



Inter-American Education
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Concerning Segregation of
Spanish-Speaking Children
in the Public Schools

By
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Other Issues of Occasional Papers:

- I. "First Regional Conference on the Education of Spanish-People in the Southwest—A Report." (March, 1946.) (Out of Print.)
- II. "Materials Relating to the Education of Spanish-Speaking People—A Bibliography." (February, 1948.)
- III. "Texas-Born Spanish-Name Students in Texas Colleges and Universities (1945-1946)." (March, 1948.)
- IV. References for Teachers of English as a Foreign Language—A Bibliography." (September, 1949.)
- V. "The Spanish-Speaking Population of Texas." (December, 1949.)
- VI. "Labor Requirements and Labor Resources in the Lower Rio Grande Valley of Texas." (December, 1950.)
- VII. "Wetbacks in the Lower Rio Grande Valley." (July, 1951.)
- VIII. "Spanish-Name Persons in the Labor Force in Manufacturing Industry in Texas." (July, 1951.)
- IX. "Concerning Segregation of Spanish-Speaking Children in the Public Schools." (December, 1951.)

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Foreword

I am frequently called upon to counsel school authorities, students, school patrons, lawyers, civic organizations, and governmental agencies on the propriety of segregating Spanish-speaking children (nearly always of Spanish-Mexican descent) in separate public-school classes or buildings. Is the practice sound from an educational viewpoint? Is it legal? What line of reasoning should be followed in analyzing a given situation to determine whether that situation conforms to good educational practice and to legal requirements? These and related questions have been asked time and time again.

This little volume is not intended as an exhaustive answer to such questions. Rather, the following presentation is simply an effort to set forth, in summary form, the principal features that are involved in arriving at a full answer. Those who would pursue the legal aspects further should study the *Mendez* and *Delgado* cases thoroughly, and analyze the legal citations in those cases. Those interested in the strictly educational features should consult top-level educational authorities to determine whether or not a given practice is consonant with sound educational theory, with good school administration, and with the dictates of educational psychology and methodology.

Much of the material included herein was originally prepared, in the form of affidavits, to be used in connection with the *Delgado* case. I am grateful to Mrs. Marie M. Hughes and to Drs. H. T. Manuel, L. S. Tireman, A. L. Campa, and Frederick Eby for their permission to reproduce (in Chapter III) their statements. I appreciate, also, the aid given by Dr. Elton B. Hale in organizing and editing the first draft of these materials. Attorneys Gus C. García (San Antonio) and A. L. Wirin (Los Angeles) gave invaluable assistance in the analysis of legal points.

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I am frequently called upon to counsel school authorities as to the proper handling of the physical and mental health of the child. It is the duty of the school to provide for the physical and mental health of the child. The school should be a place where the child can grow physically and mentally. The school should be a place where the child can learn to live with others. The school should be a place where the child can learn to live with himself. The school should be a place where the child can learn to live with the world.

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Section 1
The University of Texas

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

(Constitution of the United States, Fourteenth Amendment, Section 1.)

Section 1
The University of Texas

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I

The Legal Fact

In all parts of the Southwest, at one time or another, some Spanish-name children have had to attend segregated public schools or classes. In some places this segregation has extended only through the first grade. In others, it has extended through higher grades—even through high school. In some states the practice is now rare; in others, quite common. In all cases, the official basic assumption which has been used to justify the practice has been that these children are Spanish-speaking—that, therefore they cannot participate satisfactorily in schools or classes with their English-speaking fellow pupils, that they require separate educational treatment, etc.

The soundness of this practice has been questioned repeatedly by those educational authorities who have specialized in the subject.¹ This, together with the bitter, and long-standing, opposition of the parents and friends of the segregated children, has resulted in having the matter brought to the courts for adjudication. The most notable and conclusive legal decisions on the subject are two: the *Mendez*² case in California, and the *Delgado*³ case in Texas.⁴

The Mendez Case

The *Mendez* case was tried before Judge Paul J. McCormick in a United States District Court in southern California. The suit was based on the complaint of a group of Spanish-name children (represented by their fathers or guardians) against several school systems that segregated them in separate schools from those attended by other (mostly "English-speaking") children.

¹For instance, see: George I. Sánchez, "First Regional Conference on the Education of Spanish-Speaking Children in the Southwest—A Report," *Inter-American Education, Occasional Papers I*, The University of Texas Press, March, 1946. 22 pp.

²*Mendez v. Westminister School District* (1946), *Federal Supplement*, v. 64, 544.

Westminister School District v. Mendez (1947), *Federal Reporter*, 2nd, v. 161, 774.

³*Delgado v. Bastrop Independent School District* (1948), No. 388 Civil, District Court of the United States, Western District of Texas. (See Appendix.)

⁴For a review of other legal decisions, see: Ennis Hall Gilbert, "Some Legal Aspects of the Education of Spanish-Speaking Children in Texas," Unpublished Master's Thesis, The University of Texas, 1947.

As stated by the Court:

The complaint, grounded upon the Fourteenth Amendment to the Constitution of the United States . . . alleges a concerted policy and design of class discrimination against "persons of Mexican or Latin descent or extraction" of elementary school age by the defendant school agencies . . . resulting in the denial of the equal protection of the laws to such class of persons among which are the petitioning school children.

On February 18, 1946, after examining the facts and the law in the case, as presented by attorneys for the children and for the school systems, Judge McCormick ruled.

We conclude by holding that the allegations of the complaint have been established sufficiently to justify injunctive relief against all defendants, restraining further discriminatory practices against the pupils of Mexican descent in the public schools of defendant school districts.

The school systems involved in the *Mendez* case appealed this decision of the United States District Court to the Ninth U.S. Circuit Court of Appeals in San Francisco.⁵ The appeal was heard by seven judges, who, on April 14, 1947, unanimously affirmed the decision of the District Court. No further appeal was made, and the case was closed with the Spanish-speaking people having been upheld in their contention that segregation of their school children violated rights guaranteed to those children by the Constitution of the United States.⁶

One of the most interesting aspects of the *Mendez* case was the brilliant way in which Judge McCormick espoused sound educational theory. At one point of his discussion (*dictum*, in legal terminology) he asserts:

"The equal protection of the laws" pertaining to the public school system in California is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican ancestry that are available to the other public school children regardless of their ancestry. 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.⁷

⁵Abstracts of the principal features of the *Mendez* case, including the outcome of the appeal, are given in the Appendix.

⁶The *Mendez* case was used for precedent in a similar decision by Judge Dave W. Ling in Arizona in 1950 (*Gonzales v. Sheely*, *Federal Supplement*, v. 94, 1004). Abstract from the *Gonzales* case is presented in the Appendix.

⁷*Mendez v. Westminster School District*, *op. cit.*, p. 549.

Then he states:

The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation, and that commingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals. It is also established by the record that the methods of segregation prevalent in the defendant school districts foster antagonisms in the children and suggest inferiority among them where none exists.⁸

The findings of fact and of law in the *Mendez* case, though conclusive and of far-reaching significance, did not go far enough. Several questions, of great import to schoolmen and to the Spanish-speaking people, were still not satisfactorily answered. One of the most important of these questions was:

Question 1: Is there illegal segregation when the school authorities have no regulation, policy, or design to that effect? In other words: What is segregation?

There are several type situations in which this question arises:

A. In Community A: the Spanish-speaking children, regardless of where they reside, have gone to a certain ("Mexican") school—all "English-speaking" children, including those resident in the neighborhood of the "Mexican" school, attend the other ("white") school. All this is done as a matter of long-standing custom, the school authorities having issued no regulation nor adopted any policy or design in the matter.

B. In Community B: the situation is exactly as in A, except that some Spanish-speaking children attend the "white" school.

C. In Community C: the school authorities have ruled that children may attend the school of their choice. Even then, though some Spanish-speaking children go to the "white" school, the English-speaking children who reside in the neighborhood of the "Mexican" school also go to the "white" school—and the "Mexican" school is thus attended only by Spanish-speaking children.

D. In Community D: the school authorities have established two school zones, each with a school. Also, these authorities have adopted a policy which permits children of one zone to transfer to the school in the other zone. As a result, the situation is exactly as in Community C above.

E. In Community E: the authorities have gerrymandered the school zones so that all, or nearly all, Spanish-speaking children are in one zone and all other children are in the other zone. Or, the authorities create more zones than there are schools so that, by arbitrarily determining what schools the children of each zone shall attend, the assignment of only Spanish-speaking children to one school is achieved.

F. In Community F: the school authorities transport children from nearby districts to the local schools. Those districts sometimes are parts of a consolidation with the given school system; or, at other times, simply have some

⁸*Ibid.*

sort of agreement for the attendance of their children in the schools of Community F. The transportation route by-passes or even crosses through the zone which has the school attended only by Spanish-speaking children.

Other type situations, which are combinations of the above, may arise. In all of them the questions are: (1) Are school authorities free to fall in with a custom which results in segregation? (2) Are school authorities permitted to do by indirect means or usages (gerrymandering, transfer policies, etc.) what they may not do by direct means? (3) Does segregation exist where not all Spanish-speaking children are segregated (*i.e.* where one of the schools is a "mixed" one and the other is attended only by Spanish-speaking children)?

It is to be noted that no question is raised for those school situations where a truly defensible zoning plan has been followed—even though in such cases the zoning results in the creation of neighborhood schools which, under other circumstances, would be regarded as segregated schools. It is obvious that, where the size of the system warrants more than one school, the authorities have a right to conform to the facts of population distribution in setting up neighborhood schools. On the other hand, it is equally obvious that an analysis of geography and of population statistics will show clearly whether the zoning was justified, or whether gerrymandering or other arbitrary usages have been followed.

Another question, not clearly answered in the *Mendez* case, was:

Question II: How far may school authorities go in grouping Spanish-speaking children in separate classes (in a common building or campus)?

Many communities, which do not maintain separate school buildings for Spanish-speaking children, do force those children (or most of them) into separate classes throughout one or more grades. Does this practice fall within the prerogative of educators to form "homogeneous groupings" of children for instructional purposes?

The final question, and probably the most important, was one upon which the *Mendez* case touched only indirectly:

Question III: Do state officials have any responsibility in the matter of segregation? Or, put differently, if a school system is carrying on an unconstitutional practice (segregation), can state school authorities be enjoined from participating in that practice?

This question is a crucial one, for it raises the issue of the enforcement of court rulings. If only the offending school system is

enjoined, and segregation is a common practice in other school systems, the Spanish-speaking people in each of those other communities will be faced with the task of bringing legal action against each system individually—a cumbersome and expensive process. On the other hand, if state administrative authorities (who allocate funds, issue certificates, approve contracts, etc.) can be stopped from participating in the illegal practice, wherever it may occur, then the eradication of the practice becomes a much easier matter. It will then be necessary only to have the state authorities enjoined through the initial suit and, afterwards, to convince those authorities that a given system is following the prohibited practice. Then, since the state authorities are enjoined from participating in the practice, those authorities must apply the sanctions that are within their power (cancel certificates, withhold approval of contracts, deny accreditation, stop distribution of funds, etc.).

The Delgado Case

In four communities in Central Texas, children of Mexican descent charged that school authorities were segregating them contrary to law.⁹ Suit was filed in the U.S. District Court, Western District of Texas, presided over by Judge Ben H. Rice, Jr. The complaint was directed against the several local school boards and superintendents, the State Board of Education, and the State Superintendent of Public Instruction. The petition asked (1) for injunctive relief against all the defendants, and (2) for damages against the local school authorities.

By agreement among the attorneys for all the parties, the complaint against the State Board of Education was to be dismissed and the request for damages was voluntarily withdrawn. The attorneys also agreed upon the facts and upon the conclusions of law, and the action was submitted on its merits to the Court.

On June 15, 1948, Judge Rice ruled that:

The regulations, customs, usages, and practices of the defendants, Bastrop Independent School District of Bastrop County, et al., and each of them in so far as they or any of them have segregated pupils of Mexican or other Latin-American descent in separate classes and schools within the respective school districts of the defendant school districts heretofore set forth are, and each of them is, arbitrary and discriminatory and in violation of plaintiff's constitutional rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and are illegal.¹⁰

⁹See Appendix for principal points of the complaint.

¹⁰*Delgado v. Bastrop Independent School District, op. cit.*

The Court also ruled that all of the local school boards (and each member) and each of the local superintendents

... are hereby permanently restrained and enjoined from segregating pupils of Mexican or other Latin American descent in separate schools or classes within the respective school districts of said defendants and each of them, and from denying said pupils use of the same facilities and services enjoyed by other children of the same ages or grades . . .¹¹

The Court recognized that the only possible exception to the above prohibition was in the first grade, for children who did not know English. It limited this exception, however, by ruling that school authorities could provide for and maintain

... separate classes on the same campus for the first grade only, and solely for instructional purposes, for pupils in their initial scholastic year who, at the beginning of their initial scholastic year in the first grade, or who have not accumulated attendance substantially equivalent to a scholastic year, clearly demonstrate, as a result of scientific and standardized tests, equally given and applied to all pupils, that they do not possess a sufficient familiarity with the English language to understand substantially classroom instruction in first-grade subject matters.¹²

Judge Rice ruled that, in those instances where buildings had to be moved or constructed in order for the schools to comply with the Court's decision, a reasonable time was allowed for compliance. In no event, however, was this allowance to extend beyond September, 1949.

The final major ruling of the Court was that:

The defendant, L. A. Woods, as State Superintendent of Public Instruction, is hereby permanently restrained and enjoined from in any manner, directly or indirectly, participating in the custom, usage or practice of segregating pupils of Mexican or other Latin-American descent in separate schools or classes.¹³

As a result of this final ruling, the State Superintendent of Public Instruction, in June of 1947, issued "Instructions and Regulations to All School Officers of County, City, Town and School Districts" which reiterated the findings of the Court and which stated:

You will take all necessary steps to eliminate any and all segregation that may exist in your school or district contrary to these instructions and regulations. I shall take whatever steps are necessary to enforce these instructions and regulations and to prevent segregation of students of Mexican or other

¹¹*Ibid.*

¹²*Ibid.*

¹³*Ibid.*

Latin-American descent in the public schools of the State of Texas as directed by the above-mentioned Court decree.¹⁴

As a direct result of the *Delgado* case, and after presentation of arguments by Attorney Gus C. García and George I. Sánchez, the Texas State Board of Education issued the following statement of policy on May 8, 1950:¹⁵

TEXAS EDUCATION AGENCY

Statement of Policy Pertaining to Segregation of Latin-American Children

The State Board of Education recognizes that it has the responsibility of at all times administering the public school program of Texas in accordance with constitutional and statutory authority. Furthermore, the Board is fully aware that the intent and purpose of the law is that the public schools of Texas be operated so as to provide equal educational opportunity for all children, and that any form of segregation not authorized by the constitution and laws should be eliminated. The Board also recognizes that the segregation of children of Latin-American descent from Anglo-American children in the public school program is contrary to law.

