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COMMENTARY

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Miguel E. Vigil

FEATURE INTERVIEW

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POLICY PERSPECTIVES

Manuel del Valle  
Joseph A. Fernandez  
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# JOURNAL OF HISPANIC POLICY

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## EDITORS' REMARKS

The *Journal of Hispanic Policy* was originally conceived by members of the Hispanic Student Caucus at the John F. Kennedy School of Government. It has remained staffed predominantly by Latino graduate students of the School, working on a volunteer basis while pursuing degrees in Public Policy and Public Administration. The staff is advised by an Executive Advisory Board, composed of prominent Latinos from the public, private, and non-profit sectors, and others interested in the Latino community. The Editorial Advisory Board is composed of academics directing or working in Latino research centers nationwide, and others whose major research and professional interests lie within the Hispanic community. The majority of our published authors are Latinos.

Because of this, we feel that the *Journal* represents a substantial effort within our diverse community to discuss and document the community's political, social and economic development; one made ever more important and complex by the changing demographic profile of this country's population. The *Journal's* mission is to document our community's growth and progress, collect examples of innovative efforts to deal with our problems and concerns, and make the information available to a wide audience.

This issue of the *Journal* continues the dialogue on the many important topics addressed by the articles. As we begin a new decade, Professors Jorge Chapa and Maurilio Vigil look back at the so-called Decade of the Hispanic, and offer their perspectives on some aspects of the educational, economic, and political development of the Latino community. In the next section, we feature an interview conducted a few months after President Bush asked Secretary of Education Lauro Cavazos to remain in his post. Secretary Cavazos offers his views on many of the challenging issues brought to the forefront of public debate by the presidential election and the educational reforms of the past decade.

In the next section, our authors look at current developments in their respective fields, and offer concrete policy recommendations for dealing with the problems. Professor Edwin Melendez looks at some recent changes in employment and training programs, and gives a sense of what these changes mean for Latinos. Manuel del Valle, an attorney, proposes a new framework for dealing with the issue of language in this country, especially relevant in light of a great number of states passing legislation to make English the official language. Joseph Fernandez, then Superintendent of Schools in Miami, and now Chancellor of Schools in New York City, provides suggestions for improving the professional development of Latinos within large bureaucracies.

Finally, we end with two articles which take a look at our more distant past, and cast an eye toward the future. Gary Martin looks at U.S. policy

towards Puerto Rico, a subject of crucial importance as Puerto Rico moves toward the 1992 plebiscite to determine its future status as commonwealth, state, or independent nation. Alfred Montoya surveys the history of Latino labor union participation in the West and Southwest, providing a strong historical perspective for Edwin Melendez' article on contemporary labor issues.

We welcome and encourage comments and suggestions from our readership. As with previous issues, your reactions will serve to improve future editions of the *Journal*. We would like to give special recognition to the members of our Executive Advisory and Editorial Advisory Boards. During the five-year history of the *Journal*, they have provided substantial technical, financial and editorial assistance, and have served as mentors, teachers, and friends. A special thanks to Joseph McCarthy and William Parent of the Kennedy School of Government, who have facilitated our efforts to produce this publication.

A nuestros lectores y patrocinadores, les damos nuestras profundas gracias por su apoyo. Es nuestro deseo que este esfuerzo pueda servir en avanzar su trabajo en pro de la comunidad.

Genoveva L. Arellano  
David Moguel

Cambridge, Massachusetts  
May 1990

# COMMENTARY

## THE MYTH OF HISPANIC PROGRESS: TRENDS IN THE EDUCATIONAL AND ECONOMIC ATTAINMENT OF MEXICAN AMERICANS

Jorge Chapa

Jorge Chapa is an Assistant Professor at the Lyndon B. Johnson School of Public Affairs of the University of Texas at Austin.

### INTRODUCTION

People of Mexican origin have had a large presence in the United States for a long time. But, despite the fact that a substantial majority of the present population was born in the United States, almost all policy research and analysis of this group has focused on foreign-born Mexican immigrants, largely ignoring U.S.-born Mexican Americans. This selective focus is generally based on the assumption that social problems among the Mexican-origin population are linked with immigration and further, that U.S.-born Mexican Americans are being incorporated or assimilated into American society to the same degree and in the same manner as earlier European immigrants. Indeed, faith in the idea of this inevitable progress has been so strong that past evidence that Mexican Americans had not achieved parity has been discounted with the assertion that Mexican Americans will do so in the future. One well-known example of this type of thinking can be found in Leo Grebler, Joan Moore and Ralph Guzman's, *The Mexican American People*. Here they assert that Chicanos have the imminent "potential" to assimilate.

A very recent example of this type of thinking is evident in an essay by Linda Chavez, *Tequila Sunrise: The Slow But Steady Progress of Hispanic Immigrants*, published in the Spring 1989 issue of *Policy Review*. This journal calls itself "American conservatism's most quoted and influential magazine", and, "the flagship of The Heritage Foundation." It is not surprising that conservatives would find appeal in the idea that social and economic inequities are minimal and will inevitably disappear.

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The policy implications of this issue are obvious. If Hispanics are really making steady progress towards full parity with other Americans then there is no need for federal or state policies or programs to address these needs. Further, conservatives may suggest, as Chavez does, that government programs may actually impede or "derail" this natural progress. On this point, Chavez resorts to the contentions made by her colleague, Charles Murray, in his controversial, *Losing Ground*. (Both Chavez and Murray are fellows at the Manhattan Institute for Policy Research). If, on the other hand, Hispanics are not catching up with other Americans, or falling further behind, or even forming an underclass, then responsive policies would be very different than those conservatives prescribe.

In an attempt to lay a factual basis for future Hispanic policy analysis, this paper will assess the validity of the claim that Hispanics are making progress. It will do so in a manner consistent with the analytical principles put forward by Chavez. In acknowledgment of the diversity among Hispanics, it will focus on Mexican-origin Hispanics, the largest among the Hispanic sub-groups. In recognition of the differences between recent immigrants and long-term residents, most of the statistics presented in this paper will focus on those Mexican Americans who have been in the United States for the longest time; i.e., the U.S.-born Mexican American children of two U.S.-born parents. This group is also known as the third and third-plus generation, since they are at least three generations removed from residence in Mexico.

The evidence to be presented here will strongly suggest that Chavez' arguments are not correct. If her notion of steady progress did indeed apply to Mexican Americans, then we could expect the following patterns to be visible: 1) the educational attainment of Mexican Americans would converge with that of Anglos; 2) the Mexican American occupational distribution would be similar to that of Anglos; and, 3) the earnings of Mexican Americans would approximate those of Anglos. I will show that none of these statements accurately apply to Mexican Americans as a group.

In part, the assumption that Mexican Americans are making progress can be sustained because the data that address it directly have previously been difficult or impossible to obtain. For example, many published statistical tabulations and reports typically present information for all Hispanics, or perhaps, for all Mexican-origin Hispanics as a group. The extreme degree of heterogeneity among the different Hispanic subgroups makes it difficult to reasonably interpret any data aggregated for all Hispanics. More detailed tabulations provide statistics for each Hispanic subgroup (Cuban, Mexican, Puerto Rican, etc.); however, even these tabulations combine recent immigrants with persons who have lived in the United States for many generations. Almost all published data for Mexican-origin Hispanics show that this group has lower levels of education, earnings, and occupational attainment than Anglo Americans. The fact that the published statistics on the Mexican-origin population combines Mexican immigrants with U.S.-born Mexican Americans makes it possible to assume that these lower aggregate attainment levels are due to the presence of a large number of recent Mexican immigrants. It is thus also possible to further assume that the education, earnings, and occupational distribution of Mexican Americans are similar to or approaching that of Anglo Americans and that whatever differences do exist will eventually disappear as Mexican immigrants and Mexican Americans assimilate.

Instead of following a pattern of steady progress, I will argue that the Mex-

ican Americans' pattern has many similarities with what William Wilson described for Blacks: a well-educated middle class largely integrated into all aspects of the society and economy and a relatively uneducated, economically superfluous, and self-perpetuating lowerclass (Wilson, 1980 and 1987).

## DATA AND DEFINITIONS

The source of the 1979 data is the November 1979 Current Population Survey (CPS). The nativity of an individual's parents was the basis for identifying different generations. I define the third generation as consisting of the U.S.-born children of U.S.-born parents. This category includes all those who have been in this country for more than three generations as well. The second generation consists of a person born in the United States with one or two foreign-born parents. The first generation refers to foreign-born immigrants. The absence of the nativity of parent age data item in the 1980 census precluded its use for this detailed generational analysis. I use Mexican American to refer to those who identified themselves as being of Mexican-origin and who were born in the United States. Anglos were defined as white non-Hispanics. Blacks and Asians were also non-Hispanics of those two racial groups.

The longitudinal or time series data for California from 1940 through 1970 is drawn from Census Public Use Microdata Samples (PUMS) files. California was selected for this study because it has the largest Mexican American population in the country. These historical PUMS data have a major limitation: the only Hispanic identifier consistently available in these data sets is Spanish surname. In the census data for California from 1940 to 1970 presented below, I have equated the Spanish surname population with the Mexican-origin population. The history of the Spanish surname population of California during this time ensures that most of the people so identified were of Mexican origin. The bias of the Spanish surname identifier compared to the self-identified Mexican-origin population is towards higher socioeconomic status measures in data sets when the two identifiers can be compared directly; thus, any imprecision involved in the use of the Spanish surname identifier will tend to underestimate the true differences between Mexican Americans and higher status groups. (On the composition of California's Hispanic population, see U.S. Bureau of the Census, *Persons of Spanish Origin by State*. For a relatively recent discussion of the validity of the Spanish surname identifier, see U.S. Bureau of the Census, *Technical Documentation for the 1980 Census Spanish Surname File*, and *Comparison of Spanish Surnames and Persons of Spanish Origin in the United States*.)

Progress as used here is synonymous with socio-economic assimilation, but assimilation has many other meanings as well. When used in this paper, assimilation will mean only progress towards parity in terms of the particular measure being discussed.

## GENERATIONAL DIFFERENCES: THE UNITED STATES IN 1979

Table 1 provides an overview of the size and status of different generations within and between racial/ethnic groups. It is intended to profile the recent status of Mexican Americans in terms of various socioeconomic measures. This table shows an estimate of the population ages 25 through 64 of each generation in each group. This age range was chosen to provide a basis for interpreting the labor force characteristics to be discussed later. Comparing the size of each generation within groups shows that immigration has varied greatly. The proportion of first generation immigrants among Blacks is very small. Almost all U.S. Blacks have been in this country for many generations. In contrast, first generation immigrants is the largest category among Asians. For the Mexican-origin population, the first and second generations are about the same size. The third generation group of Mexican Americans is slightly larger.

The second panel in Table 1 presents the average number of years of school completed. The figures for the Mexican-origin population show a large difference between first generation immigrants and second or third generation Mexican Americans. Mexican immigrants have very low educational levels and the large proportion of Mexican immigrants will lower the aggregate educational level of all Mexican-origin Hispanics. However, the low average attainment of the Mexican-origin population is not solely due to this. The average educational level of third generation Mexican Americans is 10.4 years—substantially lower than the 12.5 years for third generation Anglos. It is also lower than the level attained by third generation Blacks.

Another important educational indicator is the proportion of the work-age population who have less than a high school education. While I have followed the common convention of calling these “high school dropouts,” this label may be misleading because many individuals in this category have less than an eighth grade education and did not even start high school. The third panel in Table 1 lists the percent or proportion of these people in each generational group. The dropout pattern for Mexican Americans is similar to that seen in the years of school completed—substantially more education from first generation to third generation, but third generation Mexican Americans have substantially less than third generation Anglos. The dropout level for third generation Mexican Americans is similar to that for third generation Blacks.

The fourth panel in Table 1 shows that there is virtually no difference between the occupational index of second and third generation Mexican Americans and that this measure is substantially lower for both groups than it is for Anglos. While far from perfect, the occupational index is useful for summarizing occupational distributions and for demonstrating the existence of gross occupational differences between groups (Blau and Duncan, 1967; and Reiss, 1961).

It is important to observe the large educational and occupational index differences for Mexican immigrants, Mexican Americans, and other Hispanic groups. This underlies the need for using specific Hispanic subgroup labels whenever possible rather than using the Hispanic label as an encompassing whole. For example, the higher attainment levels of second generation “Other Hispanics” probably means the national origin of this group is different from first and third generation “Other Hispanics.”

**Table 1**

Estimated population, years of school completed, and occupational index by racial/ethnic group and generation, ages 25-64, United States, 1979.

	<i>Asian</i>	<i>Black</i>	<i>Mexican Origin</i>	<i>Other Hispanic</i>	<i>Anglo</i>
<i>Estimated Population</i>					
First Generation	1,074,000	382,000	1,082,000	958,000	3,422,000
Second Generation	312,000	147,000	1,051,000	203,000	10,685,000
Third Generation	801,000	10,827,000	1,266,000	1,105,000	71,262,000
<i>Years of School Completed</i>					
First Generation	13.0	11.5	6.9	11.0	12.2
Second Generation	12.3	11.7	9.6	12.2	12.4
Third Generation	11.8	11.0	10.4	10.0	12.5
<i>Percent High School Dropouts</i>					
First Generation	27%	32%	80%	46%	43%
Second Generation	29%	31%	55%	32%	35%
Third Generation	40%	51%	48%	54%	26%
<i>Occupation Index (Males Only)</i>					
First Generation	45	31	20	36	43
Second Generation	41	31	32	43	45
Third Generation	37	28	32	30	43

Source: November 1979 Current Population Survey

The occupational index is a measure commonly used by sociologists and demographers to assign a numeric value to different occupations. Unskilled manual jobs, such as those of laborers, porters, and bootblacks, are assigned scores with values less than ten; professional occupations with the highest educational requirements, e.g., doctors and lawyers, are assigned scores with values close to 100. Since this index was developed with specific reference to the male occupational distribution, it is primarily used to score male jobs.

In the study of immigrant progress towards parity or assimilation, it is very common to compare the occupational or educational attainment of immigrants—the first generation—with the attainment of the second and third generation at the same point in time. If the attainment of the third generation is greater than that of the second and if the second is greater than the first, then this is typically taken as evidence of assimilation. So, to illustrate, Table 1 shows that the average educational attainment of adult first, second and third generation Mexican Americans across the United States in 1979 was 6.9, 9.6 and 10.4 years of schooling completed, respectively. By the logic used in most studies, the progression from the first through third generation would typically be taken as showing strong evidence of Mexican American progress.

There are two reasons why I do not think such evidence convincingly demonstrates assimilation. The first is that Mexican American attainment across the three generations at one point in time is assumed to accurately represent the actual historical pattern of increase over time.

Compare the Mexican American pattern above with the same information regarding Asians. In 1979, the average educational attainment of adult first, second and third generation Asians across the United States was 13.0,

**Table 2a**

Educational attainment in years of school completed by race for third and third-plus generation adults 25–64, California, 1940–1979.

<i>Years of School Completed</i>	1940	1950	1960	1970	1979
Black	8.4	8.6	9.6	10.9	12.0
Mexican American	7.5	9.1	9.4	10.5	11.0
Anglo	10.5	11.1	11.5	12.3	13.4
Asian	7.6	8.5	10.2	11.8	13.5

**Table 2b**

Educational attainment as a percent of Anglo attainment by race for third and third-plus generation adults ages 25–64, California, 1940–1979.

<i>Years of School as % of Anglo</i>	1940	1950	1960	1970	1979
Black	80%	77%	83%	89%	90%
Mexican American	71%	82%	82%	85%	82%
Anglo	100%	100%	100%	100%	100%
Asian	72%	77%	89%	96%	101%

**Table 2c**

Estimated population size of third and third-plus generation adults ages 25–64, California, 1940–1979.

<i>Number in Sample</i>	1940	1950	1960	1970	1979
Black	67,600	249,900	390,600	553,000	846,000
Mexican American	24,400	100,000	177,600	252,200	398,000
Anglo	1,975,200	3,284,600	4,460,800	5,377,300	6,199,000
Asian	9,000	21,100	31,500	68,600	174,000

Source: 1940, 1950, 1960, and 1970 Census Public Use Microdata Sample and November 1979 Current Population Survey



12.3 and 11.8 years respectively! No one would argue that this was evidence of Asian "de-assimilation." On the contrary, these figures would likely be taken as showing that changing economic circumstances in Asia and changing immigration regulation has changed the characteristics of Asian immigrants. (On this point see Boyd, 1974; and Massey, 1981.) The pattern of increase in the figures for Mexican Americans might also reflect changes in circumstances rather than progress across the generations.

Even if the cross-sectional pattern in Mexican American attainment did accurately reflect the historical, longitudinal increase in Mexican American educational attainment there is another reason why it does not necessarily indicate parity; the attainment figure for third generation Mexican Americans, 10.4 years, is substantially less than that of third generation Anglos, 12.5 years. Even if the historical pattern of Mexican American educational attainment did actually improve from the first to the third generation, this does not imply that it will eventually equal that of Anglos.

The data presented thus far show that the educational and occupational status of Mexican Americans in 1979 were much lower than that of Anglos even when differences in generational status were considered. The question remains whether these educational and occupational differences between Mexican Americans and Anglos will gradually disappear over time. Although there is no way to conclusively answer this question prospectively, we can make some speculations by examining the recent past. The next section will examine changes in status of third generation Mexican Americans compared to third generation Anglos from 1940 through 1979 to see if such a trend can be discerned. Both in theory and popular thought, the third generation's socioeconomic attainment is expected to show indications of convergence with that of its Anglo counterpart. Because of practical limitations, this longitudinal data analysis can only be presented for California.

## TRENDS IN EDUCATIONAL ATTAINMENT

### Average Levels of Educational Attainment

The standard measure of educational attainment is the average number of school-years completed. This measure is presented in Table 2a for third and third-plus generation Asians, Blacks, Mexican Americans, and Anglos ages 25 through 64. One of the first observations that can be made from this table is that the educational attainment increased between 1940 and 1979 among all the different groups. The average number of years of schooling completed among Blacks increased from 8.4 to 12; Anglos' increased from 10.5 years to 13.4; Asians', from 7.6 to 13.5; and Mexican Americans' increased from 7.5 to 11 years. At first glance, it may be difficult to discern any pattern other than the overall increase among all groups.

Table 2b presents the same information given in Table 2a, but now it is presented in relative terms; that is the number of years of school completed for each race is now presented as a percentage of Anglo attainment at each point in time. To illustrate, the 90% figure reported for Blacks in 1979 in Table 2b is simply the result of dividing the 12 years of Black attainment by the 13.4

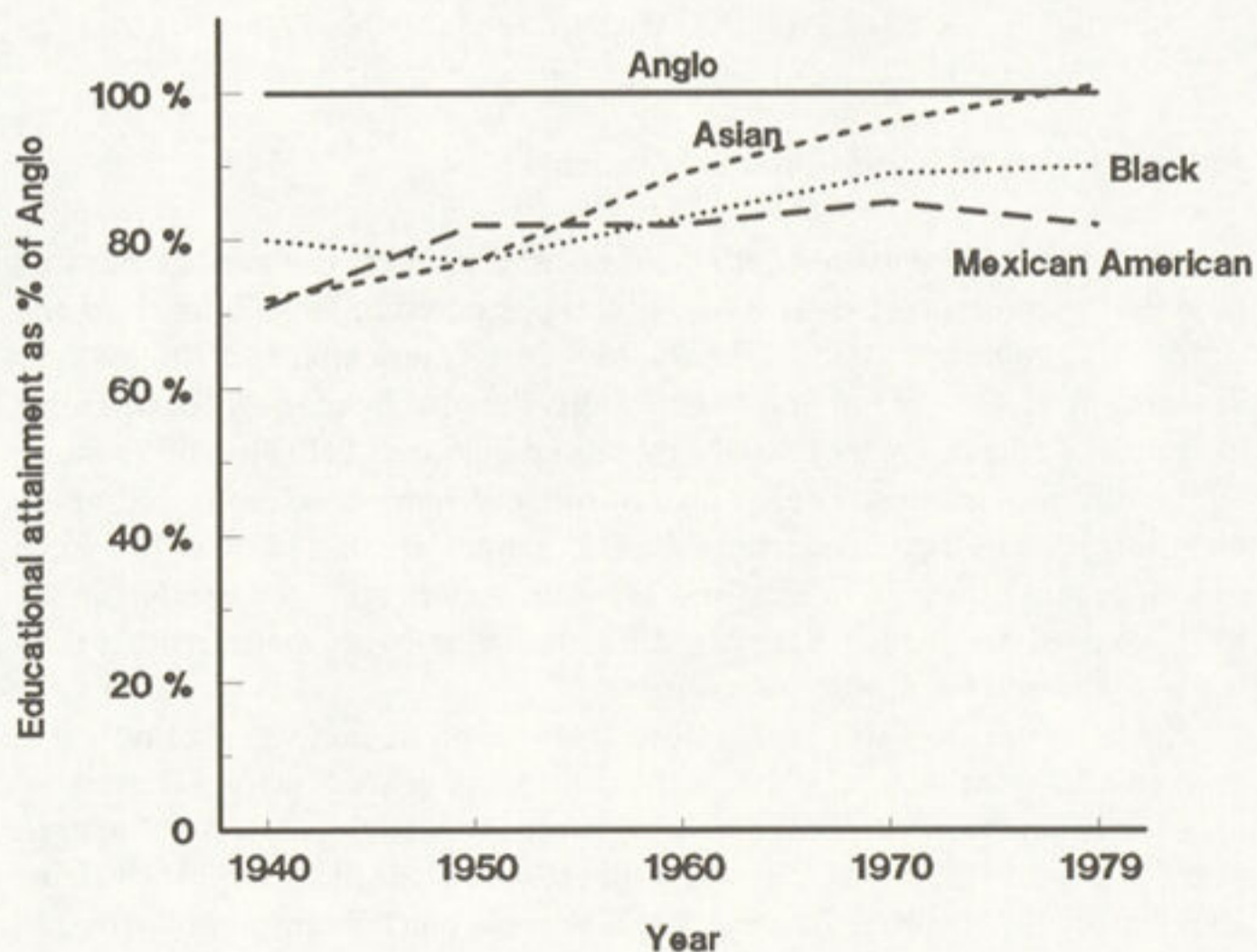
years of Anglo attainment as cited in Table 2a. (For details of the procedures used see Chapa, 1988.)

Before discussing the significance of these figures, two questions should be addressed: 1) why relative comparisons were made; and, 2) why comparisons relative to Anglo achievement were used. The rationale for comparing relative rather than absolute measures is that this is a better indicator of group standing. In 1950, the average Anglo attainment of 11.1 years was far more than that of any other group. In 1979, the Mexican American average of 11 years was the lowest. It is likely that the social and economic benefits available to those with an eleventh grade education in 1950 were far greater than those of a person with the same absolute educational level in 1979. (See Jencks, et al., 1972; and Farley, 1985, pp. 13-15, for a discussion of this point.)

