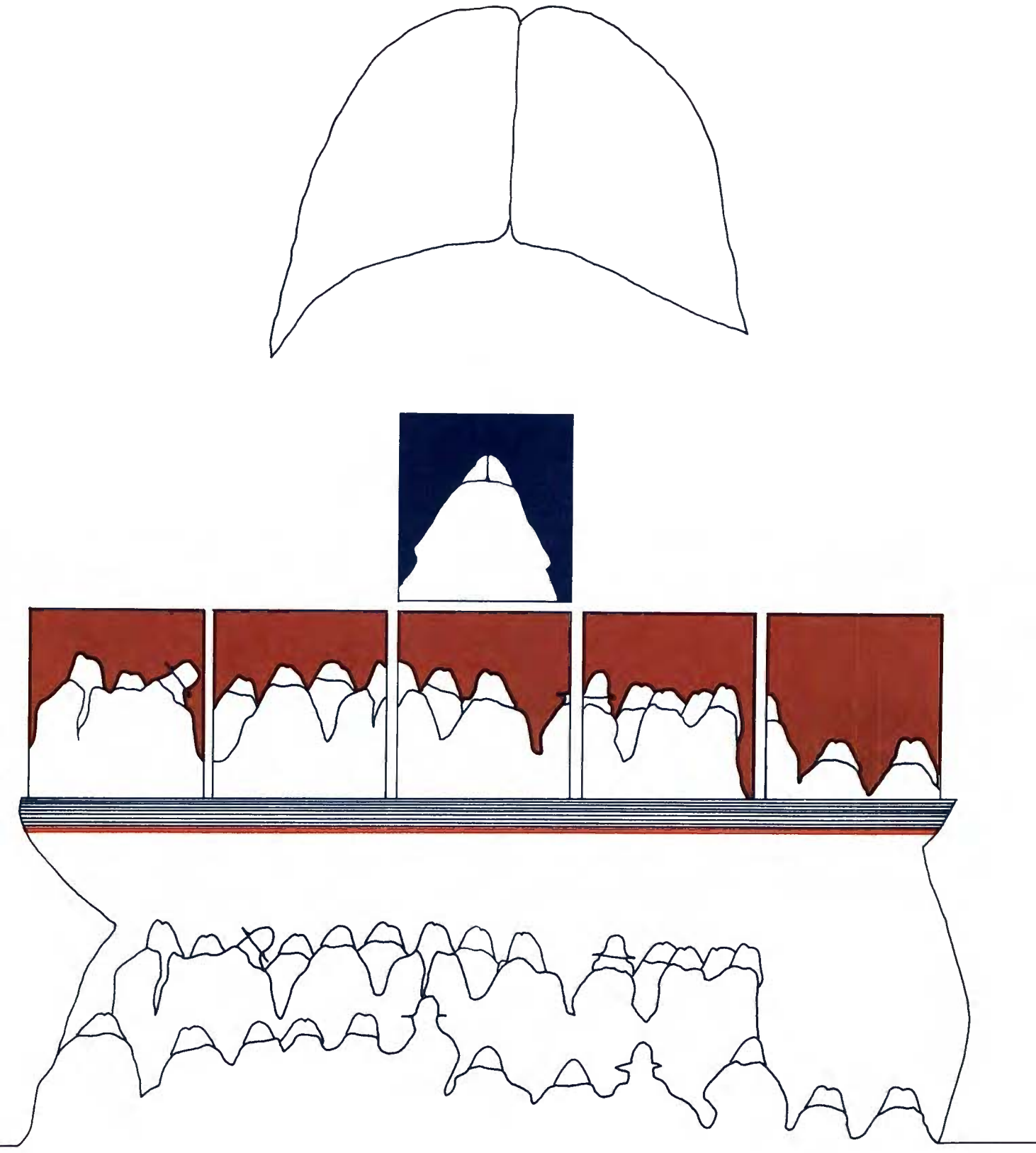
American immigrants, who came from the same cultural roots, were much more susceptible to the evolutionary forces of the peasant-urban continuum and had little difficulty in becoming thoroughly urban. While they did not assimilate, American immigrants have become integrated into the new society, have organized on an ethnic basis, and have used their economic and political powers to achieve a workable relationship with other groups.

Indians differ from whites on their views of life in general. They are a different kind of man, not individualistic nor competitive in fulfilling his role in life, but a tribal person conditioned by his culture to play a cooperative role. He seeks, at almost all cost, to conform to the complex interpersonal relationships and social mores by which his group is maintained. His attitude and behavior toward individuals and institutions outside his tribe are generally determined by concern for preserving the cohesion, identity, and autonomy of the Indian community.,

This unyielding determination to maintain the group conditions the Indian's relationship and attitude toward the institutions of America. Among white citizens the State is supported because of its ability to protect individual rights and assets while keeping the door open to social mobility. To an Indian, white institutions are worthy of acceptance, contact, and cooperation only to the extent that they

---

Mr. Muskrat is Director of the Mountain States Regional Office of the U.S. Commission on Civil Rights.



protect group rights and assets. When an element or institution threatens the social relationship between the Indian and his group, he withdraws. The degree of his cultural obstinancy is astoundingly high. This, to an Indian, is the right way to live.

The tribe, group, or band to which the Indian belongs lacks traditional formal organization and recognized leadership, yet it is still a viable social organism, responsive to social and economic pressure, and subject to change. In dealing with outsiders, Indians spend much time assuring the fair representation of their component groups both in decisionmaking and in obtaining and distributing benefits.

In dealing with other tribes as in the past, or with the Government or private interests as in the present, the group is designed to convince, communicate, and seek autonomous and yet interdependent relationships rather than to assimilate or to act as a pressure group or power bloc. This type of group-to-group political communication permits the Indian to keep his precarious identity. It proves to be, however, a distinct handicap in his ability to participate effectively with the white society in which a power bloc seems much more effective.

The attempt to establish a symbiotic relationship is frustrating to Indian and white alike. The Indian cannot understand the reasons for white behavior anymore than the white can understand the Indian's. Both must coexist, but the Indian is at a distinct disadvantage because coexistence means using white institutions and the white man's rules.

Tribal peoples assimilate into an urban society only under very unusual conditions and the stronger the pressures to do so, the greater the degree of withdrawal from the dominant society. The pressure to assimilate acts as a threat to the Indian's identity as an Indian. Today's American Indian is a living example of the failure of these pressures.

While he has not assimilated, he has not developed either. The only alternative has been existence as a living anachronism in a deplorable poverty. The Indian lives in the worst housing, has the poorest health, and is unable to give his children anything but the most meager education. He lives on generally poor land, and this economic base is decreasing as a result of governmental policies and continuous victimization by private speculators.

From the Indians' point of view the problem is that the economic benefits of society are offered only in exchange for his assimilation. It is an all or nothing proposition. Development on Indian terms using the resources of the Federal Government is prohibited because the Government refuses to relinguish its control to the Indians. Every time the Indian discovers a resource worth developing, it is taken away from him. He is, once again, faced with the choice—assimilate or starve. The subtlety of this choice can be illustrated by the policy of two States—Washington and Wisconsin—and the judgments of the United States Supreme Court in two cases involving those policies.

The Washington Case

The genesis of the Washington case is the Treaty of Medicine Creek which dates back to December 26, 1854. For the signatory tribes this treaty provides that:

> *The right of taking fish at all usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the territory.*

The tribes of the northwest coast were primarily salmon fishermen. In October of 1805 Lewis and Clark found the banks of the Columbia River almost continuously lined with Indian fish racks and bands of salmon fishermen. Only by preserving their fisheries and allowing them to choose their favorite valleys as a reservation was Territorial Governor Issac I. Stevens able to obtain the State of Washington from the Indians.

The Indians' "usual and accustomed grounds and stations" for fishing are called fishing stations. They are at the mouths of streams where the salmon begin to go upstream en masse, where the stream forms an eddy and the salmon stop to rest, a narrow spot where one can stretch a net across the river, spear fish, or use a dip net. There are hundreds of these fishing stations throughout the State. When the Indians were removed to their inland reservations, it was these very important fishing stations off the reservations that they sought to protect.

Salmon to Indian fishermen was not simply a commercial item, but a gift of God. The river was a great table where all of God's children could sit and eat. The balance of nature to an Indian was a delicate one. It was an entire way of life in which some things were allowed, others were not. For example, the Quinault tribe held a great salmon feast with the coming of the first fish of the year. There was much celebration, some

happy, some serious, for the occasion had a ritual significance crucial to the continuity of tribal life and ethos.

