CIVIL RIGHTS DIGEST

A Quarterly of the U.S. Commission on Civil Rights/Summer 1974

EVADING THE LAW IN THE CONSTRUCTION INDUSTRY

Volume 6 Number 4
SUMMER 1974

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- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
- Submit reports, findings, and recommendations to the President and the Congress.

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PHOTOS: cover, 39 (top right)—Black Star/Ward; inside front cover—Black Star/Merritt; 2—Black Star/Fletcher; 7, 15—Black Star/Wilson; 10—UPI; 19, 25, inside back cover—Dandelet Interlinks/Wing; 22 (both)—NEWS Photo; 28, 29—Dandelet Interlinks; 39 (top and bottom left, bottom right), 42 (bottom)—Black Star/Moore; 41—Black Star/Leviton; 43 (bottom right)—Black Star/Haun; 43 (top right)—Black Star/Keating; 42 (top)—SNCC/Lyon; 46—SCLC/Fitch.

The *Civil Rights Digest* is published quarterly by the U.S. Commission on Civil Rights as part of its clearinghouse responsibilities. Funds for printing the *Digest* were approved by the Director of Bureau of the Budget on January 29, 1963. Correspondence related to the *Digest* should be addressed to Editor, *Civil Rights Digest,* U.S. Commission on Civil Rights, Washington, D.C. 20425.

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

EVADING THE LAW

APPRENTICESHIP OUTREACH AND HOMETOWN PLANS IN THE CONSTRUCTION INDUSTRY

By Herbert Hill

Among the most urgent problems confronting black communities—and one that has crisis implications for the entire society—is the rapidly deteriorating condition of black youth.

Projections based upon census reports and other data indicate that during the decade of the 1970s the number of black teen-agers will increase by 24 percent and the number of blacks aged 20 to 24 will increase by 36 percent. The number of black youth who will be entering the working-age category will increase at a rate five times greater than the rate of increase of young white workers. But what is their future?

Unless a drastic and rapid change occurs in the dismal condition of black youth trapped in the web of urban racism, a large part of an entire generation of young blacks will never enter the labor force. Their only future will be a marginal, alienated existence—separate and unequal within American society. This circumstance is the single most explosive factor in causing urban unrest and has dangerous implications for every city and suburb in the United States.

A major difficulty in reversing the pattern of joblessness and alienation among young blacks is the rigid control of training and access to employment by many labor unions committed to perpetuating the racial status quo.

An additional complicating factor is the role of the Federal Government in aiding and abetting discriminatory racial practices. The relationship between the U.S. Department of Labor and the various unions affiliated with the AFL-CIO (under both Democratic and Republican administrations) is a prime example of how government policy can transform "voluntary associations," such as labor unions, into a private sovereignty.

With the passage of the Civil Rights Act of 1964, and after the Federal courts began to expand their interpretation of Title VII (which pertains to employment), organized labor began to resort to more sophisticated practices that gave the illusion of compliance with the law. This was especially true in the building and construction trades where craft unions rigidly control apprenticeship training programs and access to employment through union hiring halls and other job referral systems.

As a consequence of this control, craft unions have been able to exclude blacks from higher-paying skilled jobs in new construction and to limit nonwhite workers generally to repair, maintenance, and small residential building. The demands of black workers seeking to enter the more desirable job classifications in new construction have increased during the past decade and have taken a variety of forms, including litigation and protests at public construction sites. This issue has been a major source of volatile racial conflict in many American cities.

Soon after Title VII went into effect, the building trades unions were found by many Federal courts to engage in unlawful and systematic discrimination. For the first time, the courts ordered sweeping relief to black plaintiffs in class action suits and began to impose restrictions on the power of the unions to determine eligibility for employment.

Confronted with the potential loss of the basis of their power—job control—the building and construction trades unions responded by developing two approaches which give the illusion of fulfilling the requirements of the law, but actually serve to evade and circumvent the comprehensive body of civil rights statutes and Federal Executive orders as they apply to

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the construction industry. These two approaches are the apprenticeship outreach programs and the related hometown plans.

Apprenticeship Outreach Programs

The apprenticeship outreach program is intended to prepare black and other minority youths to pass a variety of written and oral tests which will qualify them for formal apprenticeship training. The outreach preparation usually consists of a tutoring program lasting approximately 10 weeks.

After the pre-apprenticeship preparation, tests are given by representatives of joint apprenticeship committees—committees which are invariably dominated by the craft unions. Persons who successfully complete the pre-apprenticeship stage and then manage to pass a battery of tests for admission into apprenticeship training programs must still wait until occasional local openings occur.

The outreach concept of pre-apprenticeship preparation could be potentially beneficial to minorities, but only if it were operating in conjunction with a fundamentally restructured and greatly expanded system of apprenticeship training. Most importantly, control by restrictive labor unions would have to be eliminated.

At present, several basic factors prevent these programs from being effective.

1) The majority of craftsmen do not enter their respective trades through apprenticeship, since formal training programs involve only a very limited number of potential journeymen. According to the 1974 *Manpower Report of the President*, in 1972 only 28,488 workers completed training nationally in all building trades apprenticeship programs, while 30,159 failed to complete training. This number is not enough on an annual basis to fill even 20 percent of the vacancies caused by attrition.

2) Highly restrictive journeymen-apprentice ratios drastically limit the number of apprentices in each craft.

3) Non-work related and discriminatory testing procedures are often used.

4) Training programs are unnecessarily protracted. The average program lasts 4 years.

5) Arbitrary standards and nepotism are common practices of unions controlling training and job referrals.

6) The outreach programs accept the discriminators' description of the issue—that the inadequacy of the black population is at the root of the problem. But an extensive body of litigation proves that this is untrue. The greatest proliferation of training programs will have little effect until racial discrimination is eliminated.

This state of affairs was described in the decision of a Federal court in New York City in a typical case involving the discriminatory racial practices of building trades unions:

> There is a deep-rooted and pervasive practice in this Union of handing out jobs on the basis of union membership, kinship, friendship and, generally, "pull". . . .The Government has shown in case after case the preference of whites over blacks on grounds of nepotism or acquaintanceship.
>
> The officers of the Local did not merely acquiesce in this state of affairs; many, if not all, of them have been active participants in the pattern of favoritism and its inevitable concomitant, racial discrimination.

The outreach programs have received much favorable publicity as a result of an extensive public relations campaign, and much praise from spokesmen for organized labor, government, and other groups. However, a close analysis of outreach programs clearly reveals that they have failed to alter the status of blacks and other minorities in the building trades.

Jobs in the construction industry are of special significance to low-income black communities. Much new construction generated by urban renewal, highway and road building, public housing, waterways and harbor improvement, hospitals, schools, and other federally-assisted building programs is often in or near major black population centers.

The construction industry is growing and vast expansion is anticipated in the 1970s and 1980s. The U.S. Department of Labor estimates that during the 1970s the construction industry will experience the third largest employment increase of any sector.

The most dramatic increases are projected to occur in the skilled crafts, with electricians doubling their percentage of employment in the industry and plumbers and pipefitters tripling their representation during the 1970s. And these are among the trades where racial exclusion is most rigidly enforced.

The construction industry, in comparison with other large industries, is highly dependent on public funds. The Federal Government is directly responsible for at least one-third of all money spent on construction throughout the country. It is anticipated that during the 1970s Federal construction projects as well as those of States and local governments will be greatly increased. One example of this trend was the announce-

THE FACTS

Reports issued by the Equal Employment Opportunity Commission, based on a nationwide reporting system known as the Local Union Report EEO-3, reveal a continuing pattern of black exclusion from building trades craft unions. The report released in 1969 noted that black workers comprised 0.2 percent of Sheet Metal Workers, 0.2 percent of Plumbers, 0.4 percent of Elevator Constructors, 0.6 percent of Electrical Workers, 1.6 percent of Carpenters, 1.7 percent of Iron Workers, and 0.9 percent in the Asbestos Workers Union.

The report issued in 1970 observed that "almost three of every four Negroes in the building trades were members of the Laborers Union." One year later the EEOC concluded that the percentage of blacks in the skilled occupations had actually decreased.

In a 1973 report analyzing data reported for 1971, EEOC observed:

> The greatest membership advances occurred in those international unions that already had high minority representation. . .in the laborers, roofers, and trowel trades group. As a consequence, that group had even more of all the black and Hispanic workers in the construction referral unions than 2 years earlier.
>
> With less than one-fourth the total membership, this group had three-fourths of the blacks and one-half of the Spanish Americans. Two-thirds of all blacks in the building trades were in the Laborers Union—well over one-fourth of its entire membership. As in 1969, the mechanical trades had the lowest minority membership, and the miscellaneous construction trades a somewhat higher level.
>
> Comparing the proportion of blacks in skilled building trades with that of black skilled craftsmen in all industry, we found no catchup in the mechanical trades and a slight gain in the miscellaneous trades.
>
> —Herbert Hammerman in *Monthly Labor Review*, May 1973.

According to the June 1974 EEOC report, which analyzes 1972 data, there was "an overall increase" in minority membership in the building trades unions, but "their movement into the highest skilled, better paying union categories has not risen significantly." Again: "Minority membership was greater in the generally lower paying trowel and miscellaneous trades, making up 10.7 percent of the total membership. This compares with 8.6 percent reported in 1969 . . . . In the lowest paying building trades group . . . minority group membership was 37.6 percent, against 31.8 percent in 1969."

The EEO-3 reports allow information on the race of individuals to be obtained by visual survey, from existing records, by tally from personal knowledge, or by self-identification. "A good faith effort is acceptable." There is reason to believe, however, that the figures reported by labor unions are often inflated or otherwise distorted.

For example, the 1969 EEOC report stated that 30 percent of the membership of Iron Workers locals in New York City were members of minority groups, but information developed during litigation against locals of the Iron Workers Union revealed that in the "A" unit of Local 850, with jurisdiction in new construction, there were exactly two blacks out of a total membership of 1,307. With the exception of these, all other black and Puerto Rican members were in the "B" unit, whose members earn considerably lower wages because they are excluded from work in new construction.

Such analyses suggest that some unions do not report accurate statistical information about minority membership. They further distort the data by combining information on new construction with industrial and other classifications. Unfortunately, EEOC does not make an independent audit to verify the accuracy of union reports, and an unknown number of local unions ignore the law and do not report at all.

James McNamara, building trades director for the New York City Manpower Administration and Career Development Agency, stated in *Engineering News Record* (May 3, 1973), "In New York City over half the locals fail to report, and when they do the figures are often incomplete and inaccurate."

ment by the Federal Government in June 1972 of a $1 billion new construction program that would create over 320,000 additional jobs during a 3-year period.

A major new form of implementation developed to obtain compliance with the law on such government projects is the concept of numerical goals and timetables. The use of numbers expressed in the form of imposed goals and timetables to enforce the legal prohibitions against job discrimination in the building trades and in other industries has its origins in a 14th amendment case, *Ethridge v. Rhodes*, initiated by the National Association for the Advancement of Colored People and decided in 1967 by the U.S. District Court in Columbus, Ohio.

In this case the NAACP proposed the principle that government agencies require a contractual commitment from building contractors to employ a specific minimum number of black and other minority workers in each craft at every stage of construction. Whatever its procedural and administrative difficulties, this concept, later known as the Philadelphia Plan, was potentially the most effective means of enforcing the law.

Goals and Timetables

The Philadelphia Plan was most important because it was the case that joined the issue and finally established the legality of the use of specific numbers in civil rights law enforcement. The intransigent resistance of organized labor to the Philadelphia Plan explains the development and proliferation of apprenticeship outreach programs and the hometown plans.

Labor unions in Philadelphia and nationally had repeatedly resisted all efforts to increase minority participation in the skilled craft occupations of the building trades unions. While the first Philadelphia Plan guidelines were still in effect, an electrical subcontractor, under pressure from government agencies, hired three black electricians on the United States Mint construction project.

Twenty-five members of the International Brotherhood of Electrical Workers immediately walked off the job in protest. In response, black demonstrators threatened to close other construction sites in Philadelphia.

More resistance and protest followed. As a result of volatile demonstrations that impeded Federal and State building activity, 3 days of public hearings were held by the Office of Federal Contract Compliance on the exclusion of nonwhites from jobs in the Philadelphia construction industry. On June 27, 1969 the first part of the Revised Philadelphia Plan was issued by the OFCC.

It contained a Labor Department review of its own data together with information compiled by various government agencies which showed that nonwhites were excluded from seven crafts: ironworkers, plumbers and pipefitters, steamfitters, sheet metal workers, electrical workers, roofers and waterproofers, and elevator constructors.

The revised order stated:

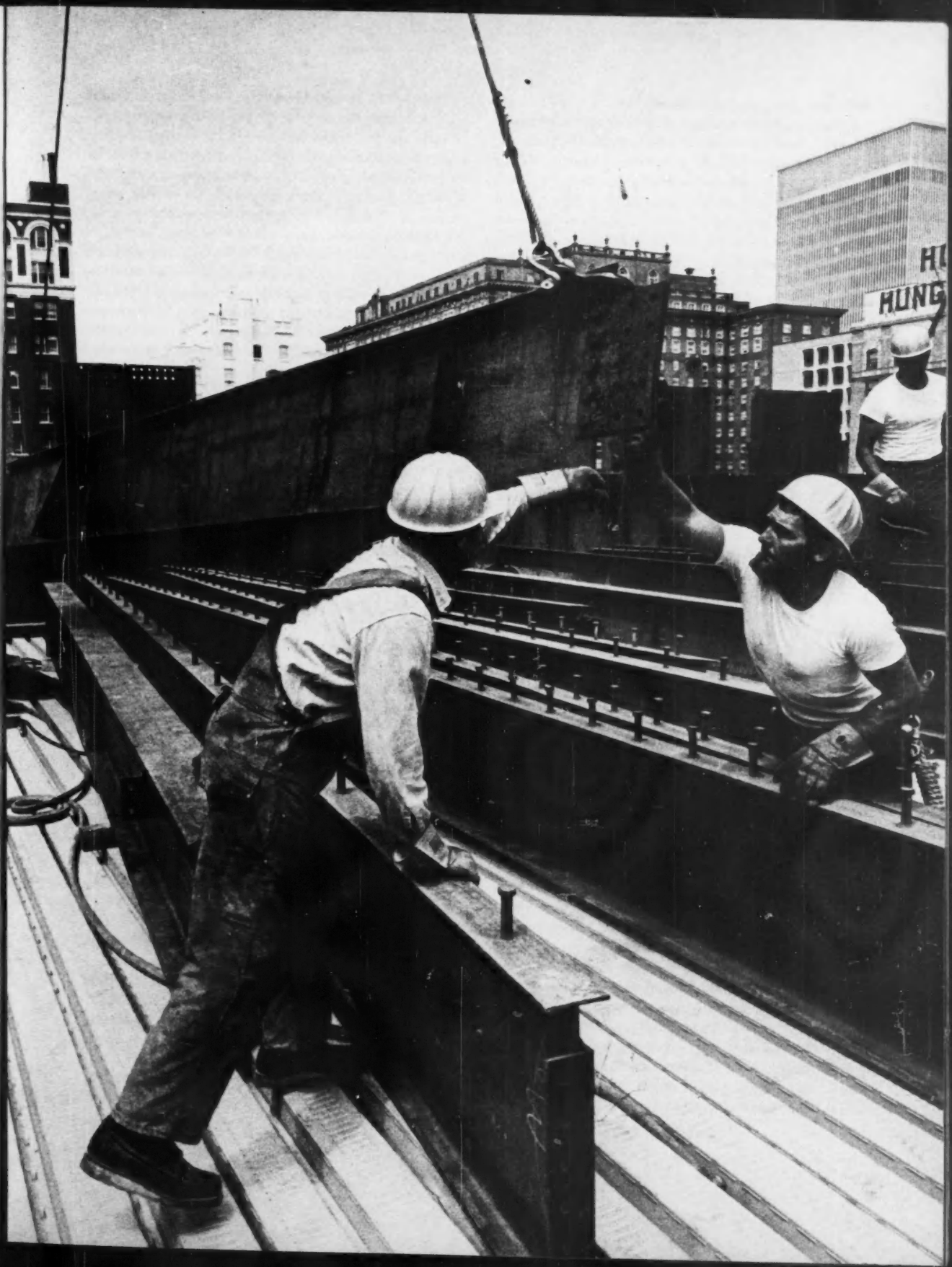
> Because of the exclusionary practices of labor organizations, there traditionally has been only a small number of Negroes employed in these seven trades. These exclusionary practices include. . .failure to admit Negroes into membership and into apprenticeship programs.
>
> At the end of 1967, less than one-half of one percent of the membership of the unions representing employees in these seven trades were Negro, although the population in the Philadelphia area during the past several decades included substantial numbers of Negroes.