Consistent with this Board's belief in local self-government to the fullest extent possible, it is conceived to be the privilege and responsibility of local school boards to handle matters of administration and to adjust with local citizens complaints and grievances so long as the action taken is consistent with the law.

To this end this Board deems it proper, in cases where it is alleged there exists a practice of segregating Latin-American children from Anglo-American children, that the local boards of school trustees be given the opportunity to eliminate such segregation prior to the bringing of such cases to the Commissioner of Education, where such matters would be handled only on the basis of appeal.

The Board authorizes and directs the Commissioner of Education to advise local administrators and local boards of trustees regarding their responsibility to comply with the law pertaining to segregation; and the Commissioner is directed to give consideration to any appeals which may be submitted to him as a result of decisions made by local boards, in order to determine whether or not in his judgment there has been a violation of the statutes or of constitutional rights. In the event the Commissioner shall determine that the school district has violated statutes pertaining to segregation or has invaded the constitutional rights of children of Latin-American descent, he is directed to take such action as may be appropriate and consistent with the advice and counsel of the Attorney General.

¹⁴L. A. Woods, "Instructions and Regulations," issued by the State Superintendent of Public Instruction, State of Texas, as a result of the *Delgado* case. (Mimeographed, undated but issued in June, 1947.) (See Appendix.)

¹⁵Files of the Texas State Board of Education.

Interpretations

The rulings in the *Delgado* case lead to certain conclusions which are highly significant to school authorities:

Segregation is Illegal. This basic conclusion is incontrovertible. In so far as the law is concerned there is no longer any possibility of dispute on this question. School authorities cannot legally set up a separate school for children of Mexican descent, nor can they set up separate classes for such children. If the school system is large enough to justify more than one school, the assignment of children to those schools can be based only on criteria that apply equally, and are equitably applied, to all children of the school system. The same principle holds in the matter of the assignment of children to classrooms or activities in any one school plant.

The fact that the segregation in separate schools or buildings has been effected without a specific ruling by the school authorities, or without the expression of any policy to that end, does not make it legal. Oftentimes the segregation is simply a product of long standing custom—a custom sometimes approved and encouraged by the Spanish-speaking people themselves. Nonetheless, whether by “custom, usages, and practices” or regulations, segregation is illegal. The current or past acquiescence of the Spanish-speaking people is irrelevant. People cannot choose to give up their constitutional rights! And school authorities cannot fall in with, or casually overlook, the violation of the law in the operation of the schools under their jurisdiction.

Homogeneous Grouping. For instructional purposes, it is often necessary to group children in ability-groups or achievement-groups. It seems quite clear, however, that when such grouping results in a class composed entirely of Spanish-speaking children there is room for strong suspicion that segregation is being practiced. It would be indeed remarkable that, on the basis of defensible criteria, only Spanish-speaking children would fall below the demarcation point in all, or practically all, the divisions of the curriculum. As a matter of fact, such an occurrence would constitute prima facie evidence that, somehow, the school system was doing less well for Spanish-speaking children than for others—a circumstance with legal and administrative implications as serious as those revolving around segregation. It seems safe to conclude that if all the children in the lower half (the “slow section”) of a given grade are Spanish-speaking, and are placed in a separate classroom, and all or nearly all of those in the upper half of that

grade are “Anglos,” the arrangement is merely a subterfuge for the setting up of illegal separate classrooms for Spanish-speaking children.

It must be recognized that many Spanish-speaking children (and some “Anglos”) do not enter school until October, November, or even December—and that many of them leave school a month or two before the close of the school year. Because of the administrative difficulty of providing for such children, and because many of those children will be retarded in their educational development, it is possible that some school systems, which are honestly concerned with doing the best possible job for such children, will want to make special provisions for them. It is doubtful that, even under such extreme circumstances, the wholesale assignment of such children to separate classrooms would be legal. Whatever plan is followed should be one that judges *each* of those children on his *individual* merits by the same criteria, and with the resultant same treatment, as applied to the rest of the children of his age, grade, educational status, or date of enrollment. There is no place in American educational theory or law which tolerates a “special education” for children simply because they engage in farm labor and enter school late. Therefore, even though these late-entrants do present unusual difficulties to school authorities, they cannot be segregated or offered an education that is not substantially that offered other children.

The *Delgado* case is very clear as to homogeneous grouping for first grade children who do not know English. If a school system wishes to set up separate classes (first grade only) on the basis of language differences, it must first apply “scientific and standardized tests” to *all* the first grade children—and then use a given score on such tests as the dividing line for the two groups. If that procedure is followed conscientiously, it will not be at all remarkable to find “Anglo” children with scores below the dividing line and, consequently, assigned to the separate classroom made up largely of Spanish-speaking children who know little or no English. By the same token, some Spanish-name children will be found with test scores above the dividing line; and those children cannot be placed in the segregated classroom. In addition, the *Delgado* case clearly states that the separate classrooms for children who are deficient in English must be on the same campus as the regular school. Special note should be made of the fact that the Court set forth the additional proviso that the separate first grade classrooms

could be maintained only for children who *do not already have substantially one school year of attendance.*

The Court's ruling in the *Delgado* case implies also that the separate classroom, set up for those who do not know English, will offer facilities or procedures that cannot or are not offered in the regular first grade classroom. Otherwise, there would be no justification whatsoever for the homogeneous grouping of children who do not know English. School systems not making such special provisions in the separate classrooms will leave themselves open to the charge that the separate classroom is segregated—particularly if all the children in that classroom are Spanish-speaking, and more particularly if the criteria or procedures used in classifying them cannot stand professional scrutiny. Later in this study, more discussion will be given to the matter of homogeneous grouping.

Gerrymandering. As in the cases where segregation is achieved by other means, the first question to ask in checking for gerrymandering is: Is the given school attended exclusively, or almost exclusively, by children of Mexican descent? If so, it needs to be determined whether this was achieved by the establishment of obviously defensible zone boundaries or if the zone boundaries have been made to conform not to the facts of geography and population distribution but to an arbitrary plan designed to include only "Mexicans" in the zone—that is, the zone boundaries have been made to conform with ethnic boundaries. This can easily be determined by examining the various alternatives to existing zone lines. If the alternatives are demonstrably more feasible, and if such alternative boundary lines would result in mixed schools and a closer adherence to sound educational principles, it would seem that the power of school authorities to zone has been used in an arbitrary manner to create a segregated school. It is to remember that there is no legal road to the commission of an unconstitutional act, and that one may not do indirectly what the law or the courts have determined cannot be done directly. That is to say, the creation of a segregated school through the use of the power to create school zones is patently illegal.

Gerrymandering can be accomplished in ways other than the arbitrary establishment of boundary lines between two school zones. School authorities may create more school zones than there are schools, carefully bounding one zone so as to include all or the majority of the Spanish-speaking children, and then ruling that the "Anglo" school is the school to be attended by the children of all zones except the one populated by Spanish-speaking people

(where the traditional "Mexican" school is located). Such an elementary subterfuge is so obvious that there can be little doubt that gerrymandering has been practiced—particularly if it can be determined that the "Mexican" school is more conveniently situated for some of the children from the privileged zones than is the "Anglo" school.

Neighborhood Schools. Closely related to gerrymandering is the matter of neighborhood schools. Some communities achieve segregation by establishing schools whose zone lines coincide with ethnic boundaries. Such zone lines, by following "natural barriers" (a highway, railroad tracks, an arroyo, etc.), effectively divide the districts into "Mexican town" and "the white section." While seemingly legitimate, this practice is subject to serious question.

In the first place, the school system concerned must be prepared to defend the establishment of two (or more) schools—on the basis of enrollment, of costs, of efficiency. It seems reasonable to assume that a small and compact town with, say, 400 elementary school children would find it difficult to defend the operation of two schools (one "Anglo" and one "Mexican") of 200 children each in lieu of one school of 400. The defense would be particularly difficult if the facilities provided the 200 "Anglos" were obviously superior to those provided the 200 "Mexicans." These considerations would hold true whatever the combination of grades involved.

In the second place, as in gerrymandering, the location of zone lines in the above hypothetical case would have to be justified. It would have to be shown that the facts of population in that town cannot be interpreted more reasonably in favor of other alternatives which would not result in the separation of the two ethnic groups. In this connection, it should be noted that railroad tracks and main traffic arteries are questionable as "natural barriers." After all, such obstacles are subject to relatively easy control through the establishment of overpasses, underpasses, and traffic lights.

In analyzing the justifications for a given neighborhood school, it should be kept in mind also that modern educational theory is solidly behind inter-cultural education. The separation of children by ethnic groups in separate schools or classes, when alternatives which would not result in such separation are feasible, is counter to the best educational theory and practice. In the light of the numerous ways that there are for controlling such hazards, it is absurd to subordinate supinely the education of children to the dictates of a railroad track or of a well-travelled street. What,

indeed, would have been the state of educational affairs in large centers of population if such "barriers" had been unquestionably accepted as impenetrable lines and as the course that school zone boundaries should inevitably follow?

"Free Choice." Sometimes the two neighborhood schools are in the same school zone, or district, and the children are given "free choice" as to which one they will attend. Because of custom or other indirect pressure, however, one of the two schools is attended only by children of Mexican descent. Thus, by falling in with custom or usage, the school authorities operate a segregated school just as surely as though they had ordered the practice through a regulation.

The Texas State Superintendent of Public Instruction investigated one such situation in 1949, when the Del Rio school system was accused of segregation through the operation of "free choice." The investigation confirmed the charge. The State Superintendent concluded that the problem as to which school to attend cannot be left to children's choice, and that the Del Rio school system was practicing segregation of children of Mexican descent. He ruled, therefore:

I hereby confirm my previous ruling of withdrawing the accreditation from the Del Rio Independent School District, removing them from the accredited list of schools, and do hereby declare it to be an illegally operated school to which teachers who are the holders of valid teachers certificates issued through this office are not eligible to teach without having their teachers certificates cancelled, after the beginning of the scholastic year of 1949-1950, which begins on September 1, 1949. The removal of the Del Rio School from the accredited list is still effective as of February 12, 1949.

Given under my hand and seal of office this the 23rd day of April, A. D., 1949.
(L. A. Woods)

State Superintendent of Public Instruction¹⁶

The school officials of Del Rio, after a hearing before the State Board of Education, decided to ignore the ruling of the State Superintendent. However, on the opening day of school (in September), a large number of "Mexican" children "chose" to enroll in the "Anglo" school. By doing so, they demonstrated what Superintendent Woods had concluded: namely, that "free choice" is unworkable. The "Anglo" school could not accommodate the children, and the school authorities were thus forced to do what the State Superintendent had advised from the very beginning: *all*

¹⁶From the files of the Texas State Superintendent of Public Instruction (Del Rio case).

the children in certain grades were assigned to one school, and *all* the children in the remaining grades were assigned to the other school.

Segregation Is a Federal Issue. There is a widespread misconception that the states have sovereignty in educational matters. The fact that education is not mentioned in the Federal Constitution and that, therefore, education is one of the functions that were reserved to the states has been misconstrued as meaning that the states can do as they please in the field of education. Sometimes this erroneous interpretation is extended to mean that the local school boards (city, county, town, etc.), and the political subdivisions that they represent, virtually "own" their schools and can do as they please with them.

Local boards and superintendents direct educational enterprises only because of powers delegated to them by the state. The schools are, in effect, *state* schools; and the local school officials are acting as officers of the state. Those officials cannot do what the state cannot do, for their acts are carried out by state authorization or under the color of state law. Therefore, the limitations to which the state is subject constitute limitations also on the powers of local school officials.

While education is a function of the states, it is not so absolutely and exclusively. State rights are exercised within the framework of limitations imposed by the Federal Constitution. Some of these limitations are stated in the Fourteenth Amendment. This Amendment provides, among other things, that (a) a state may not deprive persons of life, liberty, or property without *due process of law*; and that (b) a state must give every person *equal protection of the laws*. It follows that, in carrying out the state right or function (in this case, education), the state must do so without infringing upon people's rights to *due process of law* and to *equal protection of the laws*.

The *Mendez* and *Delgado* cases have established that Spanish-speaking children may not be segregated by the arbitrary and capricious acts (of commission or omission) of school officials. Such segregation is a violation of the Fourteenth Amendment of the Constitution of the United States, since such acts do not constitute due process of law or equal treatment under the law. In sum, the segregation of these children is a matter of national concern, is subject to the provisions of the national Constitution, and may be adjudicated through the federal courts. Furthermore,

the violations involved in the segregation of Spanish-speaking children are *violations by state*—and *both* the state and local officials that take part in the violations are acting as officers of the state in the matter and *both* may be enjoined from carrying on such violations.

II

Educational Considerations

The segregation of any group of children with a foreign home-language into classes or schools, distinct from those attended by the rest of the children of the same ages and grades, is a policy and practice based on a confusion of the fundamental issues in the education of both groups of children. This confusion arises principally from the acceptance by the school authorities of assumptions that are either illogical, without foundation in fact, or contrary to sound educational theory and practice.

English *versus* Education

The first error which such school authorities make is to confuse "English" with "education"—that is, it is evident that they assume that the entire school policy or program should revolve around the question of whether or not a given child or group of children know English. They seem to assume that the location and/or quality of school facilities and services for all phases of school life should be determined on the basis of this one factor. They also assume that successful participation in all other phases of the curriculum and of school life are dependent on achievement in English. The lack of logic in these assumptions becomes quite evident when one examines them closely.

There are many phases of the curriculum and many activities of the school life that are not dependent upon proficiency in English; for instance: playground activities of all kinds, drawing, music, arithmetic computation, participation in auditorium activities and in cafeteria or lunchroom experiences, etc. It is very important to note that these activities—and the knowledges, skills, and attitudes that arise therefrom—are at least as important phases of education as is achievement in the English language. That is to say: English is but one small part of the education to be attained in the primary grades, and many significant parts of that education arise out of school activities that depend very little on proficiency in English. Furthermore, even if English could be learned best under segregation, there is no doubt but that the rest of education would suffer under segregation. Therefore, in the interest of those other highly important phases of primary education, separation would be deemed undesirable.