Salmon also represented the economic stability of the Indians. They were caught and preserved, consumed, and traded throughout the territory and far inland to the East. There were plenty of salmon for everyone. Even with the coming of the white man the salmon remained plentiful. The fishing stations were reserved to the tribes and, as far as fishing was concerned, everyone was relatively happy. It was the advent of salmon canning and the affluent society that caused problems. Salmon canning made salmon valuable to the white man as a commercial item and people had more leisure time to fish for fun. Thus were born the commercial and sports fishermen.

Commercial fishermen, assisted by modern technology, ranged from the Bering Straits to California. Russia, Japan, and Canada joined in, and everyone began catching salmon in increasing numbers. The canneries were working overtime. Salmon became big business.

Sportsmen began to increase as they, too, benefited from modern technology. Equipped with the latest rods, reels, clothing, boats, motors, and cars to take them to the fish, sportsmen stayed in hotels, motels, and boarding houses during the fishing season. It was estimated that they spent between $30 to $40 for transportation, equipment, supplies, and lodging for every salmon they managed to catch. Salmon indeed meant big business.

The canneries were buying all of the salmon they could get their hands on. Upstream where the Indians were waiting, there were fewer salmon than had been in the past years. The Indian's commercial fishing dated back to pre-history as did their method of catching them. Therefore, using the white man's modern nets, why not sell the fish to the white man? Nothing had really changed, but the method of catching fish was better and the market considerably improved. Salmon became big business for Indians, too.

The white man had all but exterminated the salmon in California (where some years earlier he had all but exterminated the Indian), and many streams along the northwest coast had been severely decimated. Strict regulation was required to save the salmon.

Commercial fishermen on the high seas were regulated by treaties between the various countries involved and were governed by Washington State's laws when fishing on the high seas and land at a port in that State. Those fishing within its territorial waters and Puget Sound, including sports fishermen, are regulated by the State of Washington as to the times, manner, and places where they may fish. The Indians who were waiting upstream as they had for ages, but with new equipment, suddenly found themselves in the wrong place, at the wrong time, catching the wrong fish.

The salmon controversy is nothing new to the State of Washington. The first case involving Indian off-reservation fishing was decided by a Washington Territorial Court just 33 years after the signing of the Treaty of Medicine Creek. The courts of the State of Washington over the years had held the Indians fishing off the reservation were subject to the same regulations as anyone else. As more demands were made for the salmon, the regulations grew more restrictive.

In 1940 a case arose concerning the question of whether the Indians fishing off the reservation had to buy fishing licenses. The Supreme Court of the State of Washington reasoned that since Indians were subject to the same regulations as anyone else, they had to buy fishing licenses. The U.S. Supreme Court reversed that decision, ruling that the Indians' right to fish was a treaty right and the State could not charge the Indians a fee for exercising that right. The Court then said that the Indians were subject to regulations as are "necessary" for the conservation of the fish. This latter ruling opened a Pandora's box.

The Federal courts in Washington adopted the theory that in order to be "necessary" regulations had to be "indispensable." In other words, only after the State had done all in its power to conserve the salmon by other means could a conservation regulation be imposed on the Indians as "necessary."

In the first case which came before it the Washington Supreme Court dismissed charges against a group of Indians because the State had not proven that the regulations under which the Indians were charged were "necessary." The U.S. Supreme Court split 4 to 4 on the appeal. Since the Supreme Court could not make up its mind, the decision of the trial court was automatically affirmed.

In 1963, the Washington Supreme Court again considered the question of off-reservation Indian fishing. In that case, in a 7 to 1 decision, the court held that the Indians were subject to conservation regulations which were "rea-

sonable and necessary."

The regulation of Indian off-reservation fishing by the State was not met with enthusiasm by the Indians. While the laws and regulations applied equally to young and old, rich and poor, black, white, and yellow, they did not have a treaty as the red men did. In addition to the principle involved, there was this very pragmatic economic consideration. If the regulations applied to Indians, they would prohibit the Indians from catching fish at their "usual and accustomed places." The commercial and sports fishermen were catching so many of the salmon before they got to the Indians, those that remained were needed for spawning purposes. Thus, the Indians fishing with highly efficient modern gear were in a position to decimate the salmon runs severely. The Indians claimed that if the State wanted to conserve the salmon, it should begin with the sports and commercial fishermen, and leave the Indians alone.

Since they continued fishing off the reservation in violation of the State regulations, the Indians were arrested. Although the Indians read their treaty to the game rangers, they were arrested anyway. The Indians kept fishing, the game rangers kept arresting. Other people who heard of the Indians' plight issued public statements sympathetic to their goals—enforcement of their treaty rights. But the Indians adopted a passive resistance technique and modified it to suit their purpose—they held fish-ins.

Dick Gregory, comedian and civil rights activist, attended a fish-in and symbolically helped an Indian fisherman lift a salmon into a boat. He was promptly arrested, tried, and given the maximum penalty under a statute enacted to prevent poaching. The Governor of the State of Washington refused to commute the sentence by even one day.

The Puyallup Tribe is one of the smallest and least organized in the State of Washington. Its reservation consists of 20 acres (at one time it had included most of the city of Tacoma) and is used primarily as a cemetery. The Puyallups were engaged in extensive new fishing downstream from a State fish hatchery. The State of Washington contended that the hatchery fish runs were being depleted.

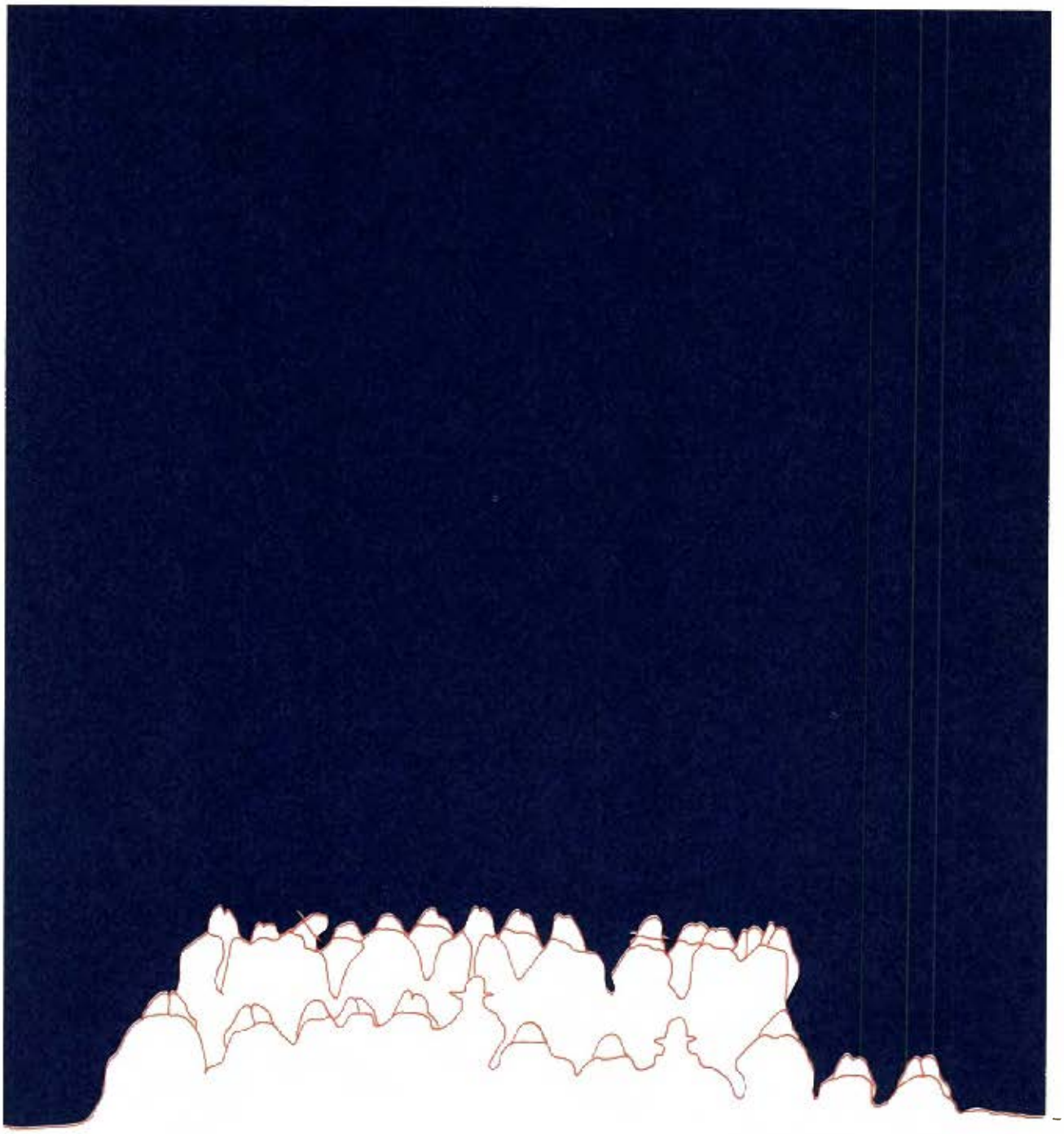
The State sued the Puyallups. Fishing by the Puyallups, who were weak and unorganized, was extensive and engaged in primarily by one family. The same was generally true of a second tribe, the Nisquallys, which was also sued. The Nisqually Tribe, at a height of indignation difficult for whites to understand, refused to answer the ludicrous charge that they had no fishing rights. However, 12 members of the tribe who had been arrested for fishing in violation of State regulations did appear and answered for themselves.