The Revised Philadelphia Plan was designed to meet the U.S. Comptroller General's requirements of specificity in affirmative action programs and hiring goals. It ordered "goals" or "ranges" in the form of minimum percentage requirements of nonwhite employment in specific crafts. The first part of the plan announced that affirmative action commitments would be required of contractors in the pre-award stage of all Federal construction projects involving the expenditure of $500,000 or more in Federal funds in the Philadelphia area. No contracts were to be awarded to bidders who did not commit themselves to percentage requirements imposed in the seven affected crafts.

The OFCC issued the second part of the Revised Philadelphia Plan—the first order of implementation—on September 23, 1969. This required contractors to commit themselves to hire from 4 to 9 percent minority workers in 1970, 9 to 15 percent in 1971, 14 to 20 percent in 1972, and 19 to 26 percent in 1973. Ranges were given in each of six skilled trades which had virtually no black members or referrals in 1969 (roofers were exempted "subject to further examination"), with the aim of increasing minority participation to 20 percent over a 4-year period.

The primary reason for the 3-month delay between the OFCC's announcement of the Revised Philadelphia Plan and its scheduled implementation was a second attempt by U.S. Comptroller General Elmer B. Staats to have the plan terminated. (The Comptroller General pays the bills for Federal contracts.)

Staats asked for a legal justification for setting goals and timetables, although the plan had already been



revised once to meet his objections.

Laurence H. Silberman, solicitor for the Department of Labor, pointed out in a memorandum dated July 16, 1969 that Federal Executive orders had been issued for over 28 years. Their authority to require nondiscrimination in Federal contracting had been upheld by opinions of attorneys general, comptrollers general, and several courts. Since the Revised Philadelphia Plan was an administrative procedure for enforcing Executive Order 11246, it too was well within the enforcement authority of the Department of Labor.

The solicitor went on to argue that the requirement of ranges and goals as affirmative action under the Executive order was parallel to the affirmative action provisions of Title VII of the 1964 Civil Rights Act and of the National Labor Relations Act.

"It is plain," Silberman noted, "that affirmative action programs limited to recruiting of minority group employees will be inadequate; since the contractor does not do his own recruiting, [and] so long as the unions engage in discrimination, few minority group persons will be hired."

Although the ranges contained in the plan were very minimal—well below the 40 percent black population in the Philadelphia area—the principle of goals and timetables for administrative enforcement of the Executive order was established. For the first time, the concept of mandatory minimum percentage requirements for the employment of black workers in specific job classifications was included in Government procedures for enforcing civil rights laws in the building trades.

From the Government's point of view, the plan had the advantage of avoiding contract cancellation by offering the less drastic alternative of refusing to award contracts in the first instance to companies that would not commit themselves to hire specific numbers of minority workers in high-paying skilled jobs.

In an effort to stop the Philadelphia Plan, Senate Minority Leader Everett M. Dirksen appended a rider to an appropriations bill that would have barred funds for contracts in which the minority employment goals were imposed. The implementation of the Philadelphia Plan virtually ceased as a result of Dirksen's rider and opposition to the plan by the Comptroller General, and the debate shifted to the congressional arena.

The AFL-CIO lobbied intensively in support of Dirksen's proposals. At its annual convention in Atlantic City, the Building and Construction Trades Department adopted a statement condemning the Philadelphia Plan as an "illegal quota system" imposed upon the "scapegoat" construction industry.

The NAACP defended the Philadelphia Plan, arguing: "the requirement for the employment of a specific number of black workers in each craft at every stage of construction is absolutely essential, given the institutionalized pattern of racial discrimination in the building trades. . . .The Philadelphia Plan, at a minimum, should be adopted and strongly enforced by the Federal Government."

Finally, in December 1969 the House voted 208-156 to strip the rider from the appropriations bill, and the Senate voted 39-29 to accept the House action. For the first time, Congress approved the use of numerical goals and timetables as a means of insuring black workers jobs long barred to them on federally-assisted construction projects.

Misleading Numbers

Despite the congressional vote, the AFL-CIO and the various building trades unions continued to oppose and resist compliance with the Philadelphia Plan in many ways. Pressed for compliance with Title VII and Federal Executive orders, these unions almost invariably responded by citing the labor-sponsored outreach programs as the alternative to the mandatory minority employment goals of the Philadelphia Plan. These outreach programs began to be widely utilized by organized labor 2 years after the effective date of Title VII, when it became apparent that labor unions, particularly those in the construction industry, would be vulnerable under the new law.

In a speech to the National Press Club, AFL-CIO President George Meany called the plan "a concoction and contrivance of a bureaucrat's imagination." He went on to say:

> Whatever the reason, we found that very few young Negroes who could qualify to enter the existing apprenticeship programs were interested in entry. Now what the reasons might be I don't know. Maybe some of them just didn't believe that the doors were going to be open to them.
>
> But this is a fact and that is why we set up this so-called apprenticeship "Outreach Program"—reaching out and bringing these people in. And the AFL-CIO and its affiliates in the Building Trades inaugurated an official apprenticeship "Outreach Program" about 2 ½ years ago.

Meany then contrasted the Philadelphia Plan with the success of the outreach programs; "As of

November 1969, just a short 5 weeks ago, 5,304 apprentices had been placed by this outreach program."

An examination of Meany's claim reveals much about the effectiveness of the outreach programs. Official reports on them issued by the Department of Labor also reveal how misleading numbers can be if accepted at face value.

Through October 31, 1969 the "cumulative total" of those entering apprenticeship training through the program was indeed 5,304. But the president of the AFL-CIO refrained from noting that the "cumulative total" included 860 workers who for various reasons dropped out. This figure itself has been called low by many observers.

Of the remaining 4,444 in the Manpower Administration's overall figures, two percent were white—not members of minority groups—leaving a total of 4,355. The pertinent question at this point is how many of these gained entry into training for the exclusionary skilled craft occupations. Such classifications as cement mason, carpenter, bricklayer, plasterer, and roofer as well as those identified as "miscellaneous trades" (laborers) have long had a relatively high concentration of blacks. Significantly, more than half of the 4,355 in the outreach program were in this group.

In those classifications from which black workers have been most rigidly excluded, such as plumbers and steamfitters, sheet metal workers, and asbestos workers, 1,599 minority men began training as a result of outreach programs—but with no guarantee of union membership and jobs. This amounted to 0.05 percent of the full 3,500,000 membership of the building trades unions. The outreach programs, after 2 ½ years of operation, had disturbed the racial status quo not at all.

Of course there is no assurance even after the men are indentured that they will be graduated—or once graduated, what position (if any) they will fill in their trade. Will they, for example have a "class A" journeyman's card, or a "class B," or a "class C" card? That is, will they be classified in new construction, or in prefabrication, or in maintenance and repair? The difference is important. A higher classification means higher pay, higher job status, and other advantages.

Such decisions are controlled solely by the building trades unions which establish and apply the standards by which job applicants are judged. Apprenticeship training programs are supposedly designed to prepare workers for journeyman status; in deciding whether to grant that status, union authority is absolute.

Furthermore, there is no guarantee that upon completion of their apprenticeship training, blacks and other nonwhite workers will be admitted into craft unions or be permitted to work. In several cities black youths, after preparation by outreach programs, have passed the written tests of local building trades unions but repeatedly failed oral examinations—which are highly subjective and depend upon arbitrary scoring by union officials.

After a survey of outreach and related training programs, the *New York Times* reported last year that "the process of winning a union book is long and often discouraging." Specifically:

> If an applicant passes the aptitude test, which is both verbal and mathematical, he must score high enough to place among the number of apprentices the union wants.
>
> "Unions call apprentices on a needed basis," said Robert Sutton, who heads the Recruitment and Training Program's operation in Harlem. "If he takes the test in January, he may not be called until the next January. The union must only hold his name on the list for a year. After a year, he may have to be retested."
>
> According to Mr. Sutton, some applicants tested last June were still waiting to be called [in February].

Fallacy and Funding

The basic concept of outreach programs is a fallacy. Even if full racial integration of all union-controlled apprenticeship programs were achieved, no substantial integration of the craft unions would result because the overwhelming majority of white construction workers do not become journeymen through apprenticeship training.

Data from the Department of Labor reveals that about 80 percent of the journeymen in the craft unions did not advance through a formal apprenticeship program. They are trained on the job. They do not have to be prepared or tutored. It is only blacks and members of other minority groups who must climb the slow and often futile apprenticeship ladder.

In addition, a 1971 Labor Department study of journeyman and apprentice admission standards in the building trades found that union selection criteria were frequently those the courts had repeatedly struck down as discriminatory and unlawful. Local unions were allowed a very high degree of discretion in establishing and applying their apprenticeship entrance standards,

and "the most frequently occurring provision related to age, followed by examination (scores) and good moral character."

The study also reviewed the body of Title VII law applying to the construction industry, noting that Federal courts have consistently ruled that entrance requirements "must be objective in character and non-discriminatory" in contrast to the practices which the Department of Labor found to be prevalent in the industry.

Such studies, however, do not prevent the Department of Labor from financing and helping to perpetuate these practices by funding outreach and related programs.

From fiscal 1963 through fiscal 1972, the Labor Department's Manpower Administration allocated $104 million to labor organizations for a variety of training programs including outreach. The AFL-CIO Human Resources Development Institute received $5.8 million, and $7.7 million went directly to construction unions conducting outreach programs.

By May of 1972, the Department of Labor had specifically funded outreach programs in the amount of $27.2 million. Of this sum almost $9 million went to the Urban League, over $6 million to the Workers' Defense League/A. Philip Randolph Institute, and over $4 million to various AFL-CIO Building Trades Councils.

By mid-1973 there were 117 outreach programs with 32 operated directly by building trades unions. New grants continue to be made. On March 18, 1974, for example, the Department of Labor announced that $870,989 in Federal funds were granted to outreach programs in four cities in northern California. From 1967 to mid-1974, total Federal funding of all apprenticeship outreach and related other programs was almost $50 million.

An indication of the results of some of these programs is to be found in the highly publicized Plumbers Union training program. Funded by the Department of Labor in 1970, this $1.4 million program had the stated aim of placing 500 minority workers in the construction industry. A year later, not a single worker belonging to a minority group had been trained or placed on a job.

Thus while the Department of Justice was suing building trades unions and contractors' associations in many cities across the country for violating the law, the Department of Labor was subsidizing them.

An analysis of the record of Project Build, an outreach program in Washington, D.C., further confirms the failure of the outreach approach. Project Build, funded by the Department of Labor, began operations in February 1968. In mid-1972, it reported to the Labor Department that 659 persons were enrolled in training, but the Manpower Administration was able to verify only 344 as registered. Further investigation revealed that over a 4-year period only 12 minority youths had completed the program; 183 had been cancelled, and 149 were still in training.

Moreover, no government agency could report that any of the 12 had actually been admitted into construction craft unions as journeymen members or that they had ever worked on a union job. The failure of the outreach program in Washington, D.C. is especially significant because it occurred in a city with extensive Federal building programs and where blacks make up more than 70 percent of the population.

The conclusion is inescapable. A decade of apprenticeship outreach programs have failed to eliminate discriminatory racial patterns in the building trades. They have served the interests of restrictive labor unions, but not the interests of blacks and other minority workers. Indeed, the data reveals that the present

FIGHTING FIRE

A Labor Department grant for minority recruitment into the Washington, D.C. local of the International Association of Firefighters, AFL-CIO, has, according to reports in the *Washington Post* (December 16, 1972), been used mainly to pay the project director's salary. The D.C. fire department's personnel officer "did not know of a single person hired through the project." The director of the minority project for the union, which altogether received $665,000 from the Labor Department, said that the 12-city project had been "rather successful." Although the program was in fact an admitted failure, in June 1974 Secretary of Labor Peter J. Brennan announced a new one-year grant of $324,321 to the International Association of Firefighters for yet another 12-city training program.

system of apprenticeship training constitutes an added and formidable barrier to black workers.

While there has been an overall increase during the past decade in nonwhite participation in apprenticeship training, little change has occurred in the percentages of black journeymen admitted into unions controlling employment in the skilled occupations. Black construction workers remain concentrated in laborers' jobs and in the trowel trades. Apprenticeship training is obviously not an end in itself. It is meaningful only if it leads to skilled employment and it has failed to do so for blacks.

Remedies: Back Pay and Preference

Litigation under Title VII of the Civil Rights Act of 1964 has proved to be the most potent form of legal action developed to date in combating racial discrimination in employment. This statute has given rise to the articulation of legal principles and new prohibitions against discriminatory employment practices.

The right of private parties to sue, not only on their own behalf, but on behalf of an entire class, has helped expose the underlying broad patterns of discrimination which give rise to specific charges. Prior to the passage of Title VII, legal and administrative procedures might, after much delay, have produced some small benefit for the individual complaining party. But the discriminatory system remained intact.

The most important consequence of the new judicial perception of employment discrimination is the sweeping relief and remedies ordered by the Federal courts. In practical terms, the relief has taken two specific forms.

First, large sums of money have been awarded as back pay to an entire affected class of minority workers found to be the victims of discriminatory practices. These substantial back pay awards are certain to have a deterrent effect upon the discriminatory practices of both employers and labor unions.