There are two reasons for using Anglos as the standard of comparison. The first is that in the United States, socioeconomic parity with Anglos is the principal way social equity is gauged. The second reason is that Anglos are the majority population and typically have the highest levels of educational and economic attainment. Almost all concerns about parity, equality or assimilation are defined in comparison to Anglos.

With all this in mind, Table 2b can be used to obtain important and meaningful insight to educational assimilation among the country's different ethnic groups. These percentages are graphically presented in Figure 1. Look first at the Asian levels of relative educational attainment. In 1940, the Asian average educational level was 72% of the Anglo level. In 1979, it was 101%. This pattern of convergence is exactly what is expected of a group mak-

**Figure 1 -- Relative educational attainment by race/ethnicity, third generation adults, ages 25-64, California, 1940-1979**



ing gradual progress towards parity. At least in terms of educational attainment, the Asian experience shown here fits this assumption Chavez makes regarding Hispanics.

The pattern seen in the Mexican American data is very different. There was a substantial increase in Mexican American educational attainment compared to that of the Anglo level between 1940 and 1950. However, the relative level of Mexican American educational attainment in 1979 is exactly the same (82%) as in 1950 and 1960 (Table 2b). In marked contrast to the Asian pattern of convergence, the pattern evident for Mexican American educational attainment since 1950 is that of stasis, at about 82% of the Anglo level. Rather than signaling the start of a trend, the relative increase in Mexican American educational attainment during the 1940s is tied to historical events.

The explanation for this one-time increase is linked to the urbanization of Mexican Americans during the 1940s and the great social changes caused by World War II that created many new opportunities for Mexican Americans. A high proportion of Mexican Americans served in the armed forces, and, unlike Blacks and Asians, they were not restricted to segregated units. The war experience opened many new horizons for Mexican Americans, made them eligible for educational benefits, and brought many of them into contact with Anglos from a wide variety of backgrounds for the first time (Acuña, 1972, pp. 198-199; Grebler, Moore and Guzman, 1970, pp. 200-202). It is more difficult to nail down an explanation for the slight increase (from 82% to 85%) in Mexican American relative educational attainment between 1960 and 1970. It is possible that the social programs and social movements of that period did have a positive effect on Mexican Americans' education. Whatever factors did cause that increase did not have a lasting effect, though; in 1979, Mexican Americans had levels of education that were 82% of Anglos, the same relative proportion as in 1950 and 1960. Insofar as convergence of educational levels is concerned, figures for Mexican Americans show little or no evidence of a trend towards assimilation from 1950 to 1979.

The Black educational attainment pattern shows that the gap between Anglo and Black education levels was cut in half between 1940 and 1979. In 1940, the Black level was 80% of Anglos; in 1979, it was 90%. The decrease between 1940 and 1950 is probably due to the large influx of Blacks from the rural South looking for war-related employment (Wollenberg, 1985, pp. 243-50). The relative educational attainment of Blacks compared to Anglos increased even more than that of Mexican Americans during the 1960s (Table 2b). The 1979 level of 90% is only one percent higher than the 1970 level of 89%. We do not yet know if Blacks have continued the general trend towards educational parity with Anglos since 1979. What is important for my analysis is that from 1960 until at least 1979 Mexican Americans have had the lowest educational level of any of these groups and have not shown indications of general relative improvement. The fact that Mexican Americans have lower educational levels than Blacks supports the arguments that Mexican Americans may well have the same dual class structure that characterize Blacks.

### **Distribution of Levels of Educational Attainment**

Average measures, such as those discussed so far, can provide useful summaries and overviews. One of my major concerns is the distribution of life chances within racial and ethnic groups. Also, the social importance of edu-

education is typically tied to the achievement of particular milestones, i.e., graduating from high school or college, rather than the actual numbers of years of education. In order to get a better sense of this topic, I will look at third and third-plus generation adults in California and analyze the relative distribution by race of three educational categories: high school dropouts, high school graduates, and college attendees.

It would be informative to add the category of college graduates to this list, but for much of the period from 1940 through 1979 the number of minority college graduates is too small for reliable analysis. I will pay particular attention to high school dropouts because they have life chances that are distinctly worse than those of high school graduates. Compared to high school graduates, dropouts are concentrated in low skill jobs, have much higher unemployment rates, earn substantially less, and are far more likely to be incarcerated (California Assembly Office of Research, *Dropping Out, Losing Out*, pp. 21-34).

**Table 3**  
Distribution within educational levels by race for third and third-plus generation adults ages 25-64, California, 1940-1979.

	1940	1950	1960	1970	1979
<i>High School Dropouts</i>					
Black	76%	74%	63%	46%	35%
Mexican American	83%	68%	65%	49%	39%
Anglo	56%	43%	39%	27%	17%
Asian	73%	71%	54%	35%	19%
<i>High School Graduates</i>					
Black	17%	17%	23%	32%	31%
Mexican American	9%	23%	23%	34%	39%
Anglo	25%	33%	33%	38%	33%
Asian	14%	18%	25%	29%	27%
<i>College Attendees</i>					
Black	7%	9%	14%	22%	34%
Mexican American	7%	9%	13%	17%	22%
Anglo	19%	24%	28%	36%	50%
Asian	12%	11%	21%	36%	54%

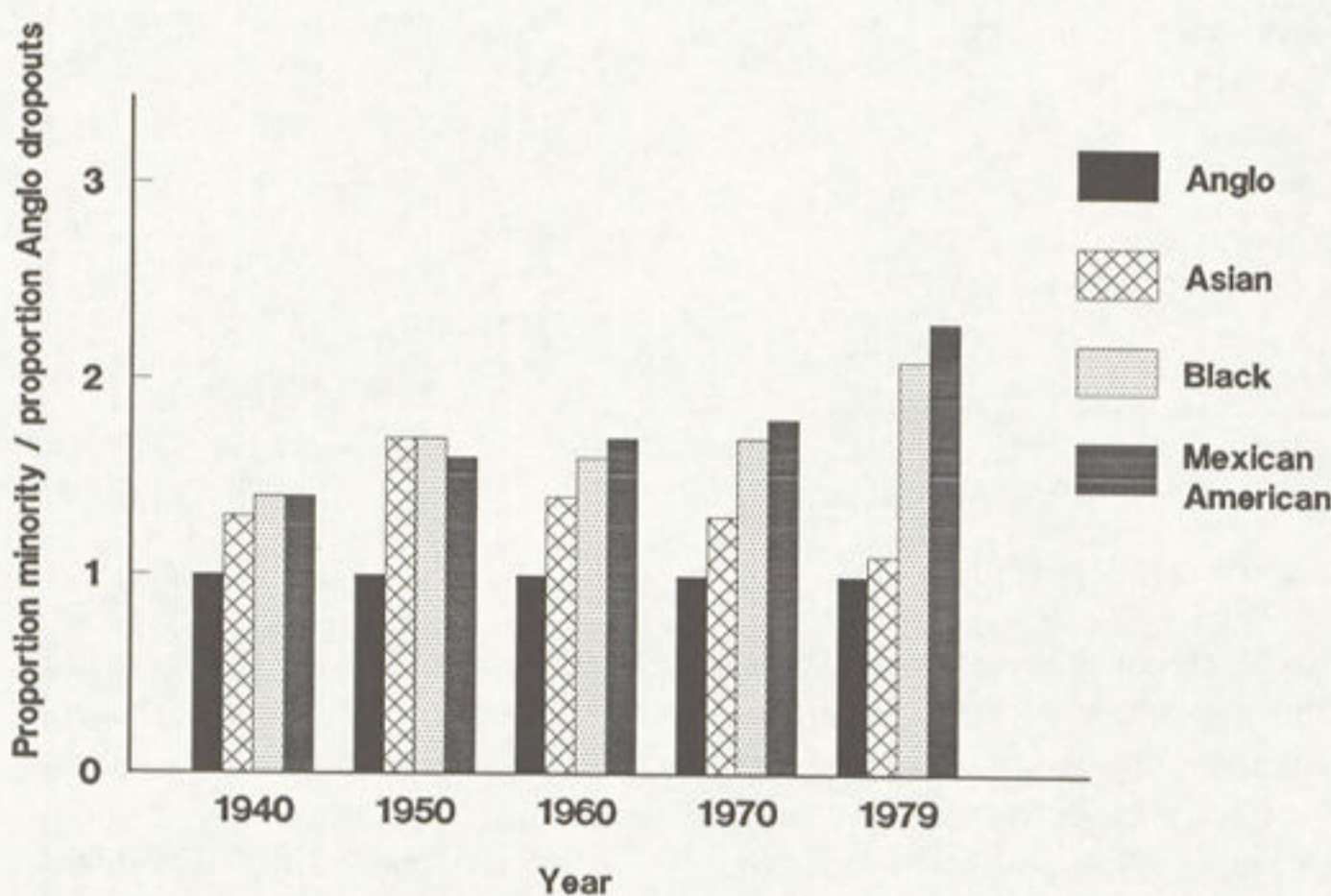
Source: 1940, 1950, 1960, and 1970 Census Public Use Microdata Sample and November 1979 Current Population Survey

Table 3 shows the distribution of each racial or ethnic group across these three educational levels. As seen in Table 2a, there was an increase in the educational attainment of all groups from 1940 through 1979. This is shown in Table 3 as a decrease in the proportion of dropouts and an increase in college attendees. As far as Mexican Americans are concerned, they had the highest proportion among dropouts at every point except 1950. The fact that 39% of adult third generation Mexican Americans had less than a high school education in 1979 speaks very loudly about the quality of life confronted by a large part of the Mexican American population of California. As far as the most recent proportions of adult dropouts are concerned, the figures for Blacks are similar to those for Mexican Americans, and Asian figures are similar to those for Anglos.

The similarity between Black and Mexican American dropout levels supports the idea of a Mexican American underclass similar to the one described by William Wilson for Blacks. Another pertinent point is that the proportion of Black college attendees (34%) in 1979 was substantially higher than the Mexican American proportion (22%). To the degree that attending college leads to middle class status, as Wilson claims, a higher proportion of Blacks are achieving this status than Mexican Americans.

Figure 2 is presented as a means of facilitating the comparison of the dropout proportion of each minority group in each educational category to the Anglo proportions. The ratio of Mexican American high school dropouts to Anglo dropouts was 1.5 to 1 in 1940. It increased steadily to 1979, at which time the proportion of Mexican American dropouts was 2.3 times greater than the proportion of Anglo dropouts. Anglo dropout rates decreased much more rapidly over this period compared to Mexican American or Black dropout rates. Thus, during a time when the social and economic impact of dropping out became increasingly negative, relatively more Blacks and Mexican Americans than Anglos were found in this group. Once again, the higher proportion of Mexican American dropouts compared to that of Blacks suggests the applicability of Wilson's theory to Mexican Americans.

**Figure 2 -- Ratio of ethnic minority to Anglo dropouts, third generation adults, ages 25-64, Calif. 1940-1979**



### TRENDS IN CLASS DISTRIBUTION AND EARNINGS

A profile of class distribution of third and third-plus generation Black, Mexican American, Asian, and Anglo males is presented in Table 4. This table presents disaggregated occupational classes where middle class is defined

as consisting of professional and technical workers as well as of managers and administrators. The white-collar working class consists of clerks and sales personnel. The blue-collar working class is composed of craft workers and operatives. Finally, the lower class occupations are service workers, laborers, and farm workers.

**Table 4**  
Class distribution by race for third and third-plus generation males  
ages 25-64, California, 1940-1979.

	1940	1950	1960	1970	1979
<i>Middle Class</i>					
Black	5%	4%	7%	13%	21%
Mexican American	12%	9%	17%	17%	24%
Anglo	22%	26%	30%	35%	46%
Asian	20%	21%	14%	28%	36%
<i>White-Collar Working Class</i>					
Black	3%	6%	8%	12%	16%
Mexican American	4%	8%	8%	11%	5%
Anglo	17%	15%	15%	16%	14%
Asian	8%	9%	11%	14%	16%
<i>Blue-Collar Working Class</i>					
Black	22%	37%	40%	43%	37%
Mexican American	33%	47%	49%	48%	56%
Anglo	37%	42%	42%	36%	29%
Asian	14%	22%	46%	36%	26%
<i>Lower Class</i>					
Black	69%	53%	45%	32%	26%
Mexican American	51%	37%	26%	24%	15%
Anglo	25%	18%	13%	13%	11%
Asian	57%	48%	29%	22%	21%

Sources: 1940, 1950, 1960, and 1970 Census Public Use Microdata Sample and November 1979 Current Population Survey

The most striking fact shown in Table 4 is the proportion of third and third-plus generation Mexican Americans in the blue-collar occupations. That figure had increased to a very high level by 1979 and the proportion of Mexican Americans in such occupations had been significantly higher than that of Anglos since 1950. One improvement in the Mexican American class distribution is the diminution of the proportion in lower class occupations. In 1979, the proportion of Mexican Americans in these occupations was not significantly different from that of Anglos. The proportion of Mexican Americans in middle class occupations doubled over this period, but the proportion of all male workers and the proportion of Anglo men in such occupations more than doubled. The proportion of Mexican Americans in white-collar working class jobs was less than that of Anglos at a highly significant level for every point in this period.

The apparent decline in the percentage of Mexican Americans with such jobs may well be an artifact of the differences between the data sources used

in 1970 and 1979. Overall, these data show no indication that the occupational distribution of Mexican Americans is converging with that of Anglos. The increase in the proportion of Mexican Americans with middle class occupations and the decrease of those with lower class occupations does show a positive improvement in Mexican American occupational status. Given the decreasing number and quality of jobs for skilled and semi-skilled workers, the increasing concentration of Mexican Americans in blue-collar occupations is a worrisome trend.

**Table 5**  
Annual earnings as percent of Anglo males by race for third and third-plus generation males 25-64, California, 1940-1979.

<i>Race/Ethnic Group</i>	1940	1950	1960	1970	1979
Black	57%	70%	65%	63%	69%
Mexican American	66%	90%	82%	79%	81%
Anglo	100%	100%	100%	100%	100%
Asian	58%	52%	64%	70%	85%
Anglo Earnings	\$1,173	\$2,633	\$5,200	\$8,889	\$20,932

Sources: 1940, 1950, 1960, and 1970 data from Census 1% PUMS file; 1979 data from the November 1979 Current Population Survey.

Table 5 shows the pattern of earnings of third and third-plus generation Black, Mexican American, and Asian males as a proportion of the earnings of Anglo males from 1940 through 1979. There was a large increase in the relative earnings of Mexican American men between 1940 and 1950, but 1950 was the high point in this comparison. There was a sharp decline in Mexican American earnings relative to that of Anglo males during the 1950s. From 1960 through 1979, Mexican Americans have earned about 80% as much as Anglos. This earning profile is illustrated in Figure 3.

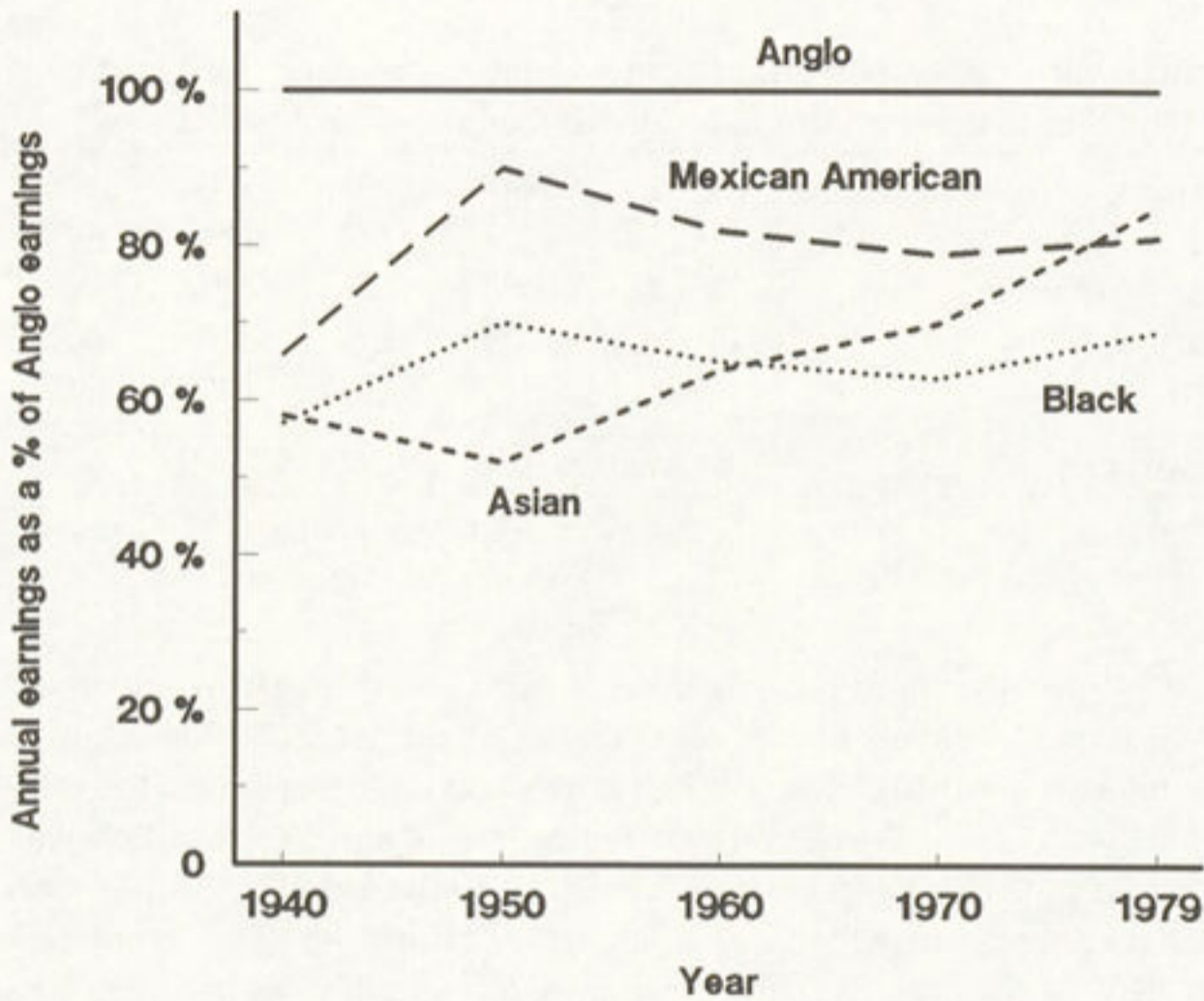
The level of Black earnings have been lower than the level of Mexican American earnings throughout this period. There was a jump in Black income during the 1940s. For Blacks too, 1950 was the high point of their earnings compared with Anglo males. The relative earnings of Blacks were lower in 1960 and 1970. In 1979, they were at about the same level as in 1950.

The occupational status and earnings of Asian males should be interpreted with the caution that proportionally many more Asians were self-employed during these years than any other group. (See Ong, Chapa, et al., 1986, pp. 45-48.) The reported earnings of the self-employed are often not strictly comparable with those of wage and salary workers. Also, managers and proprietors of small businesses are given high Duncan scores.

The data in the tables and figures provide strong evidence that Mexican Americans have not and are not achieving parity with Anglos in terms of educational and economic levels. While these data do not assess any causal relationships, the persistence of these relatively low levels of Mexican American attainment calls the theoretical completeness and empirical usefulness of the concept of assimilation into question. Furthermore, the persistence of low levels of educational attainment, the concentration of Mexican Americans in blue-collar occupations, and the relatively low earnings of Mexican American dropouts are all consistent with the concentration of Mexican Americans in

the secondary sector as suggested by Portes and Bach (1985). More precise identification of the secondary sector and more analysis is necessary before any firm conclusions on this point can be drawn.

**Figure 3 -- Relative annual earnings by race/ethnicity, third generation males, ages 25-64, California 1940-1979**



### CONCLUSIONS

Overall, Mexican Americans are not making progress towards educational or economic parity. By this I mean that a substantial portion of third generation Mexican Americans have educational levels, earnings and class distributions that have shown no indication of converging with Anglo levels.

In contrast to theories of eventual and inevitable progress, there are several reasons to think that things may be getting worse for many Mexican Americans instead of getting better. In 1979, 48% of work-age third generation Mexican Americans ages 25 to 64 were high school dropouts, far higher than Anglo levels. During the 1970s, the relative earnings of Mexican American dropouts decreased and their concentration in blue-collar jobs increased.

Two other considerations create more cause for pessimism. One is that the negative economic changes which began in the mid-1970s have continued since then. The life chances of all manual workers are now worse than they were then. This is a change which probably will have a negative impact on Mexican Americans who were blue-collar workers in 1979 (56%), whether they



finished high school or not. If these economic changes do have a severe impact on the very high concentration of Mexican Americans in these jobs, the potential direction of their children's mobility is down rather than up.

It is only in comparison with the economic situation of Blacks that the Mexican American situation looks positive. Rather than splitting into a middle class and an underclass, as Wilson argues is happening to the Black class structure, it appears that Mexican Americans can be divided into two groups. One group composed of middle class and white collar workers is analogous with William Wilson's middle class. The other consisting of blue collar and lower class workers has many of the characteristics of this lower class group. The distinction I would draw between the Mexican American lower class and the Black underclass is that the underclass is outside of the regular economy and occupational structure. The Mexican American lower class can be characterized as having had a firm grip on the bottom rung of the occupational ladder. However, if current economic and political trends continue to diminish the quality of opportunities available to Mexican Americans with low educational levels and lower class jobs, they may lose this grip and also become members of the underclass.

These findings set the context for the Hispanic policy agenda in two ways. First, it is simply wrong to assume that Hispanics are making gradual progress towards parity with Anglos. Anyone who holds this as a goal or policy objective cannot assume with any validity that parity will gradually occur of its own accord. The other consideration, which makes these issues a crucial concern to everyone, is that Hispanics are amongst the fastest growing part of the population. (See David Hayes-Bautista, Werner Schink and Jorge Chapa, *The Burden of Support*, for a race/ethnic specific projection of California's population and a discussion of policy consideration. For similar material on Texas, see Ray Marshall and Leon Bouvier, *Population Growth and the Future of Texas*.) The combination of rapid population growth and low class status will be a problem that will demand attention from everyone.