The issue, as the State saw it, was obvious. Indians were seeking special privileges, privileges over and above those held by everyone else. It was invidious discrimination. In addition, there was also a very practical consideration: one of sovereignty and control—for whoever controlled the streams, controlled the salmon, and salmon are big business.

The Indians, on the other hand, viewed all of this with great confusion and frustration. Hadn't their ancestors fished commercially in these streams since time began, using the most efficient means at their disposal? Hadn't the white man taken their lands through a treaty that was signed as a result of coercion, deceit, misrepresentation, bribery, and related chicanary? Hadn't they reserved unto themselves one benefit, minute in relation to what they had lost, the right to fish at their usual and accustomed places?

The State of Washington claimed that the issue was one of conservation—charging that the Indians were fishing the streams, catching salmon as they swam upstream to spawn, and thus catching the breeding stock and killing off all of the salmon. The Indians responded that they had been fishing the streams for thousands of years and in all of that time had never been able to destroy the salmon; it was the white man who was destroying the salmon by polluting the streams with his paper mills and manufacturing plants which in turn poisoned the salmon; it was the white man who was building dams the salmon could not cross. They claimed that the white man was creating lakes in which the salmon would not spawn, that the fish caught by the white commercial and sports fishermen were just as much breeding stock as those caught by the Indians, and that, above all, the white man was catching all of the fish before they got to the Indians. The issues were joined in fact, but not in law, as we shall soon see.

The State asked the court for an order prohibiting Indians from fishing in violation of State regulations. The State alleged what to it was obvious: there are no Indian tribes any more. Oh, there was a group called the "Puyallup Tribe," but it was just a social



club like the Italian Americans or something like that. Besides, Indians looked, dressed, talked, and acted like anyone else and, therefore, you had no way of telling who was an Indian and who was not. Before the coming of the whites, Indians had no title or rights to land. They were like animals roaming about the area and had no more rights than the animals. They were a conquered people who had nothing to give in consideration for retention of the right to fish. Since they had nothing to give in exchange there was no necessity to respect those promises even though they were called "treaties." The police power of the State authorizes it to conserve natural resources and from a standpoint of conservation the State of Washington had to control fishing in the streams.

The court then issued a blanket injunction permanently enjoining any and all Indian off-reservation fishing which was in violation of State regulations. On appeal, the Supreme Court of the State of Washington took a somewhat different view of the controversy. Treaties of the United States. said the court, cannot be repudiated by the State of Washington or its courts. The United States could not be said to have been just "playing treaty" with the Indians. It was the United States and the whites of Washington territory who asked for and got the treaty. not the Indians.

The court further found that it was not the province of the courts to determine the existence or nonexistence of Indian tribes. This was a matter within the exclusive jurisdiction of the Federal Government and if it continued to recognize the tribe, so must the State of Washington. It also found that, Indians did have special fishing rights under the treaty, but those rights were not absolute. The State had clearly established that the continuation of Indian fishing using modern methods would result in serious decimation of salmon runs.

Since the trial court had issued the blanket injunction its judgment was too broad and would have to be modified. The Indians' rights were subject only to conservation measures "reasonable and necessary to preserve the fishery." The injunction would thus have to be tailored to the particular situation, enjoining a specific act or acts on the basis that they violated a "reasonable and necessary" conservation measure. The case was then sent back to the lower court.

The Indians still had their treaty, or at least the remnants of it, and the State of Washington had some authority to regulate Indian fishing, at least in a manner "reasonable and necessary to conserve the fishery," even if no one was sure what that meant. But to the Indians, the remnant of a treaty was not enough. They appealed to the U.S. Supreme Court as did the State. That Court, speaking through Mr. Justice Douglas, handed down its decision on May 27, 1968.

The Court assumed that originally the Indians had fished with nets and that there were commercial aspects to their fishing. While it stated that the Treaty of Medicine Creek could not be construed as giving the Indians no more rights than they would have had without the treaty, the Court found that the Indians' right was "in common with citizens of the territory"; and since they could be regulated, so could the Indians. The times and manner of Indian fishing were not specified in the treaty. It was into this unspecified area that the State was allowed to enter.

The Court held that the State could regulate the manner of fishing, the size of the take, restrict commercial fishing, and the like "provided the regulation meets appropriate standards and does not discriminate against the Indians." Whether or not the regulations in question met the "appropriate standards" (were "reasonable and necessary") was not before the Court since the case had been remanded to the trial court by the Supreme Court of Washington, and the trial court had not, as yet, answered that question. Thus, there really wasn't anything for the U.S. Supreme Court to decide.

The Court did, however, in a pregnant statement, say that "any ultimate findings on the conservation issue must also cover the issue of equal protection implicit in the phrase 'in common with.'" With that, the Court affirmed the decision of the State supreme court, and, in its opinion, settled once and for all the question of Indian fishing under the Treaty of Medicine Creek.

The underlying problem in the fishing case was not conservation. However, the conservation argument of the State so overwhelmed the courts that they never dealt with the real issue—the allocation of a resource.

Any type of regulation would be "reasonable and necessary to preserve the fisheries" if the State of Washington allows the commercial and sports fishermen to catch all of the fish before they reach the Indians. leaving only enough to spawn. It is possible that this type of regulation is what Mr. Jus-

tice Douglas sought to prevent when he said that the regulation, to be applicable to the Indians, must "not discriminate against the Indians" and that the regulation "must also cover the issue of equal protection implicit in the phrase 'in common with.'"

Today, the situation in Washington has changed very little: the Indians are fishing and reading their treaty, and the State game rangers are arresting them whenever they can catch them. There have been threats (sometimes accompanied by action) of violence on both sides. The State is armed as are some of the Indian fishermen, and it looks to some like the beginnings of another Indian war.

The Wisconsin Case

On the same day the U.S. Supreme Court handed down the decision in the Puyallup and Nisqually cases, it also handed down a decision concerning the hunting and fishing rights of the Menominee tribe in Wisconsin. By treaty in 1854 the Menominees retroceded certain lands they had acquired under an earlier treaty and the United States assigned to them a reservation "for a home, to be held as Indian lands are held." One hundred years later Congress passed an act terminating Federal supervision over the property and members of the tribe. (The termination act resulted in the near bankruptcy of the tribe, costing the Menominees in the vicinity of $18 million. It also gave the newly created county the highest number of welfare recipients in the State, but that is another story). The 1954 termination act provided that after termination "the laws of the several States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction."

The termination act became effective in 1961 and the game rangers of the State of Wisconsin promptly began arresting members of the Menominee tribe for violating State hunting and fishing laws. When the case came before the Wisconsin Supreme Court, it held that any hunting and fishing rights the Menominees might have had were extinguished by the termination act which specifically stated that the Menominees were to be subject to State laws. The Menominees sued the Federal Government in the United States Court of Claims for damages occasioned by the loss of their rights. The Court of Claims held that the Indians' rights had not been lost. The Indians agreed this was their original position, and appealed to the U.S. Supreme Court seeking its affirmation of the Court of Claims decision.

First the Supreme Court had to find that the right to hunt and fish existed. It did this by interpreting the treaty phrase that the lands were to be held "as Indian lands (were) held" as implying that the Indians had the right to hunt and fish because this was the Indians' way of life. While it would seem clear to most that the hunting and fishing rights became subject to State regulation and control by the termination act, the Court reached the opposite conclusion. It had to bend over backward to do it, but it did. The Court found solace in an act passed nearly 7 years before the termination act.

