BILINGUAL-BICULTURAL EDUCATION IN TEXAS

In *United States v. Texas*[1] a federal district court ordered the Del Rio and San Felipe School Districts consolidated and desegregated. The San Felipe District student body was predominately Mexican-American (Chicano),[2] whereas the adjacent Del Rio District was comprised of Anglo students.[3] Upon determining that the Chicanos were an identifiable minority group,[4] subject to the protection of the

1. Civil No. 5281 (E.D. Tex., Aug. 13, 1971). The original suit was brought in the eastern district of Texas to desegregate black schools in the eastern and western districts of the state. United States v. Texas, 321 F. Supp. 1043 (E.D. Tex.), *modified*, 330 F. Supp. 235 (E.D. Tex.), *aff'd in part*, 447 F.2d 441 (5th Cir.), *stay denied sub nom.* Edgar v. United States, 404 U.S. 1206 (1971) (Black, Circuit Justice), *cert. denied*, 404 U.S. 1016 (1972). In August 1971 the Del Rio School District moved to intervene in the above suit to stay the court order which prohibited transfer of students when the effect would impede desegregation. The district court granted the motion to intervene, joined the San Felipe School District, and ordered consolidation and desegregation of the two school districts. United States v. Texas, Civil No. 5281 (E.D. Tex., Aug. 13, 1971). The new consolidated school district appealed, but on their motion, joined by the Department of Justice (having agreed upon a desegregation plan), the case was remanded to the district court by the Fifth Circuit on November 3, 1971, without opinion. The district court ordered implementation of a desegregated plan. 342 F. Supp. 24 (E.D. Tex. 1971). This was affirmed on appeal. 466 F.2d 518 (5th Cir. 1972).

2. The term Mexican-American and Chicano may be used interchangeably. Chicano derives from Mejicano, the Spanish term for Mexican. Both words refer to persons born in Mexico and now United States citizens, persons whose parents or ancestors immigrated to the United States from Mexico, and persons who trace their ancestry to Hispanic or Indo-Hispanic people who lived in Spanish or Mexican territory now part of the southwestern United States. *See generally* Rangel & Alcala, *Project Report: De Jure Segregation of Chicanos in Texas Schools*, 7 HARV. CIV. RIGHTS-CIV. LIB. L. REV. 307 (1972); Salinas, *Mexican-Americans and the Desegregation of Schools in the Southwest*, 8 HOUSTON L. REV. 929 (1971).

3. Del Rio, Texas, with a population of slightly over 21,000 has two school districts within the city limits, Del Rio Independent School District, which is predominantly Anglo, and San Felipe Independent School District, which is 95% Chicano. The Anglo children from the nearby Air Force base are bussed to the Del Rio schools, even though the base is located in the San Felipe district. The Del Rio schools are newer than the San Felipe schools, and the high school offers 75 to 100 courses while the San Felipe High School offers 36 courses and has no vocational program. United States v. Texas, Civil No. 5281 (E.D. Tex., Aug. 13, 1971). *See also Salinas, supra* note 2.

4. Several prior cases have reached similar results in dealing with the question of Chicanos as an identifiable unit, though not all the cases dealt with de-

fourteenth amendment and Title VI of the Civil Rights Act of 1964,[5] the district court concluded that the separation of school districts constituted de jure segregation.[6] Accordingly, the court ordered that a comprehensive desegregation plan be developed. Within this general mandate was the directive that educational safeguards be developed to insure that all students were offered equal educational opportunities. These safeguards were to "include but not necessarily be limited to bilingual and bicultural programs, faculty recruitment and training and curriculum design and content."[7] After being appealed to and remanded by the Fifth Circuit,[8] the district court approved and ordered implementation of a comprehensive educational plan for the San Felipe-Del Rio Consolidated Independent School District.[9] On appeal the Fifth Circuit affirmed the order.[10]

The Comprehensive Educational Plan includes many requirements previously adopted by other courts to deal with black-white desegregation in schools. Where races are segregated in separate school districts, consolidation of those school districts through busing of

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segregation. *See, e.g.*, Hernandez v. Texas, 347 U.S. 475 (1954); Alvardo v. El Paso Independent School Dist., 445 F.2d 1011 (5th Cir. 1971); Muniz v. Beto, 434 F.2d 697 (5th Cir. 1970); United States v. Hunt, 265 F. Supp. 178 (W.D. Tex. 1967); Independent School Dist. v. Salvatierra, 33 S.W.2d 790 (Tex. Civ. App. 1930).