It is to be noted that the undesirability of segregation is the conclusion reached with every other foreign home-language group in the nation—and in the Southwest, with the exception, in some communities, of the Spanish-speaking group. We do not find schools segregating children from Czech homes, from German homes, from Italian homes, etc., even in those communities where these foreign language groups constitute a large sector of the population. In those communities it is recognized that, while those children may be deficient in their knowledge of English, that deficiency does not justify separation—because a preponderance of the education to be obtained is not attained best under separation. Also, as will be noted later, the authorities accept the very logical, and pedagogically sound, idea that foreign home-language pupils learn English most quickly and best when they are in constant association with English-speaking children.

The Learning Environment

Here arises the second erroneous assumption made by those school authorities who segregate children "so that they may learn English better." It is virtually a truism that no student ever learned a foreign language from a classroom teacher alone. He learns the language from using it naturally in real and varied situations with those who speak the language well—in this case, his English-speaking fellow students. He learns from his classmates not only in the classroom but on the playground, on the way to and from school, etc.

Where people to whom the language is native are unavailable, good language teachers go to great lengths to create, artificially, situations which, for children learning English in an English-speaking country, need not be simulated. The artificial situation is, at best, a poor substitute for the real one. Any intelligent teacher of languages would insist on practicing this truism—and that is exactly what is done in every case, except in those communities where Spanish-speaking children are forced to remain in contact only with Spanish-speaking children, and with one English-speaking teacher for limited periods of the school day. Thus they fall into the vicious circle of being segregated because they do not know English, and not learning English because they are segregated!

Language Achievement

From the above erroneous assumptions, school authorities who practice segregation fall into another error: the assumption that all the English-speaking children in a given grade in the regular school know more English than all the supposedly Spanish-speaking children in the same grade in the segregated class or school. This is not necessarily so, and in no case where segregation is practiced have school authorities even attempted to check on the correctness of their assumption. As a matter of fact, if the segregation were based on a scientific selection of children with a certain predetermined proficiency in English, undoubtedly there would be some "English-speaking" children in the segregated class or school as well as some "Spanish-speaking" children in the regular class or school. It is to be noted that, where segregation is practiced, all the segregated children have Spanish names; and, oftentimes, only by way of exception is a Spanish-name child found in the regular school or class in the grades from which the other Spanish-name children are excluded.

Even more fundamental than the matter of whether or not little children can understand English and can express themselves in that language is the broader question of their language development. What is their store of concepts? How mature are these concepts? What facility do they have with their concepts? And so on. In laymen's language: How much do they know and how clearly and how quickly do they think? All of this without reference to the fact that they do or do not speak English.

A non-English-speaking child who has a superior language development (in terms of concepts) has a big advantage over other, less fortunate children (whether English-speaking or not) in acquiring rapidly a store of English symbols or labels. If one is to give differential treatment to children on the basis of language difference, certainly the matter of basic language development should be given at least as much weight as is the matter of their achievement in the use of the English symbolism. That, under segregation, it is overlooked completely is further evidence that the so-called language problem (when used to justify segregation) is less a matter of demonstrable true language difference and more an arbitrary, poorly thought-out, pseudo-scientific excuse.

Homogeneous Grouping

The above erroneous assumptions are based, in part, on a basic assumption that is also in error: that, since (supposedly) the segregated children are homogeneous as to their deficiency in English, they are homogeneous as to their achievements in the other subject matters and activities of the school.

In the first place, there is no evidence to support the assumption that these children are homogeneous as to their deficiency in English—and it is quite easy to show that they are not homogeneous in this respect. As a matter of fact, oftentimes the differences in this regard among these children are greater than any differences that may exist between the average of the entire segregated group and that of the children from whom they are segregated! If the policy of segregation is sound, many of the Spanish-name children should be segregated from the rest of the Spanish-name children (just as many of the English-speaking children should be segregated from the other English-speaking children)! This could be carried out to an absurdity. The question arises, then: at what point should segregation begin and at what point should it end? So far, the only answer to this question has been an arbitrary and capricious one: at the point, and with the children, subjectively determined, in different stages and degrees, by each local school system. A truly scientific plan would not permit of such variations.

To repeat, in the first place there is no evidence that all the Spanish-speaking children who are segregated in a given grade are homogeneous as to their proficiency in English. In the second place, even if they were homogeneous as to English-achievement, they would not necessarily be homogeneous as to their achievement in each of the many other subject matters and activities that comprise primary education. As a matter of fact, these children are not homogeneous even as regards the Spanish language. Quantitatively, they may range from zero to one hundred percent in the degree to which they are "Spanish-speaking." The same variation in range can apply qualitatively. Furthermore, two children who are Spanish-speaking to the same degree quantitatively may differ radically in the degree to which they are Spanish-speaking qualitatively. In sum, these children are segregated on an assumption that they are generally homogeneous in achievement—and no one has proven that they are homogeneous in any single respect (except that, in the main, they all have Spanish names!).

What is actually true is that a segregated Spanish-name child oftentimes is more like some of the English-speaking children from whom he is segregated than he is like his Spanish-name classmates. The same can be said for some English-speaking children who, similarly, differ more from their English-speaking classmates than they do from some of the Spanish-name children in the segregated class or school. This would be easily made evident if a scientific evaluation were made of all the achievements, attitudes, etc., that are involved in primary education. If the policy of segregation were sound, and the children could be regarded as homogeneous as to proficiency in English, and thereby justify separate grouping based on a given standard of proficiency, they would fall into entirely different and diverse homogeneous groups in each of the other aspects of school life. In these other groups would be found some English-speaking children; just as, in various groups formed from the original English-speaking group, there would be Spanish-name children grouped with English-speaking children from whom, to form the English-proficiency group, they were originally separated.

Separate Housing

This brings us to the culminating erroneous assumption made by some school authorities who practice segregation: that the alleged benefits of separate grouping of Spanish-name children "because they do not know English" must needs be carried out in a completely separate physical plant. Even if special facilities and services were offered to Spanish-name children "because they do not know English," the virtues of such a special program are not dependent upon, or in any way associated with, separate housing in a physical plant removed at some distance from the regular school. In a special program of language teaching, such as is implied in the practice of segregation "because the children do not know English," there is nothing that would call for basic architectural differences in the school plant, basic differences in any aspects of school furnishings and equipment, or basic differences in playground, cafeteria, auditorium, and similar facilities. The idea of a separate physical plant is pedagogically incongruous in this case.

Segregating Spanish-name children in a separate, off-campus physical plant deprives them of numerous benefits which should normally be a part of their education. Even assuming, for illustration, that grouping them separately for certain phases of lan-

guage instruction could be justified, the continuation of that grouping into all other phases of school life certainly cannot be justified; and separate housing forces that sort of extension of a homogeneous group, based on one set of criteria, to areas of education and social relationships where those criteria do not apply and are invalid. The same applies, to a lesser degree, when the separate plant is on the same campus as the regular school.

Assuming, again for the sake of illustration, that the separate grouping of Spanish-name children could be justified. Then, if the segregation of Spanish-name children "because they do not know English" were being carried out in good faith, we should expect to find that the services and facilities offered them under segregation squared up to the reasons offered for the segregation and to the implications arising out of those reasons. Presumably these children are deficient in English and language development, and they are being segregated so that the school may overcome the alleged deficiency. Presumably also, a separate class or school is established because the facilities and services to be offered these children in remedying the alleged deficiencies are not to be found in the regular class or school. That is, school authorities are to offer these children something special—presumably something better than what is to be found in the regular class or school. One must assume that the teachers are to have special qualifications, over and above the normal requirements for teachers in the regular situation. These special qualifications, presumably, are such that these teachers are especially equipped (in a manner different from the teachers in the regular class or school) to resolve the special educational problems presented by Spanish-speaking children who do not know English. By virtue of the same reasoning we should expect to find other special services, facilities, and equipment (which the regular situation does not offer) in the segregated situation.

In all the segregated schools and classes that I have surveyed or observed in more than twenty-five years of experience, I have never found one in which the school personnel, services, and facilities squared up to the implied special offering upon which the whole idea of segregation, "because the children do not know English," rests. As a matter of fact, the opposite has been true. Virtually without exception, a segregated school is an inferior school. In a survey of ten school systems in Texas, eight of which practiced

segregation of this nature, V. E. Strickland and I obtained objective evidence to this effect.¹ In every instance, objective data showed that the segregated school was inferior to the regular school provided by the same community. That is, not only were special services or facilities not offered, but the standard of services and facilities offered in the regular school were not met in the segregated school. In other words, children with admittedly special needs and handicaps are expected to have those needs met and their special handicaps remedied by an educational program that is below the standard of the regular school from which these children were excluded "so that they could be taught English better." Quoting Justice Murphy of the Supreme Court of the United States in a recent opinion: "At the very least, a low standard of living is hardly a justification for a statute which operates to keep that standard low. Something more than its own bootstraps is needed to pull such a law up to the constitutional level."² The same thought applies here.

Lack of Uniformity

Assuming that the segregation of Spanish-name children "because they do not know English" can be justified, one would expect: (1) that all school systems, having a significant number of Spanish-name children, would practice segregation; (2) that the school systems practicing segregation would follow a fairly uniform plan. The facts in the case are all to the contrary with regards to both of the above propositions. In all of the states with large numbers of Spanish-speaking people, it is only by way of exception that one finds a school system practicing segregation of these children. All the better school systems in those states, rural as well as urban, do not practice segregation. Among the systems that do not practice segregation of Spanish-speaking children are those which could most easily bear the burden of providing separate schools. It is interesting to note that, usually, the school systems least able to afford duplication of facilities are the ones that practice segregation.

The school systems that practice segregation fail to observe a uniform plan. Some segregate only through the first grade, some through the third, some through the fifth, some through the eighth, and some even through high school; the point at which segregation

¹V. E. Strickland and G. I. Sánchez, "Spanish Name Spells Discrimination," *The Nation's Schools*, January, 1948, pp. 22-24.

²*Oyama v. California*, 332 U.S., 631.

shall begin and end being, apparently, a matter for the arbitrary and capricious decision of local officials. If X school system is correct in its decision to segregate only through the third grade, then the neighboring community of Y, with virtually the same kind of children, must be wrong if it segregates them through the fifth grade; and they both must be wrong since school system Z segregates only through the first grade—and they must all be wrong since, on the basis of the same evidence, school system A does not segregate at all!

The very lack of uniformity is a denial of the alleged logic in segregation; and it is irrefutable evidence that the educational destinies of these Spanish-name children are being made the butt either of amateurish, or wholly misguided (and inconsistent), or of careless and shallow, reasoning—or of reasoning that has been vitiated by considerations other than those that should enter into the management of a program of public schools designed in the best interest of all the children of the entire community. When, alongside the fact of lack of uniformity, one places the almost invariable fact of inferior offerings, it becomes quite patent that the alleged pedagogical reasons for segregation have been used to inject, into the public school, ideas and attitudes that militate against the welfare of a group or class solely because of his ancestry and/or culture—with results that are discriminatory against that group and class, that deny them equal protection under the law, and that deprive them of rights without due process of law.

Segregation is Arbitrary

If a school can justify practicing segregation through the third grade on the basis of the unsupported opinion of non-expert school officials, what is to prevent that school from changing its mind and segregating through the eighth grade, or high school, or through any other point decided upon at the whim of the local school officials? What is the standard of English proficiency which governs the point at which segregation begins and ends? Are all English-speaking as well as Spanish-speaking children measured against this standard, and grouped strictly according to the dictates of the standard?

In all my investigations, I have found no such standard. Furthermore as far as I have been able to determine, schools practicing segregation apply whatever measure they use only to Spanish-name

children. Evidence of this is the fact that only Spanish-name children are to be found in the segregated school—no Czechs, no Germans, no “English-speaking” children who are deficient in language development, etc.

Children are Alike

Generally speaking, all children 6–7 years old in a given community are largely alike, whether they come from English-speaking or Spanish-speaking homes. They have more or less the same concepts and general language development, the same mental development, the same physical development, etc. While they may know them in different languages, they know more or less the same words and they use those words in much the same way.

Within the normal variations common to any group of unselected children, both English-speaking and Spanish-speaking children are much more alike than they are different and, especially as to the achievements which are significant to the program of the school, they manifest almost no differences as they first enter school. The principal difference (and presumably the crucial one in the whole question of segregation) is that, at the very worst, the concepts that the Spanish-speaking child knows he utilizes and expresses only in Spanish, and those that the English-speaking child has he expresses in English. If one thinks in terms of adult standards, at first blush this difference looms as a very large one. Actually, in terms of the school situations confronting children who are 6–7 years old, the difference is very small. To participate effectively in all the important activities of a first grade, a child can easily get by with a knowledge of 600–700 words. His needs are much less at the beginning of the school year.

It may be said that, at the very worst, the Spanish-speaking child needs only to acquire some 600 words in order to do as well in the first grade as his English-speaking fellow students. Let us remember that he knows these words, but that he knows them in Spanish. His task is only that of acquiring the English equivalent of words he already knows. It is to be remembered also that these 600 words are the simplest ones in the English language, many of which have self-evident meanings when accompanied by proper gestures in a normal setting. This vocabulary deficiency (of the most deficient Spanish-speaking child) is in no sense significant enough to warrant his continuous segregation for all the purposes of instruction. It is preposterous to think that that deficiency

would warrant a separate school plant for even the first year of school.

Mixed Classes Desirable

In elementary classes that I have taught, in all the schools of which I have been principal, and in all those which I have supervised, children who did not know a word of English upon first entering school were participating normally with their English-speaking classmates before the second month of school was over.

In all my experience I have found that Spanish-speaking children learn English best and most quickly when they participate normally in mixed classes with English-speaking students. This is true whether one is speaking of children in the Kindergarten, the first grade, or any other grade up through the high school. The initial vocabulary deficiency of the child who comes to school knowing only Spanish is an obstacle that can best and most quickly be overcome in mixed classes. Any other procedure for overcoming that deficiency is fraught with the gravest dangers to both groups of children, and to the very nature of the democratic concept of education.