The earlier act stated that certain States could exercise jurisdiction over "Indian country" which it defined as lands within an Indian reservation, dependent Indian community, and Indian land allotments. Under the act, jurisdiction of the State could not be exercised against any right granted under treaty, agreement, or statute "with respect to hunting, trapping, or fishing, or the control, licensing, or regulation thereof." The majority of the Court said that the two acts had to be read together and that since the earlier act said States could not regulate Indian hunting and fishing, these rights survived the termination act.

Conclusion

There we have the two most recent U.S. Supreme Court decisions on Indian hunting and fishing.

That the courts will go to great lengths to protect the Indians' right to hunt is evidenced by the Menominee case. But the right to hunt is not a substantial right. You cannot feed a family by hunting. Still, hunting lets you remain an Indian and maintain a bare subsistence level. On the other hand, in the Puyallup and Nisqually cases the Indians were commercial fishermen. Commercial salmon fishing allowed them to live as Indians and not have to starve while doing it. This right is a substantial right that is not subject to protection by the courts.

If Indians want to fish commercially they must join white society and fish according to the rules of that society. It is all right for Indians to be Indians, so long as it does not cost us anything. The choice of assimilate or starve has been the choice offered to the Indians for centuries, and the dilemma of the American Indian is that it is still the only one offered. ■

TREATMENT OF MEXICAN AMERICAN HISTORY IN HIGH SCHOOL TEXTBOOKS

by John S. Gaines

The treatment of Mexican Americans in American history texts has been grossly inaccurate, subjective, and marred by the omission of important facts, the use of stereotypes, and elements of latent nativism.

Dr. Gaines, who taught American history at the high school level from 1958 to 1967, is chairman of the Department of Education of King College in Bristol, Tennessee. This article is excerpted from his doctoral dissertation which was submitted to the School of Education, University of Southern California, in August 1971.

According to former Secretary of Health, Education, and Welfare Robert Finch, the mention of the role of Mexican Americans in contemporary society is virtually nonexistent in textbooks. This is true despite the fact that Mexican Americans constitute the largest foreign language speaking element in the United States. It is clear that this increasingly estranged ethnic community deserves greater and more understanding attention.

Regional and local histories of the Southwest do give some mention of this group, but it is often made in a patronizing tone. Increasing frustration and militance on the part of this minority promises to make this a subject of increasing concern not only in the Southwest, but also by the Spanish speaking Puerto Rican population of New York City and the large Cuban refugee colonies of southeastern Florida.

In recent years, weaknesses have often been cited concerning the black minority and its place in American history. From this developed the current—often misunderstood, but clearly belated—attention to black history. Other unassimilated minorities now claim that they, too, are treated too lightly or ignored. As a result, a movement toward ethnic studies has been spawned.

The increasing mobility and interdependence of our society demand that former modes of approaching subject matter be replaced with more effective techniques. Historians must not yield to the temptation to tailor history to the desires of each community —black history for blacks, WASP

history for WASP's and Chicano history for Chicanos. To do so would be to deny the essence of democracy. Although not unanimously held, this position is supported in sources. Certainly "separate but equal lies," as it was put in a Jules Feiffer cartoon,* is not the solution. What is needed is a comprehensive history which does not yield to the economic, political, and social pressures. Such a history would replace the current pattern of textbook writing, which has produced a version of American history devoid of controversial or unpleasant topics, with an exciting and authentic American history which embodies as well as describes the ideals of democracy.

If American history is important, is it not because of its direct relationship to one of the most widely accepted goals of public education—training for citizenship in a democratic society?

Considering the fundamental relationship between history texts and the goals of education, then the obvious questions arise. To what extent do history books prepare students for citizenship in an increasingly complex, pluralistic society? Does the American history text's overwhelming emphasis on military history, partisan politics. and international relations facilitate our major objectives or merely make history a more or less pedantic subject of interest to scholars but not to citizens?

Are our assumptions concerning American history pertinent to the average student whose vote is equal to that of the learned professor in our system of government? Are these courses meaningful to our minorities—of race, religion, language, and culture? Or do they present a homogenized and unrealistic version of American life, both past and present?

To determine the extent, accuracy, and objectivity of Mexican American history at the high school level in recent years, the contents of major textbooks were examined.

The purpose of this analysis was to facilitate better understanding of the unique and important contributions which have been made to American history by the Mexican American and his Indian and Hispanic ancestors.

This examination revealed that many important aspects of Mexican American history have been minimized, distorted, and omitted from comprehensive American history textbooks used in United States high schools.

Considering the size of this minority and its long historical record, it is difficult to imagine the problems confronting attempts to study it in depth. At the outset there is a problem in determining how many Mexican Americans there are in the United States and where they live. Such a problem may seem absurd, but it is true.* Although efforts were made to correct this situation, the 1970 census in the five Southwestern States of Arizona, California, Colorado, New Mexico, and Texas continued the practice of estimating their numbers by a Spanish surname count. Efforts to provide a Mexican American category on the census forms were not successful. The surname count was retained despite obvious defects and is particularly unwarranted since direct counts are made of blacks, Indians, Japanese, Hawaiians, Filipinos, and Koreans.

Intermarriage has also made the surname count quite unreliable. A language survey would have merit, but would still omit the more acculturated descendants of Hispanic and Mexican forebears. Limiting the survey to the five-State region ignores the fact of sizable migration of Mexican Americans outside their traditional areas. It should be noted that there is no unanimity within the group itself on this matter.

Some prefer to be listed as "white," a long sought identification by Mexican Americans in some regions, especially where nonwhites have been subject to inferior status. Others prefer to be known as Spanish Americans for essentially the same reasons. The majority are of mixed racial background and accept the term "Mexican American." It should be noted that they are deemed "foreign" in both Mexico and the United States.

Further coincidental factors include the rather narrow geographical dispersion of universities noted for their "American" historians and the even more restricted regional pattern within which most text publishers are found.

Since it would have been impractical to conduct a detailed analysis of a large number of textbooks, a systematic sampling procedure was followed. Ten representative high school American history texts were chosen. In addition, two of the most popular and most widely known college texts of the period were included. Finally, the two most successful American histories published for popular sales in recent years were selected.

* Los Angeles Times, April 20, 1969.

* An extensive article on this subject written by Ruben Salazar appeared in the Los Angeles Times, May 12, 1969, Sec. II, pp. 1-2.

The study encompassed all aspects of Mexican American history within the geographic limits now defined by the United States border as well as those elements of Indian, Spanish, Mexican, and Latin American history which could be most directly associated with American history. In doing so, it investigated a broad spectrum of relationships between Hispanic and Anglo cultures, their peoples, government, and lifestyles. Spanning an era of nearly 500 years, if deemed to begin with Columbus—and even longer if the Indian antecedents of Mexican American culture are given due consideration—it is one of the longest and most colorful strands in the fabric of American history.

All references to this relationship contained in the 14 sources selected for the study were analyzed. These included the consideration of international relations —with Spain before Mexican independence and with Mexico from 1821 until the present.

Following the selection of the texts, they were surveyed for all materials which related to the study. Then the categories of coverage were set up. A bibliography of historical, anthropological, and sociological authorities in the field of Mexican American studies was then developed. The next and very important step was to survey the writings of these experts in order to amplify the categories previously determined; to evaluate the validity of the textbook allusions to the categories; and to discover the scope of historical opinion on both these and related categories. Finally, the texts were rechecked against the authorities.

The mass of information thus obtained was then manipulated in several ways. Where feasible, the high school texts were related to the college texts, weighed against each other, and compared to the trade books. Trends, patterns, and anomalies were thus ascertained.

The criteria followed in the determination of which high school texts to study were simple to apply. Each had to meet six tests. It had to be (1) comprehensive; (2) contained in a single volume; (3) basically chronological; (4 aimed at the general high school market; (5) available nationwide; and (6) used in the classroom during the last decade.

An attempt was made to ascertain the number of copies sold and the scope of adoptions enjoyed by each. The objective was frustrated by the understandable policy of the publishers which could be simply stated as "Tell the world if the news is good, but mum's the word in all other cases."

The 10 high school texts represent nine different publishers, with the one double representation being American Book Company. Original dates of publication of the various books range from 1936 to 1969. The earliest publication date of the volumes incorporated in the study is 1954. Several had 1971 editions out.