Secondly, the courts have imposed new preferential hiring remedies. These new legal requirements indicate the minimum—not the maximum—number of minority workers to be hired, in contrast to the unofficial quota system long in operation in the building trades which has rigidly excluded nonwhites from skilled, high-status jobs.

A major factor in union resistance to new legal remedies is that white worker expectations, based on the systematic denial of the job rights of black workers, have become the norm. Thus any alteration of this norm is considered "reverse discrimination."

It should be evident that what is really involved in the debate over hiring "quotas" is not that blacks will be given preference over whites, but rather that a substantial body of law now requires that discriminatory systems which operate to favor whites at the expense of blacks must be eliminated.

During the past quarter of a century, the Federal courts have increasingly recognized the validity of numerical quotas to eliminate traditional forms of discrimination. The courts have used quotas as a remedy to eliminate systematic discrimination in the selection of juries, in legislative reapportionment, and in school segregation cases. In one such case, the Supreme Court ruled that mathematical racial ratios could be used as "a starting point in the process of shaping a remedy."

Although the courts have repeatedly spoken on this issue, the extensive public discussion of preferential hiring has ignored the major legal interpretations of the validity of minimum quotas in civil rights enforcement efforts. Typical of current judicial opinion is the decision of the United States Court of Appeals for the Seventh Circuit in *Builders Association v. Ogilvie.* In this case the court affirmed the use of job quotas, saying:

> Numerical objectives may be the only feasible mechanism for defining with any clarity the obligation of Federal contractors to move employment practices in the direction of true neutrality.

Hometown Plans

Although the legality of mandatory preferential hiring systems, as well as the Government's power to enforce them, has been repeatedly sustained in the courts, the Federal Government—at the insistence of organized employers and organized labor—has refrained from using these powers in the construction industry and has substituted voluntarism in the form of hometown plans.

This type of plan does not contain provisions for contractual duties and obligations and does not contain legal sanctions. It relies for compliance on the "good faith efforts" of the same employers and labor unions who are responsible for the continuing pattern of discrimination and who have repeatedly resisted compliance with the law.

By May 1974, in addition to the more than 100 hometown plans either in effect, under consideration, or already abandoned, there were seven "imposed" plans. However, the distinction between the voluntary hometown plans and the few "imposed" plans that do

contain goals and timetables is not significant. They both depend on "good faith efforts" by contractors and labor unions.

Hometown plans are based on pre-apprenticeship and related training activities conducted through a variety of outreach programs. Like the outreach approach, these voluntary hometown plans have been proposed and supported by the AFL-CIO and its affiliated building trades unions. They are intended as a substitute for Federal contract compliance and enforcement of civil rights laws in the construction industry. The Chicago Plan, developed by the labor unions as a prototype, was vigorously pressed as the alternative to court ordered and imposed plans containing mandatory hiring goals and timetables.

In early 1970, George Meany hailed the Chicago Plan as "truly a home town product. . .vastly superior to any government-imposed quota system—which is, of course, artificial and discriminatory." Meany suggested that the Chicago Plan approach be applied to other cities as "a worthy extension of Operation Outreach, which has already proven itself."

The U.S. Commission on Civil Rights, however, took a prophetically different view:

> Unlike the Philadelphia Plan, with specific procedures and sanctions for enforcement, the Chicago Plan will depend entirely on the ability of the local minority coalition to exert pressure. . . .
>
> The danger in "hometown solution" plans is that without guidelines to set minimum standards for local community solutions, contractors and unions may seek agreements less demanding than the Philadelphia-type Plan and lacking automatic sanctions clauses.

A year and a half after the much publicized Chicago Plan—the first and most widely hailed of the "home town solutions"—went into effect, and after the expenditure of $831,737 in Federal funds to implement the goal of placing 4,000 black and Spanish-speaking workers on construction jobs in the Chicago area, Government officials acknowledged that the plan was a resounding failure.

A representative of the Department of Labor conceded that its staff had been unable to verify the names of black employees claimed under the plan. The participating unions had refused "specific identification data" regarding alleged placements.

In one typical case, investigators found that "of the 75 persons initially started in the program, only 5 of the 46 placed are presently employed." In another, "Of the reported 72 placements, the Task Force was able to contact 44 of these persons—43 operating engineers and 1 cement mason. Only 5 were employed; 23 had been laid off, 10 discharged, 4 had quit, and 2 had joined the Armed Forces." This information was incorporated in the finding of the Department's investigative task force.

The OFCC audit of the Chicago Plan conducted during April 1971 concluded that:

> The Chicago Plan has failed to produce any meaningful jobs at all levels in the construction industry.
>
> The Chicago Plan has failed to be the vehicle of providing the preparation necessary to qualify minorities for all crafts. This is particularly clear when attention is given to the higher-paying mechanical trades.
>
> The Chicago Plan has failed to maintain suitable records of alleged minority placements.
>
> The Chicago Plan has failed to provide proper follow-up of minority placements.
>
> The nearly $1 million in Federal and State funds being expended to support the Chicago Plan have done little to improve the entry of minority workers into the construction industry.

On June 4, 1971 the Government announced that it would impose a mandatory plan on Federal construction projects in Chicago; as the *New York Times* reported, "the voluntary equal hiring program there [had] collapsed."

But the Government did not impose a mandatory plan with numerical goals and timetables in Chicago after all. Instead it approved another voluntary plan similar to the one that had just failed.

In October of 1972, the Department of Labor announced that it had funded a new Chicago Plan in the amount of $1.7 million. Like the first, the second Chicago Plan contained no enforcement powers. Fulfillment of the agreement by the unions and contractors was to be voluntary.

On June 28, 1973 the Chicago Urban League advised the Department of Labor of its intention to withdraw from the plan, charging that its "major failure" after 9 months of operation was due to the refusal of the unions and contractors to place nonwhite apprentices in

jobs. The League also announced that it was considering legal action. It became evident that the second Chicago Plan would suffer much the same fate as the first.

A later investigation by the Labor Department confirmed the failure of the second Chicago Plan and eventually Federal approval was withdrawn. On January 14, 1974, more than 4 years after the negotiation of the original Chicago Plan, the Department of Labor funded a third one—this time in the form of an imposed plan with annual goals for a 5-year period ending December 31, 1978. The Labor Department acknowledged the failure of the two previous voluntary plans and stated that contractors "must exert good faith efforts" in fulfilling the requirements of the third plan. Thus the Government again relied upon voluntarism to obtain compliance with the law.

The Chicago Plan was the first of the many hometown plans and it set a pattern of failure that the Department of Labor was to repeat in many other cities.

In the spring and summer of 1971, unrest over the continuing failure of blacks and other nonwhites to obtain construction jobs again became evident in many communities. In East St. Louis, Memphis, New York City, and Denver among others, protest actions were mounted at public and private construction sites. The *New York Times* commented on the new wave of demonstrations:

> Decades of failure to open up construction jobs to minorities have left a residue of bitterness, frustration, confusion and divisiveness. So deep are the scars that growing numbers of blacks and other minorities feel that only direct action, such as physically closing down job sites, will lead to any substantial changes.

A Federal compliance audit of 28 hometown plans, made public in November 1973, revealed that a majority failed to meet even their own extremely modest expectations. More Labor Department audits acknowledging the failure of the voluntary approach followed the demise of hometown plans in several cities.

The Conflict Over Enforcement

The collapse of the New York Plan not only provided further confirmation that hometown plans cannot change traditional racial practices in the construction industry, but also exposed the conflicting roles of cities, States, and the Federal Government.

Mayor Lindsay, a former advocate of the New York plan, said in January 1973: "Despite our most vigorous effort we have been very disappointed in the results of the New York Plan . . . . I am forced to agree that the problem of discrimination in the construction trades has not and cannot be satisfactorily addressed by the voluntary hometown plan concept."

On April 17, 1973 New York City presented its own new program to be enforced against racial discrimination in the construction trades. The mayor issued regulations requiring that all municipal contractors submit affirmative action plans with their bids, specifying annual goals and timetables for the employment of black and Spanish-surnamed workers on all their construction projects within the city.

The mayor's order, which went into effect in July 1973, involved the city in controversy with both State and Federal governments. State Labor Commissioner Louis L. Levine, in a letter to the heads of all State agencies, said "Only those plans that have been approved by the Governor or this department shall be recognized and included in contract specifications."

Peter J. Brennan, Secretary of Labor since early 1973, issued a directive prohibiting local efforts to enforce antidiscrimination regulations relating to the construction industry if such regulations exceeded Federal requirements. States and cities were not to establish any fair hiring plans that set goals and timetables without the approval of the Secretary of Labor.

In response to the insistence of Governor Rockefeller and Secretary Brennan that the Federal New York Plan was the sole equal employment program for the area, one city official stated, "That's like saying we're in conflict with the Federal Government if we require a $2.50 minimum wage and they only require $2.00." Deputy Mayor Edward Morrison added, "There are Federal projects under way here without a single minority trainee."

Civil rights organizations, as well as the city government, indicated that court tests were in the offing. They specifically cited a court decision in Boston which ruled that the State of Massachusetts could "set higher standards than the minimum Federal standards."

In that case, a U.S. District Court judge ruled in May 1973 that a Massachusetts executive order requiring minority employment quotas on State construction projects was constitutional. Hiring minorities in the percentage they represent in the population is not only legal, said Judge Freedman, but is "a proper attempt to remedy the present effects of past discrimination."

Two years earlier, when it became evident that hometown plans were in reality aiding evasion of legal prohibitions against discrimination in the construction industry, criticism of the voluntary approach reached into Government itself. Continued Federal insistence upon encouraging, negotiating, and funding these failing plans caused serious concern within the OFCC. In September 1971 the OFCC's regional and area directors jointly submitted an internal paper "Need for Compliance Enforcement in the Construction Industry" to their director, John L. Wilks.

The memorandum pointed out that nondiscrimination in Government contracting had been stated national policy for over three decades, with strong enforcement sanctions available, "yet these sanctions have never been used in the construction industry."

The history of hometown plans demonstrates not only how they are used by unions and employers to violate the legal prohibitions against employment discrimination with impunity, but also calls attention to the contradictory roles of government agencies in civil rights enforcement, especially within the Federal Government itself. This is exemplified by the activities of the Department of Labor and the Department of Justice.

In several cities where the Justice Department has initiated litigation against building trades unions for violation of Title VII, the Department of Labor has declared these very same labor organizations to be in compliance with the law by virtue of their participation in a hometown plan.

The situation in New York City is typical. Prior to the formal approval of the New York Plan by the Department of Labor, the Department of Justice filed lawsuits against four of the plan's union signatories. A year earlier the Department of Justice had obtained a contempt citation against a fifth.

Thus five of the plan's key union participants were believed to be in violation of Title VII by the Department of Justice and later found to be so by the courts, while the Department of Labor declared these same unions to be engaged in "affirmative action" compliance with the law through their participation in the New York Plan.

The Seattle Plan

The experience in Chicago, Pittsburgh, New York, San Francisco, Boston, Atlanta, and in many other cities reveals that hometown plans have not eliminated discriminatory patterns in the building trades. Measured even by their own very limited expectations, the majority of hometown plans have failed. At best the plans provide only a dubious training program for minorities, with no guarantee of union membership or jobs. Furthermore, the hometown plans are used extensively by employers and labor unions to evade their legal obligations and to perpetuate institutional forms of racial discrimination.

In contrast, a mandatory plan issued in the form of a judicial order containing clearly defined legal sanctions with monitoring and enforcement provisions can be effective. This has been demonstrated in Seattle, where a court-ordered minority hiring plan for the construction industry indicates the potential of this approach.

On June 16, 1970 in *U.S. v. Local 86, Ironworkers*, a Federal judge in Seattle issued a far-reaching decree. In addition to obtaining the immediate admission of 45 black journeymen into union membership and ordering various reforms in union recruiting, training, and referral practices, the court established a continuing monitoring system to enforce compliance.

A unique and most important aspect of the court's action was to make the United Construction Workers Association, an independent community organization of black, Chicano, and other nonwhite workers, part of the job referral and monitoring operation. For the first time, the minority community was directly involved in efforts to implement a court order against discrimination in the building trades.

As a result of the role of the minority community in enforcing the decree, some progress has been made for black and other minority workers in obtaining jobs. Most significant, however, is the fact that institutional racial barriers in the construction industry have been directly attacked. The events in Seattle reinforce the continuing necessity for litigation in conjunction with an expanded role for black community organizations in obtaining compliance with the law.

Whatever limited progress has occurred during the past decade in opening jobs in the building trades to blacks and other nonwhite workers is directly attributable to successful litigation. Some recent examples indicate the continued effectiveness of lawsuits against construction labor unions and contractors. Since March 1971, when a private action was filed against Local 638 of the Steamfitters Union in New York City, 625 nonwhite journeymen were admitted into union membership. The court had ordered a 30 percent nonwhite membership by July 1977.

On June 28, 1974 a district court in Washington, D.C. rendered final judgment in an agreement requiring the merger of segregated black and white locals af-

filiated with the Bricklayers, Masons, and Plasterers' International Union, AFL-CIO. The International Union agreed to pay $80,000 in back pay to black workers belonging to Local 4, whose members were limited to lower-paying residential work, and who were denied membership because of their race in the white unit—Local 1—which holds jurisdiction over more lucrative commercial employment.

Members of the all-black local earned $3,000 to $4,000 per year less than members of the white local. The International Union had specifically chartered Local 4 as a segregated unit whose members were limited to residential work. The litigation was initiated by three black workers who had, for many years, protested in vain against the segregated pattern.

On July 2, 1974, in an interim order, a district court judge ordered Local 28 of the Sheet Metal Workers Union in New York City to admit 40 minority trainees and apprentices by September 30, 1974. Furthermore, the court ordered a one-to-one, white-nonwhite ratio for new members admitted to this local union, which has resisted the admission of nonwhites for more than two decades.

By mid-1974 many lawsuits were pending against building trades unions and contractors associations across the country. Among the most important of these was a case in Baltimore, where several black workers filed suit against various unions, joint apprenticeship committees, contractors associations, and trustees of union health and welfare funds charging systematic racial discrimination under the Civil Rights Acts of 1866 and 1871, as well as Title VII.

On June 21, 1974, black electricians in the district court for the District of Columbia filed suit against the International Brotherhood of Electrical Workers and a major contractors' association charging violation of Title VII by systematically excluding qualified blacks from union membership and employment. The complaint further alleges that the International Union established a segregated all-black training program which pays 30 percent less per hour than that paid to white trainees.

The Alternatives

In assessing the variety of efforts to eliminate employment discrimination over the past 30 years—the period of Executive orders, State civil rights laws, and Federal statutes—one conclusion is inescapable. All efforts failed when the Government indicated it would not use its enforcement powers, but would substitute voluntarism for law enforcement.

Programs based upon voluntary compliance, with their expressed or implied promise not to enforce the law, have not eliminated patterns of employment discrimination. This is true of State agency approaches and of Federal programs—including "plans for progress," hometown plans, and outreach programs, among others.

The underlying reason for the failure of these programs is not hard to find. Job discrimination is deeply institutionalized. Employers and labor unions may make some superficial alterations, initiate a public relations campaign, or announce an education program in response to the nuisance of public exposure and criticism.