Emphasis needs to be placed upon the fact that it is educationally highly desirable and beneficial to English-speaking children not to be segregated from the Spanish-speaking children of the community. By participating jointly with those Spanish-speaking children in the school-life activities of the community, the English-speaking children develop in practice those attitudes and understandings which are commonly thought of as the attributes of democratic institutions. On the other hand, segregation fosters in both groups of children reactions which are inconsistent with or inimical to democratic institutions. Emphasis needs to be placed also on the fact that there is no evidence that the achievement of English-speaking children is impaired because they participate in mixed classes with the Spanish-speaking children. All evidence available denies that any such impairment takes place. As far as I have been able to determine after examining the proposition critically for many years, any alleged impairment is nothing more than an *a priori* conclusion used more or less as a bugaboo when opposition to the elimination of segregation is being fostered. The experience of school systems that do not practice segregation contradicts this assumption. It is my deeply considered conclusion that, not only is the education of English-speaking children not impaired in mixed classes, but, if the mixed-class situation is

properly utilized, those English-speaking children will have educational opportunities superior to those which would be available to them if there were no Spanish-speaking children in the community.

A Proposed Procedure

So far I have dealt almost entirely with the mistakes which are committed when a school system practices segregation of Spanish-speaking children. I should like now to set forth briefly what should be the proper procedure for those schools to follow in meeting whatever problems arise out of the fact that some of the children beginning school come from homes where English is used very little or not at all—or where it is used exclusively but poorly. I should point out, at the outset, that that problem is faced in some degree by practically every school system in the nation. It should be noted that many school systems, in every state of the Southwest as well as over the rest of the nation, have been faced with and have met that problem (without resorting to segregation) with children who speak German at home, or Czech, or Spanish, etc.

Attention is called to the fact that the recommendations which follow would apply regardless as to what foreign home-language was involved. Attention is also called to the fact that the same procedure would apply to children whose deficiency was in some other subject matter of the school—arithmetic, spelling, penmanship, etc.

In the first place, the children should be grouped into grades and "homerooms" without reference to the specialized deficiency or deficiencies which constitute the problem. This initial grouping should be carried through all the normal activities of the class and school, with the exception to be noted below. Even in those classes or activities within which the given deficiency would constitute a special handicap, the deficient children should be permitted to participate up to the maximum of their ability. In other words, save for the exception to be set forth below, all children would be working together all of the time.

The next step is to determine the nature and extent of the deficiency, and to make an individual diagnosis for each pupil. Let us assume that, in a given case, the deficiency is lack of knowledge of English. A suitable objective test should determine the level of proficiency in English of the class as a whole. This test should measure, not English in all its aspects, but *the English which is basic to the school activities of that class*, for our principal concern

is with attaining (among the deficient children) at least that minimum of English which will enable them to do the class work. Then, with the level of proficiency of the class as a standard of comparison, it should be determined which individual children are so far below that standard that it is deemed necessary to give them special instruction. This minority of the class may then be considered a "homogeneous group" *for the purposes of that specialized instruction only*, and with reference only to the standard of the class as derived by tests of demonstrable validity and reliability. In this case, we will assume that the deficiency is vocabulary (that is, some of the children are far below the average of the class in the recognition and expression of English words and sentences). It is to be noted that, since beginning children should do no reading in the first months of school and since the language which is used in formal classwork is simple, the training that these deficient children need is aural recognition of a limited and very simple vocabulary and training in the oral expression of those words and simple sentences. It should not be overlooked that all the other activities of the school can continuously contribute to the amelioration of this deficiency. That is, the specialized instruction of the homogeneous group will limit itself to remedial teaching of very specific knowledges and skills—teaching which cannot be done well otherwise.

During certain periods of the day, when the other children are engaged in activities which do not require the undivided attention of the teacher, the teacher devotes herself to leading the children of the homogeneous group in those drills, lessons, or activities deemed most suitable to overcome their deficiency. For instance, it may be that one of the principal difficulties encountered by those children is that of proper pronunciation of such words as *this*, *school*, *bus*, and *church*. The intelligent teacher will have little difficulty in devising interesting and useful activities to give such training. It may be that the children also need training in recognizing certain spoken phrases or words. Again, the intelligent teacher can easily devise activities to give these children special help in meeting that need.

The limited drill and attention that can be given to the homogeneous group during these special periods should be supplemented constantly throughout the day—when the children sing, on the playground, as they carry on their little drawing and construction activities, and so on. They learn to say *this* instead of *thees* not only because they have received special guidance in the special

period but more so because they will frequently be hearing other children say *this* correctly; because, as they do other things throughout the day, they will have real need of *this*, they will use it frequently, and the teacher will take advantage of every opportunity to give them additional guidance.

With all children, the greater part of the first year of school is normally limited to studies and activities involving only oral English. In the main, the activities that are suitable for English-speaking children are just as suitable for the Spanish-speaking children. The games, dances, excursions, construction activities, etc., are the same. Naturally, the children with the largest command of the English language will probably use more language and understand more of the language used than the others. By careful teaching, however, all children will participate *to the limit of their individual abilities*. In other words, there is no reason why the oral and aural language development of the fluent child need be handicapped because of the participation of less fluent children. By the time formal reading activities are in order, the originally deficient children will have acquired a sufficient knowledge of the language to begin reading the limited English that would constitute the first reading activities of the English-speaking children whether or not there were foreign home-language children in the class.

While, in many instances, the use of a foreign home-language in the home persists as a handicap in school to the child from that home, if the procedure outlined above is followed, the handicap need never assume such proportions that a child cannot keep up with the class. In any case, the best antidote for the handicap is continuous and full participation with English-speaking children throughout the school day. In general, when the above procedure is followed, Spanish-speaking children will keep up with their English-speaking classmates from grade to grade. Under the very worst circumstances, their handicap will not be as great in the mixed school as it would be in the segregated school—for, in the mixed school, the child is at least exposed to English and to English-language situations in ways that are impossible to duplicate in the segregated school.

No Unique or Specialized Methodology or Materials

I want to emphasize in the strongest terms that there is no special methodology or materials that are peculiar to the teaching of English to Spanish-speaking children. The methods or devices

and materials which are useful in teaching them English are those which will also prove useful in the language development of children who already know English. In no sense is the plan of education which applies to the teaching of non-English-speaking children one that would differ in any significant way from the plan that is used normally in teaching English-speaking children. It is true that, in certain limited areas, a child who speaks only a foreign language will need drill that need not be given to the English-speaking child; for instance, in changing the child's pronunciation of *thees* to *this*. It is to be noted that some of the Spanish-speaking children will not need this particular drill. Usually, the English-speaking children will not need that particular drill either. However, some of the English-speaking children will need similar drills—for instance, in correcting *payner* to *painter*, or *ya'll* to *you all* or *you!* More important still, special drills of this kind constitute a regular part of any normal classroom—and constitute but one small part of the total program of language and other education that goes on throughout the day.

The segregation of Spanish-name children "because they do not know English" implies, as a crucial justification, that something is going to take place in that segregated school or classroom that does not or could not properly take place in the regular one—some peculiar procedures, some sort of environmental setting, some sort of equipment or materials of instruction, etc. That implication is preposterous and without any foundation in fact whatsoever. There are not even any special children's textbooks that are peculiarly useful to Spanish-speaking children. Every game, every song, every procedure used in the segregated school could just as easily and much more properly be used in the regular school. As a matter of fact, they are so used.

An examination of the records of the school system will reveal, in addition, that, at best, the qualifications of the teachers of the segregated school are the same as those of the teachers in the regular school. It is not unusual for the teachers in segregated schools to be transferred to teaching positions in the regular schools and *vice versa*. As a rule, they are no better as teachers in one than in the other. That is to say that, in my experience, I have not found in segregated schools in the Southwest teachers who are distinguishable in any way from the teachers in the regular school except (as revealed in the Strickland-Sánchez survey) that, as a rule, the qualifications are inferior and the pay is less than that of the teachers in the regular school. It is ridiculous to think that,

somehow, something about these teachers and their procedures would warrant setting them up in a segregated school.

The special training that is desirable for teachers who deal with foreign home-language children, the procedures and materials that have added merit in that they are useful with such children, and any other such "special" aids in teaching such children are simply refinements to the art of good teaching. In no sense do they constitute a plan that is basically different to, or incompatible with, the plan that any good teacher would use with any group of children. To reiterate: There is nothing in the methodology or materials that are recommended in the education of Spanish-speaking children that in any way would call for or justify segregated education.

Segregation Defeats Purposes of Education

I am convinced that segregation, as practiced in such areas as Texas, California, and Arizona, tends to defeat the purposes of education. It has already been noted above that it is illogical to assume that the children will learn English better under segregation. In addition, segregation discourages the Spanish-speaking children from attending school regularly and from continuing in school.

Those segregated children who do not know English are very much aware of that fact; and, even after three or more years of segregation, they know that they have never used English in real situations—or, at least, in such situations as those in which they will be placed when they go to a school with English-speaking children. The degree to which this discouragement goes is made evident when one compares the enrollment in the last segregated grade with the enrollment of Spanish-speaking children in the next (non-segregated) grade. Usually the enrollment in this latter grade is consistently and disproportionately lower than in the preceding grade.

Children from the segregated school tend to fear going to the regular school—since it presents an unknown situation. They have not played with English-speaking children; they seldom, if ever, have spoken with English-speaking people other than their teachers; and they have been in attendance in a much smaller (and virtually always inferior) school. For several years their very segregated situation has impressed upon them that, somehow, they are peculiar and that they are unfit to be with the children

in the regular school. As they finish the segregated school, it is not at all surprising that they should wonder how they will measure up, whether they may not still be unfit to associate with the other children, and so on. Often these fears and uncertainties culminate in withdrawal from school.

I am of the firm conviction that one of the reasons why more Spanish-name children do not go on through grade school, high school, and college is because of the discouragement arising from the practice of segregation. It is indeed unusual for students from segregated schools to reach college. Also, children who have attended segregated schools rarely speak English well—or as well as those who come from schools where segregation is not practiced. The effects of segregation upon the English-language development of these pupils is evident even among those rare individuals who reach college. On the other hand, students in college who come from communities where segregation is not practiced usually speak an effortless English that is undistinguishable from that spoken by so-called English-speaking students. The same observations may be made as regards students in high school.

This deleterious effect of segregation upon language development constitutes one of the principal obstacles to the educational growth of Spanish-speaking children. If one adds to this the undesirable psychological and emotional effects of segregation upon these students, the sum is a formidable handicap. Further, if to that handicap is added the fact that segregated schools are almost invariably inferior schools, the obstacles to the education of these children assume insuperable proportions.

Segregation Contrary to American Educational Principles

It is my firm conviction that segregation is inconsistent with, and inimical to, the principles and ideals upon which the American public school is founded. The inculcation of democratic ideas and habits, the whole notion of a unitary school, the idea of Americanism and Americanization, and all such broad and basic attributes of what we regard as the American public school are negated by the very nature of the segregated school. This can be appreciated best if we try to imagine what the results would have been had we segregated, in the public schools, every immigrant group that came to this country speaking a foreign language. The genius of our powers of assimilation, and of our powers of Americanization, lies largely in our public school—a school that is indeed a melting pot and a training ground for democracy. Elsewhere in

the country the Italians, the Irish, the Poles, and many other large immigrant groups became American primarily through two processes: (1) their participation in social and economic endeavors on an equal footing with native Americans; and (2) especially their participation in the regular, public American schools alongside native American fellow students. One shudders to think what would have been the result had each of these groups been segregated educationally "because they did not know English."

In the five southwestern states of this country there are some two and one-half million Spanish-name people. In Texas alone there are about one million five hundred thousand. In the past these people have been confronted with numerous obstacles and handicaps to their full assimilation into the surrounding culture. Some of these obstacles and handicaps have been purely economic or geographic—poverty, isolation, and the like. Others have been the product of historical circumstance peculiar to the region—such as proximity to Mexico, increased immigration of Mexicans, and concentration of Spanish-language population.

Undoubtedly, the most potent weapon for overcoming the obstacles and handicaps that confront this Spanish-name population is education. This is self-evident. In the Southwest, in those areas where good schools have been available to these people on an equal footing with their English-speaking neighbors, they have made phenomenal strides in overcoming their handicaps. Attention need only be called to the social progress made by "Spanish-Americans" in New Mexico, in some parts of Colorado, and in some parts of California. By the same token, the least progress has gone hand in hand with the poorest education. And even a cursory examination will show that the poorest education has taken place where segregation has been practiced. I can say emphatically, without fear of successful contradiction: show me a community where Spanish-speaking children are segregated educationally for any reason whatsoever, and I will show you a community that has a backward program of education for Spanish-speaking children—and I will show you a community where the educational level of the Spanish-speaking people is below that of communities with similarly situated Spanish-speaking people who are not segregated.

Communities practicing the segregation of Spanish-speaking children are, in my conception, educationally backward and misguided. The reasoning and the attitudes behind the practice of segregation are erroneous and unsound, as well as dangerous. The practice of segregation does not square up to good pedagogy, to the best learning of English, or to good Americanism.

III

Supporting Expert Opinion

Recognition of the problems of segregation of Spanish-speaking people in the public schools of the Southwest is not limited to any particular state or group of people within a state. The urgent need for attention to the problem of segregation—with its socio-economic causes, undemocratic aspects, and inevitable unsatisfactory results—is recognized by a growing number of experts and authorities in the field of education and in related fields.

As evidence of this spreading attention to the problems of segregation of Spanish-speaking school children, and in support of what has been said previously in this study as well as elsewhere, the conclusions of selected experts and authorities who are acquainted with the problems of the segregation of Spanish-speaking children in the public schools of the Southwest are included in this chapter. They reiterate again and again what has already been said: that segregation is an undemocratic procedure which breeds undesirable results not only for the group so segregated but for all groups concerned.