The content survey is divided into eight sections. Each has a thematic basis, and the first six also have a chronological basis. The eight sections* are as follows:

I. Spanish Exploration and Discovery
II. Spanish Colonial System
III. United States and Spain (1776–1819)
IV. United States and Mexico (1810–1846)
V. The Mexican War (1846–1848)
VI. United States and Mexico (1848–1970)
VII. Hispanic-Mexican Culture in United States
VIII. Authors and Publications

The more than 300 different items which were covered by the 14 history books filled in the categories thus established.

Review of Findings

The resume of the evidence collected in this survey is in three parts: a book-by-book summary; a section-by-section comparison; and a discussion of the relationships among the various types of books.

Source I, *History: USA.*, by Jack Allen and John L. Betts (Cin. Ohio: American Book Company, 1967), follows the pattern established by the whole sample very closely. It includes references to 173 of the 304 items included in the survey for an overall average of 57 percent. It should be noted that its 42 percent coverage of the section deemed most important to this study, Section VII, Hispanic-Mexican Culture in the United States, is exceeded by only one source. Its most outstanding areas of coverage deal with the Spanish colonial regions in the United States and the war for Texas Independence. Its lowest relative ranking is tenth, for Section I.

Source II, *History of a Free People*, 6th Rev. Ed., by Henry W. Bragdon and Samuel P. McCutcheon (New York: Macmillan Co., 1967), also follows the pattern rather closely. It mentions 176 of the 304 items in the survey for an average of 58 percent. It is the only source to include a comment

* Each section had major subdivisions as well.

from a Mexican historian and the only one to quote modern Western history specialists, Bernard De Voto and Ray Billington. Its highest ranking was a tie for second in Section II and its lowest was a tie for 10th in Section IV.

Source III, *The American Achievement,* by Richard C. Brown, William C. Lang, and Mary A. Wheeler (Illinois: Silver-Bardett Co., 1966), is 11th in number of items included with 150 of 304 for a 49 percent figure. The coverage which it provides on topics related to this survey is usually very brief.

Source IV, *United States History,* by Richard N. Current, Alexander DeConde, and Harris L. Dante (Scott Foresman & Co., 1967), is tied for seventh place in number of items covered with 170 out of 304 for 55 percent. Of all the histories surveyed this source has the most complete and accurate maps depicting the topics under study. It also gives by far the most complete description of the Spanish exploration of what is now the United States.

Source V, *The Adventure of the American People,* by Henry F. Graff and John A. Krout (New York: Rand McNally, 1959), is tied for fifth in total coverage with 173 items out of 304 for 57 percent. Its overall coverage is very well balanced among the sections. It contains excerpts from three original documents pertaining to surveyed topics.

Source VI, *A Short History of American Democracy,* 2nd. Ed., by John D. Hicks and George E. Mowry (Boston: Houghton-Mifflin Co., 1956) is tied for seventh in the number of items covered with 170 out 304 for 55 percent. It devoted the greatest attention to a bibliography of any of the texts, providing nearly 50 pages.

Source VII, *A History of Our Country,* New Ed., by David S. Muzzey (Boston: Ginn & Co., 1955), is fourth in overall items included with 174 out of 304 for a 57 percent average. It glorifies the early phases of Mexican history while ignoring more recent events.

Source VIII, *United States History for High Schools,* by Boyd C. Shafer, Everett Augspurger, and R.A. McLemore (Ill: Laidlaw Bro., 1969), ranks ninth in overall items mentioned with 158 out of 304 for 52 percent. It contains 20 illustrations which depict items in the survey and has 11 map locations not discussed in the text.

Source IX, *Rise of the American Nation,* New 2nd Ed., by Lewis P. Todd and Merle Curti (New York: Harcourt, Brace & World, Inc., 1969), stands in second place for total items covered with 187 out of 304 for 61 percent. This source provides by far the best coverage of the Hispanic influences in California.

Source X, *United States History,* Fremont P. Wirth (New York: American Book Co., 1954), ranks 13th in the overall standing with 119 out of 304 items for a 39 percent average. The weakness of the narrative in this subject area is heightened by the fact that the only mention of seven items is on a time chart and the only mention of 12 more items is found on maps.

Source A, *The American Pageant,* 3rd. Ed., by Thomas A. Bailey (Boston: D. C. Heath & Co., 1966), ranks 10th in number of items covered with 155 out of 304 for 51 percent. This source, which had more and better maps than any of the other supplementary histories, included 10 map items with no supporting text.

Source B, *The United States: A History of a Democracy,* 2nd. Ed., edited by Wesley M. Gewehr, Donald C. Gordon, David S. Sparks, and Roland N. Stromberg (New York: McGraw Hill, 1960), ranked 12th for total items included with 128 of 34 for a 42 percent figure. This source ranged from a good essay on the Mexican War to virtual omission of many areas. This may be the result of the fact that the chapters were written by so many different authors.

Source C, *The Oxford History of the American People,* by Samuel E. Morison (New York: Oxford University Press, 1965), is by far the longest of the books. It was first in overall coverage with 207 items out of 304 possible for 68 percent. It gave nine map locations without textual comment. The 10 pages it devotes to Section I is by far the longest treatment given any section.

Source D, *A Short History of the United States,* 5th Ed., by Allan Nevins and Henry S. Commager, ranks 15th in total coverage with 108 items of the 304 possible for 36 percent. A highly successful trade history, its major strength lies in a pungency of style and readability which rank it higher on its literary merits than on the scope and depth of its coverage.

Hispanic-Mexican Culture in the United States

Reviewing the survey on a section-by-section basis reveals certain distinct trends and patterns in the treatment of the material. However, Section VII of the content survey is one which is intrinsically more significant than any of the others. It is in this material

that the real significance of the Mexican American in United States history will be found.

Eleven sources make general comments on Hispanic-Mexican culture in the United States. The comments are all brief and refer only to the Spanish influence. For instance, Source II vaguely alludes to the importance of the Colonial Period, Source IV states that "Spanish colonization formed part of the background for the civilization of the United States," Source IX says that the influence of Spanish culture in California "is apparent on every hand," and Source X asserts that there are two distinct types of civilization and culture—the Anglo-American in North America and the Latin-American throughout Mexico, Central America, and South America.

Various cultural features are commented upon. Among these are language, words, literature, religion, place names, architecture, laws, customs, and culture. Little elaboration is given. There is no mention of the importance of Spanish and Mexican land titles, water rights, community property laws, or mining rights. Nor is any mention made of the rich Hispanic heritage in areas such as food, music, dance, dress, or crafts.

Hispanic contributions to the American economy have included both practices and personnel. The enterprise most frequently associated with the Spanish-Mexican heritage of the United States is the cattle industry. Spanish origins are found in several different aspects of this important activity. Several sources point out that the longhorn cattle were introduced by the Spaniards.

Other sources report the Spanish-Mexican influence on cowboys. Source C says that the Texans admired "the horsemanship of his Mexican neighbors." Source B says that the "cow business was a time honored Latin American vocation long before Americans took it up in Texas." The Spanish influence upon cowboys includes their saddle, bridle, bit, spurs, lariat, trappings, dress, equipment, chaps, sombrero, and vocabulary such as bronco, mustang, and buckaroo (vaquero). Four sources speak of Mexican cowboys: Source C says that they were "the first and best cowboys," Source IV tells of "some" Mexican cowboys, and Source I reports that contrary to the tall white cowboy of Western fiction, cowboys in reality were "Negroes, Mexican, Indians, and men of other origins."

Some mention of other Spanish-Mexican influences upon American agriculture can be found. Source I reports:

> *Sheep were introduced in the West by the Spanish. The first sheepherders were Mexicans who grazed their flocks on the grass of the Southwest.*

Source III briefly notes Spanish irrigation efforts in Arizona.

Four sources comment on Mexican involvement in the mining activities in the United States. "Mexicans" and "Mexican peons" are listed among the many groups which took part in the gold rush in California.

There is absolutely no mention of the role of Mexican laborers in building the railroads of the Southwest, although the Irish and Chinese are frequently discussed. Nor is there any mention of Mexican farm workers and their long history of deprivation and labor disputes. In this connection, not one source refers to the controversial "bracero" program.*

Only three sources say anything about Latin American immigration to the United States and only Source I provides a textual comment. It says—

> *The lands south of the American border contributed many thousands more. Latin Americans—people of European or European-Indian descent—especially Puerto Ricans and Mexicans — are scattered throughout the country.*

No source comments on the size of the immigration from Mexico, the reason for it, or its significance. Nor is any reference to the repatriation of Mexican immigrants during the great depression or to the recurrent problems concerning the illegal immigration of the so-called "Wetbacks."