But they will not, except under legal compulsion, change the basis on which their institutions have, in their view, functioned quite satisfactorily. Yet so pervasive is the nature of racial discrimination that only far-reaching systematic changes will eliminate the entrenched patterns of the past and provide equal opportunity for all workers.

All the voluntary programs avoid the concept that racial discrimination is illegal, that black workers and other nonwhites have fundamental rights which cannot be bargained away, and that the institutions which discriminate against them are required by law to change their conduct. This, of course, is the basic message delivered by the courts as a result of litigation under Title VII.

Because voluntary approaches such as outreach programs and hometown plans are used to maintain the racial status quo, and because administrative civil rights agencies at all levels of government have failed to enforce the law, creative responses by independent community organizations are now essential. In practical terms, this means the development of alternative access routes to training and employment in the construction industry.

The formation of minority contractor organizations, such as the National Afro-American Builders Corporation (already active in many parts of the country), and the existence of independent community hiring halls such as the United Community Construction Workers in Boston, the United Minority Workers in Portland, Oregon, the United Construction Workers in Seattle, and Harlem FIGHTBACK in New York, among others, provide a realistic basis for the emergence of such alternative community programs. Creating these alternative routes for jobs and training in the construction industry, together with an intensified program of innovative litigation, must be one of the first priorities for black communities today.

BREAKTHROUGH FOR BILINGUAL EDUCATION

Lau v. Nichols and the San Francisco School System

By Dexter Waugh and Bruce Koon

After much foot dragging, the San Francisco Unified School District is finally on its way to providing the "meaningful education" demanded by the U.S. Supreme Court for thousands of non-English-speaking students in the city.

In finding in favor of the children, the Supreme Court had relied on HEW regulations and guidelines, one of which said that:

> Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

The court found that San Francisco had contractually agreed to comply with these regulations in accepting Federal funds, and had been clearly in violation of them.

The legal struggle began in March 1970, when a suit was filed in Federal court on behalf of a group of Chinese children—most of them American-born—who could not speak English. The suit said the district did not teach them English, yet expected them to participate in regular classes.

Nationally, 5 million students do not speak English, according to various Federal estimates. The remedy developed under *Lau* will have national impact, since it is the first Supreme Court decision to assert that school districts must meet the educational needs of such children.

The suit—*Lau v. Nichols*—was captioned after the first named plaintiff, Kinney Kinmon Lau, then a 6-year-old first grader, and Alan Nichols, who in 1970 was president of the San Francisco board of education. Lau and his mother have since moved from San Francisco and shun publicity. Nichols has since left the board.

Between March 1970 and January 21, 1974, when the Supreme Court issued a landmark decision in favor of the children, the number of non- and limited-English-speaking children ignored by the school district has increased.

In March 1970, nearly 2,000 students were in need of special English instruction. By March 1974, over 2,800 children in San Francisco needed help and were not getting it.

In finding in favor of Lau, the Supreme Court sent the case back to U.S. District Court Judge Lloyd Burke in San Francisco to oversee the remedy fashioned by the district. (Judge Burke had originally turned down Lau in 1970, thus initiating the long climb up the

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Dexter Waugh and Bruce Koon are reporters for the San Francisco Examiner. *This article is compiled from a series they wrote for the* Examiner *published May 27-31, 1974. Reprinted with permission.*

WHAT THE TERMS MEAN

English as a second language: Intensive instruction in English language arts skills for students whose native language is other than English. The purpose is mastery of English in order to be able to participate in ordinary, monolingual classes.

Bilingual-bicultural education: Instruction which utilizes two languages and two cultures, developing an understanding of both in order to facilitate subject matter learning and concept development.

appellate ladder to the Supreme Court.)

Until May of this year, the school district continued to waver and delay in setting up machinery to implement the Court's decision. Finally, it all began to come together.

On May 14, the board of education approved the participation of the community bilingual task force—made up of many of the parents and community people who had been clamoring for years for a voice in their children's education—in developing a plan for the court.

At the same time, the board agreed to negotiate a contract with the Center for Applied Linguistics, an east coast nonprofit organization that has compiled information on bilingual education. The center will work with the task force and school district in creating what board member David Sanchez hopes will be a national model for bilingual education.

On May 17, Judge Burke gave approval for the U.S. Department of Justice to enter the suit as plaintiff. John B. Rhinelander, general counsel of the U.S. Department of Health, Education, and Welfare, suggested the Justice Department take part in the suit so that "the remedy fashioned by the court will be consistent with our view of the requirements."

At the same time, the judge granted the district an extension beyond the June 1974 deadline so that they and the community task force would have more time to develop a plan. The delay in presenting the plan was welcomed by the task force. They conservatively estimate that it will take at least 6 months to come up with a satisfactory plan to reach all of San Francisco's students in need of English instruction.

The heartening thing about the court session of May 17, however, was the amenability displayed among all the previously warring factions: HEW, the Justice Department, the city attorney's office (representing the school district), Edward Steinman (the young lawyer who won the *Lau* case), and the scattering of task force representatives.

Programs and Needs

On May 20, the Justice Department attorney and HEW representatives were given a tour of the programs now used by the school district to reach students who speak little or no English. Two staff members from the Center for Applied Linguistics also met both with the task force and district staff.

They discovered essentially three programs now in effect to serve students who don't speak English:

- Newcomer Centers—where Chinese, Spanish-speaking, and Filipino students are screened in their English skills and assigned for 1 year to special, intensive classes in English instruction—assuming there is room for them in the classes;
- Pullout English as a Second Language—ESL classes in which students are "pulled out" of their regular classrooms for a maximum of 50 minutes a day of English instruction;
- And a handful of bilingual-bicultural classes—mainly for Japanese, Filipino, Spanish, and Chinese-speaking elementary students. These classes also contain Anglos and blacks, to provide racial balance.

These classes serve a total of 4,425 non- and limited-English-speaking students, plus another 675 English speaking.

The vast majority of these students—3,010—are served by the pullout ESL type of instruction, the minimum type English instruction available.

At the root of the struggle between community leaders and the school district over the past few years is the type of English instruction needed. Community leaders active in the *Lau* suit—including parents and educators—want bilingual-bicultural education. The school district's administrators by and large favor ESL, for a variety of reasons.

Not reached at all, according to a survey taken by the district in March and April of this year, are another 2,800 non- and limited-English-speaking students. Where are they? Sitting in regular classrooms—not understanding much

of what is going on, getting progressively bored, on the verge of dropping out.

Setting a Precedent

Although the *Lau* decision addressed itself to the limited-English and non-English-speaking Chinese students in San Francisco, it was understood that the decision included all children whose first language was one other than English.

Consequently, the decision is expected to have its most striking effects outside San Francisco in school systems where students speak only Spanish.

"Because the remedy in San Francisco will be used as an example for either [Spanish or Chinese] bilingual movements, it is important for civil rights lawyers like ourselves to make sure the plan is appropriate for other minorities," says Lupe Salinas, assistant counselor to the regional director of the Mexican American Legal Defense and Education Fund (MALDEF) in San Antonio, Tex. "It would be a setback [for bilingual education] if a poor plan was implemented."

However, Federal researchers participating in a national study of bilingual-bicultural programs candidly said educators outside San Francisco seemed more excited and interested in the *Lau* decision than those in San Francisco.

The researchers noted that bilingual-bicultural program administrators in Philadelphia and on the Navajo Indian reservation in Arizona were watching to see whether San Francisco commits itself to a strong bilingual-bicultural approach or simply expands its ESL instruction.

Vilma Martinez, executive director of MALDEF, said a strong bilingual-bicultural program resulting from the *Lau* decision would provide a psychological boost for their case. But she said a poor program would not be catastrophic for them.

Nonetheless, bilingual-bicultural proponents are not relying on the *Lau* decision alone in their push for bilingual-bicultural education. They point out that although *Lau*, as a bilingual case, is often referred to as the first language case, language and bilingual education have a judicial history spanning at least 44 years.

A case similar in argument to *Lau* was filed by MALDEF against a school district in New Mexico, charging that Mexican Americans have been discriminated against because of inadequate instruction.

A lower court found in that case—*Serna v. Pontales Municipal Schools*—that Chicanos did "not in fact have equal educational opportunity and that a violation of their constitutional right to equal protection exists."

The judge ordered a bilingual-bicultural program be initiated in the New Mexico school district. (The Portales municipal schools appealed the decision.)

An out of court settlement is also expected this fall in a New York case paralleling *Lau*. In that case, *Aspira v. New York City Board of Education*, the plaintiffs argued that 130,000 limited-English-speaking Puerto Ricans and other Hispanic children have been denied equal educational opportunity because of the schools' failure to provide adequate, meaningful instruction. Now both sides agree that some form of bilingual-bicultural program will be the remedy.

Herbert Teitelbaum, legal director of the Puerto Rican Legal Defense and Education Fund in New York City, says he is not overly concerned with the possibility that San Francisco may set a national precedent in implementing the *Lau* decision because New York was already committing itself to bilingual-bicultural education.

Teitelbaum said the head of the

ENGLISH THROUGH OSMOSIS

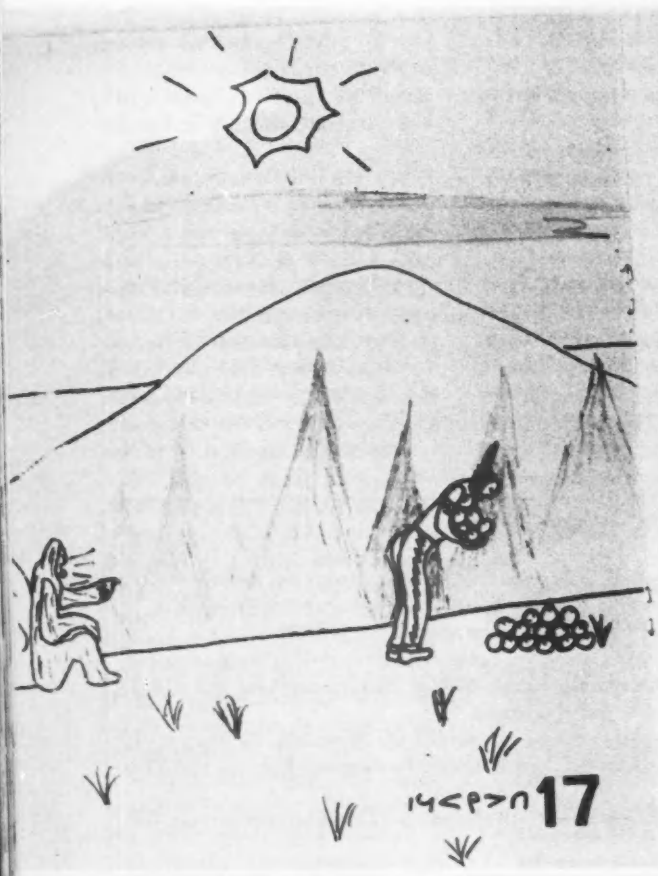
Not counting dropouts, there are 2,422 students who speak little or no English and who are not being served by the San Francisco public school system, according to a survey taken by the school district in April 1974.

They are sitting in regular classrooms, trying to learn English through osmosis. Some of them can do it, but in the meantime they are falling behind in their subjects, because they don't really understand what is being taught.

Of these 2,422 students, 819 were identified as Cantonese-speaking, 674 as Spanish-speaking and 416 as Filipino—the three largest non-English-language groups in San Francisco.

Then there are the handfuls—78 Samoans, 44 Japanese-speaking, 43 Mandarin, 38 Arabic, 37 Korean, 40 "other," and even smaller handfuls of Burmese, French, German, Greek, Hindi, Portuguese, Russian, and Vietnamese.

District administrators say bilingual education can't be extended to the handfuls. Community leaders say that argument is a red herring.



In the meantime, he was stacking up firewood and hoping that the Wi-ti-koo would fall asleep so he could have time to find a way to save himself. Fortunately, for Wi-sah-ke-chah-k, the Wi-ti-koo sat down and began yawning, and told him with a drooping head to hurry with the wood for he was hungry; with that he was soon fast asleep.

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New York district recently asked for a $14.5 million increase for bilingual programs to serve students who have limited English ability. "We're in good shape here," said Teitelbaum.

Lau will affect how other States and districts handle the problem, according to Elisa Gutierrez, a consultant with the Bilingual Education Office of the Texas Education Agency.

Texas recently passed a law making bilingual education mandatory in any school which has at least 20 children with a limited-English-speaking ability.

This summer, Texas will provide training institutes for some 2,000 teachers, to get them ready to teach bilingually this September. Bilingual classes in Spanish and English will be provided in the first grade this year, second grade next year, and so on until bilingual programs exist in grades one through six.

Ms. Gutierrez noted that the *Lau* decision required instruction even if only one child needed it. "State law here says if you have 20, you must provide it," she said. "If *Lau* is implemented all over, we will have many more students we have to serve."

Until a plan is formulated to implement *Lau*, the responsibility of school districts nationwide remains undetermined. Some bilingual-bicultural proponents feel that *Lau* mandates bilingual education, but they concede that past judicial decisions' opinions have supported only the concept that acceptable programs would be those that worked.

But the same proponents maintain that bilingual-bicultural programs are the most workable. Supporting their view is the fact that the Department of Health, Education, and Welfare has never approved a plan which was not fully bilingual and bicultural, according to the HEW general counsel's office.

Legislatively, the push for bilingual education is reflected in bills pending before Congress and in the California legislature. State Senator George Moscone's bill calling for $45 million in aid to bilingual education passed the California Senate's Education Committee in mid-May. Assemblyman Willie Brown has promised similar legislation in the Assembly. And State Superintendent of Public Instruction Wilson Riles has said that he thinks *Lau* mandates bilingual education.

In Congress, Senators Edward Kennedy and Alan Cranston introduced a bill called the Bilingual Education Reform Act of 1974, which declares that bilingual-bicultural education is the most desirable form of education. This bill was passed in a modified form and signed by President Ford.

Debate Over Methods

Community leaders want bilingual-bicultural education. School administrators favor English instruction, "pure and simple."

The argument between the two methods has intensified as the San Francisco school district moves closer to implementing *Lau v. Nichols*. In fact, the two methods are not that far apart, since every good bilingual program has an ESL component.

When people say they are against bilingual-bicultural education, and in favor of English "pure and simple," they are saying, on the surface, that non-English-speaking children should be taught English, period.

They do not deal with the argument that non-English-speaking students need instruction in other subjects in their native language, so that they don't fall behind while learning English.

"These people think you can learn English by osmosis," said lawyer Edward Steinman.

Before *Lau v. Nichols* reached the Supreme Court, the Ninth Circuit Court of Appeals ruled that, "Discrimination is not a result of laws enacted by the State presently or historically, but the result of deficiencies created by the appellants [nine non-English-speaking Chinese students] themselves in failing to learn the English language."