First Regional Conference on Education of Spanish-Speaking People in the Southwest

This conference was held at The University of Texas on December 13-15, 1945, and was attended by the following delegates:

ARIZONA

Dr. Max L. Basemann	Dr. Irma Wilson
Chairman, Department of Languages	Professor of Education
Arizona State College	Arizona State Teachers College
Flagstaff	Tempe

CALIFORNIA

Mrs. Marie Hughes	Dr. Welty Lefever
Curriculum Coordinator & Specialist	Professor of Education
in Education of Minority Groups	University of Southern California
Public Schools, County of Los Angeles	University Park
Los Angeles	Los Angeles

COLORADO

Miss Prudence Bostwick	Dr. Wilhelmina Hill
Supervising Teacher	Associate Professor of Education &
Denver Public Schools	Director of Inter-Amer. Education
Denver	Demonstration Center
	University of Denver
	Denver
Mr. John C. Unger, Director	Dr. Stuart Cuthbertson
of Secondary Educ. & Curriculum	Professor of Romance Languages
State Department of Education	University of Colorado
Denver	Boulder

NEW MEXICO

Dr. A. L. Campa	Dr. Joaquín Ortega, Director
Professor of Romance Languages	School of Inter-American Affairs
University of New Mexico	University of New Mexico
Albuquerque	Albuquerque
Dr. Edward Eyring, President	Mrs. Mary Watson
New Mexico Highlands University	State Department of Education
Las Vegas	Santa Fe
	Miss Carmen Espinosa
	State Department of Education
	Santa Fe

TEXAS

Rev. John L. Birch, Executive Sec'y	Dr. Henry J. Otto
Bishops' Committee for the Spanish-Speaking	Professor of Elementary Education
San Antonio	The University of Texas
	Austin
Dr. B. F. Pittenger, Dean	Dr. George I. Sánchez
The College of Education	Professor of Latin-Amer. Education
The University of Texas	The University of Texas
Austin	Austin
Dr. R. L. Sutherland, Professor	Miss Myrtle Tanner, Director
of Sociology and Director of Hogg	Information and Statistics and
Foundation	Inter-Amer. Relations Education
The University of Texas	State Department of Education
Austin	Austin
Mr. R. C. Eckhardt	Dr. J. G. Flowers, President
Office of Inter-American Affairs	Southwest Texas State College
Austin	San Marcos
Dr. E. N. Jones, President	Dr. J. O. Loftin, President
Texas College of Arts & Industries	San Antonio Junior College
Kingsville	San Antonio

Dr. H. T. Manuel
Professor of Educational Psychology
The University of Texas
Austin

Dr. L. A. Woods
State Superintendent of Public
Instruction
Austin

Dr. John L. McMahon, President
Our Lady of the Lake College
San Antonio

The proceedings of the conference were published by The University of Texas Press in *Inter-American Education, Occasional Papers I* in March, 1946. Excerpts from that published report (now out of print) are presented here to set forth the views of the delegates concerning the segregation of Spanish-speaking children.

Introduction. (by George I. Sánchez). The assimilation of the Spanish-speaking people of the Southwest, the inevitable cultural contacts and conflicts that occur among them and between them and other groups in this area, and a complex of many other issues and problems constitute a situation that should be of serious concern to all. As a matter of fact, however, these issues and problems have not been made the subject of attack upon a large scale by any agency or institution. While a number of individuals have distinguished themselves as students of these problems, and while some passing attention has been given to narrow phases of some segment of the situation by several private and governmental agencies, this minority population has been an orphan group insofar as effective, organized sponsorship is concerned. Even so, significant strides have been taken in the study of the educational problems of Spanish-speaking people. This has been the result of the efforts of a few individuals who, as teachers or as members of departments of education, have sought to encourage the scientific study of the problems and to apply the remedial measures dictated by sound pedagogy. These efforts have been aided from time to time through the financial assistance granted by a few organizations with an interest in these matters. Notable among these organizations are the General Education Board and the Office of the Co-ordinator of Inter-American Affairs.

The progress that has been made in this field has served to emphasize that there is great need for co-ordinated effort in the study of the problems and issues of the region and for concerted support for professional endeavor. It has been particularly evident for many years that there is great need in the Southwest for some organization or program which, at regular intervals, would bring together, in both state and regional meetings, those professional leaders who

are especially concerned in the education of Spanish-speaking people. It is clear that many worthwhile results are possible from such meetings and, without question, such continuous examination of educational problems would prove of great benefit throughout the region. The past lack of such continuous collaboration has been one of the most serious handicaps to an effective attack upon the educational issues raised by this sector of the population.

With this in mind, The University of Texas recently sought and obtained assistance from the General Education Board to finance the first regional conference on the education of Spanish-speaking people in the Southwest. Leaders in the field from over the region were invited and the conference took place at the University during December 13-15 (1945).

The fundamental object of this first conference was that of obtaining a free exchange of views on the part of the experts in this field. With this object in view, all the sessions of the conference were of the round-table, discussion type . . . and . . . since prepared papers were purposely avoided, it was deemed desirable to use another procedure to point up the discussions. For this purpose, panels of delegates were selected to give special thought to the topics of the conference and to take leadership in the discussion. The reports presented herein were prepared by the respective panels and are summarized versions of the exchange of views that took place among all members of the conference on each of the selected topics under leadership of the various panels of delegates. These reports, therefore, may be regarded as an expression of the views of all the delegates.

Statement of the Problem. (John L. McMahon, Chairman; Miss Prudence Bostwick; Edward Eyring, Mrs. Marie Hughes; George I. Sánchez; and Miss Irma Wilson). The first panel discussion of the conference properly dealt with the basic problems confronting each of the represented states in the education of Spanish-speaking people. The discussion of the individual reports tended to show that the problem is regional in character rather than locally isolated.

There was unanimity on the part of the panel members that there existed in each of the states patterns of segregation, isolation, and discrimination which operated against the welfare of both the Spanish-speaking people and the entire community where such patterns exist. Community co-operation between English and Spanish-speaking peoples and agencies for the study and solution of these problems have been initiated in some areas. Such organizations as the Institute on Community Relations conducted by Los

Angeles County, the Colorado Corporation on Inter-American Field Service, the Denver Unity Council, and the institute of leaders of both groups sponsored in Texas with aid from the Office of Inter-American Affairs have rendered valuable service. Important as such community co-operation is, the undeniable fact remains that these patterns of segregation continue to exist and that segregation is a moral and social evil, inimicable to national welfare.

Crucial Education Issues. (Edward Eyring, Chairman; Victor H. Kelley; Welty Lefever; Miss Myrtle Tanner; John C. Unger; and Mrs. Mary Watson). Special emphasis was placed upon the problem of bilingualism, both as regards the teaching of English and the teaching of Spanish. It was a matter of general agreement that the teaching of English to Spanish-speaking students is one of the crucial educational issues throughout the Southwest. It was brought out that, in a large number of cases, the child does not have sufficient opportunity to learn English; first, because of the time limitations in classroom instruction and, secondly, because he often has little chance to hear English outside of the classroom. While, undoubtedly, much progress has been made in improving the teaching of English to these children, much more attention to the problem is still warranted in every respect—teacher education, curricular reforms, research, texts, etc. It was emphasized that, in teaching English to Spanish-speaking children, association with English-speaking students is most helpful, and that segregation militates against the learning of English by Spanish-speaking children as well as against other even more fundamental aspects of their education.

It was emphatically pointed out that school segregation is pedagogically unsound, socially dangerous, and unquestionably un-American. This matter of segregation is a crucial education issue and should be attacked with all the intelligence and insight possible. Numerous illustrations were cited which served to condemn segregation and which demonstrated the desirability of its elimination—in the interest of both the English-speaking child and the Spanish-speaking child.

The other crucial problem to which particular attention was given was that of school attendance and progress. Numerous factors were cited as contributing to delinquency in this regard: health and economic conditions of the people, unattractive school plants and programs, indifference on the part of school administrators, poor teaching, seasonal labor, and the opposition of vested interests. There was agreement to the effect that more attractive

school plants and programs, by themselves, would go a long way toward correcting present lack of attendance and school progress. In addition, it was apparent that, as strongly contributing factors to current unsatisfactory conditions, much of the blame can be laid to inadequate and inequitable school financing. Along with other defects, the absence of satisfactory programs of vocational training and vocational guidance were pointed out. The group was well aware that many vital factors, economic and cultural as well as strictly educational, lie in the background of the symptoms of phenomena which we call "school attendance" and "school progress." Therefore, it insisted that much study and planning are certainly needed in this important area.

Remedial Measures. (Mrs. Marie Hughes, Chairman; Max L. Basemann; A. L. Campa; J. G. Flowers; and Miss Wilhelmina Hill). The extended need to improve the educational program of the Spanish-speaking people in the Southwest has been set forth above. The special problems presented by conditions in the Southwest have likewise been considered. Even the most cursory analysis of needs and problems identifies the low socio-economic status, inferior health conditions, inferior educational opportunities, the language handicap, and the isolation of the Spanish-speaking group from the larger community. Several of these problems are directly within the province of educational workers. Others need the co-operation of state and regional organizations to effect improvement. Whether or not the educational workers can directly effect improvement, they are obliged to secure accurate and comprehensive information regarding the problem within the school district and the larger community.

Inferior educational opportunities caused by inadequate financial structure can be improved through the co-operation of state and regional groups who believe in equality of educational opportunity for all the children.

The problem of segregated schools, that is, those schools attended exclusively by the Spanish-speaking children, is one of great concern. In many cases these schools are out-and-out segregated schools. Sometimes the children attending them even pass by the school attended by Anglo-American children. In few instances are these segregated schools maintained on the same standards of physical building and equipment of teacher efficiency. These schools represent discriminatory practice. A variety of approaches of doing away with such schools is necessary. A court decision oftentimes clarifies the issues involved. Such a decision has been sought

in California and other areas should urge court decisions on this question. Such decisions may serve as a stimulus to school boards who need, or think they need, such outside authority in changing the policy of the district.

A second approach involves a general education program for the entire community, a program which points out the dangers in segregation and the unwholesome effect on community life. Another argument, useful with lay people and educators alike, shows how impossible it is for children to learn the ways of American living when they are not in contact with people who live in that manner. This applies particularly to language and the more subtle forms of social intercourse. Administrators should become informed as to the ill effects of segregation.

Intermediary steps may be used, which open up the way to complete elimination of the segregated school. Such intermediary steps as moving the seventh and eighth grades or the kindergarten to the "Anglo" school, assemblies, play days, picnics, musical participation, and other forms of inter-communication among schools, which will accustom Anglo parents and children to being with Mexican-American children, and likewise accustom Mexican-American parents and children to being with Anglo-Americans. Still another form of action involves work with the minority groups so that they may do away with some of the obvious differences which create distinctions between themselves and the Anglo-American group.

Segregated schools and discriminatory practices stand as a direct impediment to the improvement of our relations with Spanish-speaking people in international affairs. When communities begin to realize that these practices are undemocratic, that they prevent American citizens from becoming responsible participants in the community, they cannot continue them. The present need for new buildings and existence of distinct boundaries make it a peculiarly propitious time to begin progressive campaigns against the unfriendly and undemocratic institute of segregated schools.

Regional Planning. (H. T. Manuel, Chairman; Stuart Cuthbertson; Mrs. Marie Hughes; John L. McMahon; Joaquín Ortega; and Miss Irma Wilson). The basic problem of education in the Southwest, as in the world at large, is that of building an effective democracy in which every person will enjoy his inalienable rights to life, liberty, and the pursuit of happiness, and will participate effectively with his fellows in the orderly processes of self-government. The problem in the Southwest is made more difficult than in

some other areas by the fact that our people speak different languages, come from somewhat different cultural backgrounds, and include large numbers of people of extremely unfavorable socioeconomic status. The Southwest presents, however, a peculiar opportunity to observe and study the integrating of three cultures—the Spanish, the Indian, and the Anglo-Saxon. Since the Anglo-Saxon tradition is the norm for the region, and since the Indian is the object of attention by special agencies such as the U.S. Office of Indian Affairs, special attention should be given to the seriously neglected special problem of the Spanish-speaking group. This group has cultural traditions of its own to contribute to the advance of civilization and, in both numbers and potentialities, constitutes a significant human resource.

The problems of education for this group are extremely complicated and must be attacked from many angles. They are indeed parts of the larger problems of co-operative living and are intimately bound up with them. Though recognizing these larger implications, this committee's statement is restricted to issues of more immediate concern to educators.

As educators we have four main responsibilities: (1) to furnish leadership to the public in providing adequate educational facilities for children and adults and in seeing that our people take advantage of them; (2) to conduct the processes of education with the greatest possible efficiency; (3) to advance knowledge through research; and (4) to develop a consumers' market for knowledge and for factual and factorial information so that majority thinking may coincide with the best thinking.

With respect to these responsibilities, the public needs to know that large numbers of our children from Spanish-speaking homes are out of school; that in many communities adequate provisions for their education are lacking; that in some communities an unwise policy of separating them from English-speaking children delays their language development and hinders the processes of democratic living; that programs of education for Spanish-speaking adults are generally inadequate; and that provisions for bringing English-speaking and Spanish-speaking peoples into effective co-operation are usually lacking.

Individual Statements

The following statements on segregation of Spanish-speaking children are presented as indications of the views of those professional workers who have given special study to the problem. The

biographical summary preceding each statement has been prepared by the author of this volume—the statement itself is a direct quotation.

Arthur L. Campa

Dr. Campa is a Professor of Modern Languages and Director of the Division of Language and Literature at the University of Denver. He has had some twenty years of experience in this field and his professional activities have kept him in constant touch with the needs and problems in the education for Spanish-speaking people in the Southwest.

Language is an oral-aural means of communication attained by people through the natural intercourse of experience and association. This is particularly true among children who are in the process of acquiring symbols for new objects and for new situations arising from association with one another. Unlike reading and writing, which are largely mechanical skills, the spoken language necessitates constant recurrence or oral-aural experience in order to attain proper pronunciation, natural intonation, and uninhibited expression. Segregation of children in school deprives the non-English speaking groups of the opportunity to utilize the above situations in order to learn the national language at a time when ninety-five per cent of our language needs for the present state of civilization are oral.

Language is essentially a social phenomenon which must be learned through social experience. The skills of language cannot be considered apart from the daily experiences of the child, nor must they be confined to any specific period of the day; they must be integrated with the whole curriculum and activity of the school in order that language may serve its principal function, that of social adjustment.

There is no social adjustment achieved in a situation where the non-English-speaking and English-speaking children are segregated. The non-English-speaking student will resort to his mother tongue, and will retain language patterns and social practices peculiar to his own culture. The English-speaking student, who should be making the necessary adjustments under the direction of the school, tends to widen and accentuate differences in cultural background that a closer familiarity with them would cause them to pass unnoticed.

