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ABSTRACT

It is noted in this article that Mexican American children, comprising the largest minority student group in the Southwest (17% of the total enrollment), have been neglected both educationally and legally. Thus, "Cisneros v. Corpus Christi Independent School District" (1970), which established Mexican Americans as an identifiable ethnic minority group for purposes of public school desegregation, is looked upon as providing a basis for hope for better education of Mexican American children. Further legally oriented discussion topics include the historical background of the Mexican American, discrimination in areas other than education, non-judicial recognition of Mexican Americans, the Chicano school cases, factors leading to segregation of Mexican American children (i.e., residential segregation and ability grouping), and the future of Mexican American desegregation in terms of the Southwest generally and "Ross v Eckels--The Houston Situation." Included are references to 152 legal citations. (MJB)

MEXICAN-AMERICANS AND THE DESEGREGATION OF SCHOOLS IN THE SOUTHWEST

by

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PREFACE

It was not until June 4, 1970, that Mexican-Americans, were proclaimed an "identifiable ethnic group" by court action. This occurred as a result of a law suit in Corpus Christi, Texas, in which it was shown that the Mexican-American population was generally and consistently being discriminated against in public schools. The court based its decision on the famous Brown v. Board of Education case which established that the concept of "separate but equal" educational opportunity for any specific group was in and of itself a contradiction and in violation of the United States Constitution.

This case adds important, new dimensions to the implementation of school desegregation particularly in the Southwest. Discrimination was seen by the residing judge to be clearly related to socio-economic and political disadvantagement. Most school districts had classified Mexican-Americans as "white". Those which were achieving racial balance by integrating Chicanos and Blacks are now forced to seek other structures which, hopefully, will more realistically achieve a socio-economic as well as racial and ethnic mix.

Guadalupe Salinas, Associate Director of the Houston Law Review, skillfully documents in chronological progression evidence of increasingly intensive prejudice against Mexican-Americans. In many areas this has evolved into an accepted practice of school desegregation making protection by law a necessity. An interesting sidelight to these events is the fact that the ethnic isolation that has been evidenced has never been legislated in any state. Nevertheless, it has been identified as de jure, not de facto, segregation since the enforcement of ethnic separation by school authorities has been accomplished under State sanction.

I. INTRODUCTION

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

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

characteristics are brown skin color, a Spanish surname, and the Spanish language. The fact that this group is of Mexican descent and has certain inherent characteristics makes it an identifiable ethnic group.

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

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

This comment seeks to analyze whether Mexican-Americans should be considered an identifiable ethnic minority group for purposes of public school desegregation. After providing a brief history of the American

of Mexican descent, the writer will discuss various civil rights problems encountered by Mexican-Americans and, more importantly the evolution of the desegregation doctrine as it pertains to Mexican-Americans.

II. HISTORICAL BACKGROUND OF THE MEXICAN-AMERICAN

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

In the 1500's the Spanish began to settle this area, many years before the English established the first settlement at Jamestown in 1607. This early Spanish influence is evidenced in the number of States, cities, and rivers with Spanish names.[12] These Southwestern States came under Mexican rule after Mexico won her independence from Spain in 1821.

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

Approximately 75,000 Mexicans decided to remain and receive American citizenship.[15] These Mexican-Americans were later supplemented by vast emigrations from Mexico. The first influx, precipitated by the social revolution in Mexico, began in 1910. A second wave of immigrants resulted

in the increase of the Mexican-American population by nearly one million from 1910 to 1930. During and after World War II, attracted by the agricultural labor market, a third group of Mexicans came to the United States.[16] In addition, about 3500 Mexicans immigrate to this country each month, thus continuing the steady growth of the Mexican-American population.[17]

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

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

In spite of the successes which LULAC and the GI Forum have accomplished, many Mexican-American youths have not been satisfied. Unlike their elders, Mexican-American youth activists, or Chicanos (the term is a derivation of mejicano, which is the Spanish term for Mexican), as they liked to be called, refuse to be satisfied with justice on the installment plan, that is, gradual social progress. Instead this new breed demands justice and equality for La Raza now. If there has been any validity to the sociologists' manana stereotype, which infers that Mexican-Americans will always wait until tomorrow to do what could be done today, today's Chicano readily dispels that idea.