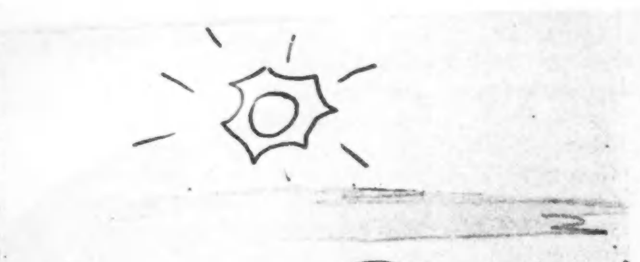
Steinman comments, "If the Supreme Court hadn't reached the *Lau* decision, this would be the law of the land."

Those who put the onus on the child and favor only a minimal type of English instruction are, for the most part, white people who also believe in the melting pot idea—that all those who come to America's shores must quickly assimilate into the American way of life.

Such people usually ignore the fact that today's Asian and Latino immigrants cannot be viewed in the same way as can those who emigrated 50 and 100 years ago from Europe.

Asian and Latino immigrants have fewer opportunities to learn English through day-to-day contacts with other people—precisely because their skins separate from them the American mainstream in a way that was not true for immigrants from Germany, Italy, and other European countries.

The argument in favor of English "pure and simple" as a means of implementing the *Lau* decision was most typically presented in a recent report by the San Francisco County grand jury:



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New York district recently asked for a $14.5 million increase for bilingual programs to serve students who have limited English ability. "We're in good shape here," said Teitelbaum.

Lau will affect how other States and districts handle the problem, according to Elisa Gutierrez, a consultant with the Bilingual Education Office of the Texas Education Agency.

Texas recently passed a law making bilingual education mandatory in any school which has at least 20 children with a limited-English-speaking ability.

This summer, Texas will provide training institutes for some 2,000 teachers, to get them ready to teach bilingually this September. Bilingual classes in Spanish and English will be provided in the first grade this year, second grade next year, and so on until bilingual programs exist in grades one through six.

Ms. Gutierrez noted that the *Lau* decision required instruction even if only one child needed it. "State law here says if you have 20, you must provide it," she said. "If *Lau* is implemented all over, we will have many more students we have to serve."

Until a plan is formulated to implement *Lau*, the responsibility of school districts nationwide remains undetermined. Some bilingual-bicultural proponents feel that *Lau* mandates bilingual education, but they concede that past judicial decisions' opinions have supported only the concept that acceptable programs would be those that worked.

But the same proponents maintain that bilingual-bicultural programs are the most workable. Supporting their view is the fact that the Department of Health, Education, and Welfare has never approved a plan which was not fully bilingual and bicultural, according to the HEW general counsel's office.

Legislatively, the push for bilingual education is reflected in bills pending before Congress and in the California legislature. State Senator George Moscone's bill calling for $45 million in aid to bilingual education passed the California Senate's Education Committee in mid-May. Assemblyman Willie Brown has promised similar legislation in the Assembly. And State Superintendent of Public Instruction Wilson Riles has said that he thinks *Lau* mandates bilingual education.

In Congress, Senators Edward Kennedy and Alan Cranston introduced a bill called the Bilingual Education Reform Act of 1974, which declares that bilingual-bicultural education is the most desirable form of education. This bill was passed in a modified form and signed by President Ford.

Debate Over Methods

Community leaders want bilingual-bicultural education. School administrators favor English instruction, "pure and simple."

The argument between the two methods has intensified as the San Francisco school district moves closer to implementing *Lau v. Nichols*. In fact, the two methods are not that far apart, since every good bilingual program has an ESL component.

When people say they are against bilingual-bicultural education, and in favor of English "pure and simple," they are saying, on the surface, that non-English-speaking children should be taught English, period.

They do not deal with the argument that non-English-speaking students need instruction in other subjects in their native language, so that they don't fall behind while learning English.

"These people think you can learn English by osmosis," said lawyer Edward Steinman.

Before *Lau v. Nichols* reached the Supreme Court, the Ninth Circuit Court of Appeals ruled that, "Discrimination is not a result of laws enacted by the State presently or historically, but the result of deficiencies created by the appellants [nine non-English-speaking Chinese students] themselves in failing to learn the English language."

Steinman comments, "If the Supreme Court hadn't reached the *Lau* decision, this would be the law of the land."

Those who put the onus on the child and favor only a minimal type of English instruction are, for the most part, white people who also believe in the melting pot idea—that all those who come to America's shores must quickly assimilate into the American way of life.

Such people usually ignore the fact that today's Asian and Latino immigrants cannot be viewed in the same way as can those who emigrated 50 and 100 years ago from Europe.

Asian and Latino immigrants have fewer opportunities to learn English through day-to-day contacts with other people—precisely because their skins separate from them the American mainstream in a way that was not true for immigrants from Germany, Italy, and other European countries.

The argument in favor of English "pure and simple" as a means of implementing the *Lau* decision was most typically presented in a recent report by the San Francisco County grand jury:

> The concept of keeping the educational process going in a foreign tongue (foreign to Americans) serves only, we feel, to keep the young pupil from becoming assimilated into our existing society, which is English-speaking.
>
> We emphasize this great need to bring the non-English-speaking people into greatest harmony with our established ways, because we feel that much of the trouble in our schools stems from a fundamental lack of understanding of our way of life.
>
> This failure to understand leads to detachment and alienation, and even to hostility between teacher and school on the one hand, and the pupil on the other.

Ling-Chi Wang, a Chinese American educator active in the *Lau* suit since its inception, believes that "there is something inherently racist about assimilation, which says that there are certain cultural values you must accept, and others you must cast away." He continues:

> Asians and Mexicans lose on both sides. They cast away their culture and lose on that side, and then find they are not accepted in white society anyway.
>
> There is no more dramatic example of this than the evacuation into camps of Japanese Americans during World War II. These were people who thought they were patriotic Americans—and look what happened to them.
>
> Nobody should be forced to give up his heritage, his language, his culture. By being forced to give up these things, you instill in children self-hate.
>
> This is why Asian Americans are so inhibited and withdrawn in the classroomm That's where they got the reputation of being docile. You visit a playground where kids are speaking Chinese—they are just the opposite, very active.

On its deepest level, proponents of bilingual-bicultural education feel the grand jury argument springs from a racist well that is unlikely to run dry. It springs, they argue, from a dual Catch-22 feeling—first, that "you should be just like us." Indeed, 20 years ago English classes for immigrants were called "Americanization" classes.

The other side of this feeling is that "you can never be like us," and springs from a fear that Asians and Latinos are "foreign and alien" and will always remain so unless they completely strip themselves of their "foreign and alien culture and language."

It is a duality that apparently can be resolved only within the individual holding it.

What about the children of this earlier "Americanization"?

Elmer Gallegos, Jr., supervisor of the district's Spanish bilingual program, is one of them. As a boy he came up from New Mexico with his parents to Los Angeles to a new world where Spanish was ridiculed.

It left a scar on the boy—who today, as a man, has difficulty conversing in his own native tongue.

"It's a mental block," he said. "I don't know what happened. I can speak it somewhat but I have trouble understanding it. When I was a boy in Los Angeles, everyone had to speak English. I got clammy hands every time I had to speak in front of class. And nobody ate beans. I developed a real inferiority complex."

Today, Gallegos' fervent belief in bilingual-bicultural education is his way of insuring that the same thing does not happen to another generation of Chicanos.

Financing Reform

The battle over methods is a battle over money as well.

Lane De Lara, associate superintendent of the San Francisco school district, frankly admits he prefers instruction in English "pure and simple" as a way to satisfy the high court's demand to provide a "meaningful education" to non-English-speaking youngsters.

De Lara said it would be cheaper and easier to go the English instruction route rather than to institute bilingual-bicultural programs.

"If the primary objective is to teach the youngster English and get him into the mainstream, than I think ESL is a much more effective and efficient way to do it," said De Lara.

Community leaders counter that the Supreme Court's decision "mandated" bilingual-bicultural education (a conclusion many authorities would dispute). They assert that the district could have been well down the road to having a bilingual-bicultural program reaching at least those children whose native tongues are Spanish, Cantonese, and Tagalog—the major non-English-language groups in San Francisco—if it had not dragged its feet for so many years.

Two years ago, a Spanish Bilingual-Bicultural Planning Task Force suggested that bilingual-bicultural classes could be instituted in the district at no extra cost, if done over a period of time.

"We are not suggesting that new classes be added to the total number now taught in the district, but that the bilingual model be adopted in schools and classes which now service, though inadequately, children whose native language is Spanish," said the task force. They continued:

> This can be done by replacing monolingual English-speaking teachers with qualified bilingual teachers gradually as monolingual English-speaking teachers retire or are reassigned.
>
> We are suggesting that bilingual teachers be hired under formula at a rate of approximately 20 each year to replace teachers who retire and transfer out of the district. We are also suggesting an affirmative action program to hire teachers with the linguistic skills necessary to communicate with the students.
>
> Bilingual classes are not an additional expense, nor a special "frill." They should be considered an integral part of the district's regular instructional program. A bilingual class serves the same number of students as a non-bilingual class. It is simply a regular class which employs a special methodology in order to meet the needs of the students.

De Lara said ESL instruction ends when the youngster learns English and graduates to a regular classroom. "In the bilingual program, you don't stop," he said. "You go from the first grade, to the second grade and so on. It becomes a matter of logistics and expense. It becomes harder to do this."

Edward Steinman thinks the cost argument is a red herring. He said the Supreme Court had not attached any merit to the school district's pleadings that it would be too costly to provide English instruction to all the students who needed it.

"As of 1973, there were about 5,000 kids in San Francisco [schools] who were non-English-speaking," said Steinman. "Now, San Francisco spends almost $2,000 on the average child for his education. Two thousand dollars times 5,000 children is $10 million—they are spending $10 million for these non-English-speaking kids and the kids are getting zero benefits."

Steinman and members of the community task force established to devise a plan to implement *Lau* agree that launching a full-fledged bilingual-bicultural program won't be easy. They think that the money to do it is already there, but is not being properly spent.

James Perez, with the Mexican American Legal Defense and Education Fund, said the question of establishing bilingual programs is a matter of desire, not cost.

"The Edgewood School in San Antonio, Tex., and schools in Crystal City, Tex., are the poorest schools in the country," said Perez. "But they have extensive bilingual-bicultural programs."

Lonnie Chin, president of The American Chinese Teachers (TACT), said cost comparisons between ESL and bilingual-bicultural classes are misleading because of what she calls "dead time" in the classroom.

"If students don't have the English vocabulary to get the concepts, time and money are wasted in the classroom. Exposure to English doesn't mean understanding," said Mrs. Chin.

District administrators also complain about the "handfuls" of foreign-language students that their numbers are too small to justify bilingual-bicultural classes.

How do you handle the handfuls? District administrators would teach them English, quickly. Community leaders think this is just another red herring argument.

"A law professor of mine once quoted Justice [Oliver Wendell] Holmes that 'hard facts make bad law.' I didn't really understand that until now," said Steinman.

"The thrust and emphasis must be on bilingual-bicultural for the major language groups," said Steinman. "For situations where that approach doesn't warrant, other alternatives can be found. In San Francisco, the thrust and emphasis has always been on the opposite, on minimal ESL—and that hasn't worked. I'd like to see the thrust reversed."

Some members of the community task force suggest that special aides could be hired to tutor the handfuls and keep them abreast of their subjects in their native language while they are learning English.

"The State says you've got to give English, you've got to give math—those are basics," said Steinman. "Now we've got another basic. The Supreme Court is saying you've got a primary obligation to provide basic instruction—nothing supplementary. And money is not a legal excuse."

SE HABLA INGLES Y ESPAÑOL

A BILINGUAL CLASS IN ACTION

By Frank Sotomayor

A Mexican American third grader in a bilingual classroom in Los Angeles is reading to her classmates from the book, *Harriet the Spy*.

"Thank you, that was very good," the teacher says. "Now would you read from this one?"

"Habia una vez un gusanito que vivía. . ." the student begins. It is immediately evident that the pupil is equally at ease in reading either English or Spanish. She reads effectively, with understanding, emphasis, and feeling.

The bilingual reading exercise at this school is a dramatic event because as recently as 5 years ago it was against the law to use Spanish as the language of instruction in California, as well as in some other Southwestern States. Now, bilingual-bicultural programs especially developed for Mexican Americans are a reality in a few selected schools and classrooms.

The results are encouraging. To a classroom observer, the students appear self-assured, enthusiastic, and involved. One pupil may ask a classmate a question in Spanish and receive an answer in English, or vice versa. It is all very natural—as natural as the students' home and neighborhood surroundings where varying degrees of bilingualism are a way of life.

In the last several years, this use of both English and Spanish in teaching has come to the classrooms of a small number of schools in the Southwest—a number much too small, its supporters believe. Across the Nation, a scattering of other minority group members also are beginning to reap the rewards of bilingual education. In addition to programs for Spanish speakers, federally-funded bilingual projects are in operation in 18 languages for such groups as Chinese Americans in California, Native Americans on reservations, French Americans in Louisiana, and Portuguese Americans in Rhode Island.

Bilingual education is not new. Various bilingual methods have been used throughout the world for many years. Some forms of bilingual education existed in the United States up to World War I, when they virtually disappeared from the public schools.

Then in the early 1960s bilingual education was revived. Mexican Americans had been pushing for some form of bilingual education for years before, but the first modern day English-Spanish program was started in Florida for Cuban immigrants after the Cuban revolution. This increased the interest in bilingual programs throughout the country. In late 1967, an important step was taken when Congress passed Title VII of the Elementary and Secondary Education Act. Title VII, also known as the Bilingual Education Act, provides Federal money for bilingual programs in many schools throughout the country.

The first bilingual programs for Mexican Americans were started in Texas, and scattered programs now exist in all five Southwestern States. For the fortunate few who are in true bilingual-bicultural classrooms, the experience is exciting and enriching.

One such bilingual program is at Bridge Street Elementary School in the predominantly Chicano area of East Los Angeles. The program there is in its fourth year and going strong.

Frank Sotomayor is a reporter for the Los Angeles Times. *This article is excerpted from* Para Los Niños, *to be published by the U.S. Commission on Civil Rights.*

The drab concrete exterior of the Bridge Street School building contrasts sharply with the bright, warm faces inside the classrooms. Along the walls on bulletin boards of the bilingual classes are posters reminding you that "A" stands for águila (eagle) as well as apple. An exhibit of heroes includes not only Washington and Lincoln but also Mexican patriots Juarez and Hidalgo and U.S. leaders of all ethnic groups. One child's display reports the "News of the Day" in English and another summarizes "Las Noticias del Día" in Spanish.

A sense of commitment to bilingual education comes through in conversations with the school's teachers, principal Luis Salcido, and Title VII bilingual coordinator Maria Acosta. For years Mrs. Acosta felt frustrated by not being permitted to use Spanish in teaching Mexican Americans. Now she supervises bilingual-bicultural instruction at Bridge in kindergarten through fourth grade. With pride, Mrs. Acosta invites visitors to view the bilingual classes.

In one kindergarten, teacher Rita Cázares is about to begin her "magic circle" session. She and 10 pupils are clustered in a circle on the floor. Behind them, hanging on a string, is a rainbow of colorful student drawings.