Specific references to the Mexican American minority are few in number and lack substance. Most of the comments which do occur speak of them as existing at the time certain areas were acquired by the United States, but make no allusions to their subsequent role in American history. Although no statement specifies that they remained after Texas independence, two sources comment on the number of Spanish or Mexican settlers. Source II puts it at "a few hundred" and Source IX says that it was "thinly held by Spaniards and Mexicans." Source C makes no mention of numbers but states that the North American colonist

---

* Originating with the labor shortage which occurred during the Korean War and continuing until 1964, this program allowed citizens of Mexico to work in the United States on a temporary basis. They served primarily as migratory farm workers.

in Texas had a "condescending attitude" toward his Mexican neighbors.

Allusions to the Mexican Americans in New Mexico are also sparse but they appear in six sources. However, the most recent reference is dated before 1912.

Six sources speak of the Mexican population of California. At the time of American conquest, it is described as "thinly settled," as having "4000 Mexicans," "barely 6000 white men," "7000 sun-basking Mexicans," and "eight to twelve thousand Mexicans of Spanish descent." One source says that the gold rush transformed the "sleepy, romantic community of Spanish-American ranchers." No mention is made of the Mexican American population of California in the last hundred years. This in spite of the fact that Mexican Americans participated in the drafting of California's first constitution and that for 30 years California observed a bilingual status. It also ignores the fact that Los Angeles with approximately 600, 000 Mexican Americans is the third largest Mexican city in the world, exceeded only by Mexico City itself and Guadalajara.

The histories in the survey employ various ethnic terms to describe both Mexicans and Americans. Only one source uses the term "Greaser," an offensive name for Mexicans. Source C makes a reference to *latinos* in a statement which alludes to all Latin Americans. None of the sources uses the terms "Chicano," "Hispano," "*La Raza*," "*Tejano*," "Californio," or "Mexican American," and only one other,—Source D—uses the term "Spanish-American." Americans are called "Los Americanos," "Norte Americano," "Yanquis," "damn Yankees," and "Gringo." Source C states that the term "gringo" resulted from Mexicans hearing American soldiers sing the folk song "Green Grows the Laurel." In fact, the term comes from the Spanish word for Greek and it applied to foreigners who "talk Greek," or unclearly. It can be found in Spanish dictionaries as early as 1787.

Not a single reference is made to Mexican American activism or to its leading figures, Cesar Chavez and Reies Lopez Tijerina, or its organizations such as the Mexican American Political Association (MAPA) or the Brown Berets. Nor is there any mention of discriminatory patterns in education, housing, and employment.

Conclusions

It is clear that many aspects of Mexican American history have been minimized, distorted, and omitted.

The *minimization* of these topics has taken many forms. A few examples include: the efforts of Spanish explorers are described as failures and their errors are frequently noted in Section I; their colonial efforts are compared unfavorably with the British in Section II; their obstruction to American expansion as well as their brutality in victory and cowardice in defeat during the War for Texas Independence is contrasted with American heroism in chauvinistic terms in Section IV; the inevitability of westward expansion and the brilliance of American military forces highlight Section V, while American partisan politics and the slavery issue outweigh any considerations of ethics in regard to the war or its settlement. In Section VI, at first the emphasis is upon friction between Mexico and the United States, but later Mexico loses its separate identity and becomes merged with Latin America.

Distortions, except for the inaccuracies noted, which are probably more attributable to lack of interest in or knowledge of the material, are almost certainly not intended to be a reflection upon Spain, Mexico, and Mexican Americans. There is, however, evidence of uncritical patriotism and overtones of American nativism—with its not so subtle elements of racism and religious intolerance. What little is told of the Indian aspects of the Mexican American heritage is patronizing, grossly oversimplified, and in several instances inaccurate. The Spaniards are pictured as cruel, greedy, and arrogant. The Mexicans are characterized as lazy, undemocratic, and cowardly, though sometimes romantic. All are viewed as foreign.

The findings clearly demonstrate the pattern of *omission* of data concerning Hispanic-Mexican contributions to American history. The lack of information on item after item is overwhelming. Topic after topic is omitted from a majority of sources. It is not inaccurate to speak of a "forgotten" people. Neither their history nor their existence are given due consideration.

It is hoped that the extensive documentation of the obvious defects of widely adopted history texts will lead to improvements, or at least the use of appropriate supplementary materials to fill the gaping holes left in the fabric of American history. The omission of this large body of important, fascinating, and thoroughly relevant material is not in the best interest of our society. ■

AFFIRMATIVE ACTION IN LABOR CONTRACTS: SOME IMPLICATIONS FOR COLLEGE AND UNIVERSITY PERSONNEL

by North Barry Dancy

The issues of management and labor, long a topic reserved for lower middle class working persons, has become, in the past

Dr. Dancy is Dean of Students at Fairleigh Dickinson University in Rutherford, New Jersey.

decade, a sensitive and complex issue for the "management" within Academe. As China watching has become a preoccupation with many Americans recently, union watching has become a preoccupation with many educational administrators. With more than cursory interest, academic management watches the daily progress of the American Federation of Teachers (AFT), National Educational Association (NEA), and the American Association of University Professors (AAUP) and their respective recruiters within the campus faculty. Collective bargaining, whether welcomed or not, has arrived, and many in the academic communities are just beginning to comprehend this fact of life.

While this fact of life is seeping down to the total segments of the faculty, however, presidents, provosts, deans, department chairmen, directors of programs, and the personnel officer should make themselves conversant with the underlying philosophy of Title VII of the Civil Rights Act of 1964. This is especially true as it may relate to the hiring practices within the academic community of which they are a part.

The genesis of The Civil Rights Act of 1964 was President Kennedy's June 1963 civil rights message. The provisions under Title VII of the Act make it an unlawful practice "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex or national origin.* (Section 703) (a).

The enforcement of Title VII was vested in the Equal Employment Opportunity Commission (EEOC). This Commission was to use "informal methods" to resolve job discrimination complaints against employers, labor unions, employment services, and the sponsors of apprenticeship or other job training programs.

As the EEOC responded to its backlog of complaints of discrimination during the initial years of operation (1965–1966), it began to develop and implement what is referred to as "technical assistance." This phrase has come to have a special meaning in the lexicon of the EEOC.

Title VII had conferred upon the Commission the authority to "furnish to persons subject to this title such technical assistance as they may request." (Section 705) (6). The object of this technical assistance as defined by the EEOC is to bring about "affirmative action to promote equal employment opportunity on the part of employers, labor unions, and community organizations."**

Generally speaking the EEOC technical assistance staff relies upon persuasion and education, rather than other means to right discrimination in hiring and labor practices. However, closely related to its technical assistance activities, the EEOC has now begun to sponsor industry hearings on equal employment activities. Although the Commission was without subpeona powers,* it held what was termed its first "forum" in January of 1967 on employment in the textile industry of North and South Carolina. Since this first forum set a precedent, it is conceivable that forums of this type could be employed in the near future to share valuable information as to the progress higher education is making in minority hiring. It appears that the existing policies guiding EEOC, as they relate to college and university personnel, are confined to providing technical assistance, which quite naturally is designed to help colleges and universities develop affirmative action plans.

The Development of an Affirmative Action Plan

On September 24, 1965, President Johnson issued Executive order 11246. In its initial stage this Executive order: (a) prohibited discrimination on the part of all employees with Federal contracts, and (b) also required that Federal contractors take affirmative action "to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, or national origin." Sex in this instance was an afterthought, and the ban against discrimination based on sex was added, effective October 1968. Executive Order 11246 goes on to state that affirmative action "shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; rates of pay or other forms of compensation; and selections for training, including apprenticeship."

* Richard P. Nathan. *Jobs and Civil Rights; the Role of the Federal Government in Promoting Equal Opportunity in Employment and Training, The Brookings Institution:* Washington, D.C., April 1969.

** *Equal Employment Opportunity*, Hearings before the Subcommittee on Employment, Manpower, and Poverty of the Senate Committee on Labor and Public Welfare, 90th Congress, 1st session (May 4–5, 1967), p. 130.

* Such power was granted in the Equal Employment Opportunity Act of 1972. 86 Stat 103.

At this time the Government deliberately did not define precisely how an employer's obligation to take affirmative action can be satisfied. The onus of providing community leadership was placed upon the employer (then referred to as the Federal contractor). It was suggested to the employer, however, that steps should be taken to eliminate or revise personnel policies, which may discriminate unconsciously against members of minority groups, as well as positive measures which provide more and better jobs for minorities.