The functions of speech, as seen today by modern language teachers, go beyond the mere necessity of communication; it is

therefore essential that in teaching a language these factors be given careful consideration. A distinguished Professor of Columbia University says: "Speech is the great medium through which human co-operation is brought about. It is the means by which diverse activities of men are co-ordinated and correlated with each other for the attainment of the common and reciprocal ends. Men do not speak simply to relieve their feelings or to air their views, but to awaken a response in their fellows and to influence their attitudes and acts."

Furthermore, segregation emphasizes English in the minds of the students as a "foreign language" rather than as a national tongue. This creates a mental blockage which does not enable the student to attain the necessary social integration looked for in the learning of the national tongue. If segregation were conducive to the learning of English, the language should be better learned in sections of the country where national groups, such as Latin Americans, Italians, and others are segregated by circumstance.

Aside from linguistic and social retardation, segregation has an unsalutary effect upon immature minds of children, whose conclusion is that segregation is a means of separating the undesirables from the more fortunate. If educational training is a sincere attempt to teach children to live with their contemporaries, it cannot hope to attain this objective through processes that place them out of touch with other future citizens.

It ill behooves us to encourage segregation within the borders of our own country at a time when we are attempting to reach world unity and a universal concept of humanity. Segregation does not enable us to perpetuate the social heritage that we consider most adequate for our way of life; it deprives children of the opportunity to achieve oral language efficiency, and it creates social maladjustments and mental blockages that no amount of adult education will eradicate. We cannot afford to impose upon a coming generation the preconceived notions of a prejudiced mind when our education should be predicated upon childrens' needs.

Frederick Eby

Dr. Eby is Professor of the History and Philosophy of Education at The University of Texas. He has had many years of experience as a specialist in the whole field of educational history and educational principles and philosophy.

As a result of my long experience as a specialist in the whole field of educational history and educational principles and philosophy, I am convinced that the arbitrary and compulsory segregation of children in the public schools—on the basis of national, racial, and cultural criteria—is contrary to what I regard as sound educational, civic, and moral principles.

To my mind it is strangely incongruous for a nation to conscript its Latin-American men for service in war and require them to face death alongside other citizens for the American way of life and constitutional government and then deny them the privilege of attending the same schools and other public institutions. We hold that our forefathers were justified in their revolt from Britain on their plea of "no representation, no taxation." The minority groups in our country ought not to be required to place their lives in jeopardy for a way of life that denies them complete and equal opportunity and sovereignty as citizens. If they are worthy to serve together in war, they are worthy to enjoy equality in taxation, they should have equality in school opportunity.

To discriminate against any group of people is to establish on this continent the divisions into social classes that obtain in European society. This creates a festering sore that will ultimately break forth with evil effect. The persistence in race prejudice, segregation, class discrimination and exploitation does more to make Communists than all the direct methods of indoctrination the Soviet government can employ. The supreme value of life is the social recognition a man receives from his fellowmen in the group he serves. To deny this recognition is to foster a feeling of inferiority which is intolerable to men of all races. To suffer it without protest is to degrade oneself to servitude; to allow it to exist is to deny the dignity of man. The American ideal cannot continue to exist as a doctrine of equality and a practice of inequality.

Equal educational opportunity on the playground and in the classroom will prepare us for that genuine world-leadership which the times now demand.

Marie M. Hughes

For more than twenty-five years Mrs. Hughes has worked as a specialist in the field of education of Spanish-speaking people. During her career she has carried out a variety of teaching, supervisory, administrative, and research and writing activities with Spanish-speaking people in New Mexico, Texas, and California. As

a specialist in the field she has been employed by various public school systems, by colleges, and by a state department of education. Two of her latest positions have been as Curriculum Coordinator with the Los Angeles County Public Schools and, on leave from that position, as a specialist with the American Council on Education, Inter-group Education Project.

During the course of my career, and as a result of scientific investigations and both intensive and extensive observations, I have come to the conclusion that the segregation of Spanish-speaking children in separate buildings and classes is educationally unsound and undesirable. The following briefly explains why I have come to this conclusion.

The unsoundness of segregation in general:

1. Segregation functions on the assumption that one group is inferior to another.
2. Segregation results in poorer public facilities—transportation, recreation, health, education, and police protection.
3. Segregation increases the distance between peoples. This may be based initially on late arrival to the community, visibility, ethnic background, and so forth. The lack of communication between peoples, enforced by segregation, breeds myths and rumors about *each* group that enhance the difficulty of people getting together. Since the people do not know and understand one another, because there is no association, the circle is never broken.
4. Segregation increases the segmentation of American communities with the result that many communities are inarticulate and non-participants in civic affairs. They are open to exploitation because they have no skills through which they may work for the rights as citizens. They become incapable of taking *their share* of responsibility for community life. Human talent and energy is wasted. At the best, such communities are merely observers of the main stream of community life; at the worst, they become liabilities.
5. The attitudes of the larger community which permits segregation, with its assumption of inferiority, so affects the people against whom it is directed that they lose hope and faith in themselves and in the country of which they cannot become a part. For the younger members of such communities, however, the results are even more devastating. They often become actively anti-social. They refuse to take care of public property. They may even gang up against members of the majority group. Moreover, out of the

fullness of their hurt, frustration, and resentment, they often attack their own group.

6. Segregation practiced in the community means mis-education of both majority and minority groups in the critical doctrine of the superiority and inferiority of groups of people.

The unsoundness of separation for teaching English to Spanish-speaking children:

1. Any realistic examination of the principles under which language is learned shows the false assumption under which the Spanish-speaking child is required to learn before association with English-speaking children. Witness the manner in which colleges set-up "houses" wherein only the language under study can be spoken. Consider the fact that the people who have really wanted to learn another language have arranged to live with a family who spoke the language. This would give them a chance to *hear* the language spoken; give them *incentive* and purpose to speak it themselves; and permit them to *hear* and to *speak* it in a variety of situations.

2. When Spanish-speaking children are by themselves, they invariably speak Spanish. There are two good reasons for this: they have not learned sufficient English to do otherwise, and there is no incentive to speak in English.

3. Under segregated conditions, Spanish-speaking children hear English from the teacher only. Thus the language becomes all mixed up with the children's feelings for the teacher. For some children in some situations, this means that they won't want to speak English. Such reaction is psychological and could be expected. Even the best classroom situation presents a more limited vocabulary that children meet when they are associating freely with youngsters of their own age on the playground, going to and from school, during the lunch period, and so forth. Any way the facts are examined, the conclusion must be that children have little opportunity to learn English except in a mixed associational situation. The wonder is that so many of our Spanish-speaking people have become bi-lingual.

The pedagogical soundness of mixing English and Spanish-speaking children in the educational interests of both:

1. Again, under segregation, the mis-education of both the majority and the minority group must be emphasized. They are

brought up on the myth of superiority and inferiority. No unity in any country can exist when that assumption governs action. No better world, no peace is possible.

2. English-speaking children very much need to hear another language spoken so that they will recognize that other languages are a part of the reality of the world in which they live. It is even better when they attempt to learn another language.

3. The more diverse the backgrounds of children associating in a school, the finer is the school as a laboratory for human relations. As children meet others, they become more aware of what is going on in the world. Their range of reality is increased to the extent that they meet others with experiences different from their own. Their appreciation and recognition of the worth of others grow with contact and the sharing of experience.

4. There is no educational penalty attached to English-speaking children attending school with youngsters who do not speak English readily. Quite the contrary, as the foregoing analysis demonstrates.

Comments on the observations of segregated schools versus non-segregated schools:

1. Segregated schools repeat the pattern of status and esteem with which one part of the community views another. Resentment and non-participation in community enterprises is always the result. Without association, groups cannot learn from one another. This is true of any group—Indian, Chinese, Polish, etc.

2. When the segregated schools are eliminated, the larger number of people in the community react favorably. Fewer complaints are filed with the Board of Education than they might expect from the "noise" made by a few when the matter is first projected. This statement is based on elimination of segregated schools for Spanish-speaking children in four different counties in California. These counties include more than one school community.

3. When segregated schools are eliminated, the school attendance of the Spanish-speaking group is increased; their stay in high school is increased and more successful. Every high school teacher claims that he can identify the students from a segregated school by his shyness, his lack of confidence, his interest in school, his poor language. This is objective evidence that may be secured by the most casual conversation. It is a sad commentary on the educational practice we have permitted. It should shout to us to make a change—and fast.

4. When any group is segregated, the major learning process of imitation is circumvented. The minority group cannot learn accepted ways of middle-class culture in America since they do not come into contact with it. This includes more than language. The frequent use by the Spanish-speaking child of the phrase, "I am ashamed" indicates his lack of confidence in the situation. He really says, "I am not sure that I know what to do. I am afraid of what you may think of me because you have not always been kind."

5. Nowhere is there such a thing as voluntary segregation. Residential segregation is always enforced by one means or another. Public schools have contributed their bit through the counselling of youngsters and the kind of impossible school situations in which they have placed them. They have no channels open to them to improve themselves, to participate in the main stream of community life.

Herschel Thurman Manuel

Dr. Manuel is Professor of Educational Psychology and Director of the Testing and Guidance Bureau at The University of Texas. He has had a long career as an expert on the education of Spanish-speaking people, conducting and directing numerous researches, and writing extensively in that field. His book, *The Education of Mexican and Spanish-Speaking Children in Texas* (1930), was the first major study of its kind and is still an authoritative source. That contribution, and subsequent researches and writings by Dr. Manuel and by his students, constitute a very important part of the scientific study that has been devoted to the problems of this population group.

Children of Mexican ancestry in the United States, like other children, vary in socio-economic status, in cultural level, in general mental ability, in emotional adjustment, in school achievement, in home language, and in the facility with which they use the English language. They are not a homogeneous group and cannot, under sound educational principles, be isolated as such for purposes of education. Some of the grossest absurdities in the practice of schools relative to these children grow out of the attempt to treat "Mexican" children as a more or less homogeneous group in neglect of the wide differences present within the group.

If this premise is correct, it follows that mere identification of a child as one of Mexican ancestry is insufficient and indeed irrelevant as a basis of segregation for purposes of instruction. If

segregation is practiced at all, it must be on some other basis; and the condition set up as a basis for segregation must be shown to exist in each child so segregated.

The extent to which segregation, if any, can and should be practiced because of differences that are significant for education is a matter to be determined by competent educational authorities in each case under consideration. The following are general principles and illustrations of their application:

1. By its very nature segregation is a dangerous policy. Children do not learn readily the give-and-take of democratic living except by living, playing, and working together. Artificial lines of cleavage promote misunderstanding and distrust, with a tendency toward disregard of fundamental human rights by the more favored and a tendency toward emotional maladjustment, suspicion, and dislike by the less favored. If the group segregated happens to be one of the lower socio-economic status and less prestige in the community, segregation makes it easier to give the children less favorable educational opportunities. That this is a real danger can easily be verified in dozens of segregated "Mexican" schools in Texas.

2. If segregation seems desirable to attain certain ends (for example, to provide reading instruction adjusted to children learning a second language), children so segregated should be selected individually with the greatest care and the segregation should not extend farther than necessary.

3. In considering the possibility of segregation, the school must take into account the rights and needs of all children—rich or poor, bright or dull, from cultured or uncultured homes, and having much or little facility in the use of English. The needs of different children sometimes come into conflict. For example, in learning to speak better English, every child would have a more favorable learning environment if *all* his associates used better language than he did, a situation that is obviously impossible. Again the attainment of different objectives or the meeting of different needs frequently leads to policies that interfere with each other. For example, if children are segregated for a supposed advantage in learning to read, the segregation may interfere with their learning to live with and co-operate with the larger group. When needs come into conflict, there is often no practicable solution other than a compromise which will not be ideal for anyone. The important consideration in such cases is that decisions be without prejudice or bias.

4. In learning to *speak* a second language, it is desirable that the learner have extensive contacts with persons who already speak fluently the language to be learned. On the other hand, instruction in *reading* a second language by children whose spoken vocabulary in the second language is extremely limited will be facilitated in its early stages by grouping the children separately for the reading class. In order, then, to promote inter-group cooperation and to provide opportunity for Spanish-speaking children to gain practice in hearing and speaking English, it is desirable to house Spanish-speaking and English-speaking children in the same buildings. The classroom learning opportunities of both groups can then be arranged as necessary by grouping within the building.

5. The terms, English-speaking and Spanish-speaking, are inadequate as a basis of classification. Each includes many different levels of attainment. Judgments of ability and achievement should be based in part upon comparable tests. Judgments on other bases are not likely to be objective.

Lloyd S. Tireman

Dr. Tireman is a Professor of Education at the University of New Mexico and has had many years of experience in studying and working in the field of education of Spanish-speaking people. He has served in the capacity of an expert in the field for governmental agencies of this country both in this country and in Latin America. He has conducted several large experimental undertakings in the education of Spanish-speaking people, has written numerous works in the field, and has directed many investigations by students, school systems, etc. His field of special interest is the training of teachers for elementary schools. This brings him close to the problems of education for children from Spanish-speaking homes.

It is my opinion, based on twenty years of study, that native Spanish-speaking children should not be automatically segregated in separate school buildings from the native English-speaking children. Such an artificial separation intensifies anti-social feelings in both groups. The Spanish-speaking children become timid and sullen. The English develop false attitudes of superiority. Neither group learns to appreciate the good qualities inherent in the other group. The great democratic tradition of respect for others and the splendid American trait of working co-operatively with others are given no chance to be practiced.

Our experience in New Mexico shows clearly that native Spanish-speaking and native English-speaking children will play and work together in harmony if the public school system be developed with that in mind. Both groups should be mixed up together and treated alike. By so doing, we develop Americans.

This general statement does not mean that children may not be sectioned within a particular grade on the basis of performance. It has long been recognized that the pupils within a grade may be divided into small groups for greater efficiency in reading, arithmetic or language. Accordingly, I believe it to be proper to place the non-English-speaking children of the first grade in a separate section for special instruction in English. However, they must be allowed to participate in the general activities of the whole school with the English-speaking children. And as soon as they have an English-speaking vocabulary of some five hundred words, they should be mixed with the English-speaking children in the regular grades and continue with them. Generally, this degree of English proficiency can be secured in one year. No further separation is necessary or desirable.

IV

Résumé

The educational viewpoint, as set forth in Chapters II and III, is consistent in its condemnation of the segregation of Spanish-speaking children in the public schools. Seen from all professional vantage points, it is apparent that, even if it were legal, such segregation would be educationally improper and undesirable. That is to say, the "pedagogical" reasons usually offered to justify segregation are not supported by competent authority; and those reasons must be regarded either as professional blunders or, worse still, as evidence that educational principle is being prostituted to racialism.