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# THE CONGRESSIONAL HISPANIC CAUCUS: ILLUSIONS AND REALITIES OF POWER

**Maurilio E. Vigil**

Dr. Vigil is a professor of political science at New Mexico Highlands University. He has published numerous books, including recently *Hispanics in American Politics: The Search for Political Power* (1987) and *The Hispanics of New Mexico* (1986). This paper was first presented at the III International Conference on The Hispanic Cultures of America in Barcelona, Spain on June 7-10, 1988.

Editors' Note: This article was written well before the 1989 election of Ileana Ros-Lehtinen (R-FL), newest member of the Congressional Hispanic Caucus.

## INTRODUCTION

Throughout the 1980's the Hispanic community of the United States has placed its confidence in conventional forms of electoral politics rather than in protest politics. Many wonder whether the change in focus will manifest itself in greater political power as well as public policy beneficial to Hispanics. Attention will invariably focus on elected and appointed Hispanic officials at the national level, and on Hispanic organizations—like the Congressional Hispanic Caucus—to determine the kind of impact these office holders can have, individually and as a group.

There has been a tendency to equate political presence with political power: it is assumed that by simply electing Hispanics to office, benefits will begin to accrue. Granted, election or appointment of Hispanics to national office is an important accomplishment; but it is also important to consider what these individual officials have accomplished. The reality of American political institutions (such as Congress, with its norms like seniority) is that it takes time to acquire political influence that will move the institution. It is important, therefore, for the student to consider the institutions in which they will have to operate when evaluating the present and future status of Hispanics in national politics.

The Congressional Hispanic Caucus (CHC) was organized in December, 1976 by the five Hispanics then serving in the U.S. House of Representatives. The objectives of the Caucus were to advance the interests of Hispanics through public policy and to enhance public awareness of Hispanic issues and problems. In the twelve years of its existence, there has been no systematic effort to evaluate the activities and accomplishments of the CHC.<sup>1</sup> The purpose of this study will be to present some preliminary observations on the history, objectives, structural organization, membership, activities and accomplishments of the Caucus.

## HISTORICAL SKETCH - HISPANICS IN CONGRESS

It may come as some surprise that Hispanics have been represented in Congress since the early part of the 19th century and almost continuously since the middle of the 19th century. Joseph Marion Hernandez was the first Hispanic ever to serve in Congress. He was the first delegate selected to represent Florida after the creation of Florida Territory in 1822.<sup>2</sup> The next Hispanic to serve in Congress was Jose Manuel Gallegos, a priest, who was elected as New Mexico's first territorial delegate to Congress serving from 1853 to 1855.<sup>3</sup> In the next 60 years of territorial status, eight other Hispanics would represent New Mexico in Congress.<sup>4</sup> During their tenure these Hispanics made numerous and persistent efforts to secure statehood for New Mexico, and that status was finally achieved in 1912. Two years later New Mexico elected Benigno "B.C." Hernandez to its single seat in Congress. Congressman Hernandez thus became the first of several Hispanics to represent New Mexico in Congress, making it the only state to have almost uninterrupted representation by an Hispanic in Congress.<sup>5</sup> The distinction of being the first Hispanic to serve as a regular member of Congress goes to Romualdo Pacheco of California who served from 1879 to 1883.<sup>6</sup> In 1929, Octaviano A. Larrazolo became the first Hispanic to serve in the U.S. Senate when he was elected to fill the unexpired term of Senator A.A. Jones who had died in office. Larrazolo, who had previously served as Governor of New Mexico (1919-20), was the first to espouse Hispanic interests before a national forum.<sup>7</sup>

Dionisio "Dennis" Chavez, who represented New Mexico in the House of Representatives from 1931 to 1934 and was appointed to the U.S. Senate in 1935, was the first Hispanic to serve in both houses of Congress. Chavez served in the U.S. Senate longer than any other person in New Mexico's history, from 1934 until 1962, when he died in office. At the time of his death, Chavez ranked fourth in seniority in the Senate, was Chairman of the Senate Public Works Committee, a member of the Senate Appropriations Committee, and clearly one of the most powerful Senators in Washington. During his tenure, Chavez sponsored legislation and pursued programs that were quite important for the state of New Mexico and for the Hispanic people. Between 1944 and 1948 he sponsored a bill calling for the creation of a Federal Fair Employment Practices Commission and he labored only to see the bill defeated by a staunchly conservative Senate. He was a strong supporter of the 1957 Civil Rights Act—the first Civil Rights legislation since Reconstruction, which created the U.S. Civil Rights Commission—and he also supported the 1960 Civil Rights Act, which authorized the federal courts to appoint referees to help Blacks register to vote. Chavez was no longer in the Senate when Congress enacted the milestone Civil Rights Act of 1964 and the Vot-

ing Rights Act of 1965, but his earlier participation helped lay the basis for them. Chavez was also a strong advocate of organized labor and social legislation on behalf of the indigent, elderly and less privileged throughout his Senate tenure.<sup>8</sup>

In 1964 Joseph M. Montoya succeeded to the U.S. Senate seat left vacant by Senator Chavez. Montoya, who had just been re-elected to his fourth term in Congress when Chavez died, immediately planned a challenge against Republican Governor Edwin Mechem who had been appointed to succeed Chavez. In 1964 Montoya defeated Mechem to become New Mexico's third Hispanic U.S. Senator. Montoya sponsored the Bilingual Education Act of 1968 and the amendments of 1974. He also sponsored the bill creating the Cabinet Committee on Opportunities for the Spanish Speaking, a bill for the training of bilingual persons in the health professions, and a bill creating a commission on alien labor. Furthermore, Montoya was a strong supporter of the Voting Rights Act of 1965 and the amendments of 1970 and 1975 and other civil rights legislation of the period. He was also a consistent supporter of social legislation benefitting minorities, the elderly, labor and consumers. Montoya was defeated in 1976 by political novice and former astronaut, Harrison Schmitt.<sup>9</sup> Montoya died shortly after leaving office. Since Montoya's departure no Hispanic has served in the U.S. Senate.

## PROGRESS FOR HISPANICS IN THE 1960'S

The decade of the 1960's was an important turning point for Hispanics in Congress. Prior to this time only one or two Hispanics from New Mexico had been elected to Congress. This changed in the 1960's as several Hispanic Congressmen from other states appeared on the scene. As these individuals were the ones who organized the Congressional Hispanic Caucus and have remained the most prominent Hispanic leaders in their respective states, it is appropriate to review their political backgrounds and present status.

### **Henry B. Gonzales**

One of the most colorful Hispanic politicians in the nation is Henry B. Gonzales, U.S. Representative from the 20th District in Texas. Gonzales was born in San Antonio, Texas in 1916. A lawyer and former San Antonio City Councilman and Texas State Senator, Gonzales was elected to Congress in a special election in 1961 to fill an unexpired term. He has, since, been re-elected by resounding majorities, often running unopposed. Gonzales' 20th Congressional District is comprised of the heavily Hispanic heart of the City of San Antonio. In Congress, Gonzales is the Chairman of the House Banking, Finance and Urban Affairs Committee and is Chairman of the Subcommittee on Housing and Community Development. He has been a friend of labor, the poor, women and the elderly and has been an advocate of social security and social legislation.<sup>10</sup>

## **Edward Roybal**

Edward Roybal is the most successful Hispanic politician in California's history. Born in New Mexico, Roybal moved to California at an early age and was raised in East Los Angeles. Roybal served at various times as a social worker, public health educator and administrator in the 1940's. He was one of the leading organizers of the Community Service Organizations (CSO) and later the Mexican American Political Association (MAPA) in California. In 1949 he was elected to the Los Angeles City Council and remained in that body until 1962. In 1962 he was elected to the 88th Congress from a Los Angeles district and has been re-elected ever since. Roybal is one of the ranking members of the House Appropriations Committee, chairing the Treasury, Postal Service and General Government Sub-committee. He has also been a member of the Labor, Health and Human Services Committee and the Chairman of the Select Committee on Aging.

Congressman Roybal has probably been the most active Congressman in pursuing Hispanic affairs. He authored the Bilingual Education Act and sponsored legislation to extend and expand the Voting Rights Acts.<sup>11</sup>

## **E. "Kika" de la Garza**

Probably the singular most powerful Hispanic Congressman is E. "Kika" de la Garza, who serves as Chairman of the House Agriculture Committee. De la Garza was born in Mercedes, Texas, but attended public schools 25 miles west in Mission, Texas. He also attended Edinburg Junior College and later St. Mary's University receiving his law degree in 1952. He served six terms in the Texas House of Representatives and was elected to the 89th Congress in 1964. He has served in the House since that time.

De la Garza's 15th Congressional District includes the South Texas point cities of Mission, McAllen and Edinburg. This rich winter garden agricultural region forms an appropriate constituency for the Agriculture Committee chairman. The district also encompasses a large Hispanic population. An ideologically moderate Democrat, de la Garza has been a supporter of civil rights and social legislation. De la Garza's primary work as a Congressman has been accomplished in his role as Chairman of the Agriculture Committee, where he has been involved in the passage of all recent major agricultural legislation. These include the 1981 Omnibus Farm Act, initiatives to continue and improve the Farmer's Home Administration's credit program, programs for rural development, and the food stamp program.<sup>12</sup>

## **Manuel Lujan, Jr.**

The most divergent member of the Congressional Hispanic Caucus has been Manuel Lujan, Jr. of New Mexico. He was the only Republican in the Caucus and was an ardent conservative who frequently found himself on the opposite side of issues from his Caucus colleagues. Manuel Lujan, Jr. was born on May 12, 1928 in San Ildefonso, New Mexico, but grew up 20 miles south in Santa Fe where his father served as Mayor.

Lujan's first attempt at public office was in 1968 when he ran for U.S. Representative and was elected over the incumbent Democratic Congressman. Appointed to the Interior and Insular Affairs Committee, Lujan rose to a later

status as the top ranking Republican on the Committee. Although he frequently found himself as "odd man out" in Hispanic Caucus-supported issues, Lujan's prominence as the highest elected Hispanic public official in the Republican Party carried added weight during Republican Party administrations. Lujan represented New Mexico's First Congressional District, with its heavy Hispanic concentration from 1968 until 1982 when New Mexico qualified for a 3rd Congressional seat. After that he represented the 1st Congressional District, whose main composition is the Albuquerque metropolitan area.<sup>13</sup> Lujan retired from the House in 1988 and was subsequently appointed Secretary of the Interior by President George Bush in 1989 becoming the 2nd Hispanic cabinet member in U.S. history and, with Lauro Cavazos (Secretary of Education), the second Hispanic in the Bush cabinet.

### **Robert Garcia**

Until his recent resignation, Robert A. Garcia, Congressman from the 21st Congressional District (i.e., the South Bronx in New York) was the only Puerto Rican serving as a full fledged member of Congress.

Garcia, a former New York State Assemblyman and Senator, was elected to Congress in 1979 and has been re-elected three times. In Congress, Garcia has been very active in pursuing Hispanic interests on the legislative agenda. He introduced an amendment to the Civil Service Reform Act which sought to rectify under-representation of minorities in the U.S. Civil Service.<sup>14</sup>

## THE CONGRESSIONAL HISPANIC CAUCUS

The Congressional Hispanic Caucus (CHC) was organized in 1976, even though most of its initial members had been in Congress since the 1960's. It was seen as a bipartisan group of Congressmen with a common commitment to develop a united Congressional effort on behalf of Hispanic Americans. The primary mover for the organization of the Caucus was Herman Badillo, the Puerto Rican Congressman from New York, who saw it as a means to encourage greater unity among Hispanic groups in the U.S., as well as in Congress. The stated purposes of the Caucus were "to monitor legislation and other government activity that affects Hispanics" and "to develop programs and other activities that would increase opportunities for Hispanics to participate in and contribute to the American political system."<sup>15</sup> Most importantly, the CHC was founded in order "to reverse the national pattern of neglect, exclusion and indifference suffered for decades by Spanish-speaking citizens of the U.S." and to fulfill the need for the development of "a national policy on the Spanish-speaking."<sup>16</sup>

## HISPANIC AND CHC GAINS AFTER THE 1980 CENSUS

One of the principal impediments to the Caucus—its small size—was at least partially remedied by developments in the 1980's. Following the 1980 census, population changes resulted in substantial re-apportionment of U.S. House seats that proved beneficial to Sun Belt states. Population growth and shifts resulted in House redistricting that have doubled Hispanic representation in Congress and subsequently in the Hispanic Caucus. It is therefore appropriate to review the circumstances that contributed to these new Hispanic victories and the Congressional districts they represent.<sup>17</sup>

### California

In California, the 4,500,000 Hispanics who make up 19.2 percent of the state's population also comprise one-third of the total Hispanic population in the United States. Most of these, or 80 percent, are Mexican Americans. Despite the high population numbers, Hispanics have traditionally been under-represented in national elective office, since only one Hispanic, Edward Roybal, served as Congressman from California before 1982.

California qualified for two more Congressional seats as a result of the 1980 census, and the resultant redistricting created two "open" districts with no incumbent Congressman. It also restructured several others, which forced at least one incumbent congressman to relocate. A third vacancy was created when an incumbent Congressman did not seek re-election. The redistricting process in California was specifically designed to increase Democratic Party representation in Congress, but also had the effect of helping Hispanics. Because Hispanics were heavily concentrated in two of the above districts, they gained two of the three seats.

Matthew "Marty" Martinez, 53, a state assemblyman from Monterey Park, was elected in a special election in 1982 to California's 30th Congressional District, which includes the Los Angeles suburban communities of El Monte, Alhambra, Monterey Park, San Gabriel, Maywood, and Cudahy. Martinez was re-elected in 1984, 1986, and 1988.

Another of California's new districts, the 34th, is also made up of suburban Los Angeles communities. The two largest cities in the district, West Covina and Norwalk, are located at different ends and contain about 80,000 people each.<sup>18</sup>

This district was structured to provide a Congressional base for one of several local Hispanic Democratic politicians, but none entered the race. Eventually, Esteban Torres, a former White House official under Jimmy Carter and U.S. representative to UNESCO, entered the race. Torres won convincingly in November 1982 and has been re-elected three times.

### Texas

Texas, where Hispanics number 2,900,000, or 21 percent of the state population, was the only state in 1982 with more than one Hispanic Congressman. Texas received three new seats as a result of the 1980 census. In August, 1981 the Texas state legislature adopted a reapportionment plan incorporating the new seats, but the plan was immediately challenged by Blacks and Hispanics. Eventually a U.S. federal district court issued its own reapportionment plan which assured further Hispanic representation.



The 27th District, one of three new Texas districts, is comprised of a strip of five counties lined up in the southeastern tip of Texas, stretching north and south along the coast of the Gulf of Mexico. At the northern tip is Corpus Christi and at the southern tip is Brownsville, the two largest cities in the district. In this district, Solomon P. Ortiz, the Nueces (Corpus Christi) County Sheriff, a veteran of 18 years of public office holding in Nueces County, entered the race, and was elected decisively. He was re-elected in 1984, 1986, and 1988.

Another Texas district, the 23rd, also had an Hispanic majority by 1982, but no Hispanic candidate emerged to challenge the incumbent veteran Democrat Representative, Abraham Kazen, Jr., until 1984. In that year, Bexar County Judge Albert Bustamante challenged Kazen in a campaign that stressed that the Hispanic majority needed an Hispanic representative. Bustamante defeated Kazen by 15,000 votes, and since Republicans had not contested the seat, Bustamante was elected. He now represents the southern part of San Antonio and Bexar County in a district that is neighbored by that of his mentor Henry B. Gonzales.

### **New Mexico**

In New Mexico, Hispanics make up 36.6 percent of the state population, which is the largest percentage of any state. The New Mexico population increased by 28.1 percent between the 1970 and 1980 census. As a consequence of this growth, New Mexico qualified for a new seat in the 98th Congress. The reapportionment plan adopted by the New Mexico Legislature in 1982 created a new metropolitan Congressional district for Albuquerque. Congressman Manuel Lujan chose to run from the new district which was part of his old constituency. This left the heavily Hispanic 3rd Congressional district of northern New Mexico without an incumbent. Mexican-born Bill Richardson, who had run a close race against Lujan in 1980 was elected to this seat in November, 1982. He was re-elected in 1984, 1986 and 1988.

In addition to the ten Hispanics who are regular members of Congress, the Caucus has also had Hispanic delegates from American trust territories including Puerto Rico (Jaime B. Fuster); Guam (Ben Blas), and the Virgin Islands (Ron de Lugo).

## **THE CONGRESSIONAL HISPANIC CAUCUS AS A POLITICAL FORCE**

In 1983, the Congressional Hispanic Caucus was, as stated, replenished by four new Congressmen and a fifth would come on in 1985. Even with its new members, however, the Caucus has had difficulty in agreeing on priorities, programs and policies that affect Hispanics. The Caucus has, as of yet, been unable to arrive at a coherent national Hispanic policy or to develop the necessary legislative agenda and the unity to carry it out. Because of the different personalities, backgrounds and philosophies of the members, the Caucus has had difficulty in presenting a united front. The Caucus has been described by Washington correspondent Paul Wieck as "more of an informal arrangement than an organized group."<sup>19</sup> They were seen, according to Wieck,

as a handful of independently-minded members who had been in Congress a long time and who worked in tandem only when it was convenient.

Probably the most important victory of the Caucus occurred in 1983 when several members actively lobbied against the first Simpson-Mazzoli Immigration Bill. On October 5, 1983, House Speaker Thomas P. "Tip" O'Neill removed the bill from the House Calendar where it was scheduled for consideration. Two Caucus members appeared in a press conference applauding the action and claiming it as "a major victory" and "the first cohesive win" for their diverse group. The Caucus was subsequently criticized for being an obstacle to immigration reform and for vetoing the only solution offered to address the national problem of illegal immigration. Even in this victory, the Caucus indicated differences of opinion among members. Congressman Manuel Lujan said, "Everyone (in the Caucus) is opposed to the Simpson-Mazzoli Bill, but each of us has different reasons."<sup>20</sup>

Lujan, for example, supported only limited amnesty for aliens already in the U.S., while others regarded amnesty as an essential aspect of reform. Moreover, Congressman Gonzales supported sanctions against employers who hired aliens, while Lujan and Garcia were opposed. When the 99th Congress finally passed the Immigration Reform Bill of 1986 the Caucus was unable to agree on a united position. As a result, Caucus members voted in a split 5 to 4 on the issue. Although the bill provided amnesty to illegal aliens in the country before 1982, as favored by some members, it also provided for penalties to employers who knowingly hire illegal aliens, a provision opposed by most members. Caucus members were able to push for some anti-discrimination safeguards, but overall the passage of the Reform Bill underscored the inability of the Caucus to achieve consensus and a position of leadership in a policy matter of great concern to Hispanics.

Internally, some members have had difficulty embracing Caucus positions. Congressman Gonzales, for example, perceives that his role is to represent his district constituency, not to serve as a regional or state spokesman for Hispanics. This may account for Gonzales' decision in 1987 to withdraw as an active member of the Caucus.<sup>21</sup> As one of only two Republican Caucus members, Congressman Lujan saw it as too oriented toward liberal programs and the Democratic Party, and on occasion considered resigning for this reason. Ben Blas, the other Republican in the Caucus has also frequently disagreed with his Democratic colleagues on matters of public policy. Garcia has favored the agenda of urban liberals (federal money for housing, education and jobs) as an appropriate Caucus agenda, which is probably acceptable to most members except Lujan and de la Garza. Even beyond partisan differences, "the diversity is so great [among members] that it would be very difficult to arrive at a consensus" according to Margarita Roque, a Legislative Assistant to the Caucus.<sup>22</sup> Because of these differences, the group has adopted a Caucus rule that unless all members agree, no Caucus position is adopted. Such a rule, of course, enables one Congressman to veto any proposal even if supported by all the remaining members.<sup>23</sup> The Hispanic Caucus cannot and does not operate like the Congressional Black Caucus, which is not as diverse in its background and policy orientations. Nevertheless, according to Roque, Caucus members do make a conscious effort to work together whenever possible. Congressmen Lujan and Blas "are very sensitive to the concerns of the majority" and will sometimes not speak out. Similarly, the Democrats are also sensitive to the concerns of the two Republicans.<sup>24</sup> This

oversensitivity to minority member concerns is a drawback which has prevented the Caucus from taking a more aggressive position on issues of concern to Hispanics.

Though the Congressional Hispanic Caucus can certainly serve as a means to power, the history of the CHC would suggest that, measured by its own goals, it has not wielded much political influence. An analysis of the CHC, however, should consider the wider circumstances under which it wields political power, the limits of that power and the objectives it seeks. On this basis it is possible to evaluate the CHC on three levels: first as a unified political group operating within the Congress; second as a loose group of individual Congressmen who wield individual power which is beneficial to Hispanics; and third, as a collective group of Congressmen who wield collective influence as representatives of the Hispanic community in national politics.

On the first level, it is clear that aside from a fairly concerted effort in opposition to the Simpson-Mazzoli Bill, the CHC has not functioned as a unified group within the Congress. The inability of the Caucus to present an alternative to Simpson-Mazzoli was an embarrassing admission of their lack of unity. The Caucus could not agree to an alternative proposal on immigration, even if they were united in their opposition to Simpson-Mazzoli.

A policy issue of concern to Hispanics and one that may test the influence of the CHC in national politics is the increasing number of states and communities adopting "English as official language" resolutions. Such resolutions which appeal to the nativistic preferences of WASP Americans are guised in patriotic rhetoric supportive of core American values such as liberty, freedom and equality. Although the resolutions nominally call for recognizing English as the sole language to be used for public documents and conduct of official public business, the implications for Hispanics are far greater. For example, it would preclude the printing of documents of any form in Spanish even if Hispanic population numbers would warrant it. It could also mean prohibitions against the use of Spanish by government officials in dialogue with Hispanic clients in need of social services, or the need to provide Spanish translation for Hispanic defendants in a court trial. By inference it could also threaten bilingual education programs throughout the country as a way of fostering an English-only society.

By 1987 seventeen states including California, Florida, Illinois, Arizona, Colorado and Arizona had passed such resolutions. California overwhelmingly adopted its English language constitutional amendment in the November 4, 1986 election. There have even been Congressional resolutions introduced on the issue so the CHC will again find itself tested as an effective bulwark on behalf of Hispanics.

In 1987 the CHC published the "Congressional Hispanic Caucus Legislative Agenda for the 100th Congress." In it the members reaffirmed "our continued commitment to improving the lives of Hispanic Americans."<sup>25</sup> In their agenda they identified major priorities in the categories of education, trade and economic development, housing, welfare, health, immigration and Latin America. Lacking in the agenda however were specific legislative proposals identifying specific goals agreed to by the Caucus – a reflection perhaps that even its agenda represents a broadly worded statement of goals designed to appease the diverse membership.