In 1972 overt discrimination within our society is, generally speaking, a thing of the past. Institutions and unions now are being urged to erase the subtle discrimination that can easily be masked in a myriad of devious ways within the maze of large institutional hiring. The affirmative action plan, therefore, is an honest approach by men of good faith to right social wrongs. An institution is encouraged to look at itself, its history of hiring practices, and to set goals that can be realistically met by the institution in expanding its hiring practices for minority groups.

An effective affirmative action plan can only begin at an institution of higher learning when the initiative is taken by the institutional leaders. The chief administrative officer of a given campus, therefore, must exert persuasive leadership in the individual colleges under his direction. The college deans, together with the director of personnel, must carry on this initiative of leadership. Leadership in this area can only succeed if the commitment to affirmative action is clearly defined, recognized, and implemented by the middle management persons directly responsible for hiring replacements in their departments and staff functions.

It is significant to note that with the event of unionization of faculty, the individual department chairmen have a dual role of responsible leadership in affirmative action implementation. First, they must recognize that they belong to the ongoing process of the university, and as such are managers. obligated in their management policies by the larger policies of the university. That is to say, if the university has an affirmative action plan, they are necessarily obligated to abide by this policy. Secondly, being members of a collective bargaining unit—AFT, NEA, or AAUP—department chairmen must remember that, historically, it has been in the best interest of union members not to violate Government "guidelines." Thus they are obligated to the affirmative action plans accepted by these collective bargaining units. Hopefully, both the policies of the bargaining group and the university are similar in this instance.

Implementation of affirmative action begins with recruitment. Recruitment can be facilitated by the appointment of an affirmative action advisory board composed of faculty staff community members, which represent minority groups and which have empathy with their problems. One of the first items on its agenda is to ask the question, "How has the university recruited in the past?" "What are the inherent flaws in this system?" "What are it's good points?" The U.S. Commission on Civil Rights suggests that for private or public employment, these steps of recruitment be kept in mind.*

—Maintain continuing communication with potential minority applicants in the job area by means of the State employment service and schools, colleges, community agencies, community leaders, minority organizations, publications, and other sources of contact with minority persons.

—Thoroughly inform such sources about the employer's recruiting and selecting procedures. Provide such sources with complete and accurate descriptions of the positions for which openings may from time to time occur, and requirements for such positions. Supplement this with periodic statement of projected openings, and with statements of unprojected openings as they arise.

—Encourage, accept, and file minority applications or transfer requests, even when there are no current openings. As applicable openings arise, draw upon this file of applications before considering persons subsequently applying.

—Provide entry-level training for applicants or new employees, and participate in Federal, State, or private and cooperative programs for placement and training of minority persons or the "hard-core" unemployed.

—Institute work-study plans in which minority persons are employed part-time, while studying or otherwise seeking to satisfy employment re-

* *Equal Employment Opportunity Under Federal Law,* U.S. Commission on Civil Rights. Clearinghouse Publication No. 17, 1971, p. 25–27.

quirements; this includes employment for high school and college students.

—Where possible, structure work so as to give rise to jobs, particularly entry-level jobs, which are suitable for minority persons available for employment.

—Invite minority persons to tour employment facilities. Explain to them employment opportunities and the equal opportunity program in effect.

—Familiarize minority applicants, or potential applicants, with the selection process.

—Make information on the affirmative action program and minority employment by the employer available on request to employees, to minority leaders in the job area, and to others with a legitimate interest in nondiscrimination by the employer.

—Work actively with predominantly minority schools and colleges in the area to establish curriculums which will provide minority graduates with the skills necessary to fulfill the employers' manpower requirements.

—Inform each minority applicant of the basis for action taken on his application. This includes detail on the basis for rejection, including the results of tests and interviews. Suggest to rejected minority applicants possible methods for remedying disqualifying factors.

—Maintain a file, with non-minority minority classification, on each applicant showing the specific grounds for rejection or passing over the applicant.

Obviously, all these points cannot be implemented immediately, and, in some instances, would not be feasible in their entirety since they are essentially developed for business. However, the spirit of intent is very straight forward and clear.

Everything that can be done should be done to enable a fair and just recruitment program.

The second step in implementing affirmative action is in selection of the candidates. Unlike many positions available in industry, where an applicant can be trained within a few days to perform a given task, the road to qualifying for advanced degrees in order to obtain academic positions is long and costly. It is at this juncture that affirmative action groups may suggest that the academic requirements for the position be lowered. Obviously, within very technical areas of academic life, where the degree is imperative, standards cannot be lowered. Conflicts arise concerning this issue and will continue to do so.

The intent must be clearly defined in the chairman's mind before he hires the person to fill the vacancy. If, for instance, the job description requires that no applicant will be considered unless he or she holds a Ph.D. or Ed.D., while no one in the department holds the terminal degree (including the chairman), this could lead to some embarassing situations for the department and for the university. Before this point is reached a strong agreement with the affirmative action group and the department chairman should be established. This should be agreed to before the final job description is written.

It is especially crucial also that reverse discrimination practices are carefully thought through at this point. This question was raised at this year's annual meeting of the American Association of University Professors.

The delegates adopted a resolution favoring "energetic and systematic attempts" to bring women and racial minorities into faculty ranks—efforts akin to Federal requirements for "affirmative action" by institutions with Government contracts.* Also at the 1972 AAUP meeting, Committee A on Academic Freedom and Tenure reported that, in setting up recommended regulations for colleges and universities, it was unable to find appropriate language to incorporate a standard against discrimination in faculty appointments. The panel could not find words to insure against one form of discrimination without contributing to another, said its chairman, William W. Van Alstyne.**

The third step consists of the actual hiring, placement, and promotion. This again brings some questions to the academic scene in unexpected ways. The U.S. Commission on Civil Rights' publication also contains the following recommended Government guidelines:

—Make available to minority applicants and employees a complete and accurate description of positions for which they may be eligible,

* Colleges and universities which accept HUD grants for dormitory construction and other construction funding should consider themselves obligated to affirmative action programs.

** Robert L. Jacobson. *The Chronicle of Higher Education*, "Reverse Discrimination Seen as Danger in Faculty Hiring," Volume VI, Number 32; May 15, 1972, p. 3.

together with position requirements.

—Coordinate the employment and placement activities of the employer's various components or facilities, and consider minority persons who apply or request transfer for positions throughout the educational establishment.

—Announce all position openings in a manner which brings them to the attention of minority employees and makes clear that they may be eligible and are encouraged to apply.

—Recruit and place minority employees in positions or departments with low minority representation, particularly in policymaking positions.

—Place minority persons among those who deal with persons applying for employment or with other members of the public.

—Provide training opportunities for minority employees, including special training programs and temporary work experience assignments in other positions or areas of work.

—Individually appraise the promotion potential and training needs of minority employees, and take action to facilitate advancement.

—Establish counseling and similar services and draw upon services available in the community to assist new or prospective minority employees to deal with logistical problems such as transportation or housing, and with other problems involved in adjusting to the job.

—Admit minority candidates into management training programs.

Although some of these suggestions are extremely difficult to implement in a university setting, the intent of others can be creatively developed.

Today, the hard facts of affirmative action implementation make us realize that there are more positions open for qualified minority applicants than there are persons to fill these positions. When faced with the decision of negotiating salary and benefits, the university finds itself in competition with business. This is especially true if the applicant possesses a marketable skill in the business world.

Presently it is a seller's market when seeking black and Spanish speaking professionals. Therefore, the question is, "Can the university afford to pay 10 to 20 percent more to attract the minority professional?" The other question then becomes "Can the university not afford to pay this premium?" These are questions that must be resolved before negotiations begin. Many a serious offer to negotiate has failed when the administration of the university has not given flexibility to the negotiating party attempting to attract candidates.

If this question is not resolved in the philosophy of the search and screen committee/department chairman with the budgetary decisionmakers at the university, once negotiations are underway both the applicant and the negotiating party for the university can and often become disillusioned.

If the department chairman, his appropriate dean, and the personnel office have decided to engage a minority professional at a higher salary than customarily offered at the university for the similar rank and position and have cleared it budgetarily, this decision should be shared with the staff of the department. Higher pay and an inflated rank can easily be interpreted as reverse discrimination by the applicant's peers. The wise educational leader might try to enlist the consensus of his staff to set a higher salary range for the new minority applicant as a form of their own affirmative action to correct the social ills that have all too long gone unchecked. After all, liberal thinking and educational commitment do have their moments of practical as well as theoretical application.