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

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

than during the entire history of La Raza in Texas."[27] This statement is applicable as well to the rest of the Southwest.[28]

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

A. The Mexican-American

Mexican-Americans, as a group, have been widely discriminated against. As a result, many Mexican-Americans have easily been able to identify with La Raza. On the other hand, there are many Mexican-Americans who have never personally experienced an act of discrimination and thus, find it difficult to emphathize with the civil rights movement. Many of these adamantly assert that they are Americans and fail to identify with Mexican-Americans. In many cases, a light-skinned complexion has helped make life more "American" for them.[29] In addition, there are some who feel a stigma or a handicap if the term "Mexican" is used to describe them and who prefer a euphemistic label like Latin American or Spanish-speaking American. Finally, there is a group who, because of their ancestry of early Spanish colonists, call themselves Spanish-Americans and Hispanos. Nevertheless, in spite of what Spanish-surnamed Americans of the South-West prefer to be called, the name Mexican-American is perhaps the best designation which can be applied objectively. Regardless of what they call themselves, one fact is clear--either they or their ancestors, including the Spanish colonists, came "north from Mexico."[30]

B. Discrimination in Areas Besides Education

1. Employment

Mexican-Americans, like Negroes, have encountered discriminatory practices by employers in hiring and promotion. What is worse, is that much of this discrimination is subtle. Employers often use the "high

school diploma" or "we'll call you" tactics since they can no longer discriminate openly with impunity. As a result, it is often difficult to maintain a civil rights action. Since the Civil Rights Act of 1964[31] was passed, at least one Mexican-American has been successful, and many more cases have been filed. The one successful claim is the agreement reached in the case of Urquidez v. General Telephone Co.[32] The suit, a class action, resulted from the fact that Urquidez applied for employment, passed the tests, and had more job-related experience and education than several Anglo applicants who were subsequently hired. The settlement agreement acknowledged that Urquidez had a prima facie case of discrimination, awarded him $2,000, and provided that General Telephone would take definite steps to remedy past discriminatory practices.

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

While some of the employment problems facing Mexican-Americans are attributable to their relatively low educational attainment,[35] there are indications of discrimination to offset much of that argument. For instance, in comparing the income of Mexican-Americans and Anglos who have completed the same number of school years, the income of Mexican-Americans is only 60 to 80 percent of the Anglo income.[36] Since passage of the Civil Rights Act of 1964, employers have resorted to more subtle practices, such as promoting Anglos before Mexican-Americans, even if the former are

less educated and less skilled. Many employers, when questioned about such practices, rationalize that Anglo workers will not take orders from Mexican-Americans.[37] Consequently, the Mexican-American is denied the equal protection of the laws as guaranteed him by the Constitution of the United States[38] and by the Civil Rights Act of 1964.

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

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

2. Spanish and Mexican Land Grants

Mexican-Americans have also suffered unjustly in the area of Spanish and Mexican land grants, an issue encountered generally in New Mexico and Colorado. The issue is whether Mexican-American land grantees or the

heirs of these grantees, who by some means were defrauded of their land by various state officials, are entitled to compensation.

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

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

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

The writer argues that the shift from the Mexican legal system, where grant lands were immune from taxation and titles were unregistered, to the Anglo legal system of land taxation and title recordation was the major factor in the land losses which Mexican-Americans suffered.[49] Many landowners were divested of title by wealthy Anglo rachers purchasing deeds at tax sales or by recording a claim to the property before the true owner.[50] Perhaps federal courts will grant relief to these aggrieved heirs of the land grantees when and if the complaints are clarified.

3. Public Accommodations

Mexican-Americans have been excluded from public accommodations. Fortunately the practice has subsided since the 1940's when Mexican-

Americans were segregated from restaurants, theaters, and swimming pools.[51] Nevertheless, prejudice and overt acts of discrimination have contributed to making Mexican-Americans an identifiable ethnic minority group.