Hand in hand with this professional condemnation of segregation, we find the courts consistently concluding that segregation of Spanish-speaking children in the public schools violates rights guaranteed to those children by the Federal Constitution. Three United States District Courts (in Arizona, California, and Texas) and one United States Circuit Court of Appeals (California) have so ruled, and there is no ruling to the contrary in the case books. The judges (three District Court and seven Circuit Court) have been unanimous in affirming that such segregation is unconstitutional.

In the face of both the educational and the judicial condemnation of segregation, there is no valid reason for the continuation of the practice. Its existence in any community constitutes an illegal as well as an educationally indefensible act. School officials, at both the state and local levels, have the responsibility of eradicating this practice. If unwilling to do so, they will be compelled to do so if the matter is properly presented to a Federal Court.

Emphasis should be placed on the fact that, where Spanish-speaking children are segregated in the public schools, *state school officials are participants* in that segregation. They have various duties, and perform a variety of acts, which contribute to the operation of the segregated schools or classes. As a matter of fact, those schools or classes could not operate without the participation of the state school officials! So, those officials are parties to the segregation and can be enjoined from such participation—just

as much so as the local school officials. It is obvious that, whenever a local public school system is sued for violating the constitutional rights (Fourteenth Amendment) of children, the state school officials should be joined as defendants also, and a permanent injunction against them should be sought. With such an injunction, not only will the practice of segregation cease in the given community but responsibility for eliminating the practice elsewhere in that state will be placed where it properly belongs if local officials are negligent: in the hands of the state's highest educational representatives.

The segregation of Spanish-speaking children in the public schools is a blot on American education. This little volume has attempted to outline the most tangible of the factors in the case against such segregation. For the sake of the greatest possible objectivity, only very briefly and largely by inference have certain less tangible, but no less compelling, considerations been touched upon in this study: the matter of fundamental morality and that of the very spirit of American education. It is not the author's purpose to launch into those fields now. Let the reader ask himself such questions as: Is segregation just? Is it compatible with moral principles? Does it conform to what is fine and good in American educational theory? The case against segregation could well be allowed to rest on the answers to such questions alone. That it doesn't have to rest on morality and theory alone in no way minimizes the significance of these considerations. In condemning segregation, students of the problem will get comfort and satisfaction in the firm knowledge that the dictates of morality and of the loftiest principles of American education are overwhelmingly in support of the conclusions of law and of the norms of good educational practice.

Appendix

ABSTRACTS OF PRINCIPAL FEATURES OF LEGAL PROCEEDINGS

MENDEZ et al v. WESTMINSTER SCHOOL DISTRICT OF
ORANGE COUNTY et al.

CIVIL ACTION NO. 4292

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

February 18, 1946

(Abstract of Principal Features)

Gonzalo Mendez and others, as citizens of the United States, and on behalf of their minor children, and "some 5,000" persons similarly affected, all of Mexican or Latin descent, file a class suit against the Westminster school district, et al., of Orange County, California.

The complaint, grounded upon the Fourteenth Amendment to the Constitution of the United States, and Subdivision 14 of Section 24 of the Judicial Code, alleges a concerted policy and design of class discrimination against "persons of Mexican or Latin descent or extraction" of elementary school age resulting in the denial of the equal protection of the laws to such class of persons.

Specifically, the plaintiffs allege that respondents have by their regulation, custom and usage and in execution thereof adopted and declared: that all children or persons of Mexican or Latin descent or extraction, though citizens of the United States of America, shall be, have been and are now excluded from attending, using, enjoying and receiving the benefits of the education, health and recreation facilities of certain schools within their respective districts and systems but that said children are now and have been segregated and required to attend and use certain schools in said districts and systems reserved for and attended solely and exclusively by children and persons of Mexican and Latin descent, while such other schools are maintained, attended and used exclusively by and for persons and children purportedly known as white or Anglo-Saxon children. It is conceded by all parties that there is no question of race discrimination in this action. It is, however, admitted that segregation *per se* is practiced in the above mentioned school districts. It is also admitted by the defendants that the petitioning children are qualified to attend the public schools in the respective districts of their residences.

The record before us shows without conflict that the technical facilities and physical conveniences offered in the schools housing entirely the segregated pupils, the efficiency of the teachers therein and the curricula are identical and in some respects superior to those in the other schools in the respective districts. Therefore, the concrete acts complained of are those of the various school district officials in directing which schools the petitioning children and others of the same class or group must attend.

The petitioners demand that the alleged rules, regulations, customs and usages be adjudged void and unconstitutional and that an injunction be issued restraining further application by defendant school authorities of such rules, regulations, customs and usages.

The defendants at the outset challenge the jurisdiction of this court under the record as it exists at the time. *The court denies the defendants' motion to dismiss* the action upon the "face" of the complaint because, while education is a State matter, it is not so absolutely or exclusively. A violation by a state of a personal right or privilege protected by the Fourteenth Amendment in the exercise of the state's duty to provide for the education of its citizens and inhabitants would justify the Federal Court to intervene.

Are the actions of public school authorities of a rural or city school in the State of California, as alleged and established in this case, to be considered actions of the state within the meaning of the Fourteenth Amendment so as to confer jurisdiction on this court to hear and decide this case under the authority of Section 24, Subdivision 14 of the Judicial Code? *We think they are.*

We therefore turn to consider whether under the record before us the school boards and administrative authorities in the respective defendant districts have by their segregation policies and practices transgressed applicable law and constitutional safeguards and limitations and thus have invaded the personal right which every public school pupil has to the equal protection provisions of the Fourteenth Amendment to obtain the means of education. We think the pattern of public education promulgated in the Constitution of California and effectuated by provisions of the Education Code of the state prohibits segregation of the pupils of Mexican ancestry in the elementary schools from the rest of the school children. The common segregation attitudes and practices of the school authorities in the defendant school districts in Orange County pertain solely to children of Mexican ancestry and parentage. They are singled out as a class for segregation. Not only is such method of public school administration contrary to the general requirements of the school laws of the state, but we think it indicates as official school policy that is antagonistic in principle to Sections 16004 and 16005 of the Education Code of the state. Obviously, the children referred to in these laws are those of Mexican ancestry. And it is noteworthy that the educational advantages of their commingling with other pupils is regarded as being so important to the school system of the state that it is provided for even regardless of the citizenship of the parents.

We perceive in the laws relating to the public educational system in the State of California a clear purpose to avoid and forbid distinctions among pupils based upon race or ancestry except in specific situations not pertinent to this action. Distinctions of that kind have recently been declared by the

highest judicial authority of the United States "by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." They are said to be "utterly inconsistent with American traditions and ideals." Our conclusions in this action, however, do not rest solely upon what we conceive to be the utter irreconcilability of the segregation practices in the defendant school districts with the public educational system authorized and sanctioned by the laws of the State of California. *We think such practices clearly and unmistakably disregard rights secured by the supreme law of the land.*

"The equal protection of the laws" pertaining to the public school system in California is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican ancestry that are available to the other public school children regardless of their ancestry. 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.

We think that under the record before us the only tenable ground upon which segregation practices in the defendant school districts can be defended lies in the English language deficiencies of some of the children of Mexican ancestry as they enter elementary public school life as beginners. But even such situations do not justify the general and continuous segregation in separate schools of the children of Mexican ancestry from the rest of the elementary school population. The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation, and that commingling of of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals.

It is also established by the record that the methods of segregation prevalent in the defendant school districts foster antagonisms in the children and suggest inferiority among them where none exists.

It has been held that public school authorities may differentiate in the exercise of their reasonable discretion as to the pedagogical methods of instruction to be pursued with different pupils. And foreign language handicaps may be to such a degree in the pupils in elementary schools as to require special treatment in separate classrooms. Such separate allocations, however, can be lawfully made only after credible examinations by the appropriate school authority of each child whose capacity to learn is under consideration and the determination of such segregation must be based wholly upon indiscriminate foreign language impediments in the individual child, regardless of his ethnic traits or ancestry.

The omnibus segregation of children of Mexican ancestry from the rest of the student body in the elementary grades in the schools involved in this case because of language handicaps is not warranted by the record before us. *The tests applied to the beginners are shown to have been generally hasty, superficial and not reliable. In some instances separate classification was determined largely by the Latinized or Mexican name of the child.* Such methods of evaluating language knowledge are illusory and are not conducive to the inculcation and enjoyment of civil rights which are of primary importance in the public school system of education in the United States.

There are other discriminatory customs, shown by the evidence, existing in the defendant school districts as to pupils of Mexican descent and extractions, but we deem it unnecessary to discuss them in this memorandum. We conclude by holding that the allegations of the complaint have been established sufficiently to justify injunctive relief against all defendants, restraining further discriminatory practices against the pupils of Mexican descent in the public schools of defendant school districts.

Findings of fact, conclusions of law, and decree of injunction are accordingly ordered pursuant to Rule 52 FRCP to be presented under local Rule 7 of this court.

Dated February 18th 1946,

Paul J. McCormick
United States District Judge

WESTMINISTER SCHOOL DISTRICT OF ORANGE COUNTY et al. v.
MENDEZ et al.

CIVIL ACTION NO. 11,310

NINTH UNITED STATES CIRCUIT COURT OF APPEALS

Appealed from the District Court of the United States for the Southern
District of California, Central Division.

April 14, 1947

(Abstract of Principal Features)

The Westminster School District of Orange County, California, et al., vs. Gonzalo Mendez, et al., herein petition for present and future relief and costs under authority of Section 24, Subdivision 14, of the Judicial Code (28 U.S.C.A. 41 14); and Section 43 of U.S.C.A., and base their petition upon alleged violations of petitioners' civil rights as guaranteed by the 5th and 14th amendments to the Constitution of the United States.

Respondents appeal from the judgment of the District Court on contention that the District Court was without jurisdiction because no substantial federal question is put at issue, that the suit is not authorized by law to redress the alleged deprivation of constitutional rights and that the findings do not support the conclusions.

Respondents are officers of the State of California in the Department of Education of that state; and, as it will hereinafter be shown, their action under the intendment of the Fourteenth Amendment is the action of the state in all cases where such action is taken under color of state law. We must, therefore, consider the questions: Are the alleged acts done under color of state law, and do they deprive petitioners of any constitutional right? The jurisdictional question is implicit in these two questions.

It is said in *Bell v. Hood*, 327 U.S. 682, that "... the court must assume jurisdiction to decide whether the allegations state a cause of action on which the court can grant relief as well as to determine issues of fact arising in the controversy." Therefore, the District Court was right in taking jurisdiction. That the acts complained of have been and are being performed under color of state law has been conclusively and affirmatively answered in principle in *Home Tel. & Tel. Co. v. Los Angeles*, 227 U.S. 278.

We hold that the respondents acting to segregate the school children as alleged in the petition were performing under color of California law. The denial of school privileges in certain schools upon the sole ground of their Mexican ancestry by respondents is not "in the ambit of their personal pursuits," but are acts undertaken in the performance of their official duties. However, the respondents "did not hew to the line of their authority"; they overstepped it.

It is argued by appellants that we should reverse the judgment in this case because the Supreme Court has upheld the right of the states to provide for segregation of Negroes upon the requirement that equal facilities be furnished each segregated group. For reasons presently to be stated, we are of the opinion that such segregation cases do not rule the instant case. The segregation in this case is not only without legislative support but comes into fatal collision with the legislation of the state.

Section 16601 of the California Educational Code requires the parent of any child between the ages of eight and sixteen years to send him to the full-time day school. There are no exceptions based upon the ancestry of the child other than those contained in #8003 California Educational Code, which includes Indians under certain conditions and children of Chinese, Japanese or Mongolian parentage. It may appropriately be noted that the segregation referred to in the cited cases includes only children of parents belonging to one or another of the great races of mankind.

It is interesting to note at this juncture of the case that the parties stipulated that there is no question as to race segregation in the case. *Amicus curiae* brief writers, however do not agree that this is so. Nowhere in any California law is there a suggestion that any segregation can be made of children within one of the great races. Thus it is seen that there is a substantial difference in our case from those which have been decided by the Supreme Court, a difference which possibly could be held as placing our case outside the scope of such decisions. That the California law does not include the segregation of school children because of their Mexican blood is definitely and affirmatively indicated, as the trial judge pointed out, by the fact that legislative action has been taken by the State of California to admit to her schools, children, citizens of a foreign country, living across the border. Mexico is the only foreign country on any California boundary.

It follows that the acts of respondents were and are entirely without authority of California law. By enforcing the segregation of school children of Mexican descent against their will and contrary to the laws of California, respondents have violated the Federal law as provided in the Fourteenth Amendment to the Federal Constitution by depriving them of liberty and property without due process of law and by denying to them the equal protection of the laws.

It may be said at this point that the practice could be stopped through the application of California law in California State Courts, and this may be so but *the idea is of no relevancy*. Punishment for the act would be legal under either or both federal and state governments. However, since the practice complained of has continued for several consecutive years, apparent to California executive peace officers, and continues, it cannot be said that petitioners are in error in taking their action in a federal court.

In the view of the case we have herein taken the contention that the Findings of Fact do not support the Conclusions of Law and the Judgment is wholly unmeritorious. The pleadings, findings and judgment in this case refer to children of "Mexican and Latin descent and extraction," but it does not appear that any segregation of school children other than those of Mexican descent was practiced. Therefore, we have confined our comment thereto. If the segregation of all children of Latin descent and extraction in

addition to those of Mexican descent were included in the practice and the plan, its illegality would, of course, be upon the same basis as that herein found. In addition, however, the impossibility of there being any reason for the inclusion in the segregation plan of all children of Latin descent and extraction and the palpable impossibility of its enforcement would brand any such plan void on its face.

The ruling of the District Court is affirmed. (Judgment by Circuit Judge C. J. Stephens, concurrence by Circuit Judges Garrecht, Denman, Mathews, Healy, Bone, and Orr.)

PROFIRIO GONZALES et al. v. ROSS L. SHEELY et al.