The CHC has probably functioned closer to the second level of analysis, that is, as a loose coalition of Congressmen who yield individual power. It is obvious that several of the veteran members, particularly Gonzales, Lujan

and de la Garza never saw the Caucus as more than a loose coalition and remained basically parochial in their loyalty to their home districts. Because they have achieved substantial seniority placing them in committee or subcommittee chairmanships or as ranking members, Congressmen de la Garza, Gonzales, Roybal and Lujan have been able to get things done for their constituents without tapping the resources or advantages offered by the caucus. It is difficult to quantify the exact benefits received by Hispanics as a result of the efforts of these Congressmen because their work often benefits the public at large. Their advocacy of programs or policies is based on a desire to help both their immediate district constituents (which include Hispanics) and the wider Hispanic community.

On the third level of analysis, the CHC has not yet achieved the desired visibility as a collective spokesman for Hispanic Americans. This is probably due to its lack of success in determining policy in any given area and to its inability to speak cohesively on any issue (except for Simpson-Mazzoli) due to its characteristic disunity.

Still, some progress has been made by the Caucus in laying the basis for a collective national leadership of Hispanics. A permanent CHC staff is in place and has begun to perform a variety of services for member Congressmen and Hispanics. This staff will likely push for greater cooperation among Hispanic Congressmen and their staffs. A method of financing CHC activities has been established with the annual banquet held during Hispanic Heritage Week in September. A CHC Institute to coordinate the Caucus' educational programs and other activities has been created. The CHC has gained visibility among Hispanic organizations and is recognized for its policy-making orientations in Washington. Moreover, the CHC Washington staff and the CHC Institute have begun to serve as a clearinghouse for collecting and disseminating information on Hispanics including a *National Directory of Hispanic Elected and Appointed Officials* and its *Guide to Hispanic Organizations*. It also provides information on educational scholarships and fellowship programs for Hispanics.<sup>26</sup>

## CONCLUSION

The long-run effectiveness of the Caucus will be determined by its ability not only to defeat proposals that are adverse to Hispanic interests, but also by its ability to present alternative proposals that have been developed by a cohesive Caucus. It is apparent that the CHC presently lacks a decision-making mechanism to develop a specific and coherent program of legislation for Hispanics for presentation to the Congress. In this respect, the unanimous consent rule which prevents the Caucus from taking a position if one member objects could be counterproductive because one member can continually veto actions favored by the majority. In that situation the individual member is not obliged to seek compromise in return for his support because his single dissenting vote will prevent the Caucus from acting. Development of a decision-making mechanism enforceable upon all the members is vital if the Caucus is to operate as a viable group within the Congress.

Moreover, because of its small size and because of the importance of con-

sensualism in the day-to-day operations of Congress, it is vital that the Caucus present a united front on any issue it addresses. Even the slightest hint of internal dissent will greatly diminish its effectiveness in persuading other Congressmen that the Caucus' position truly represents the Hispanic position. The inability of the CHC to present a united front on a variety of issues deprives it of a very important strategic tool. The strength of the Caucus, because of its small size in members is insignificant, except in very close roll-call votes. Rather, unity is important because of its potential influence on the other 426 Congressmen, some of whom have sizable Hispanic constituencies or who may be sensitive to Hispanic concerns.

The Caucus has already targeted many of these Congressmen by inviting them as honorary members of the Caucus, but can probably improve the means used to communicate with them by a more formal process. Membership in the Caucus has given members another group within the Congress where they can seek support for their individually sponsored bills; thus it is likely that a roll-call analysis would reveal a very high rate of congruence in the voting records of Caucus members with the exception of Lujan. Consequentially we have the paradox of describing the CHC as a group which exhibits a high degree of congruence in voting and positions because of similar partisan, and/or constituency interests, but not because of their membership in the Caucus.

In summary, the Congressional Hispanic Caucus has not yet achieved the level of influence hoped for by its organizers and desired by the Hispanic community. It is, however, still in its development stage and the entry of new Hispanic Congressmen may be the catalyst for change. One thing is certain: the potential for the development of the Hispanic community as a powerful political group hinges upon the successful transformation of the CHC into a leading Hispanic organization.

## PROSPECTS AND SUGGESTIONS

Several suggestions present themselves as mechanisms to build greater unity in the CHC and its capability to present a united front.

The first is the need for the Caucus to develop an internal instrument to adopt an Hispanic policy agenda which the CHC can pursue in each Congress.

A second consideration is the need for a decisional process wherein the Caucus can, after appropriate deliberation, adopt a Caucus position on matters of mutual concern.

This second suggestion implies a third consideration, which is the need to modify the unanimous agreement rule which allows one member to veto a Caucus position. There is a need for the Caucus to develop the capability to take a position on key issues even when it cannot achieve unanimous agreement.

The Caucus, moreover, needs to exert a greater public presence in order to legitimize its status as a representative of Hispanic interests both in and out of Congress.

Finally, the Caucus can benefit if the members actively aspire for a greater sense of Hispanic consciousness and unity. As the Hispanic adage says "Tres que se ayudan uno a otro, hacen tanto como seis." (Three who help each other, accomplish as much as six.)

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## ENDNOTES

1. The first such effort from which this paper is partially derived was by the present writer in *Hispanics In American Politics: The Search For Political Power* (Lanham, Maryland: University Press of America, 1987), Chapter 4.
2. "Hispanics In Congress Past and Present" (Washington, D.C.: Congressional Hispanic Caucus, 1986).
3. See profile on Jose Manuel Gallegos in Maurilio E. Vigil, *Los Patronos: Profiles of Hispanic Political Leaders in New Mexico History* (Washington, D.C.: University Press of America, 1980), p. 41.
4. The eight are Miguel A. Otero, Francisco Perea, J. Francisco Chavez, Trinidad Romero, Mariano Otero, Tranquilino Luna, Francisco Manzanares, and Pedro Perea. Jose M. Gallegos also served an additional term. See Vigil, *Los Patronos*.
5. Vigil, *Los Patronos*, pp. 143-145.
6. "Hispanics In Congress Past and Present."
7. Vigil, *Los Patronos*, pp. 126-127.
8. See Maurilio Vigil and Roy Lujan, "Parallels In the Careers of Two Hispanic U.S. Senators," *Occasional Paper Series, No. 4*, University of Texas at El Paso, Chicano Studies Publication Program, August, 1985. Also in *The Journal of Ethnic Studies*, Vol. 13, No 4 (Winter, 1986), pp. 1-20.
9. Ibid.
10. Profile on Congressman Gonzales is taken from a biographical sketch "Congressman Henry B. Gonzales," published by the Congressman's staff. Washington, D.C., 1981.
11. "Biographical sketch of Congressman Edward Roybal." Prepared by the Congressman's staff.
12. "Biography of E. (Kika) de la Garza." Prepared by the Congressman's staff, Washington, D.C.
13. "Congressman Manuel Lujan, Jr.-Biographical Data." Prepared by Congressman Lujan's staff, Washington, D.C., 1982.
14. "Biographical Sketch: The Honorable Robert Garcia, Congressman (D-N.Y.)," Prepared by the Congressman's staff, Washington, D.C., 1982.
15. Stated in a pamphlet on "The History of the Congressional Hispanic Caucus." Washington, D.C.: Congressional Hispanic Caucus, 1981.
16. Ibid.
17. For a detailed discussion of the elections of the new Hispanic congressmen described here after see Maurilio E. Vigil, "Hispanics Gain Seats in the 98th Congress After Reapportionment," *International Social Science Review*, Vol. 59, No. 1 (Winter, 1984), pp. 20-30.
18. *Congressional Quarterly and Weekly Report*, April 24, 1982, pp. 939-40.
19. Paul Weick, "Different Interests, Personalities Hurt Unity of Hispanic Caucus," *Albuquerque Journal*, December 18, 1983.
20. Ibid.
21. Congressman Gonzales' name is conspicuously absent from the Congressional Hispanic Caucus' "Legislative Review" newsletters in 1987, which include all full and active members.
22. Telephone interview with Margarita Roque, Legislative Assistant to the Congressional Hispanic Caucus, October 5, 1987.
23. Paul Weick.
24. Margarita Roque, Interview.
25. Congressional Hispanic Caucus *Legislative Agenda for the 100th Congress* Washington, D.C.: CHC, 1986.
26. Derived from various pamphlets distributed by the Congressional Hispanic Caucus Institute.

# FEATURE INTERVIEW

## UNITED STATES SECRETARY OF EDUCATION

**Lauro F. Cavazos**

Lauro F. Cavazos was asked by President Bush to continue as Secretary of Education following the November 1988 presidential election. Secretary Cavazos was originally nominated for the post by President Reagan on August 9, 1988, and was unanimously confirmed by the Senate on September 20, 1988. A sixth generation Texan, Secretary Cavazos was born in 1927 on the King Ranch in South Texas, where his father was a foreman. He earned a B.A. in zoology, an M.A. in cytology at Texas Tech University, and holds a doctoral degree in physiology from Iowa State University. He served as Dean of Tufts University School of Medicine for five years, and became the first Latino and first graduate of the school to serve as Texas Tech University President.

Irma Rodriguez and David Moguel of the *Journal* interviewed Secretary Cavazos on March 23, 1989.

**JHP: How would you describe the role of the federal government and its Department of Education?**

**CAVAZOS:** The Department's role is an evolving one, and has only been in existence since 1979. The Secretary has the responsibility to shape what happens in the Department. I am the fourth Secretary of Education and the first one to have been a University president, as well as the first Hispanic Cabinet member in the history of the United States. As Secretary, my attitudes and ideas can help shape what the Department will be doing and where its commitments will be during that administration.

The Department must take leadership in assuring that every person in this country is educated to his or her fullest potential. For the academically talented, we must assure that they receive the best education. For those who have dropped out, we must try to find a way to get them back in school. For the illiterate, we must find a way to teach them how to read and write. For the handicapped, we assume a special role to assure that they are educated to the fullest independence possible.

The federal role is one of leadership in these areas. We, as a federal agency, have little authority. Funding for education is, and always has been, primarily the responsibility of state and local governments. This nation spends \$330 billion on education – most of this comes from states and local expenditures. The Department spends almost \$22 billion. While the budget for the U.S.

Department of Education represents less than seven percent of the total this nation spends, the Department is committed to improving education and will continue to provide national leadership and support programs that help ensure equal educational opportunity and improved educational quality. We don't bring a lot of dollars to education, but a lot of persuasion – what works, what doesn't work. We do this through our Office of Civil Rights, and through the audit procedures on our grants. Our role is one of mainly setting a tone. And the tone that we are trying to set in this administration is that of the need for education of the highest quality and calibre.

**JHP: Would you say that the current state of American education calls for an increased federal role?**

**CAVAZOS:** I think it certainly calls for a tremendous amount of leadership. I think the emphasis will be different. What I've been working on is calling attention to our educational deficit and trying to address that deficit through a variety of mechanisms. I am especially interested in examining the problems of people dropping out, people being undereducated, and our children being at the bottom in terms of knowledge in math and science. These are areas that we must place special emphasis to make sure that a large segment of our population does not drop out of the system. This does not require more federal intervention, but rather, more federal involvement in making sure that the ills and problems are addressed.

**JHP: Would it call for an increase in the \$22 billion budget?**

**CAVAZOS:** No, though you will see a slight increase in the upcoming budget. If the nation already spends \$330 billion – more than any other nation in the world – how many more billions of dollars is it going to take to fix our problems? If we are dissatisfied and we already spend \$330 billion and we add two billion dollars, or five billion dollars, or 100 billion dollars, that is not going to solve our problems. What I want to do is mobilize this nation to address the issues and the restructuring of education itself, not add more money to the system. I think we already spend enough money.

**JHP: What do you see as the advantages and disadvantages of bilingual education programs?**

**CAVAZOS:** Let me say at the outset that I am a strong supporter of bilingual education. I went to school in Kingsville Texas in the 1930s where there was a school for the Whites, another school for the Mexicans and another school for the Blacks. I spoke in Spanish to my mother all of her life and in English to my father even though they both spoke Spanish. You could say they had developed a bilingual education system.

I ask the following of bilingual education: that it move the student as quickly as possible into English competency. I leave technique to the local area. Our job here at the Department is not to dictate practice or set a national curriculum. We should leave the decisions on how to teach bilingual education to the local areas. I would also ask that the student retain the other language. Don't lose it. If you lose a foreign language, I think it's a disaster.

Also, I would ask that students take those things that are the best from



the culture they come from and amalgamate them into the culture of this nation. This nation is made up of diverse cultures, coming together and creating that which is great about the United States. There is a lot of debate over bilingual education, and frankly, I don't understand it. It's been around for over twenty-five years, it is a fully recognized academic endeavor and universities have whole programs of bilingual education in their colleges of education. I think we find ourselves concerned about other things about bilingual education. Let us forget the debate about whether bilingual education is effective. It's already been shown to be effective, but different approaches work under different circumstances. Let us always remember that we are dealing with a child; not a technique, not a concept, not an idea, not a political stance or whatever—we are dealing with a child. The first day of school is traumatic enough if you understand English; it is even more so if you don't understand the language in which you are spoken to. Through all this debate—and there shouldn't be any debate—I hope people think about what is the best way to move a child into English competency as quickly as possible and make that person comfortable enough to retain the best parts of his or her culture.

**JHP: Then you definitely prefer bilingual education programs over immersion methods?**

**CAVAZOS:** What is important to remember is easing the child's transition. We are looking at immersion and other instructional approaches and are finding that different approaches can be effective under different circumstances. One of the reasons, I believe, we have such a high drop out rate among Hispanics is their inability to read. Hispanic children start falling behind at the second, third, and fourth grade levels.

**JHP: Has President Bush given you his position on bilingual education?**

**CAVAZOS:** President Bush is also a supporter of bilingual education. I would like to add that I am very much opposed to the English Only movement and am prepared to speak out against it. President Bush is also opposed to it. I don't think it's an educational issue, it's a political issue. It is divisive. I think students should move into English, but retain the other language. When he asked me to stay on, he spoke to me about his views and I found that we agreed on these things.

**JHP: Let us now move to the issue of choice. How much choice do you think parents have in choosing a school for their children, and how much do you think they should have?**

**CAVAZOS:** At the present time, most areas in the United States don't have much choice. You just go to the school in the neighborhood you live in. Currently Minnesota has a program that by 1990 would allow for choice throughout the state. Iowa is planning the same sort of thing. Boston is looking at different models of choice within that area. Frankly, I am a proponent of choice. I think that people ought to have the choice to send their children to a better school down the road instead of having to go to the school across the street or vice-versa. The President is also very supportive of choice. One of President Bush's education initiatives will provide \$100 million to help develop

more magnet schools. The idea is to make these schools more attractive and improve educational quality, and not for desegregation purposes only.

I would caution, however, that schools have to be very careful not to fall into the problem in the following scenario: in inner city schools some of the students will leave, but most will stay. Since choice sets up competition as the student takes the money from one school to another, some people predict that after a while everything will dry up in the inner city school. My response to this is why would any school district permit a second-rate school to stay in place? Some people say that only the minorities will stay at the second rate school. Well, that second rate school should not continue. The school system itself has got to do something about the school. I think implementing choice is a first major step in restructuring the educational system in this country.

**JHP: Obviously, we cannot close all the schools, nor can we send all of the children into the two "best" schools in the district. What criteria do you think should be chosen when developing an assignment process to the schools? Do you think race is an important criterion? How important do you think it should be?**

**CAVAZOS:** I think that people ought to be exposed to a lot of other people. This country is not one race. I think it is good for students to interact with people from other cultures because by doing so we start understanding other viewpoints and valuing each others' contributions. Balancing the system is an appropriate thing to look at. I'm not so sure what the numbers should be or how rigid it should be. We should be sure, however, that we don't end up with all one race. This is an extreme that some of us grew up in which serves no purpose. I look at this issue as an educational opportunity, rather than as simply fulfilling legal requirements.

**JHP: What about socio-economic status as a criterion? This type of integrated school, to put it simplistically, would be composed of lower income, middle income and high income children.**

**CAVAZOS:** I think that would be an ideal, an ideal we should work for. It is important for our children to understand how other people live and the problems they face. This is a pluralistic society; this is the very nature of this nation. Informed choice by parents can contribute to this goal by enabling poor parents to send their children to schools beyond their neighborhood boundaries. Also, I would like to add that if I could make any decisions about what a school will look like, I would like more responsibility of day-to-day activities vested in teachers and parents rather than in a huge structure that comes down the other way and becomes a huge bureaucracy.

**JHP: One of the biggest challenges facing our nation today is the problem of high school drop outs. What can the federal government do to help eradicate this problem?**

**CAVAZOS:** Let's look at this issue historically. Before World War I only about twenty-five percent of the people in this country finished high school. At the present time this rate is at about seventy-five percent. While this is a tremen-

dous improvement, it is still too low a number. It is our goal here at the Department to make the word "drop out" obsolete. What I am doing is calling a lot of attention to this issue; this is an issue that can harm this nation's productivity, its competitive edge, the very type of nation that we are if we do not address this problem. People say that everyone knows about this problem. Well if everybody knows about this problem, then why haven't we done something about it? I like to use the example that this nation sets goals, like putting a man on the moon. We mobilized resources, the scientific community, the business community, government, and we put a person on the moon. We wiped out polio; that was a national goal. I have not heard yet that we're going to wipe out the the drop out problem. We must mobilize as a nation just as if we had decided to wipe out a severe disease and bring our dollars and resources, and attention to this problem.

Now, if you look at the Department of Education's budget of \$21.9 billion, roughly 90% of it is devoted to the areas of services for disadvantaged students. Of that 90% about half goes to primary and secondary education and here is where you address the drop out issue within Chapter 1. Chapter 1 helps students that need more counseling and other educational support, especially in schools in urban areas. The other half of the budget goes to higher education: Pell Grants, Stafford Guaranteed Student Loans, research grants. But for the most part, our budget is directed to help people who need additional help beyond what the states and locals can provide. Our dollars are limited, so therefore the major thrust must come from local school districts as well as from the state level.

In addition, we must address the drop out issue all the way back at the one-year-old and two-year-old level. I've become a great advocate of early childhood education. By the time a child is ready for school that child has already developed self-esteem and motivation. It's important that we start there, in early childhood, then maybe we won't have to deal with this problem at the high school level. We shouldn't wait until they're already in high school ready to drop out and then call them in and tell them not to drop out. Good grief—the damage is done! We have to be focused on the fact that every student in this country is at risk of dropping out.

Now I would even go one step further. We spend a lot of time talking about day care. What we really need to do is stop talking about day care and start talking about learning care. Let's turn every experience a child has into a learning experience. We're starting to see models like that developed in this country where preschoolers are taught by teachers from local school districts. As a result they are prepared by the time they get to kindergarden and first grade to begin their learning.

**JHP:** Are there any particular programs that you are impressed with that help deal with the problem of drop outs?

**CAVAZOS:** I really think that those programs that start in early childhood are the ones that can transcend and turn some of those issues around. So much of what happens in the schools requires parental involvement. Parents are the key part to finding solutions. Hispanics have gotten themselves in trouble because they have not been getting involved in their children's educations.

**JHP: Are the needs of Hispanic students at the elementary and secondary levels different than those of other American students? And if so, what types of programs do you think need to be developed to meet those needs?**

**CAVAZOS:** I don't like to think that they should be different. But to be realistic about it, because of the language difference, a youngster enters school enrolled in a bilingual education program learning English and then he or she goes home and hears only Spanish. It's tough to make that transition. That's why I say their experience is a little bit different and on top of that—economic issues come into it. You might tie the fact that—and I hate to say this—but some, and I say some, Hispanic families do not communicate the value of education to their children because of the economic imperatives they face. They've got to worry about paying the rent and buying some food. I was once visiting a school in West Texas and I talked to a group of sixth graders about staying in school and not dropping out. It was a class with mainly Hispanic children, a few Blacks and a couple of Anglos. And one of the kids asked me "What do you tell your mother when she tells you it's time now for you to leave school and start work?" This is a sixth grader. I think that it may be a little bit different for this type of student, so we need to compensate for this and we need to make special efforts to reach out to their families.

For example, there's a program called Even Start which deals with illiteracy. This is a program designed to help the student and the parent learn how to read at the same time. If a child comes home who is learning how to read and the mother and the father don't know how to read, how can a parent help his/her child to read? Another example: a parent is called in for a conference with a teacher, and the parent can't speak English—a difference, again. Yet another example: what if the parent had dropped out of school? I know of a family with three generations of drop outs. They're afraid to go to school. We need to make them feel comfortable. We have to provide people who can speak that language. I know it's a terribly complex thing. But why are we doing all of this? Because we are dealing with a child who needs to be educated. A child cannot be educated unless we involve the family. Schools cannot do it alone.

**JHP: Let's talk about curriculum reform at the higher education level. Some private and public universities, such as Stanford and UC Berkeley, have recently undertaken changes in their curriculum to better respond to the changing demographic circumstances of our society. Do you think the federal government has any role in encouraging or influencing this kind of change?**

**CAVAZOS:** I think that the strength of higher education comes from its diversity. People try to tell me about the state of higher education and how they think it's terrible and too expensive. I ask them, do you want me to talk about the independent colleges and universities, the state universities, the research or liberal arts schools, or the unendowed or the well-endowed? The diversity is tremendous and therein lies the strength of higher education. Not everyone has the same goals. And thank heavens that they don't. You don't want everybody turning out the same way. Therefore, decisions about curriculum content really belong within the direct purview of the faculty working with students and the administration to say "this is the goal and thrust of our university." I don't have any trouble with that.

The only role the federal government should take is maintaining quality. The federal government should be concerned that the price be contained somehow. We should be worried about excluding whole groups of people as prices increase. I'm a real proponent of people making decisions back on that campus. I would not envision myself involved in a curriculum discussion. The university, however, must be accountable. If they have the responsibility of choosing what type of student they produce, they must ensure that the objectives they set forth have been met. I also think the faculty must spell these things out very clearly.

**JHP:** When you were appointed as the Secretary of Education—the first Hispanic cabinet member—many people in our community were very proud. But, given that you might have only served for five months, why did you accept the position?

**CAVAZOS:** Your question is one that has been asked before, and it is a good one. First of all, I was approached and offered the position by the Reagan transition team in 1981. At that time, I had just arrived at Texas Tech after leaving Tufts Medical School. So, as much as I wanted to do it, I just could not bring myself to leave Texas Tech after only being there for six months. I had no guarantee that I would even be considered for the job after January 20, 1989. But, I entered the position because I had one tiny window of opportunity to say some things I had been saying as a university president, as a dean and as a faculty member about the state of education—the educational deficit, the large number of students dropping out, the lack of competitiveness in our educational system. The speeches I give today are not much different from the speeches I gave as a university president. But not many people listened to me as a university president. I'm not sure if people are going to listen to me as the Secretary of Education, but it gives me that opportunity. And I thought this was an opportunity to bring attention to these issues and I was willing to do that. I'm sure people said the appointment was politically motivated, but that was not part of the discussion. If you look at my curriculum vitae you'll see I'm fully qualified academically to do the kind of things that I'm doing. I didn't want to let the opportunity pass by me.