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

4. Administration of Justice

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

Besides the treatment received from law enforcement officials, [59] Mexican-Americans are often inadequately represented on juries. Consequently, the juries hearing cases involving Mexican-American defendants

are not "impartial"[60] juries since they fail to represent the community. These inequities still occur frequently, even though the United States Supreme Court held in Hernandez v. Texas[61] that "[t]he exclusion of otherwise eligible [Mexican-Americans] from jury service solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment."[62] The Court stated that the absence of a Mexican-American juror for 25 years in a county where this ethnic group comprised 14 percent of the population "bespeaks discrimination, whether or not it was a conscious decision on the part of any individual jury commissioner."[63]

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

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

Recently, the Fifth Circuit overturned the 1942 rape conviction of a Mexican-American in El Paso County, Texas, because the juries that indicted and convicted him had excluded persons of his ethnic group.[67] Only 18 of the 600 grand jurors who served from 1936 to 1947 were Mexican-

Americans, even though the county population was 15 to 20 percent Mexican-American.[68] The court stated that these figures "cry out 'discrimination' with unmistakable clarity."[69]

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

C. Non-Judicial Recognition

The Mexican-American has been recognized as a separate, identifiable group not only by the courts but also by other governmental institutions. For instance, the Civil Rights Act of 1964, by use of the term "national origin,"[71] impliedly includes Mexican-Americans and other "national origin" minority groups such as Puerto Ricans. Furthermore, recognizing the problems facing many Mexican-American school children, Congress passed the Bilingual Education Act[72] which seeks to facilitate the learning of English and at the same time allow the Spanish-speaking child to perfect his mother language and regain self-esteem through the encouraged learning of Spanish.[73] In addition, Congress created a cabinet committee whose purpose is to assure that federal programs are reaching Mexican-Americans and all other Spanish-speaking groups.[74] Also, through the creation of the United State Civil Rights Commission in 1957, Congress and the public have become better informed as to the injustices Mexican-Americans endure.[75] Other governmental agencies have researched the living conditions of the Mexican-American.[76] Finally, the Department of Health, Education, and Welfare (HEW) has issued regulations which prohibit the denial of equal educational opportunity

on the basis of English language deficiency. The regulations apply to school districts accepting federally assisted programs and having at least 5 percent Mexican-American enrollment.[77]

IV. THE CHICANO SCHOOL CASES

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

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

The struggle by Mexican-Americans against separate and unequal schools has been lengthy. In 1930 a Texas appellate court held in Independent School District v. Salvatierra[79] that school authorities in Del Rio, or anywhere else, have no power to segregate Chicano children "merely or solely because they are [Mexican-Americans]."[80] However, the school district successfully argued that the children's language deficiencies warranted their separate schooling, even though the superintendent conceded that "generally the best way to learn a language is to be associated with the

people who speak that language."[81] The Attorney General of Texas later supported this holding by justifying education of the linguistically deficient in separate classrooms and even in separate buildings if necessary.[82]

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

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

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

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

After Brown v. Board of Education[97] the Chicano school cases began to assume a new dimension. Since Mexican-Americans were generally classified as whites, school districts began to integrate Negroes and Mexican-Americans while Anglos were assigned to all-Anglo schools. As a result, two educationally disadvantaged minority groups have been prevented from having maximum interaction with students of the predominant Anglo group. For example, in 1955 Negro and Mexican-Americans sued the El Centro School District in California for alleged "ethnic and racial discrimination and segregation by regulation, custom and usage."[98] In a rather narrow reading of Brown, the district court stated that Brown, which involved

constitutional and statutory provisions, did not apply in situations where only customs and regulations were alleged. The court dismissed the complaint, claiming that where no specific regulation was set forth, plaintiffs must seek construction of the regulation in a State court.[99] On appeal, the Ninth Circuit reversed and remanded the case,[100] holding that when the complaint alleged segregation of public school facilities on the basis of race or color, a federal constitutional issue had been raised, requiring the district court to exercise its jurisdiction. Instead of going to trial, the case apparently was settled out of court, but the segregation of Negroes and Mexican-Americans has continued in most of the Southwest.