5. 42 U.S.C. § 2000d (1964). The statute provides that no person can be subjected to discrimination in a school receiving federal financial assistance. A federal agency or court upon finding a failure to comply may terminate such assistance. The government or any aggrieved person can sue to have the sanction imposed.

6. There are several ways in which state authority can support school segregation. For cases where state law previously sanctioned or required segregation see Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971) and Brown v. Board of Educ., 347 U.S. 483 (1954). For cases where a state financially contributes to the support of a locally segregated school see Cooper v. Aaron, 358 U.S. 1 (1958). For cases where a local school board has aided segregation by acts or omissions under "color of law" see Dowell v. Board of Educ., 396 U.S. 269 (1969) and Henry v. Clarksdale Municipal Separate School Dist., 409 F.2d 682 (5th Cir. 1969). *See generally* Monroe v. Pape, 365 U.S. 167 (1961); Screws v. United States, 325 U.S. 91 (1945) for general definitions of actions under "color of law."

7. United States v. Texas, Civil No. 5281 (E.D. Tex., Aug. 13, 1971).

8. Upon joint motion from both parties, the case was remanded on November 3, 1971, without opinion.

9. 342 F. Supp. at 29.

10. 466 F.2d at 519.

students is an acceptable remedy to correct constitutional violations.[11] Desegregation of faculties with corollary control over recruitment, assignments, promotions and demotions of teachers are mandatory adjuncts to the desegregation of students.[12] The assignment of students to make the racial composition of student bodies substantially similar to that of the overall community and heterogeneous classrooms are basic to the desegregation process.[13] Desegregation of extracurricular activities is similarly required.[14]

The Texas federal court goes beyond these previously accepted remedies in its requirement that bilingual and bicultural faculty and curriculum be provided. Concluding from sociological data that the desegregation of Chicanos and Anglos will involve special problems,[15]

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11. *See, e.g.,* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971); United States v. Texas, 447 F.2d 441 (5th Cir. 1971); Haney v. County Bd. of Educ., 410 F.2d 920 (8th Cir. 1969) for cases dealing with the consolidation of school districts. *See, e.g.,* Hightower v. West, 430 F.2d 552 (5th Cir. 1970); United States v. Indianola Municipal Separate School Dist., 410 F.2d 626 (5th Cir. 1969) where busing is used to achieve desegregation.

12. *See, e.g.,* United States v. Montgomery County Bd. of Educ., 395 U.S. 225 (1969); Bradley v. School Bd., 382 U.S. 103 (1965); Davis v. Board of School Comm'rs, 430 F.2d 883 (5th Cir. 1970); Singleton v. Jackson Municipal Separate School Dist., 419 F.2d 1211 (5th Cir. 1969) (en banc), *rev'd in part sub nom.* Carter v. West Feliciana Parish School Bd., 396 U.S. 226 (1969); United States v. Tunica County School Dist., 323 F. Supp. 1019 (N.D. Miss. 1970); Redman v. Terrebonne Parish School Bd., 293 F. Supp. 376 (E.D. La. 1967).

13. For cases dealing with student assignment see Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971); United States v. Texas, 447 F.2d 441 (5th Cir. 1971); Valley v. Rapides Parish School Bd., 434 F.2d 144 (5th Cir. 1970). For cases requiring heterogeneous classrooms see Johnson v. Jackson Parish School Bd., 423 F.2d 1055 (5th Cir. 1970) and Moore v. Tangipahoa Parish School Bd., 304 F. Supp. 244 (E.D. La. 1969).

14. *See, e.g.,* Plaquemines Parish School Bd. v. United States, 415 F.2d 817 (5th Cir. 1969); United States v. Indianola Municipal Separate School Dist., 410 F.2d 626 (5th Cir. 1969); Lee v. Macon County Bd. of Educ., 283 F. Supp. 194 (M.D. Ala. 1968).