**JHP:** On that theme, your appointment and subsequent reappointment to some people fulfilled President Bush's pledge to the Latino community that he would appoint the first Hispanic member to the cabinet. Has President Bush given you any sense that he has a "Hispanic Agenda", such as more promises that he has to keep to the community? And do you as the first Hispanic cabinet member feel any obligation or responsibility to not only his, but other people's "Hispanic Agenda?"

**CAVAZOS:** I am here to serve the President. He is very committed to every citizen of the United States. He has told me, "I need to see more minorities and women in the Departments." He has a strong commitment to all minorities, not just Hispanics. You can take some of the issues facing the Hispanic community and apply them to the Black community—he expressed a strong commitment to addressing these issues. I am very comfortable working with him. I have a tremendous amount of respect for him and he is committed to the same things I am.

**JHP: How effective do you think standardized tests are for measuring a student's potential for college?**

**CAVAZOS:** First of all, I'm not a testing expert. But as I read about it, minorities in general do not handle standardized testing as well as other groups. This has nothing to do with intellectual capacity or capability, but with the quality of education to which they have been exposed. That gets back to my main point about the need to transform elementary and secondary schools and improve the preparation of minority students.

**JHP: What role do you think standardized tests play in universities' admissions policies?**

**CAVAZOS:** The admissions process, in general, is very complex. You need to look at academic achievement at the secondary level, leadership experiences, community involvement, and yes, test scores will be included. There are a lot of factors you must look at, not just the test score, however. I'm not sure you should say that a student must achieve a certain minimum test score and throw out a whole lifetime of experience. I think it is one factor; yes, you need those standardized tests, or some sort of measure, but you want to make sure you know what you're measuring.

**JHP: What does a successful affirmative action admissions policy look like? How much emphasis do you think should be placed on race as a criterion?**

**CAVAZOS:** Is it that much different than when we talked about choice and balance within the schools? Education is a whole series of experiences that come together from different cultures—not just intellect. I can understand the struggle that an admissions officer goes through in finding the correct balance. I can't tell you what the percentage should be. But there should be every effort made to balance the schools.

**JHP: What do you hope your greatest achievement as Secretary of Education would be?**

**CAVAZOS:** I would raise the awareness and commitment of this nation to educating each and every person to his or her fullest potential. This would make me proud. This would include stemming and stopping the drop out problem, teaching every person to read, educating the handicapped to their fullest independence. I know these are big problems, but I would like people to say that I got this nation going in the right direction.

# POLICY PERSPECTIVES

## TOWARDS A GOOD JOB STRATEGY FOR LATINO WORKERS

**Edwin Melendez, Ph.D.**

Dr. Edwin Melendez is a professor at the Massachusetts Institute of Technology, Department of Urban Studies and Planning. This paper was presented at the conference "Cities in Transition: Policies for the 1990's," at the Lyndon B. Johnson School of Public Affairs, Austin, Texas on October 6 and 7, 1988. The author is indebted to the Inter-University Program for Latino Research for their financial support, to Frank Bonilla and Leonardo Estrada for their helpful criticisms, and to John Stifler for his editorial assistance.

### INTRODUCTION

Several factors have renewed public interest in employment and training (E&T) programs in recent years. Many members of the public policy community perceive that the secular decline in labor productivity is behind the loss of U.S. competitiveness in international markets. In this perception, labor productivity, in turn, is associated with the quality of the labor force, and quality directly depends on education and skill levels. New York Governor Mario Cuomo clearly articulated this view in the Introduction of the recently released report by the Cuomo Commission on Trade and Competitiveness:

"The changes one must make to become a more competitive economy do not mean that we must become a poorer, more divided society. On the contrary. . . the adjustments and reforms that will make this country competitive are also those which open the doors of opportunity, create more good jobs, improve the quality of education, and give us more control over our lives."<sup>1</sup>

The issue of the quality of the labor force is directly related to the situation of minorities in labor markets. Samuel M. Ehrenhalt, Regional Commissioner of the U.S. Bureau of Labor Statistics, believes that Black and Hispanic underrepresentation in managerial, professional, and technical support occupations—the key occupational sectors of employment growth for New

York City in recent years – represents the most important problem facing the regional economy. He observes,

“The prospect is that minorities will account for all the city’s net labor force growth in the 1990’s. The strengths of the New York City labor market derive largely from its position as a national and international center of financial and business services, characterized by substantial concentrations of higher level professional and managerial jobs. Consequently, the city may be subject to a competitive disadvantage stemming from the difficulties of a rapidly expanding minority workforce in adapting to the more training- oriented occupational growth of the 1990’s.

The quality of the labor force may become a limiting factor on the New York city economy.”<sup>2</sup>

The public sector’s sense of urgency in improving minorities’ situation in labor markets is echoed by many recent studies of productivity and competitiveness in the U.S. economy that have been conducted by the business and research communities. The Business Roundtable, for example, urges increased private sector participation in providing training and job opportunities for disadvantaged workers, particularly the adult illiterate population.<sup>3</sup> Similarly, a report by the MIT Commission on Industrial Productivity sharply criticizes American firms for not investing in apprenticeship programs, and for failing to explore new ways in organizing the workplace to promote continuous learning, as, for example, in the Japanese and West Germany models of in-plant training and rotations. The Commission concludes,

“These handicaps for the American economy [lack of apprenticeship programs and innovation in the workplace] are likely to become even more serious as the composition of the labor force changes in the coming decades. A majority of new entrants to the labor force will be drawn from groups that have historically been disadvantaged. White males will constitute only 15 percent of the new entrants to the labor market over the next decade. Three-fifths of the new workers will be female. Minority and immigrant workers will constitute larger proportions of the work force. These changes in the supply side of the labor force, when coupled with changes on the demand side for more and different skills, constitute a formidable set of challenges.”<sup>4</sup>

These views from the public, business, and research sectors outline the current employment and training policy problem: economic growth requires upgrading the quality of the labor force as well as drawing from the existing pool of labor reserves. The growing awareness of the relationship between economic growth and equity issues opens a “window of opportunity” for the improvement of Latino workers’ situation in labor markets. However, existing E & T programs are ill-equipped to make a significant difference in the status of these workers.

The Job Training Partnership Act (JTPA) of 1982, by far the largest federally funded E & T program providing training for economically disadvantaged youth and adults,<sup>5</sup> emphasizes placement and short-term outcomes. It has a relatively small impact on the quality of the labor force.<sup>6</sup> JTPA budget cuts, which were severe during the Reagan administration, and changes in program regulations are not emphasizing long-term services that substantially



improve workers' skills. Thus, the program perpetuates an unskilled labor force and contributes very little to the nation's productivity. The new administration's challenge is to reform JTPA providing the leadership for state programs to reverse the direction of current policies and to upgrade workers' skills and education.

E & T programs can be effective only to the extent that they are part of a broader economic growth strategy. To make a difference in participants' long-term earnings and employment, E & T programs must provide the education and skills necessary for a good job, and good job opportunities must be open to participants in these programs. Programs that are regarded as second-rate institutions circulating workers among low-wage jobs, contribute very little to improving the quality of labor and fostering growth.

Fortunately, the national interest in fostering productivity converges with the need to open employment opportunities for Latinos, Blacks, and others so far excluded from the benefits of declining unemployment and tight labor markets. The present administration's challenge is no longer to come to terms with the old liberal axiom of achieving an efficient use of resources before distributing the benefits of the resulting economic growth. Rather, restoring international competitiveness depends to a large extent on the incorporation of labor reserves, whether inactive or sub-employed in secondary markets, into expanding industries in need of a better educated and trained post-industrial era labor force. Corporate America may very soon discover that its own survival in international markets is tightly linked to economic justice at home.

## LATINOS IN THE LABOR FORCE

Reform of the E & T system is particularly critical for Latino workers. As the Cuomo and M.I.T. Commissions and other studies suggest, Latinos constitute a growing proportion of the labor force and a large number of new entrants in labor markets. According to the 1980 U.S. Census, Latinas constituted 5.4% of the civilian labor force and Latinos 6%. By 1988, based on the March sample of the Current Population Survey compiled by the Bureau of the Census, the proportion of Latinas in the civilian labor force has increased to 6.4%, and of Latinos to 7.8%. Perhaps more important, Latinas represented 11.2% of the change in employed civilians, Latinos 22.2%.<sup>7</sup> These trends are likely to continue, since Latinos are much younger than other groups and their share of the population is growing at a faster rate.<sup>8</sup>

Despite their growing importance in the labor force, Latinos are concentrated in secondary labor markets at the bottom of the occupational strata, where low wages, higher rates of part-time work, and high unemployment prevail. In 1988, the proportion of Latinas in the occupational category of operators/fabricators/laborers was 16.6%, twice that of non-Hispanic women. The proportion of Latinas in service occupations was 21.7%, as compared to 17.4% for other women. Conversely, Latinas were underrepresented in the high-wage occupational category of managerial/professional; only 15.7% of Latinas were in this category, in contrast to 25.9% of non-Hispanic women. A similar situation affected Latinos, who were extremely overrepresented in low-wage occupational categories (28.1% in the operators/fabricators/laborers

category and 14.8% in services, as compared to 20.3% and 9% respectively for non-Hispanic men) and underrepresented in high-wage occupational categories (13% in the managerial/professional category, in contrast to 27.3% for non-Hispanic men).<sup>9</sup>

If it is true that the growth of low-wage employment during the recent expansion has affected all groups of workers, inducing greater income inequality among the population as a whole, Latinos are disproportionately affected by economic trends as a result of their concentration in low-wage labor markets.<sup>10</sup> Using 1980 Census data, Robert Taggart estimates that the incidence of inadequate individual and family earnings—defined as earnings of less than minimum wage by persons in the labor force, or as earnings below the poverty level for an entire family—was higher for Latinos than for Whites, although lower than for Blacks. Considering all persons in the workforce, for White, Black, and Latino workers, the proportion of inadequate individual earnings was 22.9, 35 and 29.3 percent respectively; and the proportion of inadequate family earnings was 9.8, 24.4, and 16.3 percent. Thus, Latinos have a 28% higher incidence of inadequate individual earnings and a 66% higher incidence of inadequate family earnings than Whites. These differences in economic hardship persist even when only full-year workers are considered. Full-year Latino workers have a 43% higher incidence of inadequate individual earnings and a 19% higher incidence of inadequate family earnings than Whites.<sup>11</sup> The evidence indicates that the highest incidence of economic hardship among Blacks and Latinos has continued throughout the 1980's. Allowing for the differences between Blacks and Latinos in terms of economic hardship at the individual level, a recent study estimates that in 1985 minorities constituted 20.1% of the full-time, year-round working poor and 24.3% of all working poor.<sup>12</sup>

To the extent that the expansion of low-wage employment continues to be a systemic characteristic of the U.S. economy rather than a cyclical phenomenon, Latino workers are among those workers who will benefit most from E & T reform.<sup>13</sup> E & T programs cannot only improve Latino workers' skills but, if these programs are linked to other key labor market institutions, such as public employment, state and local capital investment, and industrial incentives programs, they may also help remove barriers to equal employment opportunities related to the demand side of labor markets, such as racial and gender discrimination.

## EMPLOYMENT AND TRAINING DURING THE REAGAN YEARS

The nature and scope of employment and training programs have historically been determined by the general state of the economy. For example, during the recession that followed World War I and during the Great Depression of the early 1930's, the expansion of the economic infrastructure through public work was the dominant form of E & T programs. Public sector employment during the administrations of Harding and Roosevelt was perceived not only as a good investment but also as sound fiscal policy. In the years of high unemployment, thousands of workers were employed by the government. After World War II, on the other hand, E & T programs were regarded as gener-

ally unnecessary. The war economy had virtually eliminated structural unemployment and had greatly expanded productive capacity. From then to the mid-1960's, business cycle downturns were relatively mild, and no major programs were enacted to combat unemployment.<sup>14</sup>

During the mid-to-late 1960's, as in previous periods of rising unemployment, several E & T programs were created. As on previous occasions, these programs were designed primarily to stimulate economic growth. With the advent of the War on Poverty, and with the growing concentration of unemployment among minorities and youth, however, greater emphasis was placed on E & T as an anti-poverty strategy. The Comprehensive Employment and Training Act (CETA) of 1973 consolidated Public Sector Employment and many other training programs under a unified administrative agency, the Employment and Training Administration. When CETA was enacted, its funding (\$2.3 billion) represented about half of one percent of total federal government expenditures. By 1979, CETA funding had jumped to more than \$10 billion and 2% of Federal expenditures, half of it devoted to public sector employment.<sup>15</sup>

It is safe to conclude that by the time CETA funding reached a peak, political opposition to the program was growing. Two main criticisms are evident from the literature: 1) CETA did not provide a real improvement of workers' skills; and 2) Public Sector Employment constituted a direct subsidy to localities that did not add new jobs but paid for jobs that already existed or were going to be created and financed with local monies.<sup>16</sup>

The change in public perception of E & T programs between the pre- and post-CETA periods is apparent. While E & T programs were generally perceived as an important improvement of economic development in the period before World War II and generally unnecessary during the economic expansion following the war, the War on Poverty in the late 1960's changed the perceived function of E & T programs to be, for the most part, that of an anti-poverty strategy. In the public perception, and consequently to the extent that political support is involved, the emphasis has shifted from regarding E & T programs as a tool for economic development to considering these programs as one more way of draining substantial amounts of public resources without making significant differences in terms of participants' acquisition of new skills.

Regardless of the merit of these criticisms, it was behind this growing dissatisfaction with CETA that the Reagan administration was able to eliminate Public Sector Employment, and substantially reduce funding for youth and other programs when JTPA was enacted in the middle of the worst post-war recession.<sup>17</sup> E & T was one of the types of programs most affected by the reorganization of the budget and domestic priorities during the early years of President Reagan's administration. Public Sector Employment, the largest CETA program, was completely eliminated, and the remaining programs lost about one-fourth of their funding. Appropriations declined from \$10 billion, or 2% of total government expenditures for CETA in 1979 to less than \$4 billion, or .41% of the federal budget in 1985.<sup>18</sup>

In conjunction with these funding cuts, JTPA introduced a new set of regulations that aggravated the worst aspects of CETA as an employment and training system. JTPA performance standards aimed to maximize the number of unsubsidized placements and minimize costs per participant. These new performance-based contracts discouraged local administrators and training institutions from providing long-term services to participants and encouraged

them to select the job-ready applicants, those most likely to succeed in the program and to be successfully placed in employment at the end of the program.<sup>19</sup> In addition to these regulations, funding support services, such as transportation and child care were reduced, and stipends to participants were reduced drastically or eliminated altogether. The combined effect of funding cuts, changes in regulations concerning performance standards, and the virtual elimination of financial support for participants was to discourage the most economically disadvantaged worker from participation in the program.<sup>20</sup>

Funding cuts, programmatic changes, and the elimination of Public Sector Employment transformed federally funded E & T programs into a virtual placement service in which there is no substantial training, basic skills, or work experience component. Job-ready applicants are selected ("creamed") from the eligible population, and very few participants experience a significant gain in the level of skills or work experience that they take to the labor market. The small proportion of participants who are able to enter training programs sponsored by the private sector face stricter screening procedures and have less financial support than those in comparable unsubsidized training programs. Community-based organizations (CBO's) complain that performance contracts and the focus on short-term services and placements have forced them to withdraw from bidding for contracts altogether; in the few cases in which CBO's still have service contracts, CBO's are forced to screen out participants in need of long-term services. These criticisms of JTPA, as I will discuss in the next section, are particularly relevant for Latinos.

JTPA's emphasis on placement and minimum costs per participant reflects the Reagan administration's market philosophy to create jobs and promote economic growth. In essence, a "private sector strategy" is based on the assumption that market forces are strong enough to provide employment opportunities for all disadvantaged (whether because of lack of skills or employers' discrimination) workers. This market ideology leaves very little room for the public sector in the creation of jobs or in promoting human capital investments.<sup>21</sup> The fact that the current interest in E & T programs is associated with current work-for-welfare legislation at the state and federal governments should not surprise anyone. E & T and work-for-welfare legislation converge in their objectives of channeling workers to low-wage labor markets; indeed, JTPA may well be the placement mechanism for which welfare agencies are looking. The combined result of E & T and welfare reform; however, will be to reinforce the public perception of E & T as second chance institutions that make very little difference in improving the long-term earnings of the working poor and do not significantly contribute to economic growth.

## LATINOS' PARTICIPATION IN JTPA

Recent studies by government agencies and advocacy groups have assessed Latinos' underrepresentation in JTPA. The question of group participation in the program is a matter of contention, because participation rates depend on how the pool of eligible participants is defined. The law is sufficiently ambiguous to invite different interpretations of the targeted population at the state and PIC levels. The law mandates the provision of E & T ser-

vices to those "who can benefit from, and who are most in need of, such opportunities."<sup>22</sup> However, those who are most in need (e.g., the poor) and those who can benefit (e.g., the unemployed) are overlapping but not necessarily identical populations. While serving the unemployed may result in higher placement rates at a lower cost, serving the economically disadvantaged may require more resources, a longer period of program participation, and different types of programs and support mechanisms. The law also requires that local administrators "make efforts to provide equitable services among substantial segments of the eligible population."<sup>23</sup> Thus, the question of the participants' composition, whether by ethnic, racial, sexual or income group, is at the very heart of legislative intent.

Two recent studies by the National Commission for Employment Policy have concluded that Latinos are underrepresented in JTPA programs. Steven H. Sandell and Kalman Rupp used two different measures of the pool of eligible participants; the first measure is based on the "economically disadvantaged" as defined by JTPA (Title II-A) eligibility rules, and the second is based on those eligible for the program who are also unemployed.<sup>24</sup> Using the broader eligibility criteria of the economically disadvantaged, they found that in program years 1984 and 1985 the participation rate (the ratio of participants to eligible participants) for Hispanics was 26% lower than the average.<sup>25</sup> This gap in program participation by the economically disadvantaged remained after controlling for differences in sex groups. However, using the more restrictive measure of unemployed eligible participants, they found that differences in participation rates for Hispanics when compared to other groups were substantial only for men. While the participation rate for unemployed Latinas was about average, the participation rate for Latinos was 27% lower than the average for the population as a whole, a figure representing a substantial gap in JTPA services to Latinos.<sup>26</sup> All other racial-gender groups were close to the average participation rate.

From the policy-makers' point of view, adoption of either a broad or a restrictive measure of the targeted population is crucial because it either confines or does not confine the problem of program underrepresentation to unemployed Latinos. In a follow-up study, Carol Romero estimated the participation rate in accordance with Sandell and Rupp's methods, but correcting the estimates of the eligible pool for illegal migration to exclude the possibility that program underrepresentation resulted from an overestimation of eligible participants as a result of the inclusion of illegal immigrants who are not eligible for program participation.<sup>27</sup> Although her estimates for unemployed men and women supported Sandell and Rupp's findings, she found that Latinos underrepresentation in program participation was consistent across different sub-population groups, including youth, school dropouts, employed males, persons in families with income below than 70% poverty line, and in families receiving AFDC whether headed by a man or woman.<sup>28</sup>

Romero's study attributes Latino underrepresentation to four factors: 1) the use of participation in social services (e.g., food stamps and public assistance) to determine eligibility tends to exclude Latinos because Latinos use these services at a lower rate than other groups; 2) JTPA funds allocation formula discriminate against SDA's in large urban areas where Latinos are concentrated; 3) Latinos or persons knowledgeable about Latino issues are poorly represented in policy-making forums; and 4) the federal regulations' lack of

clarity regarding the adjustments that service delivery areas "are permitted to make to national performance standards send contradictory signals to SDA's regarding services to Hispanics."<sup>29</sup> These factors are all related to the design of the program or to regulations enacted at different levels of program administration and are, consequently, open to political pressure and reform. A recent study by the National Council of La Raza, which reached conclusions similar to those of the National Commission for Employment Policy Studies, suggested that policy reforms should include addressing Latino underrepresentation in JTPA, increasing incentives to reach the hard-to-serve, particularly limited-English speakers, removing funding restrictions for supportive services, and increasing CBO's participation in the Private Industry Councils.<sup>30</sup>

Available data suggest not only that Latinos are less likely to participate in JTPA programs, but also that their participation is of shorter duration. In PY1987, the average length of stay in JTPA (Title II-A) was 102.1 days, a significant decrease from the CETA average of 140 days.<sup>31</sup> However, non-Latino whites stayed an average of 110.8 days in the program, while Latinos stayed 86.3 days, or 22 percent less than white participants on average.<sup>32</sup> As predicted by Latino advocacy groups, the findings of recent studies on participation rates and the available data on length of program participation are consistent with the thesis that Latinos have been more affected by JTPA creaming of job-ready participants than other groups.<sup>33</sup>

The type and quality of services provided to Latinos is as important as the quantity of services provided. Unfortunately, there are very few studies of the JTPA program's impact on participants,<sup>34</sup> but average post-program participation earnings indicate that the effect of the program on its participants is relatively small.<sup>35</sup> In 1987, JTPA (Title II-A) program terminees were earning an hourly average of \$4.84 upon placement, a wage level barely above minimum wage and only 54% of the average hourly wage of all workers in private non-agricultural employment.<sup>36</sup> The average wage for Latino program terminees was about the average for all terminees.<sup>37</sup> In New York City, for example, program participants gained only four percent in earnings relative to average earnings in the state.<sup>38</sup>

## REFORMS TO MAKE E & T PROGRAMS WORK

E & T programs are ineffective in their current form. They do little to improve workers' skills, and they provide services only to a small proportion of those who are eligible. Moreover, these shortcomings are only half the problem. In its current form, the E & T system is an inadequate response to a rapidly changing demand for labor and an inadequate means of dealing with the institutional barriers that minorities, youth, immigrants, women and other workers face in labor markets. Stable and well-paid employment depends not only on the level of skills and education that workers bring to labor markets but also on employers' hiring and promotion practices. E & T programs must, therefore, be designed as an integral component of a broader strategy to remove institutional barriers to good jobs for the working poor and the unemployed, whether these barriers are on the supply or the demand side of the market.

The ultimate goal of E & T programs should be to maximize workers' gains from program participation. Maximizing individual gains requires long-term services for those lacking basic educational levels; a strong enforcement of equal employment opportunities to combat racial, sexual, national and other types of discrimination; work experience for new labor market entrants; and early intervention with displaced workers to minimize the duration and effects of unemployment. In short, E & T programs can be an effective strategy only to the extent that providing participants with a good job becomes the ultimate goal of the program, and that extending services to all those in need, or increasing program performance is not at the expense of program quality or overall individual and social impact.