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

While Keyes did not answer whether mixing Blacks and Chicanos satisfies constitutional requirements, Cisnero did, holding that placing Negroes and Mexican-Americans in the same school did not achieve a unitary system.[106] However, Keyes involved de facto segregation, whereas Cisneros

involved de jure segregation in the form of (1) locating schools in the Negro and Mexican-American neighborhoods; (2) bussing Anglo students to avoid the minority group schools; and (3) assigning Negro and Mexican-American teachers in disproportionate ratios to the segregated schools.[107]

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

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

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

Another case involving segregation of Mexican-Americans, Perez v. Sonora Independent School District,[112] held that the Sonora, Texas schools were operating in a "unitary, nondiscriminatory, fully desegregated school system."[113] MALDEF has offered evidence to show that in 1938 the Sonora school board passed a resolution enrolling Mexican-American children in the "Mexican School."[114] Perez is an important case for Mexican-Americans and the desegregation of schools in the Southwest in that it is the first

desegregation case in which the Justice Department has intervened on behalf of Mexican-Americans.[115]

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

1. If it is a crime to commit A, and
2. If it is a crime to commit B, then
3. One cannot commit A and B simultaneously

and be absolved of the crimes.

The same applies to school districts which continue to segregate Negroes and Mexican-Americans from predominantly Anglo schools on the theory that a unitary school system is achieved by integrating the two minority groups, merely because one is technically classified as white. Actually the public school system remains a dual one with identifiable white schools and identifiable minority schools, thus justifying

intervention of courts in situations where either identifiable minority group seeks relief.

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

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

A. Residential Segregation

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

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

This table reflects a positive correlation between de jure segregated

schools and substantial residential segregation. This should be sufficient to shift the burden of proof to the defendant school districts in cases where de facto segregation is alleged.

Furthermore, Dowell v. School Board,[119] which holds that a neighborhood school policy is invalid when superimposed on residential segregation which was initiated by State enforcement of racial convenants, should be an aid to the Mexican-American's quest for an equal educational opportunity. There is support for the view that Mexican-Americans have been denied access to homes and apartments in predominantly Anglo areas.[120] These denials are aggravated by the economic reality that when one settles for a home in a residentially segregated neighborhood, the home is usually retained for some time.[121]

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

B. Ability Grouping

Like residential segregation, ability grouping (grouping students according to their talents and aptitudes) often leads to segregated

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

In Hobson v. Hansen,[128] Judge Skelly Wright held that the school district's track system, a method of ability grouping, must be abolished because "[i]n practice, if not in concept, it discriminates against the disadvantaged child, particularly the Negro."[129] Judge Wright did not condemn all forms of ability grouping. However, he did question ability grouping when it unreasonably leads to or maintains continuous racial or socio-economic segregation. In cases of such segregation, the effect is unreasonable and discriminatory because it fails to accomplish its aim--the grouping of pupils according to their capacities to learn. Because minority group children have had an educationally disadvantaged experience does not mean they must be permanently restricted to low achievement.

Hobson may contribute much to the fall of the track systems employed in the Southwest. After all, when tests are given which result in highly disproportionate numbers of Mexican-Americans in the retarded or below

average category, the classification is constitutionally suspect. The Supreme Court's language in Hernandez applies by analogy to the discriminatory effects of ability grouping in the Southwest:

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

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

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

In order to realize how examinations such as these deny equal protection to the Mexican-American student, one must perceive the discrepancy

which results when the Chicano child is tested under varying conditions. Using the Wechsler Intelligence Scale for Children, 44 scored below 80 when tested in English. But when the test was administered to the same group in Spanish, only 20 scored below 80.[133] Consequently, when applied to children with a limited background in English, these tests are inadequate since they are unable to measure a child's capacity to learn and thus result in harmful discrimination to the Mexican-American child in the public schools of the Southwest.