"Today we are going to talk about what makes us feel very happy," Mrs. Cázares begins. "Hoy vamos hablar de algo que nos hace sentir muy feliz . . . Who wants to be first?"

"I like to watch TV," Jenny says.

"Yo quiero un carro de carreras," Alfonso chimes in.

"I like swings," Sandra adds.

In turn, the students continue to volunteer answers. Which language they use is not important. Their expressions of thoughts and ideas are what matter. The goal is to develop the students' positive image of themselves. Pupils readily take part because they are talking about their ideas and feelings.

"The children's experiences are the curriculum," says Mrs. Acosta. "Use of their own language allows them to express themselves—their thoughts, wishes, and feelings."

Every few minutes, Mrs. Cázares has the children review what the others have said, encouraging them to listen carefully and aiding their awareness of others. Each student uses his own language and hears a second language in a meaningful situation . . . a method that allows the pupil to increase his bilingual skills.

Down the hall, third grade teacher Arturo Selva is dictating a letter in English to a dozen pupils. Earlier he had dictated a similar letter in Spanish to them.

In another part of this classroom, a Mexican American parent who serves as a teacher's aide gives individual attention in English reading to a pigtailed girl who speaks only Spanish at home. Other students, meanwhile, work by themselves, reading from English skills workbooks.

Then teacher Selva ends the group sessions and goes to the blackboard. He writes out the Spanish sentence "Adonde vas" and asks for a volunteer to punctuate it. Fifteen boys and girls raise their hands and wave them with enthusiasm saying, "I know, I know."

Selva calls on a girl of Japanese background who correctly places question marks at the beginning and end of the sentence and an accent on the "o".

Turning to the class, Selva asks, "¿Estan de acuerdo?" "Do you agree?" He then compares the accentuation of the Spanish "¿Adónde vas"? with the English "Where are you going"? Selva uses both languages to stress points, reinforce ideas, and introduce new concepts.

The bilingual technique continues throughout the day. Selva teaches all subject areas—including mathematics, history, and science—in both English and Spanish. Use of the two languages follows no hard and fast plan but develops naturally as teacher and students see fit. And more than that, the teacher increases student understanding and interest by drawing from experiences of two cultures to explain his points.

"We use examples and descriptions that will be familiar to the students," Selva says. "If I'm talking to my students about what one-half means, I give them a tortilla, have them cut it into two equal pieces and give a half to a classmate. Then they all understand what one-half means.

"Many of the hangups some students had about themselves have been erased," Selva says. "Last year we had a tough time convincing one boy that it was all right to speak Spanish. He thought there was something wrong with it. Now he's comfortable using it and is well on his way to becoming perfectly bilingual."

The majority of third graders in Selva's class are already reading considerably above the fourth grade level. Selva is confident that by the sixth grade, when the students' bilingual training is due to end, almost all will be reading above the sixth grade level in both English and Spanish.

Five of his students—four of them Mexican Americans—out of a class of 26 have been tested as "gifted" (IQ above 132). One girl moved into Selva's bilingual classroom and scored a below-average 33 on her September math test. In the State testing several months later, she came up with a near-perfect 58 out of 60.

"I'm able to establish a good relationship with the

students because I speak their language and I know their culture," Selva explains. "I've lived in East L.A. most of my life and I am familiar with the community and the people. This facilitates my teaching and our community involvement.

"What these children need is a composite picture of themselves, not a jigsaw puzzle with parts missing. What bilingual-bicultural education does is to allow a child to say: 'I have a culture that is as beautiful as any other. Different is not wrong. I can speak two languages. Perhaps I can learn to speak three, four, five. I am proud of my heritage. I know I live differently. Isn't that nice?"

Educators involved in Title VII programs consider community support important. People from the community serve on advisory boards that select bilingual teachers and make decisions on courses. Neighborhood adults are also used as aides and classroom volunteers. Many schools invite parents to workshops where teachers show how bilingual programs work.

When the Bridge Street School bilingual program was getting started, some parents were worried. One parent, María Ybarra, now a teacher's aide at Bridge, explains: "When I first learned about bilingual education for our children, I was against it because I felt that Mexican Americans had to learn English to do well in this society. But now that I have worked in this program and understand bilingual education, I see I was wrong. Our children are speaking better English and better Spanish than if they were in a regular English-only class. Estoy encantada. [I am delighted.]"

Other parents quickly saw the benefits of bilingual instruction. One Mexican American mother drives her son in from another section of the city so that he can have a bilingual education. Having grown up in an Anglo neighborhood, the boy did not speak Spanish. Now he is gaining fluency and confidence in Spanish.

Yumi, a Japanese American girl in Selva's class, is driven to school by her parents, who live outside the school's boundaries. With district permission, the parents bring her to this school because they like the teacher and believe in the value of a bilingual program.

In the overall picture of the Los Angeles schools and all the schools serving Chicanos in the Southwest, Bridge Street School is a glowing asset. It is important to point out, however, that the bilingual program at Bridge school is but one type of bilingual education used in American schools. Some bilingual programs, for example, set up specific parts of the day for speaking either English or Spanish instead of using the "concurrent" method; that is, the switching back and forth between two languages as is done at Bridge school. Others use varying combinations of these approaches. Although there is considerable disagreement as to which type of bilingual program to use, there is general agreement on the value of the bilingual approach.

The new bilingual-bicultural program at Bridge Street School and at a few other schools is encouraging. But thousands of other students are still caught up in the unresponsive programs of most schools. For example, the Los Angeles Unified School District is the second largest in the Nation and has the largest number of Chicano students. During 1973-74, this district included approximately 90,000 Mexican American students in elementary schools. However, Title VII bilingual programs included only about 1,850 students, or 2 percent. A small number of other Chicano students attended local- and State-funded bilingual programs.

In the Southwest as a whole, Title VII bilingual programs enroll about 4 percent of the 1.6 million Mexican American students. During the 1972-73 school year, 123 projects for Mexican Americans were funded, with about 70,000 students participating.

State funding for bilingual education has been limited and slow in coming. Of the five Southwestern States, only Texas starting in the 1974-75 school year will require bilingual education for Spanish speaking children. In contrast, Massachusetts, which has a much smaller Spanish speaking population than any of the Southwestern States, in 1972 became the first State to require bilingual programs for non-English-speaking children.

More Federal and State funds and more bilingual teachers will be needed before bilingual education can reach a significant number of Chicanos. So, for most Mexican Americans, bilingual education is a distant hope. But for Leticia Prieto, a third grader at the Bridge Street School, bilingualism is here and she knows its value. She wrote the following with the rich excitement and imagination of an 8-year-old:

"How It Feels To Be Bilingual"

One day I was walking down the street suddenly I thought if I could go to the beach. So I went. Then I saw a castle. Then I went inside the castle I saw a giant crying. Then I said, What happened?

The giant said I want to speak bilingual. Well that's simple I'll teach you. The giant said, When do we start? I said, Right now. So we went on until the night. The giant said, sí means yes. I said now you know how to speak bilingual. The giant said, I love to speak bilingual so much.

The next day I told my mother how it feels to speak bilingual. Well it feels good. It feels like I speak all kinds of languages.

INFLATION AND THE BLACK CONSUMER

SETBACK TO BLACK INCOME

By Robert B. Hill

The current period of inflation has had grievious effects on the economic status of black people. The income gap between black and white families has risen, and black purchasing power has, in general, declined.

Before examining these phenomena, some background information is in order.

During the early 1960s, price increases remained relatively stable. Between 1961 and 1965, the Consumer Price Index rose at an average rate of about 1.3 percent, while the Wholesale Price Index rose by only 0.7 percent per year.

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As a result of the increase in government spending due to the Vietnam War, however, prices began to rise more rapidly than they had in the 1961-65 period. Wholesale prices rose 1.7 percent in 1966, while consumer prices jumped to an annual rate of 3.4 percent in 1966.

The largest upsurge occurred in 1969, when wholesale prices increased 4.8 percent, while consumer prices rose by 6.1 percent. The administration attempted to control this inflation almost entirely by reducing aggregate demand through highly restrictive monetary and fiscal policy.

As a result of these severe policies, the real Gross National Product declined in 1970, sending unemployment up from 3.9 percent in January to 6.0 percent in December 1970, and bringing on the first recession in the U.S. in 10 years.

In August 1971, the administration instituted a wage-price freeze and guidelines which succeeded in slowing unemployment and price increases and causing output to rise. Thus by 1971 and 1972, consumer prices were increasing at an annual rate of only 3.4 percent. But wholesale prices, on the other hand, increased by 6.5 percent in 1972.

With the lifting of mandatory Phase 2 controls in early 1973, consumer prices followed wholesale prices, by soaring 8.8 percent in 1973. And by the first quarter of 1974, the U.S. economy was experiencing "double-digit" annual rates of inflation.

The surge in prices in 1973 can be attributed to several factors: reduced harvests of some important crops in 1972 and early 1973; devaluation of the dollar resulting in increased demand for U.S. products abroad and higher prices for imports; movement from mandatory controls in 1972 to self-administered Phase 3 controls in early 1973 to tighter Phase 4 controls late in the third quarter.

Much of the rise in food prices in 1973 can be traced to the effects of unfavorable weather which reduced agricultural supplies in many areas of the world, notably Russia and Peru, in 1972 and early 1973—a time when domestic crops were affected by poor weather and expanding demand. Thus a rapid rise in the price of grains and animal feed from mid-1972 through the third quarter of 1973 had an impact on a wide range of food items—meats, poultry, dairy products, cereal and bakery products, eggs, and salad oils.

But by the last quarter of 1973, an impending crisis accelerated price increases for another commodity—fuel. As a result of the threat of an embargo on shipments of crude oil to the U.S. by Arab countries—and later by the actual cutoff of supplies—the price of gasoline and distillates shot up at alarming rates. In the Wholesale Price Index, gasoline prices leaped by 113.8 percent, while heating fuel jumped 186.4 percent. And gasoline and heating oil in the Consumer Price Index rose 19.7 and 46.8 percent, respectively, in 1973.

In fact, the climb in prices of refined petroleum products had been developing over a long period of time as a result of accelerating consumption of gasoline and the failure of domestic output of crude petroleum to keep pace with the rise in production of refined petroleum products.

Thus, the need for imports of crude oil expanded sharply and as a result, import quotas of crude oil and refined products were lifted in the spring of 1973. Consequently, the Arab countries decided to exploit this need on the part of the U.S. in their confrontation with Israel by imposing an oil embargo. Gasoline rationing was instituted throughout the country and a Federal Energy Office was established. Although the energy crisis abated somewhat after the oil embargo was lifted in March 1974, its aftereffects continue to reverberate.

Of course, these developments led to sharp increases in the full range of nonfood commodities and services as well—rent, utilities, housing maintenance and repairs, furniture, appliances, apparel, transportation, and medical care.

The Impact on American Consumers

What impact did these price increases have on American consumers? Which consumers suffered most from these increases—the middle-income or the low-income consumers? Most analyses of the situation have concluded that all income groups have suffered somewhat from the 1973-74 inflation and energy crisis—but low-income groups suffered most of all.

According to a study conducted by the Washington Bureau of the National Urban League, the poor and minorities were disproportionately affected by the energy crisis. They had to pay more rent for less or no heat. Being the last hired, they were the first fired. Many black small businessmen, especially service station owners—one of the fast-growing and lucrative small black enterprises—lost their businesses as a result of the energy crisis.

Moreover, a recent study by the Washington Center for Metropolitan Studies revealed that although the poor use less fuel to heat their homes, they use that smaller amount of energy less efficiently, since they are

least likely to have winterizing features and equipment that save fuel. Almost 70 percent of all poor households have no storm doors or windows, and more than half of the one-family houses lived in by the poor have no insulation.

According to a study of inflation by the staff of the U.S. Congress Joint Economic Committee, both middle-income and low-income consumers suffered as a result of the 1973 inflation—but low-income consumers much more. Between August 1971 and December 1973, it was estimated that prices rose about 16 percent for the poor, but only 13 percent or less for middle-income and upper-income consumers. Overall, this study concluded that the real purchasing power of the average American consumer declined by more than 1 percent in 1973.

Real adjusted hourly earnings (the hourly wage for production and nonsupervisory workers in the private nonfarm economy, adjusted for changes in overtime, interindustry shifts in employment, and price increases) increased 3.6 percent in 1972, but fell 1.6 percent during 1973.

Also, real gross average weekly earnings—a measure of the pretax weekly earnings of production-related workers, corrected for inflation—declined 1.7 percent in 1973, compared to an increase of 3.4 percent during 1972. And, finally, real spendable weekly earnings—after taxes take-home pay adjusted for inflation—increased 4.3 percent in 1972, but dropped 3.1 percent in 1973. Of course, since these annual changes are based on changes from fourth quarter to fourth quarter (when impact of inflation was greatest), they are greater than the changes in purchasing power that would have been obtained if differences between annual averages were used.

However, even analysts from the Bureau of Labor Statistics acknowledge that, "while gains in current dollar earnings were somewhat larger in 1973 than the year before, sharp 1973 increases in consumer prices more than offset these gains, and workers' real purchasing power declined during the year."

The decline continued into 1974. By March of this year the net spendable earnings of workers with three dependents had dropped 4.5 percent below the March 1973 level (in constant dollars).

What do the changes in purchasing power for black and white consumers mean?

Increasing Unemployment

The inflation of 1973, coupled with the onset of the energy crisis near the end of the year, resulted in an increase in the Nation's unemployment rates—especially among black workers. Between March 1973 and March 1974, the (unadjusted) unemployment rate for black workers rose 3 percent (from 9.0 to 9.3), while the unemployment rate for white workers increased 2 percent (from 4.7 to 4.8).

Or, the number of unemployed black workers increased 7 percent (from 887,000 to 948,000), while the number of unemployed white workers increased 5 percent (from 3.6 to 3.8 million).

Black teenagers, with an unemployment rate of 31.9, were undoubtedly one of the hardest hit groups of workers. White teenagers had an unemployment rate of 13.3 percent.

But surprisingly, the group of workers next most seriously affected by the inflation and energy crisis of 1973-74 was adult black men. While the unemployment rate for white men remained unchanged (at 3.6 percent) between March 1974 and March 1973, the unemployment rate for adult black men shot up by 12 percent—from 6.6 to 7.4 percent.

Furthermore, black men had the largest increase in the number of workers unemployed 15 weeks or more. While all other groups of workers (including black women) showed a decline in long-term unemployment over this period, the number of long-term unemployed black men leaped 41 percent—from 105,000 in March 1973 to 148,000 in March 1974.

These findings are consistent with unemployment patterns since the onset of the energy crisis in October 1973. The black male breadwinner appears to have been disproportionately hurt by inflation and the energy crisis. Consequently, one can expect a decline in the earnings capacity of thousands of black families.

But adult males were not the only breadwinners in black families hurt by inflation and the energy crisis. Women heading their own families were equally affected, if not more so.