15. The problems involved in the desegregation of Chicanos and Anglos include those of any socially subrogated minority group: physical distinctiveness, educational deficiencies, poverty, malnutrition, and public attitude of racial inferiority. Added to these are peculiar problems of the Chicanos as a people: distinct heritage and culture leading to cultural incompatibilities with Anglos, singularity of religion, regional isolation and English language deficiencies. *See generally* L. GREBLER, J. MOORE & H. GUZMAN, THE MEXICAN AMERICAN PEOPLE (1970); G. STEINER, LA RAZA: THE MEXICAN AMERICANS (1970); Salinas, *supra* note 2, at 929 (1971) for general comments about the political and social environment of the Chicanos.

the court based its order on two principles: (1) that special consideration should be given Chicanos in aiding them to adjust to a new environment that presents "a cultural and linguistic shock" and (2) that Anglo-American students learn to understand and appreciate the different language and culture of the Chicanos.[16] In order to effectuate these two principles, the court's plan required that a bilingual and bicultural program be instituted with the teaching and development of both a student's preferred language and a second language.[17] The court held these guidelines applicable to all students, thereby requiring that Anglo students receive Spanish instruction.[18] To institute this program, the court felt that "bilingual-bicultural" teachers as well as the training of teachers presently on staff in the bilingual-bicultural system were mandatory.[19]

These steps are novel in desegregation law, but many recent desegregation cases have involved new approaches to meet new constitutional requirements. The Fifth Circuit before 1968 had approved desegregation plans which followed the "freedom of choice" method, particularly when the proposal was patterned on the model plan propounded by the Fifth Circuit.[20] In *Green v. County School Board*,[21] the Supreme Court, while not holding "freedom of choice" plans unacceptable, demanded that the plan adopted achieve desegregation immediately.[22] The *Green* decision disrupted existing desegregation law because "freedom of choice" had not resulted, in the majority of cases, in any meaningful amount of desegregation.[23]

16. 342 F. Supp. at 28.

17. *Id.* at 30-33, 36.

18. *Id.* at 30-33.

19. *Id.* at 29-30, 34-35.

20. The model "freedom of choice" plan was put forward in United States v. Jefferson County Bd. of Educ., 380 F.2d 385 (5th Cir. 1967). *See* Gozansky, Gignilliat & Horwitz, *School Desegregration in the Fifth Circuit*, 5 HOUSTON L. REV. 946 (1968) for a discussion of this decision. "Freedom of choice" plans allow a student to choose the school he will attend.

21. 391 U.S. 430 (1968).

22. *Id.* at 439. *See* 21 VAND. L. REV. 1093 (1968).

23. The Fifth Circuit in United States v. Jefferson County Bd. of Educ., 372 F.2d 836, 847 (5th Cir. 1966), admitted that "the Courts acting alone have failed" to grant equal educational opportunities. *See, e.g.*, Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971); Raney v. Board of Educ., 391 U.S. 443 (1968); Bradley v. Board of Pub. Instruction, 431 F.2d 1377 (5th Cir. 1970); United States v. Board of Educ., 431 F.2d 59 (5th Cir. 1970); Acree v. County Bd. of Educ., 399 F.2d 151 (5th Cir. 1968) for other school districts under "freedom of choice" plans subsequently found inadequate.

"Freedom of choice" was seen as a step toward desegregation, in line with the "all deliberate speed" guideline previously in force, but it was not always a method by which desegregation could occur "now." Since *Green,* the Fifth Circuit has encountered a wide variety of methods to bring about immediate desegregation, such as pairing, rezoning, busing, consolidation and regulation of the location of new schools.[24] In 1971 the Supreme Court compounded the difficulties by using a test for desegregation which focused on the ratio of black to white students in the schools as compared to the black-white ratio of the community as a whole.[25] The Fifth Circuit is just encountering the problems arising under this new decision. Desegregation law is, therefore, in a state of flux, striving to meet the new constitutional guidelines by new methods.