CIVIL ACTION NO. 1473

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

December 15, 1950

PRELIMINARY INJUNCTION

... it is, therefore, ORDERED, ADJUDGED AND DECREED:

The regulations, customs, usages and practices of respondents herein in segregating persons of Latin and Mexican descent in separate schools within the Tolleson School District No. 17, in the town of Tolleson, County of Maricopa, State of Arizona, are and each is arbitrary, discriminatory, illegal and void, and are and each is violative of petitioners' rights under the Constitution and laws of the United States;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pending the trial of this action the respondents Ross L. Sheely, James W. Johnston and Frank E. Babcock as the duly elected, qualified and acting Board of Trustees of the Tolleson Elementary School District, Number 17, town of Tolleson, County of Maricopa, State of Arizona, and Kenneth Dyer as Principal for said District, and each of them, and their agents and successors in office, are hereby restrained and enjoined from segregating persons and pupils, in the public schools of said school district, of Latin or Mexican descent or in separate schools within the Tolleson School District, No. 17, in the town of Tolleson, County of Maricopa, State of Arizona.

(Dave W. Ling)

Judge, United States District Court

MINERVA DELGADO, et al.

v.

BASTROP INDEPENDENT SCHOOL DISTRICT OF BASTROP
COUNTY, TEXAS, et al.

CIVIL ACTION NO. 388

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

June 15, 1948

COMPLAINT

(Abstract of Principal Features)

Minerva Delgado and others brought suit against the Bastrop Independent School District of Bastrop County, Texas, and others before the Honorable Ben H. Rice, Judge Presiding, with complaint to enjoin violation of federal civil rights and for damages.

I

The Plaintiffs allege:

This Court has jurisdiction under the provisions of 28 U.S. Code, Sec. 41 (14), in that this is a suit, in equity and at law, to redress the deprivation of civil rights; said deprivation being by officials of the State of Texas, under color of custom and/or usage by said officials, acting for and in behalf of said State of Texas, of rights, privileges and immunities secured by the Constitution of the United States under the Fourteenth Amendment, and rights secured by the laws of the United States, including particularly 8 U. S. Code, Sec. 43.

1. The defendants have exceeded the authority vested in them by the Constitution and Laws of the State of Texas in carrying out a policy of segregating children of Mexican descent from other children as hereinafter set forth. For several years past, the defendants adopted a common custom, plan, or usage and/or practice as follows: That children of Mexican descent be barred, prohibited and excluded, solely because of said Mexican descent, from attending those certain public schools and classes under defendants' charge, which said schools and classes (hereinafter referred to as *regular* schools and classes) are exclusively established or maintained by said defendants for attendance by school children of so-called white or Anglo-American parents (these latter children being hereinafter referred to as *other white*

children); and that said children of Mexican descent be segregated into public schools and classes, commonly referred to as "Mexican" schools (hereinafter referred to as *segregated* schools and classes), established or maintained exclusively for the attendance of school children of Mexican descent.

2. Pursuant to said custom, usage and/or common plan, the defendants have, for several years past, prohibited, barred and excluded, and do now prohibit, bar and exclude, the Plaintiffs, and all such school children of Mexican descent, from attending the certain regular schools and classes, within their charge and under their control, reserved by said defendants for the exclusive attendance of the other white school children; and said defendants have thus prevented said school children of Mexican descent from receiving the educational, health and recreational benefits which such other white children receive in said regular schools and classes; and the plaintiffs, and said children of Mexican descent have, for several years past, been generally and continuously assigned to certain segregated schools and classes intended exclusively for said children of said Mexican descent.

3. There is no provision in the Constitution of the State of Texas or in any Statute of said State authorizing or permitting the separation, into segregated schools and classes, by officers of the State of Texas engaged in the administration of the Public School Laws of the State of Texas, of school children of Mexican descent.

4. The exclusion of the plaintiffs and said children of Mexican descent from said regular schools and classes, and the segregation of said children of Mexican descent in said segregated schools and classes as aforesaid, is solely because said children are of Mexican descent; and said exclusion and segregation are intended to, and have the effect of, discriminating against the plaintiffs and the said children of Mexican descent solely because of their Mexican ancestry.

5. Said segregation aforesaid is unjust, capricious and arbitrary and in violation of the Constitution of the United States in that it deprives the plaintiffs and said children of Mexican descent of liberty and property without due process of law, and denies them the equal protection of laws, and of privileges and immunities as citizens of the United States, as guaranteed by the Fourteenth Amendment to the Constitution of the United States; and said segregation further deprives said Plaintiffs, and said children of Mexican descent, of rights under the 8 U. S. Code, Sec. 43.

II

The Attorney General of the State of Texas has rendered an opinion that it is illegal for school officials of the State of Texas to segregate children of Mexican descent into separate schools and classes solely because of such descent. Despite said opinion, said defendants above-named have continued the segregation aforesaid.

III

1. The practice, custom and/or usage of segregating school children of Mexican descent, as aforesaid, is general in the State of Texas, and obtains in many school districts of the State of Texas in addition to the school districts named as defendants herein; and said existence of practice is of

general and common knowledge in the State of Texas, and of general and common knowledge to the educational officials of the State of Texas. Said practice has been expressly called to the attention of the defendant L. A. Woods, as State Superintendent of Public Instruction. Said defendant, as said State Superintendent, has issued no orders, instructions or regulations, pursuant to his duty so to do, to the defendant School Districts and their officers, nor to any school district in the State of Texas, directing that said practice be discontinued; on the contrary, he has participated in said practice by allocating certain school funds, which said school funds were, to the knowledge of said defendant, to be used for the maintenance of segregated schools and classes, and to be used for the general maintenance of the practice of segregation hereinabove complained of.

2. The existence of said practice is known to defendant members of the State Board of Education, and said Board and the members thereof have issued no orders, instructions, or regulations to the State Superintendent of Public Instruction nor to the defendant School Districts and their officers and members named herein through said Superintendent of Public Instruction, nor to any school district in the State of Texas, directing that such practice be discontinued; on the contrary they have participated in said practice by allocating certain school funds and textbooks; which said school funds and textbooks were, to the knowledge of said defendants, to be used for the general maintenance of the practice of segregation hereinbefore complained of.

IV

This suit is brought by the plaintiffs for and in behalf of themselves and for and in behalf of all school children of Mexican descent within the school district within which said plaintiffs are respectively resided, and *this suit is filed as a class suit* for and in behalf of said children of Mexican descent so resided in that, as heretofore set forth in this complaint, all of said children of Mexican descent are in the same class as said plaintiffs in that they all are required to attend segregated schools and classes solely because they are of Mexican descent; said class is so numerous that it is impracticable to bring all of its members before the Court; and the character of the right sought to be enforced herein is several and there are common questions of fact and of law affecting the several rights of the school children of Mexican descent constituting said class; and a common relief is sought by said school children of Mexican descent against all the defendants herein.

V

Unless enjoined by order of this Court both by permanent injunction, and by injunction *pendente lite*, the defendants intend to continue to practice the custom and/or usage aforesaid, and to continue the general practice of segregation aforesaid. The plaintiffs and the class in whose behalf this proceeding is filed, have no plain, speedy or adequate remedy at law, and will suffer great and irreparable injury unless an injunction *pendente lite* and a permanent injunction are issued by this Court enjoining said practice, custom and/or usage.

For a second cause of action, being a cause of action for damages against the defendants herein before described, the plaintiffs incorporate herein all of the allegations set forth in the plaintiffs' first cause of action. The plaintiffs, as aforesaid, by the acts of the defendants complained of, were deprived of their rights under the Constitution of the United States and the Laws of the United States to be free from discrimination solely because of their ancestry; and were thus denied the right to receive an education in the regular schools of Texas, free from such discrimination; and were further deprived from securing the educational, recreational and health benefits accorded by said defendants to other white children, to the damage of the plaintiffs, and of each of them, in the sum of five thousand dollars.

The acts of the defendants, Bastrop Independent School District of Bastrop County, et al., were wanton, reckless and with a complete disregard of the rights of the plaintiffs by virtue whereof the plaintiffs, and each of them are additionally entitled to punitive or exemplary damages in the sum of five thousand dollars.

WHEREFORE the Plaintiffs pray for relief as follows:

Under the first cause of action: For a judgment and decree granting a permanent injunction, and for an order granting an injunction *pendente lite*, against all the defendants in behalf of the plaintiffs, and the school children of Mexican descent represented by them, enjoining said defendants and their agents from in any manner assigning into segregated schools and classes school children of Mexican descent under their control; and from in any manner, directly or indirectly, participating in said practice of segregation, including the proration and/or payment of any funds and/or instructional materials of the State of Texas, used, or to be used, for the purpose of maintaining segregated schools and classes for school children of Mexican descent.

Under the second cause of action: For damages in behalf of the Plaintiffs, and each of them, against the Bastrop Independent School District of Bastrop County, et al., in the sum of five thousand dollars actual damages, and, additionally, the sum of five thousand dollars as punitive and for exemplary damages.

And plaintiffs further pray for such action as may be proper.

MINERVA DELGADO, et al.

v.

BASTROP INDEPENDENT SCHOOL DISTRICT OF BASTROP
COUNTY, TEXAS, et al.

CIVIL ACTION NO. 388

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

AUSTIN, TEXAS

June 15, 1948

FINAL JUDGMENT

(Abstract of Principal Features)

This action came on for trial on the 15th day of June, 1948, before the Honorable Ben H. Rice, Jr., Judge Presiding, both the plaintiffs and the defendants being represented by their attorneys. The plaintiffs having heretofore voluntarily dismissed their second cause of action in their complaint, and the evidence having been introduced both oral and documentary and said action having been submitted for decision on the merits, the court being fully advised in the premises, and findings of fact and conclusions of law having been waived by stipulation of the parties.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. This action by plaintiffs is a representative class action on behalf of themselves and of all pupils of Mexican or other Latin American descent, and the action has been properly brought as such class action pursuant to law.

2. The regulations, customs, usages, and practices of the defendants, Bastrop Independent School District of Bastrop County, et al., and each of them in so far as they or any of them have segregated pupils of Mexican or other Latin American descent in separate classes and schools within the respective school districts of the defendant school districts heretofore set forth are, and each of them is, arbitrary and discriminatory and in violation of plaintiff's constitutional rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and are illegal.

3. The defendant school districts and their officers are hereby permanently restrained and enjoined from segregating pupils of Mexican or other Latin American descent in separate schools or classes within the respective school districts of said defendants and each of them, and from denying said pupils use of the same facilities and services enjoyed by other children of the same ages or grades; provided, however, that this injunction shall not prevent said defendant school districts or their trustees, officers, and agents from

providing for and maintaining separate classes, on the same campus in the first grade only and solely for instructional purposes, for pupils in their initial scholastic year who, at the beginning of their initial scholastic year in the first grade, clearly demonstrate, as a result of scientific and standardized tests, equally given and applied to all pupils, that they do not possess a sufficient familiarity with the English language to understand substantially classroom instruction in first-grade subject matter.

4. If, in any school district, obedience to this decree renders it practically necessary, in the discretion of the school district, that additional school buildings be provided or moved from one campus to another, then a reasonable time is hereby allowed for compliance, but in no event beyond September, 1949.

5. The defendant, L. A. Woods, as State Superintendent of Public Instruction, is hereby permanently restrained and enjoined from in any manner, directly or indirectly, participating in the custom, usage or practice of segregating pupils of Mexican or other Latin American descent in separate schools or classes.

6. The motion of the State Board of Education and the members thereof to be dropped as parties hereto is sustained, and they are hereby dropped and dismissed from this suit with their costs.

Dated at Austin, Texas, this 15th day of June, 1948.

(Ben H. Rice, Jr.)

United States District Judge

INSTRUCTIONS AND REGULATIONS

OF

THE TEXAS STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

The only requirements or authority for segregation of students in the public schools of the State of Texas on account of race or descent is based upon Section 7, Article VII, of the Constitution of Texas, and applies only to persons of Negro ancestry. Section 7 of Article VII provides:

"Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both."

The above reference to "colored" children has been interpreted consistently by the Texas courts and the Texas Legislature as including only members of the Negro race or persons of Negro ancestry. The courts have held that it does not apply to members of any other race. There has never been any requirement or authority for segregation of children of Latin American descent, and attempts at segregation of pupils of Mexican or other Latin American ancestry on account of race or descent have been held unconstitutional by the State courts of Texas and by the recent United States District Court decision in the case of *Delgado v. Bastrop Independent School District and others*, which enjoined me, as State Superintendent of Public Instruction, from "... in any manner, directly or indirectly, participating in the custom, usage or practice of segregating pupils of Mexican or other Latin American descent in separate schools or classes."

Therefore, by virtue of the authority vested in me, as State Superintendent of Public Instruction of the State of Texas, by Articles 2656 to 2663, inclusive, Revised Civil Statutes of the State of Texas, and pursuant to my duties as State Superintendent, I hereby adopt the following regulations and instructions in compliance with the Judgment rendered by the United States District Court of the Western District of Texas, Honorable Ben H. Rice, Jr., presiding, in the above mentioned case:

1. The regulations, customs, usages and practices of any county, city, town or school district segregating pupils of Mexican or other Latin American descent in separate classes or schools are arbitrary, discriminatory, and in violation of the constitutional rights guaranteed by the Fourteenth Amendment to the Constitution of the United States, and are hereby forbidden.

2. These instructions and the above-mentioned judgment recognize that it is permissible to have separate classes in the first grade for any students who have language difficulties, whether the students be of Anglo American, Latin American or any other origin; such separate classes shall be formed only for instructional purposes, on the same campus and with the same school facilities as are available to all other first grade students. Such classes may be formed only after a language test has been applied to all first grade pupils. The separate classes, therefore, will be comprised of all students with language handicaps, regardless of their native tongue. These separate classes

should be formed only for students who clearly demonstrate that they do not understand English sufficiently to follow even the simple class-room teaching process. Since this separation is permissible only for the purpose of familiarizing the pupils with the English language to the extent that they can understand class-room instructions, said pupils cannot be separated in any other school activities or facilities. All of said pupils, therefore, are entitled to the same cafeteria and lunchroom facilities, as all other pupils, to join participation in school contests, dramatics, musical organizations, play grounds, recesses, and organized sports, and to joint participation in all other activities which are generally considered part of the educative process.

3. You will take all necessary steps to eliminate any and all segregations that may exist in your school or district contrary to instruction and regulations. I shall take whatever steps are necessary to enforce these instructions and regulations and to prevent segregation of Mexican or other Latin American descent in the public schools as in the State of Texas as directed by the above-mentioned Court decree.

L. A. Woods,
State Superintendent of Public Instruction,
State of Texas.