The civilian labor force participation of black married women (with husband absent) dropped from 57 percent in 1969 to 49 percent in 1973. Not only were these women more likely to have to withdraw from the labor force over this period, but those remaining in the labor force experienced longer periods of unemployment.

In 1969 only 6 percent of the black married women with husband absent were unemployed, but by 1973, 13 percent of these women were unemployed. Declining job opportunities apparently forced many of these women to withdraw from the labor force.

Another factor responsible for this decline in labor force participation was the unavailability of low-cost child care services and the spiraling price increases for

those currently existing. Thousands of working mothers either could not find a child care facility for their children or could not afford those that did exist.

Between the fourth quarter of 1972 and the fourth quarter of 1973, the proportion of black women withdrawing from the labor force because of home responsibilities and school jumped from 44 percent to 54 percent. Consequently, a decline in their labor force participation led to an increase in the number of female-headed families dependent on some public assistance.

According to a recent Census Bureau report, the labor force participation of working wives in black families declined between 1970 and 1973 as well. This decline led to a sharp drop in the purchasing capacity of most black families, which are dependent on a wife in the labor force to keep them above the poverty level.

Widening Income Gap

The steady decline in gainful job opportunities for female heads of black families is a major factor in widening the income gap between black and white families.

Between 1972 and 1973, the median income of black families increased by only 6 percent (from $6,864 to $7,269), while white median family income rose by 9 percent (from $11,549 to $12,595). This slower increase in black family income widened the gap between black and white families.

Black median family income as a proportion of white median family income went from 59 percent to 58 percent between 1972 and 1973. This represented a sharp drop from the black to white family income ratio of 61 percent in 1969.

The decline in black income relative to whites, as a result of the 1973 inflation, was greatest among black families in the Northeast and West. Between 1972 and 1973, the black to white family income ratio in the Northeast dropped from 64 percent to 59 percent, while the ratio in the West dropped from 71 percent to 65 percent.

This represents a significant worsening in the relative economic status of blacks in these regions since 1969, when black family income was two-thirds of white family income in the Northeast and three-fourths of white family income in the West. Apparently inflation and the energy crisis accelerated the decline for blacks in these regions over the past year.

Interestingly, it is the South where the black to white ratio of family income has remained almost constant over the past 4 years. The black-white family income ratio of 56 percent in 1973 was not significantly different from that in 1972 (55 percent) or the ratio in 1969 (57 percent).

At the same time, although the black to white income ratio of 69 percent in the North Central region in 1973 remained virtually unchanged from 1972, this did constitute a sharp drop in the relative economic status of blacks in that region from 1969, when black median family income was 76 percent of white median family income.

These data strongly indicate that the relative economic status of black families in most regions of the country has significantly worsened since 1969 and that inflation and the energy crisis have accelerated the descent. Whether this decline in economic status is a consequence of a deliberate "benign neglect" policy regarding blacks and other minorities is open to debate. But the fact of the decline is not.

The Shrinking Middle Class

The economic status of black families has not only worsened relative to white families, but relative to their own former status as well. In fact, contrary to reports in the media, the proportion of black families who are economically "middle class" has not significantly increased in recent years. If anything, the 1973-74 inflation may have brought about a decline in the proportion of middle-class black families.

In 1972, 26 percent of black families were above the Bureau of Labor Statistics intermediate ("modest, but adequate") family budget level, compared to 24 percent of black families above that standard in 1973. Furthermore, the proportion of black families above the BLS lower budget level—which is based on a nutrition-deficient food plan for welfare recipients—dropped from 46 percent to 44 percent between 1972 and 1973.

Thus the standard of living of middle-income and low-income black families suffered severe setbacks in 1973. While Government statistics continue to show increasing numbers of black families moving into higher income levels, their real purchasing power has not significantly improved.

But it should be noted that the living standard of white families also did not significantly improve in 1973. About half of all white families continued to remain above the BLS intermediate levels in 1972 and 1973, while close to three-fourths of white families remained above the lower BLS family budget levels.

Decline in Real Income

The decline in the standard of living of black families in 1973 is sharply revealed in the failure of black family income to keep up with inflation. Based on annual average differences, consumer prices increased 6.2 percent between 1972 and 1973, but black family gross in-

come, in current dollars, increased by only 5.9 percent. When black family income is adjusted for inflation, we find that the real gross income of black families did not increase at all (at -0.3 percent) between 1972 and 1973.

Several recent news accounts described the 8.4 percent increase in gross median family income (from $11,116 to $12,051) of all families in the U.S. between 1972 and 1973 as an indication that the income gains of the average American family had "outpaced" the 6.2 percent annual rate of inflation. Such assertions are misleading, since a more accurate assessment of gains in purchasing power requires an examination of gains in spendable income—income after taxes—and not gross income.

An examination of disposable income reveals a far worse decline in the purchasing power of black families in 1973. While black family income after taxes, in current dollars, increased about 4 percent between 1972 and 1973, real spendable income of black families declined 2 percent. At the same time, real spendable income of white families just barely kept pace (at 0.6 percent) with inflation.

One of the largest declines in purchasing power among black families in 1973 occurred in the husband-wife families where the wife was not in the paid labor force—about half of all two-parent black families.

Although the real disposable income of black husband-wife families with wives in the paid labor force just kept pace (at 0.2 percent) with inflation between 1972 and 1973, the real disposable income of black husband-wife families with wives outside the paid labor force dropped 4 percent. At the same time, families headed by black women who worked year-round, full-time made out somewhat better—with an increase in real disposable income (of 0.4 percent) that kept pace with inflation.

Among white families, however, the two-earner families—and not the one-earner families—experienced the largest decline in purchasing power in 1973. While the increase in real disposable income of white husband-wife families whose wives were outside the paid labor force barely kept up (at -0.6 percent) with inflation, the white husband-wife families with working wives experienced a drop in real purchasing power of 3 percent.

Apparently, the increases in the social security tax rate and the maximum taxable income for social security were major factors in the decline in the purchasing power of two-earner white families in 1973.

Welfare recipients and other poor groups suffered the greatest loss in purchasing power as a result of inflation in 1973. Welfare benefits and food stamp increases have lagged behind the increase in the cost of living. Between December 1972 and December 1973, the average monthly AFDC payment per recipient increased only 5.5 percent, while the average food stamp bonus value rose by only 9 percent—far below the 20 percent increase in food prices in 1973.

Moreover, according to a recent report prepared by a panel of the Senate Select Committee on Nutrition and Human Needs, only one-third of those eligible for food stamps get them and only 3 percent of the elderly poor eligible for federally-subsidized special meals get them.

A major reason for the low utilization of food stamps by the poor is that many of them are simply too poor to afford them. Thus, untold members of poor families in this nation are going without food—as well as other essential goods and services—for longer and longer periods.

In sum, while the real disposable income of white families barely kept pace with cost of living increases in 1973, the purchasing power of the average black family declined by 2 percent. Moreover, while the gain in real spendable income of black families headed by women working full-time just kept up with inflation, the real purchasing power of black husband-wife families where the wives were not in the labor force dropped 4 percent between 1972 and 1973. Because welfare and food stamp benefits increased at a slower rate than inflation, the poor and welfare recipients suffered sharp declines in their purchasing power in 1973.

Key Recommendations

How can the disastrous effects of inflation on black and poor people be mitigated? First, the depression-level unemployment rates and decline in real purchasing power in black and poor communities throughout the Nation require that inner-city areas be declared economic disaster areas and special Federal funds be allocated for their relief.

Second, a widely expanded public service employment program should be established on a continuing basis and directed toward significantly increasing employment opportunities for adult breadwinners in minority and poor families, especially women heads of household.

Third, the cost of child care services should be reduced for working mothers by significantly increasing the number of low-cost day care facilities available and reducing the cost to low-income mothers for those services currently existing.

And last, taxes should be reduced for low-income persons in order to stop the decline in their purchasing power. Rates of both Federal income and social security payroll taxes should be reduced for low-income families in order to alleviate some of the burden of "double taxation."

AFTER TWENTY YEARS

REFLECTIONS UPON THE CONSTITUTIONAL SIGNIFICANCE OF BROWN v. BOARD OF EDUCATION

By Archibald Cox

". . . in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

We celebrate the 20th anniversary of *Brown v. Board of Education* as the first clear, national commitment to accomplish an egalitarian revolution in race relations by and within the rule of law.

There were earlier beginnings. The struggle against racial injustice is as old as the Nation. After World War II a few national political leaders, notably Harry S. Truman, initiated concrete civil rights reforms. Devoted counsel were laying legal groundwork in the white primary cases, in *Missouri v. Gaines*, and in *Sweatt v. Painter* with admirable skill and patient timing.

But *Brown* was the decisive step. After *Brown* there was no room for turning back. First counsel for the plaintiffs and then the Supreme Court proved the capacity of the law to work itself clean, to rid itself of the shabby lie, "separate but equal."

Thereafter the American people could not evade the choice between their pretensions and their practices, between their declared ideal that "all men are created equal" and the caste system engrained in society, North as well as South, since long before the Declaration of Independence. And the choice, so far as the Supreme Court could commit the people, would be the path marked by morality and natural justice.

We must come back to the qualification, "so far as the Supreme Court could commit the people." But consider first what *Brown* accomplished.

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BFD

The moral and social pressures behind the *Brown* decision, the movement envigorated by that beacon of hope, and the force of the decision itself as both precedent and example—all joined to produce a veritable revolution in the law of civil rights.

State laws enforcing a caste system were invalidated, and enforcement gradually stopped. New doctrines developed to extend the reach of the equal protection clause. New Federal statutes were enacted to deal with acts and practices depriving black citizens of the right to vote, to enjoy equal treatment in places of public accommodation, to have equal employment opportunities, and to have equal access to housing. Constitutional law changed and grew in order to sustain these Federal laws.

Neither lawyers nor the legislative, executive, or judicial branch of Government can claim sole credit for the reforms. The driving force came largely from the movement—from the Montgomery bus boycott, the freedom rides, the march on Washington, the march from Selma to Montgomery, and hundreds of smaller but equally courageous demonstrations.

But those interested in law and government can justifiably take pride that the law did change to meet the needs of men. Where the law had at its worst been a tool of racial oppression and even at its best been indifferent to racial wrongs, it became the handmaiden of equality—sometimes errant, sometimes ineffectual, often slow, but cleansed and committed so far as commitment can be written into law.

This first set of consequences would be enough to bring us here, but as dreamers of the American dream our debt to *Brown* is larger. The example set by civil rights lawyers showed others that constitutional litigation could be used as an effective substitute for traditional forms of political action by groups lacking economic and conventional political power. Such groups then pressed their causes upon the courts, and the courts—at least for a while and in some degree—became the guardians of values inadequately represented elsewhere in government.

At this point a third set of consequences ensued. The *Brown* decision had extraordinary generative power and soon led to the remaking of wider areas of constitutional law. The revitalization of constitutional prohibitions against racial discrimination gave impetus to a review of other inequalities in American life. The opinions invalidating racial discrimination provided the doctrinal support for close judicial scrutiny not only of other invidious governmental distinctions, but of statutory classifications affecting the exercise of fundamental rights.

The reapportionment decisions are intellectually traceable to *Brown*, as are the rulings abolishing the poll tax, property qualifications, excessive residence requirements, and other restrictions upon participation at the polls. Propelled by the decision, the courts later struck down a multitude of discriminations based upon sex, alienage, length of residence, illegitimacy of birth, and sometimes (but less often than one would wish) ability to pay. The influence of *Brown* also ran strong in the decisions reforming the administration of criminal law by requiring the States to supply paupers in both courts and police stations with the legal assistance that others can buy.

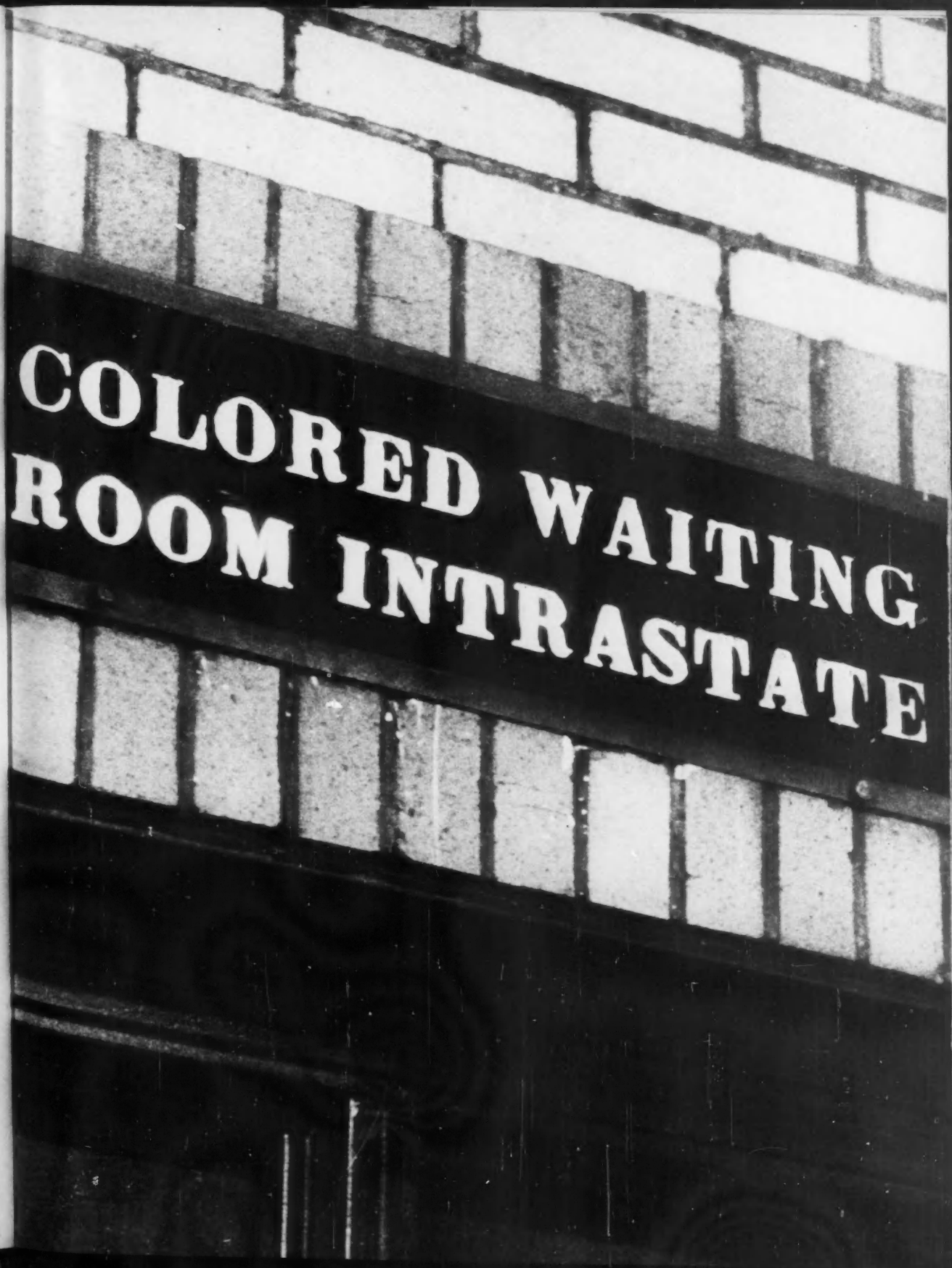
Fourth, the desegregation cases introduced a remarkable new dimension into constitutional adjudication, the effects of which are not yet clear. The change is from "Thou shall not" to "Thou shalt." The change may be remarkably creative, but it also raises grave problems.