VI. MEXICAN-AMERICAN DESEGREGATION--THE FUTURE

A. The Southwest Generally

Overall, there are many areas of the Southwest where segregated schools should be challenged as denying the equal protection of the laws. For example, Del Rio, Texas, the scene of the Salvatierra case in 1930, although it is a rather small town, has two school districts within the city limits: The Del Rio Independent School District, which is predominantly Anglo, and the San Felipe Independent School District, which is almost entirely Mexican-American.[134] Since the Del Rio schools are much better, the Anglo children from a nearby Air Force base are bussed at State expense to the Del Rio district schools, even though the base is located in the San Felipe District.[135] Although there are two technically separate school districts in Del Rio, they should be treated as one for purposes of school desegregation. The obvious reluctance of the Del Rio district to accept Mexican-Americans is evidenced by the fact that this school district's accreditation was questioned in 1949 for failure to integrate Mexican-American students.[136] This may support a claim of unconstitutional State action. However, assuming the Del Rio public school system is segregated on a de facto basis, the Keyes[137] separate-but-equal formula

may play a decisive role in the desegregation of these schools. Keyes demands that segregated schools offer equal educational opportunity if they are to be constitutionally allowable. However, both physically and academically, the Del Rio district schools are superior. Besides being newer, Del Rio High School (mostly Anglo) offers 75 to 100 courses. On the other hand, San Felipe High School (Mexican-American) offers only 36 courses and cannot afford a vocational program.[138]

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

Ethnic isolation or concentration, as it exists in the Del Rio and San Antonio, Texas systems, is similar to that found throughout the Southwest, although it is least serious in California and most serious

in Texas.[142] It is interesting to note that there is an inverse relationship between the educational level of Mexican-Americans in these two States.[143] In other words, where the ethnic segregation increases, the educational level decreases, and vice versa. This reaffirms the accepted view in desegregation cases that segregated educational facilities fail to offer an equal educational opportunity.[144]

B. Ross v. Eckels--The Houston Situation

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

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

Judge Clark, in his dissenting opinion in Ross, denounced the pairing order as "mock justice" because it paired Negroes with another predominantly disadvantaged group. An analysis of the school populations may

prove Judge Clark's dissent to be more consistent with the prior development in the desegregation cases involving Blacks and Chicanos.[147]

The elementary grade level students in the Houston public schools number approximately 143,400.[148] Of these, 66,612 are Anglo; 53,875 are Negro; and 23,000 are Mexican-American. The respective percentages of each group in relation to the total student population in the elementary schools are 46.5 percent Anglo, 37.5 percent Negro, and 16 percent Mexican-American. Comparing the Anglo with the combined minority groups, Black and Chicano students comprise 53.5 percent of the student population. In addition, in 23 of the 170 elementary schools, the Mexican-American student population exceeds 50 percent, thus leading to ethnic imbalance. This does not include the many other schools where the combined minority group population greatly exceeds the 53.5 percent this combined group represents. In these 23 elementary schools, Mexican-Americans account for 74.9 percent of the total enrollment (13,300 out of a total of 17,750). In comparison to the entire Mexican-American school population, the 13,300 students in these ethnically concentrated schools account for 57.8 percent of the total Chicano population in elementary schools. As a result, Houston is typical of the elementary school segregation norm in the South-West: Over 50 percent ethnic isolation.

Of the 27 schools involved in the Ross pairing order, only one was predominantly (50 percent or more) Anglo. It appears that the desegregation order excluded any meaningful integration of the Anglo student with the other identifiable groups in Houston. Overall, there are 2,368 Anglo, 6,233 Mexican-American, and 14,942 Negro students involved in the pairing plan. Consequently, 21,175 of the total 23,543 students, or 89.9 percent, were children of educationally disadvantaged backgrounds. The purpose of the

desegregation cases, which is to establish unitary school systems and thereby provide meaningful social and educational encounters between students of all racial backgrounds, is not achieved by the Ross pairing order.[149]

VII. CONCLUSION

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

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

Cisneros is consistent with prior judicial development. Historically, Congress and the courts have granted Mexican-Americans protection from unreasonable discrimination in housing, employment, public accommodations, voting, the administration of justice, and in the field of equal educational opportunity. This protection has resulted from a recognition that Mexican-Americans are an identifiable ethnic minority group, whether

because of physical characteristics, language, predominant religion, distinct culture, or Spanish surname[152] and are entitled to equal protection of the laws in the area of public school desegregation.

FOOTNOTE REFERENCES

[1]Civil Action No. 68-C-95 (S.D. Tex., June 4, 1970) (hereinafter cited as Cisneros), noted, 49 Tex. L. Rev. 337 (1971).