Summary

Affirmative action is now becoming a way of life in management, union recruiting, and hiring practices. As university faculty seek a stronger way to determine their destinies through collective bargaining, they must be aware that the parallels they are developing within the historical context of management are not exempt; neither are collective bargaining units exempt from certain contingencies imposed upon them from the Government sector.

In the foreseeable future, educators will discover that they are not as exempt and free as they have often been portrayed in scholarly mythology. The way in which individual college and university faculty and staff adjust to the contingencies that affirmative action calls for will be a test of the leadership that educational institutions can exert within their own communities. If this leadership fails, then it will be only a matter of time before outside "encouragement" to adopt affirmative action programs is offered. ■

Reading & Viewing

BOOKS

Setting National Priorities: The 1973 Budget, by Charles L. Schultze, Edward R. Frie, Alice M. Rivlin, and Nancy H. Teeters. Washington, D.C.: The Brookings Institution, 1972. 468 pp.

This volume is the third in a series of annual reviews of national priorities as established in the President's budget. The authors examine and analyze controversial issues of public policy that will shape the pattern of public spending for years to come—foreign affairs, and the defense budget, Federal support of child care programs, fiscal problems of American cities, financing local education, the value added tax and income tax reform, and alternative methods of cleaning up the environment.

Tomorrow's Tomorrow: The Black Woman, by Joyce A. Ladner. Garden City, New York: Doubleday & Company, Inc., 1971. 304 pp.

This young sociologist brings exceptional insight into her study of the meaning of womanhood in the black community. In excerpts from taped interviews, black girls express their needs and desires while at the same time they recognize that socioeconomic pressures greatly reduce their chances of actually achieving their goals. They discuss with a maturity beyond their years how, for example, financial instability influences their attitudes toward boyfriends, premarital sex, marriage, and education.

STUDIES AND REPORTS

Federal Agencies and Black Colleges: Fiscal Year 1970. Federal Interagency Committee on Education. HEW Publication No. (OE) 72–70. Washington, D.C.: U.S. Government Printing Office, 1972, 85 pp.

Federal Employment Problems of the Spanish Speaking, U.S. Congress. House Committee on the Judiciary. Hearings . . . 92d Congress, 2d session. March 8–10, 1972. Serial No. 26. Washington, D.C.: U.S. Government Printing Office, 1972. 515 pp.

A Good Life for More People: the Yearbook of Agriculture 1971. U.S. Department of Agriculture. Washington, D.C.: U.S. Government Printing Office, 1971. 391 pp.

Group Life in America: a Task Force Report. The American Jewish Committee. New York: The American Jewish Committee, Institute of Human Relations, 1972. 111 pp.

If We Had Ham, We Could Have Ham and Eggs . . . If We Had Eggs: a study of the National School Breakfast Program. New York: Prepared by the Food Research and Action Center, 1972. 145 pp.

The Job Crisis for Black Youth: report of the Twentieth Century Fund Task Force on Employment Problems of Black Youth, with a background paper by Sar A. Levitan and Robert Taggart III. New York: Praeger Publishers, 1971. 135 pp.

Population Growth & America's Future: an interim report to the President and Congress. Commission on Population Growth and the American Future. Washington, D.C.: U.S. Government Printing Office, 1971. 49 pp.

President's Ten-Year Review & Annual Report 1971. The Rockefeller Foundation. New York: The Rockefeller Foundation, 1972. 220 pp.

FILMS

Tellin' the World. Specifically aimed at the 18–21 year-old, this nonpartisan film is designed to encourage young people to register and vote. It is particularly useful in the efforts of various groups and individuals striving to insure that the approximately 11.5 million potential new voters participate in this country's political process. The presentation consists of scenes of working and minority youth in everyday activities, including voting. All of this is set to a background of folkrock music which creates a catchy, fast-moving atmosphere.

The film is brief, only 9 minutes long, and it can be used in many and varied situations, such as classrooms, before meetings, or during community registration drives. *Tellin' the World* is in color, 16mm, and more information is available from Frontlash, 112 East 19th St., New York, N.Y. (212) 228–4882. ■

Book Reviews

TWO INDIANS SPEAK ON INDIAN LITERATURE

PEOPLE OF THE DREAM. by James Forman, Farrar, Straus and Giroux: New York, 1972. 240 pp.

Reviewed by Joe Sando

Evidently James Forman, the author of *People of the Dream*, is a prolific and good writer. Like many good writers he makes the reader feel a part of the scene and the action.

However, Mr. Forman is infested with the average Anglo's dream world of an author's fancy as to Indian life, culture, and prejudice against them.

The book begins with innuendo by stereotyping all Indians as innately interested in liquor by virtue of their birth by an Indian mother. He appears to believe that without ever seeing a wine bottle the young Indian already knows that a wine bottle is closed by a cork. "Little Turtle watched, fascinated, as the cork came out." And continues to implicate all Indians, "You'd like some, wouldn't you? You Redskins all love it." All this unilateral conversation was directed at a boy in the early spring following his eighth winter.

Mr. Forman's lack of understanding of the Indian culture is exposed by his discussion of Little Turtle's activities. "By now the moon was up, full, high and pale . . . the boy shed his breech cloth and moc-

---

Mr. Sando works with the Southwest Educational Laboratory (SWEL) in Albuquerque, New Mexico. He is also on the board of directors and the executive committee of Americans for Indian Opportunity (AIO).

casins and stepped naked into the stream. Then he plunged, and the cold of that mountain stream shot needles into his flesh. . . ."

Any Indian on a quest for visions does not take a ceremonial bath in the evening.

All this is reserved for the early dawn long before the father sun begins to announce his approach with the stream of rays. Likewise, it would be unthinkable for a man on this kind of mission to sleep until sun-up in the forest where all creatures are up before the sun. The book says, "The sun was high in the trees before Red Griggly Bear awakened him."

In general, the book is about the flight from the Wallown Valley to Canada. However, despite all the problems the Nez Perce had with white encroachment, settlers, and miners, little was said. The Nez Perce story was a tragedy and Mr. Forman could have explained the situation as the events occurred without being vindictive towards the white who caused all these events.

Consequently, the reader is invited to read Chapter Thirteen, "The Flight of the Nez Perce, from Dee Brown's *Bury My Heart at Wounded Knee.*"

THE PATH TO SNOWBIRD MOUNTAIN, by Traveler Bird, Farrar, Straus and Giroux: New York, 1972. 96 pp. Reviewed by Clydia Nahwooksy.

The Path to Snowbird Mountain is a collection of Cherokee legends with introductions strongly reminiscent of Kiowa author N. Scott Momaday's *On The Way To Rainy Mountain.* However, similarity ends there with the legends in some instances being rearranged and romanticized, possibly to make them more palatable to the reader. The legends are primarily about animals, and analogies to the human situation and its attitudes are apparent in the over-simplified renderings. These analogies, furthermore, lack the charm and strength that the original legends were based on, and in some cases distort the narrative to such an extent that the supposed insights into human behavior are completely lost upon the reader.

It is obvious that the author is well read in existing Cherokee oral history. He borrows to a great extent from the works of Cherokee authors Ann G. and Jack S. Kilpatrick.

The last chapter is a resume of the author's recent *Tell Them They Lie—The Sequoyah Myth,* and is a harmful fabrication. How very sad, not only for the Cherokee people, who have much of distinct value to share, but also for the reader, whose knowledge is directed by the judgment or, in this instance, the misjudgment of the publishers.

The market today is flooded by erroneous Indian material, unscreened by editors and publishers. Therefore, the public is innundated with false information, such as this, which now and for decades hence will have to be sifted for fact. ■

Miss Nahwoosky is director of the Smithsonian Institute's Indian Awarenes Program. She also served as a consultant for AIO's Reading Development Series.

U. S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE & FEES PAID
U. S. COMMISSION ON CIVIL RIGHTS

U.S.MAIL

Thomas Victor Pilla CRC-17
c/o White
207 N. Satair Ave.
W. Los Angeles, Calif. 90049

U.S. Commission on Civil Rights

Rev. Theodore M. Hesburgh, C.S.C., *Chairman*
Stephen Horn, *Vice Chairman*
Frankie M. Freeman
Maurice B. Mitchell
Robert S. Rankin
Manuel Ruiz, Jr.

John A. Buggs, *Staff Director*

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution;
- Appraise Federal laws and policies with respect to equal protection of the laws;
- Submit reports, findings, and recommendations to the President and the Congress; and,
- Serve as a national clearinghouse for civil rights information.