Thou Shalt

Prior to 1954, the traditional role of the courts in constitutional cases had been to block executive or legislative aggression against individual rights. Judicial decrees did no more than validate or veto unconstitutional action by other branches of government—by the President, by the President and Congress, by the States and the State legislatures, governors, and courts, and by other, minor officials. Decrees telling State officials what programs they should institute and requiring legislatures to appropriate vast sums of money were unthinkable. When the Court entered its validation or veto, its task was done.

When litigation is used as an instrument of reform, the end is often supplementation or change in ongoing programs. The judicial command will be a "Thou shalt." The reform will thus require either affirmative cooperation by the political branches of government or else judicial formulation and implementation of a program having typically administrative, executive, and even legislative characteristics—programs heretofore thought unsuited to judicial undertaking.

Affirmative action programs such as those required to remedy school segregation are one example. The reapportionment cases are another. But the use of constitutional adjudication to secure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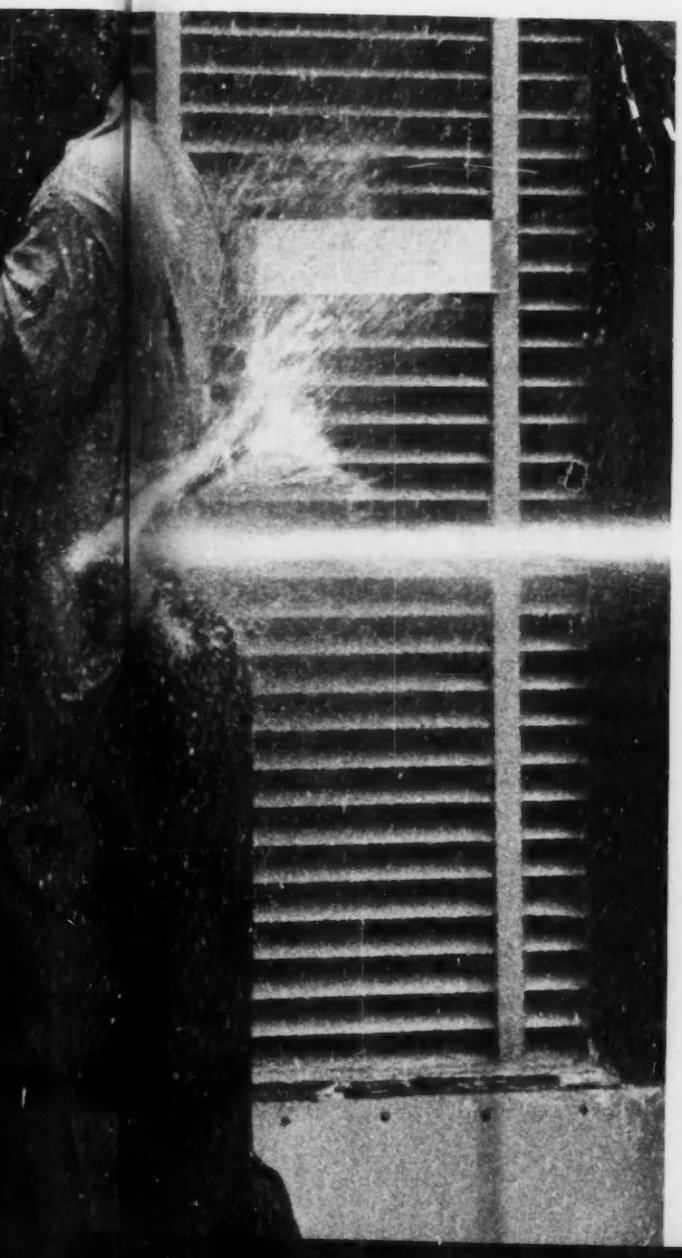

reorganization of State programs through affirmative judicial command is not confined to judicial remedies for past violations. The due process clause has become a basis for obtaining benefits such as medical care and job training in penitentiaries, education in institutions for retarded children, and better facilities and treatment in hospitals for the mentally ill.

Formerly, allegations of denial of equal protection were focused upon the sanctions a State was imposing upon one group but not another. Today the charge made often is that the State is failing to provide equal benefits—in welfare, in education, in municipal protection.

It is not yet clear how far this trend will develop, but at the least we know that since *Brown* the Federal courts have increasingly undertaken to supervise affirmative action, thus providing a source of change and relief for groups lacking political clout. This is the promise of the new constitutional law of "Thou shalt." I turn to its problem in a moment.

In sum, *Brown v. Board of Education* revolutionized our constitutional law. It generated high hopes for what can be done by constitutional litigation. But to write a statute or hand down a judicial decision does not automatically change the way we live. How much has been realized? How far has *Brown* remade the lives of men, women, and children?

Ideals, Laws, and Realities

Although accomplishment is all about us, there are stark reminders of the difficulty of translating law into practice. In Topeka, Kansas, home of the Brown family, gerrymandered school districts still preserve racial segregation. In Boston the School Committee has stalled, delayed, and evaded legal obligations, and Boston's racists have almost won their fight to gut the State's racial imbalance law. There are Topekas and Bostons across the country. The gap between our professed ideals and the law has been closed, but there is now a wide gap between the law on the one hand and the realities of life on the other.

The gap is widest in school systems where busing is a necessary part of an effective judicial remedy for prior segregation. I observed earlier that school desegregation cases had taught the use of constitutional adjudication as an instrument of reforms effectuated by affirmative judicial commands. This use puts new strains upon the rule of law because the judicial imposition of affirmative duties is likely to be fruitless without at least the grudging cooperation of other branches of government, and it is infinitely harder to secure support for judicial decrees requiring affirmative programs of reform than for commands merely blocking executive or legislative action.

The school desegregation decrees ordering large scale transfers of pupils are especially striking for these legislative characteristics. They require vast financial expenditures. They pertain to the future. They are mandatory. They govern millions of people. They reorder people's lives in ways that benefit some and disappoint others in order to achieve social objectives.

I can think of no other decrees with these characteristics in all of constitutional litigation. The economic due process decisions of the first third of this century involved the accommodation of the conflicting interests of large social and economic classes, but they are not a happy comparison and even there the Court was vetoing accommodations worked out through the political process, not imposing upon millions of people a novel program of an essentially legislative character without popular representation. And so we come back to the question—how far can the Court commit the people?

In an era of reform it is inevitable, and in one sense even desirable, that a gap exist between law and practice. Our highest law ought always, in some degree, to state our ideals—not merely mirror our practices. The Court can be the voice of the spirit telling us what we are by reminding us of what we may be.

But the power of the great constitutional decisions ultimately rests upon the Court's ability, by expressing its perception, to command a consensus. If the gap grows too wide—if the community is not persuaded to follow the law made by judges or if the feeble sanctions available to courts are not enough when added to the moral force of legitimacy—then the law will be changed, either by avowal or by lapse into desuetude. The aspirations voiced by the Court must be those the people are willing not only to avow but in the end to live by.

Supporting the Courts

I speak these thoughts not as a counsel of judicial caution, but as a reminder that the struggle for human justice, while advanced by litigation, cannot be won by litigation only. In the end, equality must be achieved in the minds and hearts of people. The courts can lead in certain areas but they cannot indefinitely go it alone. If we value constitutionalism, we must persuade the people, therefore, to support the courts.

It is here, I think, that political

leadership has been inadequate and even destructive—inadequate to secure implementation of the desegregation decisions, and destructive of the proper relationship between the courts and the political branches. For half a decade after *Brown* no real executive or legislative support for equality existed.

As the school desegregation cases bring constitutional adjudication into the realm typically belonging to the legislature (because of the quasi-legislative character of the decrees), so would President Nixon's anti-busing legislation intrude upon the realm of constitutional adjudication. The great vice of the anti-busing bill passed by the House, in terms of the struggle for racial equality, is that it sets the face of the Government against reform and aligns it wholly with bitter resistance in a major sector of the battle.

The vice in terms of constitutionalism is similar: because the bill is essentially a restriction of judicial power in key constitutional cases with only the most grudging acceptance in others, its enactment would put the legislative branch into the stance of attacking constitutionalism by depriving the judiciary of power to frame remedies pursuant to its own constitutional determinations.

Some interplay and, therefore, some modification of the purely judicial remedies is an inescapable and probably desirable consequence of the overlapping functions of the Court and Congress in areas where the implementation of constitutional principles requires affirmative governmental action. Constructive dialogue would begin with open political commitment to basic constitutional principle judicially declared.

Judicial remedies short of total and immediate integration by automatic busing could be immeasurably strengthened by legislative and executive assistance. There are also particular injustices under de facto segregation for which Congress has ample power to provide remedies even though they may lie beyond judicial competence. This done there is ample room for legislative guidance on the complex problem of busing.

The measure passed by the House—but happily defeated in the Senate—not only asks for a vote of "no confidence" in the courts; it challenges constitutionalism by repudiating what the courts have done to interpret the Constitution and provide remedies for past violations. Enactment would be seen as, and would be, a break in the Nation's resolve to realize the constitutional rights of all its children.

Our Confidence

We meet under the shadow of disappointment, disillusion, cynicism and distrust. The highest levels of government have been besmirched not only by the spying and contempt for human dignity and privacy characteristic of a police state but also by the avaricious pursuit of money and power, by concealment and deception. There is also doubt in the competence of democratic government, of the ways of constitutionalism and civility; and this, in a relatively free society, means loss of confidence in ourselves.

At such a time it is good to have this 20th anniversary celebration to remind us that there is a better side to man, and that the system works. The dream of justice and equality is far from dead. It was brought measurably closer by the leaders of the attack on segregation in the courts. It was brought measurably closer after years of suffering and perseverance, through the ways of constitutionalism and civility.

For although the protest movement often spoke of "civil disobedience," the disobedience was of laws whose constitutionality was challenged—sincerely, plausibly, and, for the most part, quite rightly. None of the great events of the civil rights movement involved the deliberate breach of an admittedly valid law: not Tuscaloosa in 1956, not Little Rock in 1957, not the Freedom Rides in 1961, nor Oxford in 1962, nor even the bridge at Selma. The revolution was within the rule of law.

It took too long, and little enough was accomplished. Yet we must keep our perspective. "Man may be little lower than the angels," Judge Learned Hand reminds us:

> But he has not shaken off the brute. . . . He must grope his way through the murk, as his remote forerunners groped, in the dank, hot world in which they moved . . . . Nor be cast down; for it is always down. Day breaks forever, and above the eastern horizon the sun is now about to peep.
>
> Full light of day? No, perhaps not ever. But yet it grows brighter, and the paths that were so blind will, if one watches sharply enough, become hourly plainer. We shall learn to walk straighter.

Brown v. Board of Education—the men who presented the case and the Justices who rendered the decision—proved that we can learn to walk straighter.

Yes, it is always dawn.

READING AND VIEWING

BOOKS RECEIVED

Blacks and the Military in American History, by Jack D. Foner (New York: Praeger Publishers) 1974. The role of blacks in American military history from the Revolution to the present, and its effects on U.S. social and political history as well.

Other Voices: Black, Chicano, and American Indian Press, by Sharon Murphy (Dayton, Ohio: Pflaum/Standard) 1974. Directed at high school students, this book will be useful to anyone as an introduction to the problems and accomplishments of America's minority press.

Blacks and American Medical Care, by Max Scham, M.D. (Minneapolis, Minn.: University of Minnesota Press) 1974. A personal look at the problems of blacks in receiving medical care and medical training, and as practicing physicians.

Breaking the Bonds of Racism, by Paul and Ouida Lindsey, (Homewood, Ill.: ETC Publications) 1974. An analysis of black-white relations; Part I discusses the life-style of black people and Part II concentrates on education and learning.

The Law, the Supreme Court, and the People's Rights, by Ann Fagan Ginger. (Woodbury, N.Y.: Barron's Educational Series, Inc.) 1974. A useful narrative description of important constitutional cases decided by the Supreme Court, grouped under three headings: freedom, justice, and equality.

Affirmative Action: The Unrealized Goal (Washington, D.C.: The Potomac Institute, Inc.) 1974. A review of the progress or lack of it in affirmative action over the last decade, with chapters on public and private employment, Federal contractors, and higher education.

Evaluating School Busing: Case Study of Boston's Operation Exodus, by James E. Teele (New York: Praeger Publishers) 1973. An analysis of a private, voluntary busing effort initiated and sustained by black parents. This book records the children's improved academic skills and the unique relationship between the researcher and the parents, who jointly planned and carried out the study.

The Urban Scene in the Seventies, James F. Blaustein and Eddie J. Martin, eds. (Nashville, Tenn.: Vanderbilt University Press) 1974. A survey of economic policy, public policy, and poverty along with education, health services, housing, suburbs, ghettos, and new communities.

Bright Eyes: The Story of Susette La Flesche, An Omaha Indian, by Dorothy Clarke Wilson (New York: McGraw Hill) 1974. La Flesche helped lead the struggle to retain land for the Poncas and Omahas, at a time when women—much less minority women—had no political rights or privileges of their own.

Black Protest: Issues and Tactics, by Robert C. Dick (Westport, Conn.: Greenwood Press) 1974. An account of black thinkers and their ideas on politics, colonization, civil disobedience, violence, separatism, and black abolitionism from 1827 to the Civil War.

The Black Protest Movement, by Daniel W. Wynn (New York: Philosophical Library, Inc.) 1974. A brief but useful interpretation of the black movement from slavery to 1974.

Cesar Chavez and the United Farm Workers: A Selective Bibliography, by Beverly Fodell (Detroit: Wayne State University Press) 1974. An update of an earlier bibliography. This book lists books, articles, government documents, dissertations, and other materials published before November 1972.

Sojourner Truth, A Self-Made Woman, by Victoria Ortiz (New York: J. B. Lippincott Co.) 1974. A moving and dramatic biography of an ardent fighter for the rights of blacks and women.

Low Wages and the Working Poor, by Barry Bluestone, Mary Stevenson, and William M. Murphy (Ann Arbor, Mich.: Institute of Labor and Industrial Relations) 1974. This study focuses on how little, not how much, wage differences are explained by education, training, age, region, and immigration patterns. The authors advocate development of "human capital," Government action to insure equal access to jobs, and increased Government intervention in the economy.

Aspirations vs. Opportunity: 'Careers' in the Inner City, by Paul Bullock (Ann Arbor, Mich.: Institute of Labor and Industrial Relations) 1974. An examination of the job market and employment problems of ghetto youth and the presently ineffective programs designed to alleviate the disastrous unemployment rate of the minority youth labor force.

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