[2]Id. at 9-10.

[3]347 U.S. 483 (1954). See also Swann v. Charlotte-Mecklenburg Bd. of Educ., 91 S.Ct. 1267 (1971).

[4]Cisneros at 13-14.

[5]Id. at 20-21.

[6]See THE NEW YORK TIMES ENCYCLOPEDIC ALMANAC 35, 288 (2d ed. 1970).

[7]Id. at 245, 288.

[8]Cisneros at 10 n.34.

[9]Id. at 8 n.28.

[10]L. GREBLER, J. MOORE, & R. GUZMAN, THE MEXICAN-AMERICAN PEOPLE 14-15 (1970) (hereinafter cited as GREBLER, MOORE, & GUZMAN). The authors cite the Mexican-American population in 1960 as 3.8 million and estimate the 1970 count to be 5.6 million.

[11]Id. at 15.

[12]E.g., States: Arizona, California, Colorado, Texas; cities: San Antonio, Del Rio, San Francisco, Santa Fe, Pueblo; rivers: Rio Grande, Brazos, Guadalupe.

[13]9 Stat. 922 (1848).

[14]Id. at 929-30, art. VIII.

[15]C. McWILLIAMS, NORTH FROM MEXICO 52 (1948) (hereinafter cited as McWILLIAMS).

[16]L. F. HERNANDEZ, A FORGOTTEN AMERICAN 8 (1969).

[17]U.S. BUREAU OF THE CENSUS, WE THE MEXICAN AMERICANS 2 (1970).

[18]McWILLIAMS 193.

[19]R. DANIELS & H.H.L. KITANO, AMERICAN RACISM 74 (1970). The authors refer

to People v. Zammora, 66 Cal. App. 2d 166, 152 P.2d 180 (1944), in which 17 Mexican-American youths were indicted and convicted for murder, without any tangible evidence, in the death of another youth who was killed in a gang fight. The California appellate court reversed and remanded all the convictions.

[20]Id. at 77. The name "zoot suiters" was derived from the gaudy clothing worn by some the Chicano youths.

[21]See Independent School Dist. v. Salvatierra, 33 S.W.2d 790 (Tex. Civ. App.--San Antonio 1930), cert. denied, 284 U.S. 580 (1931).

[22]AMERICAN GI FORUM, 21st ANNUAL CONVENTION, July 4, 1969. The incident leading to the creation of the GI Forum was the refusal in 1948 of Anglo citizens in Three Rivers, Texas to have a deceased Mexican-American veteran buried in the city's cemetery. The soldier, Felix Longoria, was buried with honors in Arlington National Cemetery. San Angelo Standard-Times, July 6, 1969, § 1, at 1, col. 1.

[23]Judge Seals listed MAYO, LULAC, and the GI Forum as products of discriminatory practices. Cisneros 12.

[24]Steiner, Chicano Power, THE NEW REPUBLIC, June 20, 1970, at 17.

[25]The Texas Observer, April 11, 1969, at 6, col. 1. MALDEF is operating under an 8-year, $2.2 million Ford Foundation grant.

[26]See Hernandez v. Texas, 347 U.S. 475 (1954). The Supreme Court found that Mexican-Americans had been discriminated against in the selection of jurors in Jackson County, Texas. See also Tijerina v. Henry, 48 F.R.D. 274 (D.N.M.), appeal dismissed, 90 S. Ct. 1718 (1969) (Douglas, J., dissenting).

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

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

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

[30]McWILLIAMS.

[31]42 U.S.C. § 2000e-2 (1964).

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

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

[34]Id. at 39.

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

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

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

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

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

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

[41]Id.

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

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

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

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

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

[47]Id at 19-20.

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

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

[50]See McWilliams 76-78, supra note 15.

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

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

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

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

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

[56]Id. at 4 n.15.

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

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

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

[60]See U.S. CONST. amend. VI.

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

[62]Id. at 479.

[63]Id. at 482.