In such a situation, one cannot say that the bilingual-bicultural plan exceeds judicial power to remedy the effects of segregation. In *Swann v. Charlotte-Mecklenburg Board of Education,*[26] the Supreme Court said: "[O]nce a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."[27] Pursuant to *Swann* and before the decision here involved, the Fifth Circuit ordered the Texas Education Agency to make

> [R]ecommendations of specific curricular offerings and programs which will insure equal educational opportunities for all students

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24. *See, e.g.,* note 10 *supra* (consolidation of school districts and busing); Plate v. Dade County School Bd., 434 F.2d 1151 (5th Cir. 1970); United States v. Hinds County School Bd., 433 F.2d 622 (5th Cir. 1970) (pairing of schools); Allen v. Board of Pub. Instruction, 432 F.2d 362 (5th Cir. 1970); Wright v. Board of Pub. Instruction, 431 F.2d 1200 (5th Cir. 1970); Youngblood v. Board of Pub. Instruction, 430 F.2d 625 (5th Cir. 1970) (rezoning of school attendance lines); United States v. Board of Pub. Instruction, 395 F.2d 66 (5th Cir. 1968); Graves v. Walton County Bd. of Educ., 300 F. Supp. 188 (M.D. Ga. 1968) (regulation of the location of new schools); Franklin v. Quitman County Bd. of Educ., 288 F. Supp. 509 (N.D. Miss. 1968).

25. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971). For a general discussion of this case and its effects on the Fifth Circuit see Comment, *Busing, Swann v. Charlotte-Mecklenburg, and the Future of Desegregation in the Fifth Circuit,* 49 TEXAS L. REV. 884 (1971). *See, e.g.,* Davis v. Board of School Comm'rs, 402 U.S. 33 (1971); Alexander v. Holmes County Bd. of Educ., 396 U.S. 19 (1969); Green v. County School Bd., 391 U.S. 430 (1968); Carr v. Montgomery County Bd. of Educ., 429 F.2d 382 (5th Cir. 1970); Mays v. Board of Pub. Instruction, 428 F.2d 809 (5th Cir. 1970), for other cases dealing with the general equitable powers of courts in desegregation cases.

26. 402 U.S. 1 (1971).

27. *Id.* at 15.

> regardless of race, color or national origin. These curricular offerings and programs shall include specific educational programs designed to compensate minority group children for unequal educational opportunities resulting from past or present racial and ethnic isolation, as well as programs and curriculum designed to meet the special educational needs of students whose primary language is other than English.[28]

The bilingual-bicultural directive by the district court follows the philosophy of these two cases. Other courts and the federal government have also strived to provide remedial education to socially disadvantaged children.[29]

Since the Constitution recognizes the right to equal educational opportunity and since segregated schools are unequal per se, thereby requiring desegregation,[30] the remedy to achieve desegregation must take into account the peculiar characteristics of the minority group that is being desegregated.[31] This applies especially to Chicano students. If a non-English speaking Chicano child is placed in a class taught only in English, he is not in the same position as his English-speaking Anglo peers and is not being granted an equal educational opportunity. This obstacle could be overcome by providing special classes for Chicano students, but this would defeat the purposes of desegregation.[32] Bilingual programs, therefore, provide Chicano children with equal, not extra, education. To make bilingual teaching viable (so each class is not taught first in English and then in Spanish), all of the students in a class must become proficient in both languages. This allows both groups to be in an equal position in the classroom and thus able to receive an equal educational opportunity.[33]

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28. 447 F.2d at 448.

29. United States v. Jefferson County Bd. of Educ., 380 F.2d 385 (5th Cir. 1967); Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969). *See also* Bilingual Education Act, 20 U.S.C. § 880(b) (1968).

30. Brown v. Board of Educ., 349 U.S. 294 (1955); Brown v. Board of Educ., 347 U.S. 483 (1954).

31. United States v. Texas, 447 F.2d 441 (5th Cir. 1971); United States v. Jefferson County Bd. of Educ., 380 F.2d 385 (5th Cir. 1967); Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969).