The effectiveness of any E & T system depends ultimately on its interconnection with other economic and social development programs. Labor markets do not function in isolation. Productive workers need adequate health care, efficient transportation, good housing, and affordable day care. In such areas, government programs and legislation can play a catalytic role. Social development programs affect workers' productivity directly, but they are too expensive for any individual employer to undertake alone and may give a cost advantage to the employer's competitors. Perhaps more important for an E & T program's success is its connections to economic development projects, to existing educational institutions, and to community development. A brief discussion of key areas in any reform effort follows.

**Adequate Funding.** Concluding in a recent study that "without additional funds, JTPA cannot hope to have more than a marginal impact," S.A. Levitan and F. Gallo recommended an increase in appropriations to \$11 billion from their current level of \$5 billion (FY1987). Of the new \$6 billion in funding, the authors recommended \$3.5 billion to increase funding to current programs and \$2.5 billion to create a PSE program that would create about 250,000 job slots.<sup>39</sup> Public support for increased funding is more likely if JTPA is perceived as an effective program that enhances the quality of the labor force and helps participants gain good employment.

**Linkage to Economic Development Programs.** Linking E & T to economic development programs is a subject that has received much attention in the last few years. Whereas in earlier years employing disadvantaged workers was rarely part of location incentives packages offered by state and city government, regional economic development planners now are increasingly viewing human capital development as the key ingredient for rapid growth. In her recent study, Susan A. MacManus found that one-third of the fifty states already coordinate employment and training and economic development programs and policies. She also found that about half of the states share data bases for both functions and have formal departmental liaisons; and that many states have common service delivery areas, sponsor joint staff training sessions, have joint review of financial and technical assistance, and have established cabinet level clusters to supervise these activities.<sup>40</sup> Large cities such as Chicago and New York are also moving in this direction.<sup>41</sup>

State and city governments have vast resources that constitute a powerful base from which to develop a well articulated employment system in which training becomes a critical component. Local governments have many programs offering technical assistance and financial subsidies to business. In return for these services, businesses will give hiring preference to workers re-

ferred and trained by E & T programs or, on many occasions, in programs jointly undertaken with the private sector.

In the public works projects, the need for linking E & T programs to economic development is even more apparent.<sup>42</sup> Local governments invest billions of dollars in renovation and construction of roads, bridges, sewer and water systems, and other public goods. Projections of public works throughout the 1990's "range from \$400 million to \$3 billion by the year 2000."<sup>43</sup>

**Integration with the Educational System.** Given JTPA's performance standards and cost limitations, the best strategy to maximize program resources in affecting participants' human capital is to integrate E & T programs with the educational system, particularly with the vast network of vocational schools and junior colleges. The expansion of existing and new counseling and employment assistance programs could foster earlier labor market attachment and prevent school system detachment for youths at risk. Linkage to the educational system can promote E & T as a mainstream activity with no stigma attached to it.<sup>44</sup>

**Link to Community Economic and Social Development.** Community economic development organizations can create good jobs directly and provide employment opportunities in communities with large members of the working poor. E & T programs can lower the starting cost for new community development ventures or help ensure the continuation of existing ones by training new staff or providing new skills to current staff. Jobs in these organizations tend to stay in the community and represent an important avenue to gaining work experience for many.<sup>45</sup>

JTPA, however, reduces CBO's participation in E & T programs by de-emphasizing the types of complementary support services provided by CBO's. During the JTPA years, CBO's participation in E & T services has been drastically reduced.<sup>46</sup> CBO's can provide an important base from which to launch a human capital development strategy. There is a vast network of CBO's that could expand rather quickly and provide the support systems for groups that face multiple barriers to employment. CBO's can sponsor English as a Second Language and basic education courses, residential programs for youth, and day care and transportation programs as part of a long-term human capital development strategy.

E & T programs with links to economic development programs and to community-based organizations, integrated with the educational system, and receiving substantial additional funding should be more effective in improving participants' human capital and delivering good jobs to participants, and thus they should contribute to economic growth and become an effective anti-poverty strategy. To gain credibility in our communities and to gain public support, E & T programs must make a significant difference in people's lives. A dead-end job does not require any educational or vocational preparation, and does not offer any incentive for students to remain in school. Why should public resources be invested in E & T programs that make no difference to participants and contribute very little to improving the quality of the labor force?

Latino workers are likely to benefit enormously from E & T reforms. Latinos have a significantly higher incidence of inadequate earnings than other groups, yet they are currently underserved by JTPA programs. Increased



funding and stronger links to key social institutions, particularly the educational system and CBO's, should create more effective services for the hard-to-serve population, including those with limited English fluency, and those whose skills were acquired in a foreign country and who need to adjust to a different labor market environment. Linkage to economic development projects is important in increasing Latino representation in expanding industries, promoting mobility from low-wage occupations, and reducing discrimination in the private and public sectors.

Public initiatives are critical to counterbalance market forces that tend to create low-wage jobs and perpetuate discrimination and inequality. E & T reforms are only part of a broader set of economic reforms needed to adjust the economic system, to respond to the new international realities, and to prevent the brunt of economic change from falling on the least able to respond. In fact, E & T reforms are more likely to succeed if implemented along a broader labor market program that includes changes in labor law to facilitate workers' organization in unions, legislation to secure equal pay for equal work, strong enforcement of affirmative action and equal employment opportunity laws, advance notification and retraining programs for displaced workers, higher minimum wage, universal health insurance, the expansion of quality public day care facilities, and provisions for flexible hours.<sup>47</sup> Many of these reforms are already underway as private sector initiatives designed to attract and retain workers in tight labor market areas, but active public and civic involvement is necessary to guarantee that the benefits of economic growth are shared by all workers and are spread throughout the country. E & T reform, as a part of larger democratic labor market programs, is necessary for this country to march along the elusive path of prosperity and economic justice.

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## ENDNOTES

1. Lee Smith, ed., *The Cuomo Commission Report*, (New York: Simon & Schuster, Inc., 1985), p. xxvi. Similar conclusions, regarding the critical role of training to improve competitiveness in a global economy, are presented in the National Commission for Employment Policy, *U.S. Employment in an International Economy, Report no. 188-24*, (Washington, D.C., 1988) and in Chapter III "The Key to Competitiveness," in R. Marshall, *Labor and Economic Policy in a Competitive World*, (New York: Basic Books, Inc., 1987), pp. 62-90.

2. "New York City's Economy: New Risks and a Changing Outlook," in *CBC Quarterly*, Vol. 8, No. 1, (Winter 1988), p.5.

3. The Business Roundtable, *American Excellence in a World Economy* (New York: The Business Roundtable, 1987).

4. M.L. Dertouzos, R.K. Lester, R.M. Solow. *MIT Commission on Industrial Productivity Made in America: Regaining the Productivity Edge* (Cambridge, MA: The MIT Press, 1989), p. 93. Their Appendix I is an excellent survey of policy recommendations by the most important related studies during the last decade.

5. S.A. Levitan and F. Gallo. *A Second Chance: Training for Jobs* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 1988), pp. 1-16.

6. JTPA is not the only program providing E & T; in addition to the educational system, which provides fundamental skills for the majority of the population and receives but a fraction of their funding from the federal government, there are a variety of programs offering assistance to those for whom the traditional educational system have failed and face multiple barriers to economic progress. Among the most important of these programs are those funded under the Feder-

al Adult Education Act, first passed in 1966, and training offered by the Defense Department which may reach a higher proportion of low-income youth than any other program. S.A. Levitan and I. Shapiro, *Working but Poor: Americas Contradiction*, (Baltimore: The John Hopkins University Press, 1987), pp. 71-77.

7. U.S. Department of Commerce, Bureau of the Census, *Summary of 1980 Census of Population, General, Social and Economic Characteristics, and The Hispanic Population in the United States, March 1988, Advanced Report*.

8. In 1988, Latinas' median age was 25.5 years while it was 32.9 years for non-Hispanic persons. Between 1980 and 1988, the change in population in the U.S. was 6.4 percent but the Latino population grew 33.0 percent during this period. The Hispanic Population in the United States, Table 1, p. 7.

9. *The Hispanic Population in the United States: March 1988*, Table 2, p. 8.

10. See B. Harrison and B. Bluestone, *The Great U-Turn* (New York: Basic Books, 1988), and S.A. Levitan and I. Shapiro, *Working But Poor* (Baltimore: The John Hopkins University Press, 1987) for a discussion of the expansion of low-wage employment in the U.S. economy.

11. R. Taggart, *Hardship: The Welfare Consequences of Labor Market Problems* (Kalamazoo, MI: The C.O.E. Upjohn Institute for Employment Research, 1982), Table B-2.

12. Levitan and Shapiro, Table 1, p.18.

13. See B. Bluestone and B. Harrison, "The Growth of Low-Wage Employment: 1963-86," *American Economic Review*, Vol. 78, No. 2, (May 1988): 124-128, for a defense of the expansion of low-wage jobs thesis. See M.H. Koster and M.N. Russ, "The Distribution of Earnings and Employment Opportunities: A Re-examination of the Evidence," *AEI Occasional Papers*, September 1987, for a critique of the low-wage thesis.

14. For a summary of the history of manpower development programs, see Ewan Klague and Leo Kramer, *Manpower Policies and Programs: A Review; 1935-75*, (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 1976); and, Bennet Harrison, *Education, Training and the Ghetto* (Baltimore: Johns Hopkins University Press, 1972).

15. Levitan and Gallo, pp. 1-16.

16. L.J. Bassi and O. Ashenfelter, "The Effect of Direct Job Creation and Training Programs on Low-Skilled Workers," in S.H. Danziger and D.H. Weinberg, *Fighting Poverty* (Cambridge: Harvard University Press, 1986). Ray Marshal, "Selective Employment Programs and Economic Policy," *Journal of Economic Issues*, 8:1, 143-158, (March 1984). R.F. Cook, C.F. Adams, Jr., V. Lane Rawlins and Associates, *Public Service Employment* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 1985).

17. A brief discussion of the political climate when JTPA was enacted in 1982 is presented in Levitan and Gallo, pp. 9-15.

18. P. Gottshalk, "U.S. Labor Market Policies Since the 1960's: A Survey of Programs and Their Effectiveness, Institute for Research on Poverty," *Discussion Paper No. 730* (Madison: University of Wisconsin, October 1983). Marc Bendick, Jr., "Employment, Training and Economic Development," in J.L. Palmer and I.V. Samhill (eds.), *The Reagan Experiment* (Washington D.C.: The Urban Institute Press, 1987), pp. 247-69.

19. An earlier evaluation of JTPA concluded, "The picture that emerges from the majority of [service delivery areas] SDA's in this study is one in which substantial changes have been made in the managerial practices surrounding employment and training programs, changes that have resulted in greater operating efficiencies when judged by most conventional business bench marks. JTPA has also resulted in an emphasis on helping those most likely to be employed to take the last few steps needed for placement. It has chosen to pay less attention to those who need the most help in finding work." Grinker Associates, Inc., *An Independent Sector Assessment of the Job Training Partnership Act: Final Report* (New York, 1986), p. viii.

However, a recently released study on the impact of JTPA performance standards on participants placed much of responsibilities for the adverse effect of the new regulations on local and state responses to them. The National Commission for Employment Policy study concluded that "the Federal Standards for the entered-employment rate and wage rate for adults generally did not have unintended effects on clients or services," but that the Federal Cost Standards "had the most unintended effect." The effects of Federal Cost Standards varied significantly between SDA's, depending on a given state's emphasis on compliance with the cost standards. *JTPA Performance Standards: Effects on Clients, Services, and Costs*, (Washington, D.C., September 1986), p. 202.

20. See Grinker Associates, *An Independent Sector Assessment*, p. 14 and Westat, Inc., *Transition Year Implementation of the JTPA*, (Rockville, MD, January 1985), pp.7-18 through 7-23. Two studies dispute their conclusions: U.S. General Accounting Office, *The Job Training Partnership Act: An Analysis on Support Cost Limits and Participants Characteristics*, (Washington D.C., November 6, 1985), and National Commission for Employment Policy, *The Job Training Partnership Act*, (Washington D.C., September 1987), pp. 59-62.

21. Reliance on the private sector for the implementation of E & T programs is not restricted to the current administration; for a discussion on how President Carter Administration continued a tradition of private sector involvement in E & T programs, see R. Kasis and P. Sabonis, *Leveraging With a Toothpick: The Carter Administration's Private Sector Strategy for Job Creation*, (Washington, D.C.: National Center for Jobs and Justice, 1979).

22. The Job Training Partnership Act (JTPA), Public Law 97-300, October 13, 1982.

23. *Ibid.*

24. S.H. Sandell and K. Rupp, "Who is served in JTPA Programs: Patterns of Participation and Intergroup Equity," *National Commission for Employment Policy*, (Washington, D.C., February 1988), pp.5-7.

25. Participation rates for the economically disadvantaged, as reported in Sandell and Ruggs, "Who is Served," Table 3, p. 43, were as follows:

White	2.1
Black	3.1
Hispanic	1.7
Other	2.1
Total	2.3

Thus,  $(1.7 - 2.3) / 2.3 = -.261$ .

26. Participation rates for the unemployed reported in Sandell and Ruggs, Table 4 and 5, p. 44, were as follows:

	Women	Men
White	15.7	11.1
Black	14.2	13.1
Hispanic	15.7	8.2
Other	13.2	12.7
Total	15.1	11.2

Thus, for Latinos  $(8.2 - 11.2)/11.2 = .268$ .

27. Carol L. Romero, "Services to Hispanics in JTPA: Implications for the System," *National Commission for Employment Policy*, (Washington, D.C., April 1989 (Draft)).

28. Ibid. See Tables A-1, A-2, and A-3.

29. Ibid. pp. 30-31.

30. Fred Romero and Judith Gonzalez, *Falling Through the Cracks: Hispanic Underrepresentation in the Job Training Partnership Act*, (Washington, D.C., National Council of La Raza, February 1989), pp. 18-22. See also Fred Romero, "Public and Private Initiatives: The Road Ahead for Hispanic Workers," The Tomás Rivera Center, Occasional Papers Series no. 2, Claremont, CA.

31. Data for the estimated medial length of stay are from Department of Labor, Employment and Training Administration, Office of Strategic Planning and Policy Development, Division of Performance Management and Evaluation, *Summary of JTQS Data for JTPA Title II-A and III Enrollments and Terminations During Program Year 1987* (July 1986-June 1987), December 1988, Table C-15. For a discussion of the decline in length of stay from CETA to JTPA, see Grinker Associates, *An Independent Sector Assessment of the Job Training Partnership Act*. However, unpublished data reported by SDA's JTPA Annual Status Reports indicate a larger number of average weeks of program participation. Based on Annual reports, average weeks have remained at 18 weeks from PY1985 to PY1987.

32. Ibid. *Summary of JTQS Data*, Table B-11.

33. M.M. Escutia and M. Prieto, *Hispanics in the Work Force, Part I*, (Washington, D.C., National Council of La Raza, August 1986), p.31; and M. Borrero, "Assessing the Impact of Federal Cutbacks on Employment and Training Opportunities for Puerto Rican, Summary of a Seven-City Study," (Alexandria, VA, National Puerto Rican Coalition, September 1983).

34. Two studies indicate that the types of training and services have changed from CETA to JTPA. JTPA emphasis on short-term training and low-cost job search activities tends to favor the expansion of OJT, Job Clubs, and to reduce classroom training. These shifts in program mix need not affect participants' earnings or employment duration adversely; they may indeed have a positive effect on overall program quality. It is impossible to assess how changes in program mix have affected participants without specific studies addressing the issue. See the Wrinkler Study already cited and *The Job Training Partnership Act: A Report by the National Commission for Employment Policy*, (Washington, D.C., September 1987), pp.78-79.

35. Program participation may have a positive impact on participants, even when post-program participation wages are low, if the program increases the likelihood of long-term employment. A CETA study concluded that earning gains were generally insignificant for men, regardless of the length of program participation, and between 5 to 9% for women; earning gains from program participation varied by type of program, length of program participation, and race. H.S. Bloom and M.A. McLaughlin, "CETA Training Programs: Do they Work for Adults?," Congressional Budget Office, (Washington, D.C., July 1987). Given that JTPA participants are more job-ready than CETA participants, JTPA program participation is likely to have a smaller impact on participants.

36. The figure for average wages of program terminees is from JTPA Annual Status Reports, Table B-28; for average wages for all workers in private, non-agricultural employment, from Council of Economic Advisors, *Economic Report of the President, 1989*, Washington, D.C. .

37. *Summary of JTLS Data*, Table B-28.

38. Edwin Melendez, "The Impact of New York City Employment and Training Programs on Latinos," paper presented at the Conference *Puerto Ricans and New York City Government: From Access to Power*, May 14, 1988.
39. Levitan and Gallo, p. 181.
40. S.A. MacManus, "Linking State Employment and Training and Economic Development Programs: A 20-State Analysis," *Public Administration Review*, 46:6 (Nov. Dec. 1986), p. 641.
41. Linkages of JTPA Programs to economic development efforts have been generally praised by the policy analysis community. The National Commission for Employment Policy, for example, stated in their most recent evaluation of JTPA programs that "at the state and local levels, we applaud efforts to join JTPA with economic development activities." *The Job Training Partnership Act*, p. 116.
42. See R.E. Friedman and W. Achmeke, "Investing in People," and B. Dyer and R. Pollard, "Investing in Public Work," in D.R. Jones, *Building the New Economy: States in the Lead, the Corporation for Enterprise Development*, (Washington, D.C., 1986).
43. Dyer and Pollard, p. 61.
44. See T. Baily, "Employment and Training Programs," in C. Brecher and R. Horton, eds., *Setting Municipal Priorities: 1988*, (New York: New York University Press, 1988), pp. 189-193, and James Jacobs, "Training the Workforce of the Future," in *Technology Review*, August-September 1989, pp. 66-72.
45. D.M. Gordon, *The Working Poor: Towards a State Agenda* (Washington, D.C.: Council of State Planning Agencies, 1979). H. Stanback, "Attacking Poverty With Economic Policy," in A. Gartner, C. Greer, and F. Reissman, eds. *Beyond Reagan: Alternatives for the 80's* (New York: Harper & Row, 1984), pp. 57-73.
46. See Grinker Associates, *An Independent Sector Assessment*, pp.87- 88, and Fred Romero, *Public and Private Initiatives*, pp.3-4.
47. S. Bowles, D.M. Gordon, and T.E. Weisskopf, "Austerity vs. Jobs and Justice," *The Nation*, April 16, 1986. Center for Popular Economics, *Economic Report of the People* (Boston: South End Press, 1986), pp. 221-245.

# DEVELOPING A LANGUAGE-BASED NATIONAL ORIGIN DISCRIMINATION MODALITY

**Manuel del Valle**

Manuel del Valle, LL.M. London School of Economics '84, J.D. Yale '74, A.B. Princeton '71, is a partner in the New York and New Jersey law firm of Del Valle & Zayas. He is a member of the New York State Bar, the New Jersey Bar, and the Washington, D.C. Bar.

## INTRODUCTION

For Hispanics, historically, their use of the Spanish language has been a basic determinant of whether or not they will face discrimination in the workplace. The public policy which has been developed on the legal protection to be afforded foreign language speakers or linguistic minorities in the United States is worthy of review and presents a sobering picture for Hispanics. Public policy in the United States has too often used the fact that Hispanics speak Spanish "as a ground of inferiority in law or an obstacle in fact to the exercise of" their rights.<sup>1</sup> Such treatment differs from the protection afforded language under international law.<sup>2</sup>

United States courts have approached issues of language-based discrimination by bifurcating national origin, which is a classification that affords members of ethnic communities protection against discrimination, from language, which is seen as a mutable characteristic of ethnicity and hence unprotected by the law. Thus, courts may take cognizance of discrimination claims which have been based strictly on their traditional almost one dimensional conception of a person's national origin, while failing to accept a lawsuit based on an Hispanic's claim of language-based discrimination. The effect of this approach has been to allow courts to sanction language-based discrimi-

nation against Mexican Americans and Puerto Ricans, while striking down discrimination based on other so-called immutable characteristics such as color or race. The result has been a history of employment discrimination litigation which fails to accept and protect the rights of Hispanics as a linguistic minority of the United States.

This article examines the need for a reassessment of public policy in the United States in order to make it consistent with the concept of "effective equality" found in international law and afforded linguistic minorities in the world. This approach would enlarge national origin claims to legally encompass the language-based claims of Hispanics and other groups so as to afford them protection against discrimination. For this reason a review of the applicable international precedent, of applicable civil rights law and the applicable national origin employment discrimination case law would be useful in order to provide a background and context to the recommendations made by the author. It is the author's position that the discrimination faced by Hispanics in employment calls for a language-based national origin discrimination modality which has its logic in history, pragmatism, and the law.

## INTERNATIONAL PRECEDENT

The United States is not the only country in the world with linguistically identifiable minorities. At the end of the first World War, the major Allies sought to secure treaty protections for such minorities. A model treaty was signed with Poland; the League of Nations undertook similar guarantees from Albania, Estonia, Iraq, Latvia, and Lithuania.<sup>3</sup>

### **Towards a Theory of Genuine and Effective Equality**

The Permanent Court of International Justice passed on the significance of these minorities treaties in 1935 in its *Advisory Opinion on Minority Schools in Albania* decision.<sup>4</sup> The Albanian Declaration before the Council of the League of Nations in 1921 provided the same treatment in law and fact for its nationals who belonged to "racial, religious or linguistic minorities" as that granted other Albanian nationals. The declaration specifically allowed these minorities among other things to establish schools at their own expense and to conduct these in their own language.

In 1933, Albania decided to close all private schools and reserved to itself the right to offer education in its own schools; compulsory attendance was required for primary instruction which was provided free of charge. Before the Permanent Court, Albania argued that it had not discriminated against students in the minority language schools since it did no more than pass a general measure applicable to the majority as well as the minority.

The definition for community elaborated by the Permanent Court in its *Advisory Opinion on the Greco-Bulgarian Communities* was applied; a community was

A group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidar-

ity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.<sup>5</sup>

This definition would work equally well as a delineation of what the legal classification of "national origin" should mean in the United States. This definition of community also is consistent with the sociology of ethnic communities and explicitly makes language one of the chief characteristics of ethnicity. More importantly, this definition can serve as a point of departure for our analysis and as the legal basis for protecting the rights of linguistic minorities against the public policy of a linguistic majority—a situation extant for diverse groups throughout the world.