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

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

[66]See United States v. Hunt, 265 F. Supp. 178 (W.D. Tex. 1967); Gonzales

v. State, 414 S.W.2d 181 (Tex. Crim. App. 1967); Monotoya v. People, 345 P.2d 1062 (Colo. 1959).

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

[68]Id. at 703.

[69]Id. at 702.

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

[71]42 U.S.C. § 2000(a) (1964).

[72]20 U.S.C. § 880b (Supp. V, 1970).

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

[74]42 U.S.C. § 4301 (Supp. V, 1970).

[75]For example, the following reports have been published: U.S. COMM'N ON CIVIL RIGHTS, MEXICAN AMERICAN EDUCATION STUDY, REPORT I: ETHNIC ISOLATION OF MEXICAN AMERICANS IN THE PUBLIC SCHOOLS OF THE SOUTHWEST (1970); U.S. COMM'N ON CIVIL RIGHTS, MEXICAN AMERICANS AND THE ADMINISTRATION OF JUSTICE IN THE SOUTHWEST (1970); H. ROWAN, THE MEXICAN AMERICAN, U.S. Comm'n on Civil Rights (1968); U.S. COMM'N ON CIVIL RIGHTS, HEARING HELD IN SAN ANTONIO, TEXAS, DECEMBER 9-14, 1968 (1968).

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

[77]Pottinger, Memorandum to School Districts with More Than Five Percent

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

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

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

[80]Id. at 795.

[81]Id. at 793.

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

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

[84]Id. at 549.

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

[86]64 F. Supp. at 549.

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

[88]Id. at 781.

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

[90]Id. at 1.

[91]Id. at 2.

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

[93]Id. at 331.

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

[95]Id. at 331-32.

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

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

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

[99]Id. at 831.

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

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

[102]Id. at 69.

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

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

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

[106]Cisneros at 13.

[107]Id. at 14-15.

[108]434 F.2d 1140 (5th Cir. 1970).

[109]Id. at 1150 (dissenting opinion).

[110]Id. at 1141.

[111]Houston Chronicle, Sept. 15, 1970, § 1, at 1, col. 1.

[112]Civil Action No. 6-224 (N.D. Tex., Nov. 5, 1970). Sonora, Texas had a "Mexican" elementary school which was 2 percent black and an all-Anglo elementary school.

[113]Id. at 2.

[114]Plaintiff's Motion for a Preliminary Injunction at 4, Perez v. Sonora Ind. School Dist., Civil Action No. 6-224 (N.D. Tex., Nov. 5, 1970).

[115]Houston Chronicle, Nov. 6, 1970, § 1, at 9, col. 7. The United States has also objected to the adoption of a desegregation plan in Austin, Texas whereby Blacks and Chicanos were integrated to the exclusion of Anglos, thus maintaining ethnically and racially identifiable schools. United States v. Texas Educ. Agency, Civil Action No. A-70-CA-80, (W.D. Tex., filed Aug. 7, 1970), cited in Brief for MALDEF as Amicus Curiae at 14, Ross v. Eckels, 434 F.2d 1140 (5th Cir. 1970).

[116]One case where Mexican-Americans and Negroes were denied relief is United States v. Lubbock Ind. School Dist., 316 F. Supp. 1310 (N.D. Tex. 1970), where the court found the segregation to be de facto.

[117]GREBLER, MOORE, & GUZMAN 274, supra note 10. Zero percent segregation connotes a random scattering throughout the population; 100 percent represents total segregation.

[118]Id. at 275.

[119]224 F. Supp. 971 (W.D. Okla.), aff'd sub nom. Board of Educ. v. Dowell, 375 F.2d 158 (10th Cir. 1965), cert. denied, 387 U.S. 931 (1967).

[120]PERALES 139-46, supra note 51.

[121]Kaplan, Segregation Litigation and the Schools--Part II: The General Northern Problem, 58 NW. U.L. REV. 157, 212 (1964).

[122]334 U.S. 1 (1948).

[123]Matthews v. Andrade, 87 Cal. App. 2d 906, 198 P.2d 66 (1948).

[124]Clifton v. Puente, 218 S.W.2d 272 (Tex. Civ. App.--San Antonio 1948, writ ref'd n.r.e.).