32. *See* cases cited note 12 *supra.*

33. For further discussion see Rangel & Alcala, *Project Report: De Jure Segregation of Chicanos in Texas Schools, supra* note 2. It can be contended that not teaching in Spanish to non-English speaking Chicanos would violate

In a desegregated atmosphere where bilingualism is utilized, education in the minority culture furthers desegregation. Maintenance of the Chicano culture for the Chicano child and knowledge by the Anglo child of that culture can only aid understanding between the races and encourage mutual as well as self-respect. Knowledge coupled with respect may be the necessary prerequisites to end racial separation.

The logic of this case may have a substantial effect on desegregation law. The arguments for the constitutional necessity of a bilingual-bicultural curriculum are based on the premise that it is a method to bring about desegregation. The district court stated, however, that its order was issued with the goal of "true integration as opposed to mere desegregation . . . ."[34] If the words can be taken in their literal sense, the ramifications of the decision may be far greater than they seem on the surface.[35] If true integration is the aim, then what are the requirements for fulfillment? Since racial mixing is not sufficient, the extent of special educational programs to achieve "true integration" must be determined.

Postponing the issue of the type of segregation necessary before desegregation is required, there is also the problem of which racial or ethnic groups qualify for minority culture education. Involved in this consideration would be the determinants of size, distinctiveness and identifiability. Groups to be considered for bilingual education could include Eskimos in Alaska, Chinese and Japanese wherever they are located in substantial numbers, Hawaiians, Puerto Ricans in the East, Cubans in Florida, and a multitude of Indian tribes located in the Midwest, Southwest and South.

Until recently, desegregation has been limited to areas where de jure segregation was found. But if "true integration" is the goal, the

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the fourteenth amendment. *See, e.g.,* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956) (identical treatment of persons not identically situated may violate equal protection if it results in a denial of a fundamental right). *See also* James v. Valtierra, 402 U.S. 137 (1971); Meredith v. Fair, 298 F.2d 696 (5th Cir. 1962) (neutral state action can violate fourteenth amendment); Franklin v. Parker, 223 F. Supp. 724 (M.D. Ala. 1963), *modified,* 331 F.2d 841 (5th Cir. 1964).

34. 342 F. Supp. at 28.

35. The decision would undoubtedly affect the educational systems wherever Chicanos are a substantial minority. Schools throughout the Southwest and California must evaluate their curriculum in light of this decision.

question of the constitutionality of de facto segregation is raised. The extensiveness of the requirement of "true integration" involves the breadth of remedies needed to acquire it. Since political boundaries have frequently been ignored in dealing with de jure segregation, this would also occur in dealing with de facto segregation. "True integration" could require more than ignoring school district boundaries and township boundaries, but also city and county boundaries or even state boundaries. These and innumerable other problems await the courts' determination if the goal of "true integration as opposed to mere desegregation" is adopted.*

Stephen Geddes Sneeringer

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* The Court of Appeals for the Ninth Circuit recently held in Lau v. Nichols, 472 F.2d 909 (9th Cir. 1973), that Chinese students enrolled in San Francisco schools who had English deficiencies were not denied equal protection by the failure of the school system to provide compensatory English instruction. The court determined that the linguistic deficiencies of the Chinese students were not caused nor furthered by any de jure segregationalist policies of the school system itself. The court concluded that the school district need only provide non-English speaking Chinese students with the same educational opportunities as it provided English speaking students and that failure to provide remedial education was not a denial of equal protection.

By its decision and through its discussion of United States v. Texas, the Ninth Circuit limited compensatory or bilingual education to those groups that were denied equal educational opportunity because of de jure segregation. Bilingual and compensatory education was required only when the linguistic deficiencies of minority students were caused in any manner by past segregation in the schools. When such de jure segregation is lacking, the school is not required to provide remedial education to culturally disadvantaged students.

The dissent, on the other hand, found that a prima facie case of a denial of equal protection was established. Once a state provides education, it must grant each child an equal educational opportunity even if this entails remedial education to place certain culturally disadvantaged students on an equal footing with other students.

The *Lau* decision distinguished the scope and applicability of the bilingual-bicultural system instituted in the Texas case by applying the traditional de jure-de facto segregation distinction. The Ninth Circuit failed, however, to reconcile the language and logic of United States v. Texas with its legal justification. Questions as to the extent and applicability of bilingual-bicultural education remain for resolution. The Ninth Circuit has not helped in the resolution of these conflicts.