Albania argued that it had merely promised to its racial, religious, or linguistic minorities a right equal to that possessed by other Albanians.<sup>6</sup> Albania contended that when the majority ceased to have the right to establish and conduct their own private schools, the minorities also lost that right. Albania insisted that it was treating the minority no different than the majority. For the Permanent Court to rule otherwise, Albania asserted, would be to accord these minorities a special privilege not available to the majority.

On the other hand, the Greek Government argued that the equal treatment of the minority and the majority would result in an "apparent" or "formal equality" inconsistent with the "genuine and effective equality" required by the Albanian Declaration of 1921. In passing on these claims, the Permanent Court described the essence of the principles that governed the international protection of minorities.

The essential characteristics of protections to be accorded a minority included (i) a concept that no person shall be placed in a position of inferiority because of language, race or religion and (ii) that there were certain minimum rights which were granted to minorities without regard to birth, nationality, language, race or religion. These rights were defined with the objective of preventing differences in race, language, or religion "from becoming a ground of inferiority in law or an obstacle in fact to the exercise of the rights in question." The Permanent Court made a distinction between equality in law and in fact. It cited its Advisory Opinion concerning the case of the German settlers in Poland to the effect that minorities must be accorded equality in fact as well "as ostensible legal equality in the absence of discrimination in the words of the law." The concept of equality in law forbade discrimination of any kind, which differed from equality in fact that required "different treatment in order to obtain a result which establishes an equilibrium between different situations."

In essence the Permanent Court arrived at the same position the U.S. Supreme Court had reached in *Yick Wo v. Hopkins*<sup>7</sup> nearly a half-century before: that there are cases where the equal treatment of majority and minorities can result in inequality in fact.<sup>8</sup> This of course is applicable to any situation which requires conformity of a linguistic minority to the majority language, while subordinating and making inferior the language of the minority in question. Equality in fact requires more than affording majority and minority similar disabilities.

The Permanent Court in the Albania case concluded that the abolition of the private language schools and their replacement by state schools would destroy the equality of treatment to which these minorities were entitled. The

Court found that the effect of such an action would be to deprive the minority of their institutions, while perpetuating the institutions of the majority. This conclusion is similar to that of the U.S. Supreme Court in *Meyer v. Nebraska*<sup>9</sup> and *Bartels v. Iowa*,<sup>10</sup> where the prohibition of foreign language instruction in private schools to children below the eighth grade was deemed a deprivation of liberty and unconstitutional. Although Nebraska and Iowa did not abolish foreign language private schools as Albania sought to do, these states desired to exercise control over foreign language instruction to children belonging to a linguistic minority under the police powers of the state and on the ground of an alleged need for linguistic conformity.

For the Permanent Court the value of "equal rights" is questionable where the government has the power to abolish or curtail the right in question, with the result that the right becomes illusory. For the right to be meaningful, it must always be enjoyed by the minorities in question; to do otherwise would be to make the right and those who assert it inferior to the majority.<sup>11</sup>

The Permanent Court found that State education was something afforded all persons in Albania; it was something in addition to private education, and as such could not take the place of private schooling. The Permanent Court found that the Albanian Minorities Declaration guaranteed to its racial, linguistic or religious minorities the right to maintain, manage, and control at their own expense or to establish in the future charitable, religious, and social institutions along with schools and other educational establishments; within these institutions they had the right to use their own language and exercise their freedom of religion.<sup>12</sup>

The rationale and outcome of this case reflects the considered global jurisprudence that finds language discrimination actionable as a violation of declared minority treaty rights or in the case of the United States violated the ordered concept of liberty in the due process clauses of the United States Constitution.<sup>13</sup> As we will demonstrate below, the equal protection clause to the Fourteenth Amendment of the United States has been a vehicle to afford equality in law and in fact to Hispanics, a process we believe consistent with American constitutional jurisprudence and with international concepts of equality.

### **The Belgian Linguistic Cases**

Like many major international instruments, the European Convention on Human Rights provides that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."<sup>14</sup>

In the Belgian Linguistic Cases, the European Court of Human Rights found that a Belgian statute which prevented certain children, solely on the basis of their parents' residence, from having access to the French-language schools existing in the six communes on the periphery of Brussels (which had a special language status) violated Articles 2 and 14 of the Convention.<sup>15</sup>

Belgian had established zones where Dutch and French would be used exclusively as the language of instruction, and a child whose parent resident in one zone would not be entitled to instruction in the other language. These zones were based on the historic national origin groups (French and Dutch) that came to constitute the Belgian nation-state. The European Court on Hu-



man Rights concluded that these language-based distinctions were deemed discriminatory. Such discrimination is similar to that faced by Mexican American children in publicly segregated schools simply because they spoke Spanish.

### **The Right of Hispanics and others to Self-Identification of their Protected Status**

Any concept of equality in fact for Hispanics requires a way of allowing Hispanics to identify themselves as members of a protected classification or group. In this regard, American courts have taken what amounts to an intrusive role unlike the international precedent noted below which provides for an unobtrusive role for the state in this regard. Thus, courts and public agencies in America continue to pass upon the question of self-identification of minority group members, that is, whether or not they are a part of a specific national group, or, until quite recently in the context of lawsuits under the Civil Rights Act of 1866, 42 U.S.C. Section 1981, whether or not they are a part of a race. For example, a State Supreme Court justice in New York ordered the Office of Equal Employment Opportunity of the New York Police Department to explain why it refused to permit an officer, seeking to benefit from an affirmative action promotion program for sergeants, to reclassify himself from white to Hispanic.<sup>16</sup>

The Permanent Court of International Justice addressed this issue of classification in its Advisory Opinion on Minority Schools in Upper Silesia.<sup>17</sup> Confronted with the issue of self-classification, the Permanent Court held that the German-Polish Convention of 1922 bestowed upon every national the right freely to declare (according to their conscience and personal responsibility) that they did or did not belong to a racial, linguistic, or religious minority and to declare the language.<sup>18</sup>

The treaty had prohibited a verification of the minority status of an individual. The aim of the provision was to avoid the disadvantages which arise if the authorities had to determine an individual's minority background. Although the Permanent Court noted that this could lead to the treatment of certain persons who were not in fact minority members as such, this was a consequence accepted by the parties in light of the greater disadvantages that would otherwise result.

The courts in America, however, have traditionally examined the factual basis for the assertion of protection. In this connection, it should be recalled that the case of *Plessy v. Ferguson* involved the arrest of a passenger who claimed to be white, but was perceived as and held to be non-white, and who was traveling in a train car exclusively available only to whites.<sup>19</sup> This case refused to accept the passenger's self-identification and enunciated the doctrine of "separate but equal," which was the United States equivalent to the argument for apparent equality made by Albania and rejected by the Permanent Court.

In *Hernandez v. Texas*,<sup>20</sup> the first U.S. Supreme Court case to explicitly recognize that Mexican Americans were protected by the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, the Court focused on the factual basis of the group's treatment to identify whether Chicanos were protected by the clause. The Supreme Court held that "just as persons of a different race are distinguished by color," the Spanish-surnames of the Mexican claimants provided "ready identification for members of this class."<sup>21</sup>

For our purposes *Hernandez v. Texas* is a fundamental decision for Mexican Americans and other Hispanics since the Court acknowledged the language-based national origin treatment of Chicanos. The Court found that one method of establishing group discrimination against persons of Mexican descent was evidence of the community's attitude, which included:

- (i) the segregation of children of Mexican descent in public schools on the basis of their language; the purported reason for this was that these children needed special assistance in learning English; the Court found that in most cases each teacher taught only one class in the regular school, but in the Mexican school each teacher taught two grades; the purported reason for additional language instruction was no more than subterfuge for the unlawful segregation of Mexican children;<sup>22</sup>
- (ii) at one restaurant in town there was a sign announcing "No Mexicans served"; and
- (iii) there were two toilets on the courthouse grounds, one unmarked, and the other marked "Colored Men" and "Hombres Aqui" ("Men Here").<sup>23</sup>

Strikingly, the separate toilet for Chicanos was designated in Spanish. This evidence was used by the Supreme Court to hold that Mexicans constituted a class entitled to the protection of the equal protection clause. It also evidenced how language had been used in public schools<sup>24</sup> and public accommodations to discriminate against Hispanics in the United States.<sup>25</sup>

Rather than accept the self-identification choices or classifications as was the case pursuant to the German-Polish Convention, American courts and public policy makers have involved themselves in a factual analysis which is unnecessary, inappropriate, and intrusive. Instead, we believe that American public policy makers should accept the self-identification choices made by or group characteristics associated with minority groups for the purposes of affording them protection. This could be accomplished by a *per se* rule that would treat Hispanic claims as national origin claims which encompass discrimination on the basis of their group characteristics such as language, accent, race, height, and Spanish-surname.

For public policy makers involved in the national debate on bilingual education in the public schools, it should be noted that the Permanent Court went on to conclude in its Advisory Opinion that in this Polish case there was an obligation to establish public primary schools where the medium of instruction would be in the minority language and that the authorities were free to limit these facilities to the children whose language was the minority language.<sup>26</sup>

The consequence of the Permanent Court's opinion was to insure that self-classification would be the norm for minorities without verification, dispute, pressure or hindrance of the authorities and that the minority language schools would be available to the minority language child as prescribed in the Convention.

These treaty interpretations are of some value in the treatment of Mexican Americans and Puerto Ricans, two groups who were made part of the American polity through conquest and treaty. In this regard they are unlike the foreign immigrants who came to America without treaty guarantees or the status of United States citizenship.<sup>27</sup> These two Spanish-speaking minorities were established communities within the meaning of the Minority Schools

in *Albany Advisory Opinion*, that is, they lived in prescribed localities, had their own race, religion, and traditions and were united by them.

The treaties in question guaranteed them Mexican Americans and Puerto Ricans the rights of other United States citizens in law and in fact. Puerto Ricans were allowed to elaborate their own pedagogy in the Spanish language. Puerto Rican public schools are conducted in the vernacular language of the Island, which is Spanish. They are the only American-flag schools which do this,<sup>28</sup> but historically public schools in the United States were at different time conducted in such languages as French and German. In the case of the Mexican American, language has always been a substitute for national origin and race discrimination. Many Mexican schools were created in the Southwest and publicly segregated purportedly on the basis of student language needs.<sup>29</sup> The xenophobia that resulted from the first World War impelled state authorities to employ public policy to restrict foreign language use, to use such regulations as a proxy for national origin discrimination in the name of linguistic conformity. The current English-only Movements in the United States are contemporary examples of this xenophobia and are inconsonant with international precedent and United States jurisprudence protecting the rights of linguistic minorities such as Mexican Americans and Puerto Ricans.

## LANGUAGE-BASED NATIONAL ORIGIN DISCRIMINATION IN THE U.S.

### **The Treaty of Guadalupe-Hidalgo of 1848 and the Treaty of Paris of 1898**

An historical review of the Treaties of Guadalupe-Hidalgo of 1848, the Treaty of Paris of 1898 and the Second Organic Act of 1917, which made Mexican Americans and Puerto Ricans citizens of the United States, is appropriate to rebut the rationale of the *Carmona v. Sheffield* modality discussed below that citizenship in the United States is exclusively conditioned on English or that the Immigration and Nationality Act applied to the inhabitants of these territories absorbed by the United States or to their descendants.

The Mexican American and the Puerto Rican became part of the United States of America by acts of war, conquest, and cession which resulted in their inclusion in the American body politic in the nineteenth century. The Treaty of Guadalupe-Hidalgo of 1848 made the Mexican residents in the newly acquired territories American citizens unless they took steps within a year to preserve their Mexican citizenship.<sup>30</sup>

Specifically, it was article VIII of the Treaty of Guadalupe-Hidalgo which mandated that all Mexicans who had not declared their intention to become United States citizens within a year of the ratification of the treaty were to be considered to have elected to become citizens.<sup>31</sup>

Of significance in this respect was the absence of any requirement that these new citizens show any ability to read, write or speak the English language. They and their descendants became United Citizens whether or not they spoke English. A victorious America had no need and showed no desire to impose an English language requirement for the exercise of citizenship.

The Mexicans who had remained in the newly acquired territories were

to be afforded the equality granted the inhabitants of other territories equal to that given the residents of Louisiana and Florida. Those inhabitants were also made United States citizens, without English language requirements.<sup>32</sup>

The Treaty of Guadalupe-Hidalgo demonstrated that the Federal government can and has refused to impose English literacy requirements for United States citizenship. A similar policy was applied in 1918 in the admission of Mexican nationals for the purpose of temporary work in the United States. In 1918, the Commissioner General of Immigration issued a Departmental Order which waived the literacy requirements for Mexican laborers; this policy was continued long after the end of the labor shortage. English literacy has not been a condition precedent for the exercise of rights by Mexican Americans, nor is it for Puerto Ricans.

Mexicans became the largest contingent of Spanish-speaking United States citizens to be joined by Puerto Rico's Spanish-speaking inhabitants in 1917. As a result of the Spanish-American war, the United States had acquired Puerto Rico in 1898. The Treaty of Paris of 1898, which ceded Puerto Rico to the United States, provided that the U.S. Congress would determine the political and civil rights of the inhabitants of Puerto Rico.<sup>33</sup>

Puerto Ricans were made United States citizens through the Second Organic Act of 1917, commonly referred to as the Jones Act.<sup>34</sup> Like the Mexican Americans before them, Puerto Ricans were not required to demonstrate any English language knowledge or proficiency. Unlike the Mexican Americans in the Southwest, Puerto Ricans were to continue to use Spanish as the dominant language on the Island. Its public schools were to receive federal funds and the language of instruction was to be in Spanish.

The historical treatment accorded Spanish-speaking groups by federal public policy has been to extend to them United States citizenship without an English language requirement. The use by courts of the Immigration and Naturalization Act to somehow hold otherwise is erroneous as a matter of history and law. This statute did not and does not apply to the Mexican American and Puerto Ricans and their descendants; the federal government has never sought to condition the right of Mexican Americans and Puerto Ricans to citizenship on the basis of English language facility.

### EMPLOYMENT DISCRIMINATION AND THE *Carmona v. Sheffield* AND *Garcia v. Gloor* MODALITIES

Two contemporary modalities have been developed by courts to handle the language-based national origin employment discrimination claims of Hispanics. The *Carmona v. Sheffield*<sup>35</sup> modality rests on its operational outcome (leading to a dismissal of claims by Spanish-speakers for bilingual assistance or notice) on the dual bases of English as the language of the United States and the alleged and unproved administrative costs associated with providing bilingual services. The *Carmona v. Sheffield* modality provides that it is reasonable for state government in the United States to conduct all of its business only in one language, especially in the light of what is perceived to be the finite resources of a state.

The *Carmona* modality thus posits its public policy prescription on an argument that no special efforts are required to affording Spanish-speakers who

do not read English an understanding of the notices sent to them by the state unemployment insurance and that protection afforded them would lead to claims by all other similar groups for special treatment. The Court dismissed the claims of the Spanish-speaking Plaintiffs without ever holding a trial on the merits of their claims.

While English is the de facto language of the United States, the court sought to make it the de jure language by citing the naturalization statute which requires an understanding of English for United States citizenship. That statute is, of course, entirely inapplicable to Puerto Ricans, who are Spanish-speaking American citizens from birth. Interestingly enough, a federal district court facing the identical claims raised by the Mexican Americans in *Carmona* refused to dismiss the lawsuit and that suit was ultimately resolved by settlement in favor of the Spanish-speaking Puerto Rican class.<sup>36</sup>

The *Garcia v. Gloor*<sup>37</sup> case established a modality that differentiates between monolingual Spanish-speaking Hispanics, who were protected from national origin discrimination, from bilingual (that is, English and Spanish-speaking) Hispanics, whose use of the Spanish language at the workplace was not protected from discrimination. The Court found that Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination in employment on the basis of national origin did not prohibit discrimination on the basis of "the language the one chooses to speak."<sup>38</sup>

Consequently, a bilingual Mexican American salesman who had been hired in order to speak Spanish with the majority Spanish-speaking clientele was properly dismissed for answering in Spanish a fellow salesman's inquiry which had been in Spanish. Such action on the part of the dismissed employee had violated the employer's requirement that conversations between salesmen on the job be in English. This result could only rationally be obtained from a public policy analysis that artificially divided language from national origin, protecting what is perceived to fall within the national origin classification and excluding from national origin what in international precedent is fundamental, namely, the language of the member of the linguistic minority.

The *Carmona v. Sheffield* and *Garcia v. Gloor* modalities are mere extensions of the distinction sanctioned by the courts against Hispanics on the basis of language. They stand in contradistinction to the *Hernandez v. Texas* and *Katzenbach v. Morgan* modalities which seek to guarantee Hispanics the equality in fact which are implicit in the Treaty of Guadalupe-Hidalgo and Treaty of Paris. Such guarantees are made more explicit for Puerto Ricans who are encouraged through federal funds for their public school system in Puerto Rico to retain their Spanish language which is a salient national origin trait.<sup>39</sup>

## THE EEOC NATIONAL ORIGIN GUIDELINES

In summary, there is an international recognition of discrimination on the basis of language which is actionable and deemed illegal where not otherwise justified by some legitimate reason. The norm is analogous to that reflected in the National Origin guidelines of the United States Equal Employment Opportunity Commission (EEOC), the difference lies that language is subsumed within the classification of national origin in EEOC's view and is a sep-

arate actionable classification in the world view.<sup>40</sup>

The EEOC view seeks to make use of the "national origin" classification used in American jurisprudence and to the extent that it includes and protects language would be consistent with the protection and status afforded language in international instruments and under international law.

In both the EEOC view and international jurisprudence, language-based discrimination is inextricably tied to the national origin of the minorities claiming the discrimination. Congress has been aware of this link in the case of Mexican Americans and Puerto Ricans<sup>41</sup> – it is time that the courts of the United States also concur. Failing a judicial acceptance of the concept of language-based national origin discrimination, Congressional action is needed in order to protect Hispanics in the United States.

The historic and international arguments for this are also associated with the promises made to Hispanics for the preservation of their rights and culture best exemplified in the case of Puerto Ricans. Otherwise discrimination meaning (1) a distinction, exclusion, restriction or preference, (2) based on the salient trait of national origin minorities, and (3) as a result of intentional or inadvertent (adverse impact) actions of employers will be allowed to nullify or impair the equality of treatment obtained by Hispanics in the United States.<sup>42</sup>

### **Elaborating an Approach Toward Language-Based National Origin Discrimination**

Hispanics are not the only groups to have pressed language-based claims of discrimination; they are today the largest such group. The legal principles for a standardized approach against language-based national origin discrimination lies in the concepts of disparate impact and disparate treatment. The Supreme Court set the standard in *Yick Wo v. Hopkins*<sup>43</sup> where it held that facially neutral procedures which were unevenly applied to a protected group constituted a violation of the equal protection clause of the Fourteenth Amendment. The Court held the equal protection clause was a pledge of the protection of equal laws and was applicable to all persons regardless of their race, color, or nationality.<sup>44</sup>

#### **1. English Literacy: Vehicle for Discrimination**

For Hispanics and other national origin groups it has been the actions of states against the languages of such groups that has made them turn to the federal courts for protection. As already noted, the First World War led to a xenophobic reaction which produced state laws prohibiting the instruction of English to elementary or junior high school students; state statutes adopting English as the official language of the state were also passed. Such statutes were justified as an attempt to promote civic development and American ideals, which would be inhibited if a child was trained or educated in a foreign language.

States reacted to large foreign born communities typified by a common use of foreign words, foreign leaders, and foreign atmosphere. This was viewed as a hindrance to the children of the foreign born and as a peril to public safety. In *Meyer v. Nebraska*,<sup>45</sup> the U.S. Supreme Court was called upon to scrutinize a state statute which made it a criminal offense for a teacher to

instruct children below the eighth grade level in specified foreign languages. In this case a parochial school teacher was convicted for teaching the subject of reading in the German language.

The Court's perspective on language based discrimination is as applicable today as it was in 1923: the Constitution protects all persons, whether they were born speaking English or not. The Supreme Court found that the Nebraska English-only statute deprived persons of the liberty guaranteed by the Fourteenth Amendment.

The Court found that the teacher in this case taught German in the school as part of his occupation; he had a right to teach and parents had a right to have their children instructed. These rights were within the liberty protected by the Fourteenth Amendment. The Court saw no emergency which could serve as a basis for rendering foreign language instruction to children harmful and acknowledged that such languages are best learnt at an early age. The statute was declared unconstitutional as was a similar statute in Iowa.<sup>46</sup>

These state statutes were sophisticated enough not to target their prohibitions at the particular national origin groups who spoke the prohibited foreign language, rather the legislatures learned to draw classifications based solely on language. The supporters of these state statutes saw themselves as pro-English and believed them to be a proper response to the purported threat of foreign language groups; they even attacked the loyalty of foreign language speakers.

The English-only statutes currently proposed throughout the United States is but another example of the xenophobic trend that seeks to impose linguistic conformity on linguistic minorities. The motivation is no longer against French or German speakers but principally against Hispanics who constitute one of the largest foreign language communities in the United States.

As in the Albania case, the U.S. Supreme Court intervened to arbitrate the controversy and to protect the rights of the foreign language teachers, students and their parents. The Nebraska and Iowa cases were soon followed by cases in the Philippines and Hawaii, where United States territorial governments had legislated foreign language prohibitions. The willingness and ability of a dominant linguistic group to make use of the instruments of public policy to enforce their dominance against linguistic minorities should make such actions suspect and require that they be subjected to the strict scrutiny referred for other classifications used in the past to discriminate against groups such as race.

In *Yu Cong Eng v. Trinidad*,<sup>47</sup> the Philippines legislature passed a statute which required that merchants keep their account books in English, Spanish or one of the 43 Philippine local dialects. This statute prohibited some 12,000 Chinese merchants from keeping their books in Chinese, and the failure to do so was to result in criminal sanctions. The U.S. Supreme Court found that the statute was aimed at the Chinese merchant community in the Philippines, that it prohibited these merchants who spoke no other language from the details essential for the conduct of their business.

The U.S. Supreme Court held the statute unconstitutional as a deprivation of the liberty of these merchants to conduct their affairs in a language they understood and thus of their property without due process of law. The Supreme Court ruled the statute unconstitutional as a violation of the due process of law and the denial of the equal protection of the laws.<sup>48</sup>

In 1926, the Hawaii legislature focused its concern on private schools where children were taught in Japanese; it sought to progressively prohibit the admission of children to such schools unless they had completed the first and second grades in an American public school. It further sought to regulate what could be taught in such schools, assess a fee per pupil, license instructors for knowledge of American values and the English language, and require English equivalents to be published in new textbooks for foreign words and idioms. The Japanese private schools were prohibited from conducting sessions during the mornings or while the public schools were in session. Violation of the rules constituted a criminal misdemeanor and subjected the defendant to a fine.<sup>49</sup>

These regulations were aimed at controlling the personnel, student admission requirements, curriculum, materials and hours of instruction of the 163 foreign language schools in Hawaii. Nine of these schools were conducted in Korean, seven in Chinese, and 143 in Japanese. The Ninth Circuit Court of Appeals found that the right to impart instruction, whether viewed as a property right or as part of one's liberty, was implicated in this case, and the legislature's action against these private schools violated the privileges and immunities of United States citizens and the due process of law clause.