[125]87 Cal. App. 2d 906, 198 P.2d 66 (1948). The language in Clifton was similar to that cited here.

[126]396 U.S. 19, 20 (1969). See generally Wright, Public School Desegregation: Legal Remedies for De Facto Segregation, 16 W. RES. L. REV. 478 (1965).

[127]Hobson v. Hansen, 269 F. Supp. 401, 484-85 (D.D.C. 1967), appeal dismissed, 393 U.S. 801 (1968), aff'd sub nom., Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

[128]Id.

[129] Id. at 515; accord, Dove v. Parham, 282 F. 2d 256, 261 (8th Cir. 1960).

[130] Hernandez v. Texas, 347 U.S. 475, 482 (1954).

[131] A suit has been filed in Texas against a district alleging segregation resulting both from design and from a rigid system of ability grouping. Zamora v. New Braunfels Ind. School Dist., Civil Action No. 68-205-SA (W.D. Tex., filed Aug. 28, 1968), cited in Docket Report, Tit. 3, Education, at 1.

[132] Covarrubias v. San Diego Unified School Dist., Civil Action No. 70-394-T (S.D. Cal., filed Dec. 1, 1970).

[133] M. WEINBERG, DESEGREGATION RESEARCH: AN APPRAISAL 265-66 (2d. ed. 1970).

[134] U.S. COMM'N ON CIVIL RIGHTS, HEARING HELD IN SAN ANTONIO, TEXAS, December 9-14, 1968, at 295-304 (1968).

[135] Id. at 304.

[136] Id. at 305.

[137] 313 F. Supp. 61 (D. Colo. 1970).

[138] 2 Civil Rights Digest 16, 20 (1969).

[139] U.S. COMM'N ON CIVIL RIGHTS, MEXICAN AMERICAN EDUCATION STUDY, REPORT I: ETHNIC ISOLATION OF MEXICAN AMERICANS IN THE PUBLIC SCHOOLS OF THE SOUTHWEST 26 (1970) (hereinafter citied as ETHNIC ISOLATION).

[140] Rodriguez v. San Antonio Ind. School Dist., 299 F. Supp. 476 (W.D. Tex. 1969) (issue here limited to whether a three-judge panel should hear the case).

[141] 269 F. Supp. at 513.

[142] ETHNIC ISOLATION 30.

[143] See GREBLER, MOORE, & GUZMAN 144, supra note 10.

[144] A Connecticut Department of Education study shows that children bussed to suburban classrooms from inner-city schools accelerate their reading ability as much as 18 months ahead of their urban counterparts who remain behind. Houston Chronicle, Nov. 8, 1970, § 1, at 2, col. 7.

[145] 434 F.2d 1140 (5th Cir. 1970).

[146]ETHNIC ISOLATION 35.

[147]E.g., Cisneros v. Corpus Christi Ind. School Dist., Civil Action No. 68-C-95 (S.D. Tex. June 4, 1970); Keyes v. School Dist. Number One, 313 F. Supp. 61 (D. Colo. 1970); Romero v. Weakley, 131 F. Supp. 818 (S.D. Cal.), rev'd, 226 F.2d 399 (9th Cir. 1955). These three cases involved segregation of Negroes and Mexican-Americans into minority schools.

[148]Houston Chronicle, Oct. 1, 1970, § 1, at 13, col. 1-2. All figures and percentages used in the analysis of the Houston elementary schools were derived from this article.

[149]Ross v. Eckels, 434 F.2d 1140 (5th Cir. 1970) was appealed to the Supreme Court of the United States by the Houston Independent School District because the court pairing order integrated two minority groups. Houston Chronicle, Sept. 15, 1970, § 1, at 1, col. 1. A motion to stay the pairing order was denied by the Supreme Court. Houston Chronicle, March 1, 1971, § 1, at 1, col. 1.

[150]ETHNIC ISOLATION 89.

[151]See T. P. CARTER, MEXICAN AMERICANS IN SCHOOL: A HISTORY OF EDUCATIONAL NEGLECT (1970).

[152]Cisneros v. Corpus Christi Ind. School Dist., Civil Action No. 68-C-95, at 10-11 (S.D. Tex. June 4, 1970).