It said that were the regulations involved here to be imposed by a state against a college in which foreign languages were taught it would "shock the conscience of mankind." The state statutes examined so far were aimed at the prohibition or regulation of foreign language usage by striking at its use in private schools created for this purpose. The goal was to curtail foreign language usage in the United States.

Another way to accomplish this was through the imposition of literacy requirements on the exercise of the franchise. The states of California and New York passed English literacy statutes with the intent of discriminating against the foreign language speaker. In 1891, A.J. Bledsoe (known as a member of the vigilante Committee of Fifteen which expelled from Humboldt County every person of Chinese heritage) introduced the English literacy requirement as a proposed constitutional amendment in the California State Assembly. In his introduction, he quoted from the political platform of one of the major political parties which sought to deny the franchise to the foreign born until they had been acculturated.

The English-literacy constitutional amendment was approved in 1894 and required an ability to read the California state constitution in English and to write their name.<sup>50</sup> Rather than prohibit the use of the language of the national origin group, the stratagem was to require English competence at a high enough level to insure exclusion of immigrant groups. The California amendment required an ability to read a legal document, complex in nature, and unfamiliar to most voters; there was room here for discrimination and that was what the amendment's sponsors sought. The discrimination could now be defended with the argument that the right to vote was not denied because of the individual's race, color, creed, or national origin, but because of their illiteracy in the English language. This is but another version of the *Garcia v. Gloor* modality with its tenet that language-based discrimination is allowed whereas national origin discrimination is prohibited. As we discuss below, the California Supreme Court was finally called upon to strike down the English literacy requirement in the case of Chicanos in 1970 holding that Spanish literacy would suffice to make the state requirement.



In New York the object of exclusion of immigrants and the protection of those already on the voter's rolls was achieved through an English literacy statute and a grandfather clause waiving such requirements for those who were already voters. The only other exception to the constitutional requirement was physical disability.<sup>51</sup> This provision was successful in keeping Puerto Ricans from exercising their right to vote.<sup>52</sup> Yet, its genesis lies in the reaction of its sponsors to the foreign born who through naturalization were eligible to vote. One such sponsor spoke of the need to check the danger stemming from the infusion of Southern and European races into the United States.<sup>53</sup>

The supporters of the English literacy requirement argued before the Supreme Court that its intent was to provide an incentive for non-English speaking immigrants to learn English and to guarantee the intelligent exercise of the right to vote. The Supreme Court responded that Congress was free to question this in light of the prejudice that played such an important role in its passage.<sup>54</sup>

## **2. The Promise in *Balzac v. People of Porto Rico*<sup>55</sup>**

The Jones Act made Puerto Ricans United States citizens; what it did not do was make applicable to Puerto Rico all rights guaranteed fellow citizens on the mainland under the bill of the U.S. Constitution. In the landmark case of *Balzac v. People of Porto Rico*, the Supreme Court held that the right to trial by jury was deemed a mere matter of procedure and not applicable to Puerto Rico even though its people were United States citizens. The reason for this was that Puerto Rico was an unincorporated territory of the United States to which the United States Constitution did not apply in all of its respects.<sup>56</sup>

The Supreme Court saw the grant of United States citizenship as a signal to Puerto Ricans to obtain full equality with fellow citizens by migrating to the continental United States. The Supreme Court noted the goal of Congress was to insure local autonomy for Puerto Rico and complete equality of Puerto Ricans in its promise to them.

Whatever might occur in Puerto Rico, Puerto Ricans who moved to the continental United States were promised an "exact" equality which was denied many of them because of the English-literacy requirements imposed by states such as New York.

## **3. The Congressional Response to the Puerto Rican Claim for Bilinguality**

In 1965, the United States Congress passed section 4(e) of the Voting Rights Act<sup>57</sup> of that year, which allowed that persons educated in American-flag schools where the language of instruction was other than English and who had completed the sixth-grade were not to be denied the right to vote. This was a direct response to the New York statute which had been amended to allow persons with at first eighth grade educations and then sixth grade educations in Puerto Rico to vote; the difference was that the Puerto Rican schools had to have been conducted in English.<sup>58</sup>

The Supreme Court held in *Katzenbach v. Morgan* that section 4(e) was an enactment passed under section 5 of the Fourteenth Amendment to enforce the equal protection clause; it also held that Puerto Ricans were entitled to the protection of the amendment; the Court viewed section 4(e) as a statute designed

“For the Puerto Rican community residing in New York nondiscriminatory treatment by government—both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.”<sup>59</sup>

The effect of the statute was “to prohibit New York from denying the right to vote to large segments of the Puerto Rican community”; this in turn was to enhance the political power of Puerto Ricans deemed helpful in order to obtain nondiscriminatory treatment in services. The Court cited the promise in *Balzac* for the proposition that Section 4(e) would enable the Puerto Rican minority to obtain the “perfect equality of civil rights and the equal protection of the laws.”

Under section 5 of the Fourteenth Amendment, it was for Congress to determine whether the needs of the Puerto Rican community required federal intervention on the state interests that were served by the English-literacy requirement. The Supreme Court held that Congress had the power to evaluate and weigh the conflicting considerations involved in the nullification of the New York state English-literacy requirement. Congress was free to consider an equivalence between an ability to read or understand Spanish and English literacy based upon the Spanish-language newspapers, radio and television programs to which Puerto Ricans had access.<sup>60</sup>

The statute was challenged by New York state voters who alleged that their right to vote would be diluted if Puerto Ricans were allowed to vote; they also asserted that the statute limited itself to Puerto Ricans and did not include those educated abroad who also spoke foreign languages. The Supreme Court rejected the assertion that Congress had to extend relief to those educated in non-American flag schools.

It considered that the Congress' choice may have been a result of four factors: (i) Congressional familiarity with the quality of teaching in American-flag schools (found by the Court to apply only to Puerto Rico's schools); (ii) the unique and historic relationship between Congress and Puerto Rico; (iii) Congressional awareness, acceptance and funding of Puerto Rico's public schools where Spanish was the language of instruction, and (iv) congressionally enacted policies which fostered migration from Puerto Rico to the continental United States.

The Supreme Court thus answered the 'floodgates' argument, that is, that if affirmative relief is awarded to a specific national origin group it must be accorded to all. This is not the case where Congress has a basis for a distinction; in short, Congress need not treat all evils at the same time. Congress' power to forge piecemeal reform directly contradicts one of the tenets of the *Carmona* modality which stipulates that language-based relief could not be afforded Spanish-speaking claimants since it would have to be granted to all foreign language claimants.

Most importantly, the Congress responded to the promise detailed in *Balzac* to insure by its own affirmative action that Puerto Ricans be accorded full political and civil rights in the continental United States. Congress created a basis for a doctrine of effective equality<sup>61</sup> which did not accept the appearance of equal treatment, for example, that all persons must show literacy in English, but rather insists on the substance of equality, that is, that assistance designed to attain equality may be required. The implication is that Puerto Ricans were entitled upon reaching the United States not merely to equality in form or apparent equality but rather to equality in fact, which was ultimately

to encompass a bilingual election apparatus in cities throughout the United States.

#### 4. The Voting Rights Cases

Mexican Americans began the quest for effective equality by defining what the right to vote meant for Hispanics who were illiterate and yet entitled to vote under Texas law. In *Garza v. Smith*,<sup>62</sup> three illiterate Mexican American voters brought a class action to challenge the Texas Election Code's prohibition against voter assistance at the polls; assistance was only allowed for voters who could not prepare ballots because of a physical infirmity that rendered them unable to see or write.

The district court held that the right to vote included the right to know which mark on a ballot or which voting machine lever would effectuate the choice of the voter. The court refused to accept the notion that an illiterate voter had the right to vote, but not the right to know for whom or what he pulled the lever. Accordingly, the Texas code provisions which prohibited voter assistance to illiterates were found violative of the equal protection clause of the Fourteenth Amendment. The argument of an illiterate voter's right to know which was successfully made in *Garza* was used by Puerto Ricans to make their argument that they were entitled to know in their own Spanish language the consequence of their marking a ballot or pulling a voting machine lever. The Mexican Americans had established a principle of effective equality similar to the concept of equality of fact found in international jurisprudence; the Puerto Ricans would now use this concept to make their case for a bilingual election apparatus.

Puerto Ricans made use of a concept of the right to an effective vote in *Puerto Rican Organization for Political Action v. Kusper*.<sup>63</sup> Puerto Ricans argued that in order to make their right to vote effective they required assistance in the Spanish language. The court reviewed the Voting Rights Act of 1965, as amended in 1970. It relied on Congress' declaration of policy that it was "necessary to prohibit the States from conditioning the right to vote of Puerto Ricans on ability to read, write, understand, or interpret any matter in the English language"<sup>64</sup> in concluding that Chicago's election commissioners were required to provide voter assistance in Spanish for the 1972 general election.

The defendants had argued that such an order would violate an Illinois statute which made English the official language of the state; the court found that the existence of the statute had not precluded the states from the publication of materials in other languages. This rationale may be equally applicable to those Hispanics working in jurisdictions with English-only statutes or in states which have declared English to be the official state language.

The English as the official state language argument did not preclude the federal district court from ordering that defendants prepare in Spanish and distribute: (i) directions for voting on voting machines to be affixed to Specimen General Election Ballots; (ii) posters that advised who was entitled to voter assistance, (iii) instruction cards to be affixed to the model voting machines. These materials were to be used and displayed in the polling places; reasonable efforts were also to be made to appoint bilingual elections in the polling places.<sup>65</sup> The Seventh Circuit Court of Appeals affirmed the decision of the district court by affording Spanish-speaking Puerto Ricans assistance in a language they could understand.<sup>66</sup>

The precedent set in Illinois was immediately transferred to New York where the federal district court in *Torres v. Sachs*,<sup>67</sup> ordered the most comprehensive bilingual relief obtained in a voting rights case. The Board of Elections in New York City was ordered with respect to all future elections to:

- (i) provide all written materials sent to voters or prospective voters in connection with the election process in Spanish and English;
- (ii) provide ballots in both Spanish and English;
- (iii) provide a sufficient number of election officials who speak, read, write and understand Spanish and English;
- (iv) provide conspicuous signs in Spanish at all polling and registration places that indicated that election officials were available to assist Spanish-speaking voters or registrants and that bilingual printed materials were available; and
- (v) publicize elections in all media in a way that reflected the Spanish language characteristics of the Puerto Rican plaintiffs.

In arriving at its determination, the district court found Puerto Ricans protected by the Voting Rights Act of 1965 as amended, that they were United States citizens, and, unlike persons seeking to become naturalized, United States citizens were not required to learn English. The promise of political equality inherent in *Balzac* and extended by Congress to Puerto Ricans through section 4(e) of the Voting Rights Act had now remade the electoral apparatus of American politics adding to it a component of bilinguality. A federal district court in Philadelphia joined these other courts in ordering bilingual voter assistance for Puerto Ricans.<sup>68</sup>

By contrast, the full measure of relief obtained by Puerto Ricans was denied Mexican Americans in *Castro v. State of California*.<sup>69</sup> In this lawsuit Section 1 of Article II of the California constitution, which conditioned the right to vote on the ability to read the state constitution in English, was challenged by plaintiffs who were literate in Spanish but not in English. The California Supreme Court held that the provision as applied to persons otherwise qualified who were literate in Spanish but not in English violated the equal protection clause of the Fourteenth Amendment.

In reaching its conclusion, the California Supreme Court pointed to the availability of Spanish language periodicals, newspapers, and other communication mediate adequate to inform the Spanish-speaking plaintiffs about local, state, and national issues and candidates.

The defendants were unable to show that the Spanish media did not provide the necessary political information. The California Supreme Court's holding was made applicable to any otherwise qualified voters, literate in a language other than English, who could show comparable access to sources of political information.

The court, however, denied the Spanish-speaking plaintiffs a right to a bilingual election apparatus. It assumed that these voters could prepare themselves through study on their own with the assistance of others who could translate sample ballots and materials for them. The Spanish news media was also counted on to communicate the relevant information. The basic rationale for this holding was that California had a substantial interest in a single language system and bilingual materials were unnecessary for intelligent exercise of the franchise.

Mexican Americans, who were the chief beneficiaries of the court's ruling, were denied the bilingual election apparatus that Puerto Ricans had obtained in Illinois, New York, and Pennsylvania. This also contrasted with New Mexico which authorized ballots and instructions to be printed in Spanish and English. In terms of the English literacy requirements, 30 states in 1966 had no such requirements, Hawaii accepted literacy in English or Hawaiian, and New Mexico provided personal assistance.<sup>70</sup> California maintained a literacy requirement but could no longer limit it to literacy in English.

The decision in *Castro v. State of California* placed the burden of equality, that is, of understanding the significance of an English-only electoral apparatus, on the Spanish-speaking Hispanic. This is in line with the *Carmona* modality which excuses governments from assuming the administrative burden associated with bilingual services or materials. Rather than mark a departure from such tenets the California's response confirms a judicial refusal to effectuate genuine equality of treatment by requiring special assistance to monolinguals.

The fuller protection afforded by Congress and the courts to Puerto Ricans were denied Hispanics in California. In 1975 this situation was addressed by Congress through the amendments to the Voting Rights Act. Congress required a bilingual election apparatus where more than 5 percent of the citizens of voting age of a state or political subdivision were from a single language minority and the illiteracy rate was higher than the national illiteracy rate; illiteracy meant failure to complete the fifth primary grade.<sup>71</sup> Language minorities meant persons who were of American Indian, Asian American, Alaskan Natives, or Spanish heritage. Congress was called upon to intervene and prohibit state governments from conducting an English-only electoral apparatus, which did not accord Hispanics and others genuine and effective equality in comprehension of and participation in the process.

These federal bilingual election requirements were passed once again in 1982 and extended for ten years.<sup>72</sup> The statute sought to cure the discrimination and stigma which came with English illiteracy. The disability that comes with English illiteracy marks children for their entire lives, denies them equality of civic and political participation, and limits employment opportunities. It results in personal and economic costs which are inestimable.<sup>73</sup>

For Hispanics the cost involves a life of discrimination based exclusively on their inability to speak English; such discrimination has been the focus of federal involvement in the area of the franchise. It has not, however, been addressed with a uniform approach in the area of language-based national origin discrimination in employment.

The essential lesson from the Hispanic quest for equal civil rights is that historically they have been discriminated against on the basis of their language. The passage of English literacy requirements against the Chinese in the Philippines, against the foreign-born language-speaking European in California or New York had at its roots an attempt to curtail the civil rights of these national origin groups. The history of the Mexican American in the Southwest discloses the intentional segregation of their children on the basis of their Spanish language. Such segregation was alleged to be for remedial purposes, when in fact the courts found it to be because of the race and national origin of the Mexican American child. It comes as no surprise that for Hispanics and other national origin groups that measures that are alleged to promote the English language have in fact turned out to be vehicles for national origin discrimination.

This was true in the 1920's in Nebraska and Iowa, and it is true today in California, the latest state to declare English as its official language. The attempts by New York to condition the right to vote for Puerto Ricans on English literacy requirements necessitated the intervention of the Federal government, and the current attempt to turn back the clock to the xenophobia of World War I and its aftermath may also require congressional action. Certainly, Congress has the power to prohibit states from using the declaration of English as the official language to deny Hispanics effective equality in treatment and services.

Public policy makers are compelled by the increasing demographic presence of Hispanics in the United States to understand the special needs of Hispanics as a linguistic minority facing discrimination in employment, education and voting. There is a need to protect Hispanics against language-based national origin discrimination and that the concept of national origin as interpreted by the courts encompass language. An effort by policy makers in this regard would bring American jurisprudence in light with international precedent and would serve as a basis for the equality in fact to which Hispanics are entitled. More specific, detailed policy recommendations follow, but none is more important than insuring the protection of Hispanics as a linguistic minority entitled to full and effective participation in the American polity.

## POLICY RECOMMENDATIONS

Hispanics constitute the second largest minority group in the United States; it is predicted that in the twenty-first century they will be the largest minority group in America. Hispanics compose communities throughout the United States which are tied together by race, color, language, national origin, and culture. The indicia of Hispanic race/national origin in American society has been their surname, height, language, accent, race and color, racial and national origin stereotypes, physical appearance, alienage, socio-economic and socio-educational status.

Courts have failed to appreciate the physical, cultural, and linguistic characteristics of Hispanics as a matrix of factors which define their national origin. Attempts to separate these characteristics from Hispanics so that race or national origin must be individually proven along with attempts to separate language from national origin has resulted in uneven treatment of their claims and legally sanctioned discrimination against them.

### **1. Language-Based National Origin Claims Should be Deemed by Courts to State a Claim upon which Relief can be Granted.**

In order to afford Hispanics equality in law and in fact, courts should allow claims of language-based national origin discrimination to go forward to trial. An allegation of adverse impact or disparate treatment should suffice to defeat a motion to dismiss or for summary judgment. An employer that could not support its language-based discrimination on the basis of job-relatedness or necessity should not be allowed to prevail.

In short, where Hispanics and other language-based minority groups can

demonstrate that classifications constructed by public or private employers fall more harshly on them than on the majority group, courts should find that they have made out a prima facie case of national origin discrimination. The burden of going forward should then shift to the defendant that its classification is designed and administered to meet the needs of Hispanics and others and that less drastic or alternative approaches either would not produce a better result or would not be feasible.

Where the defendant cannot show that its policies and practices meets the needs of Hispanics, but instead perpetuates the discriminatory effect already demonstrated by plaintiff, such practices should be enjoined. On the other hand, if the defendant meets its burden of proof, the plaintiff should then be free to show that the defendant's reasons are mere pretext and if the plaintiff succeeds in doing so the court should grant appropriate relief.

## **2. The Burden of Proof Should Fall on the Employer to Show that Its Employment Decisions and Actions Against Hispanics and other National Origin are Based on Just Cause.**

The Congress should consider amending Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e et seq. with the purpose of explicitly stating and allocating the burdens of proof between plaintiffs and employers. The Congress should adopt the same standard that obtains in private arbitration discipline cases, that is, that an employer's actions were based on just cause. The burden of proof would be explicitly placed on the defendant which is the party most knowledgeable about the facts that surround its employment decisions. State laws should also be amended to reflect this basic arbitral principle.

## **3. The Statute of Limitations in Employment Discrimination Cases Should Be Extended From 180 Days to 365 Days so that a Complaint Filed Within 365 Days of the Act of Discrimination would be Timely.**

Many of the cases brought by Hispanics and other national origin groups have been dismissed because they were untimely. While in personal actions under many state and federal statutes (including those that adopt state statute of limitations) plaintiffs have a year or more to file their claims, Title VII plaintiffs must file within 180 days. Federal employees must take action within 30 days. The distinction between federal and non-federal employees should be eliminated, and the statute of limitations should be lengthened to at least one full calendar year. The time would start to run from the date of the discriminatory act, and in the case of tenure decisions, which generally occur one year before a professor is terminated, would not begin to run until the date of actual termination. In the case of a professor, this would obviate the present necessity of commencing litigation against colleges and universities while also working for them.

## **4. The Distinction Between Monolinguals and Bilinguals Must Be Abolished in Treating Language-Based National Origin Claims**

The distinction between monolinguals and bilinguals must be abolished in treating language-based national origin claims of employment discrimination.

Courts should make use of EEOC's National Guidelines at 29 CFR 1606. To the extent that they do not (which has been the case with respect to language-based national origin claims), Title VII of the Civil Rights Act of 1964 should be amended at 42 U.S.C. Section 2000e by defining the term "national origin" as in a new section (l) as follows:

(l) The term "national origin" is defined broadly as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group.

This definition merely adopts the well-reasoned approach used by EEOC at 29 CFR 1606.1. On the other hand, Title VII itself could be amended at 42 U.S.C. 2000-e et seq. by adding language as a prohibited classification.

For example, Title VII would be amended to read at 42 U.S.C. Section 2000e-2(a)(1):

(a) It shall be an unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, language, or national origin. (2) to limit, segregate, or classify his employees or applicants for employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, language, or national origin.

The balance of Title VII would also be amended to include the additional "language" provision as another protected classification.

#### **5. Private Employers Should Not Be Given A Right Prohibited to State Employers; They Should Not be Allowed to Discriminate on the Basis of Alienage.**

Under Title VII, private employers currently have the right to deny employment to persons on the basis of their alienage. This is a right forbidden to state employers, except where such positions are state, executive, legislative or judicial positions involving persons that participate directly in the formulation, execution, or review of broad public policy. The private employer should be held to the same standard and therefore be forbidden to refuse to hire persons because of their alienage. Such an amendment could be undertaken by defining national origin at 42 U.S.C. Section 2000e(l) to include alienage:

(l) The term "national origin" is defined broadly as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, alienage and/or place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group.

This definition would protect aliens in private employment in the same fashion that they are protected by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution against employment discrimination by the states. An alternative to the definitional amendment would be added as a separate Title VII protected category.



## **6. State Constitutions and Laws that Make English the Official Language Should Be Amended or Nullified in Order to Protect Hispanics.**

In light of the current movement to make English the official language of the states of the union, it will be critical that state fair employment practices statutes also be amended either to define national origin consistent with the EEOC definition set out above, or, by protecting the "language" classification. To fail to do this will be to insure that discrimination on the basis of language will continue unabated.

It cannot be said that English-only statutes have historically been used against Hispanics and others as a proxy for national origin discrimination. The Congress has responded to this in the case of Puerto Ricans by specifically nullifying the English-only literacy requirements of the State of New York; it has also responded by passing the bilingual election requirements provision of the Voting Rights Act of 1965, as amended. Under Section 5 of the Fourteenth Amendment, Congress has the power to nullify the English-only statewide provisions currently being enacted and should consider doing so with respect to Hispanics. A Congressional statute which exempts Hispanics from such English-only statutes will restore the equilibrium between majority and minority interest that is at the heart of equality of treatment in law and in fact.

Congress has in effect done this in the case of Puerto Rico by permitting Spanish to be used in the Island's federally funded school system and thereby fulfilling the promise made to Puerto Ricans that their language and culture will be preserved within the American constitutional structure. To do less is to disavow the historical guarantees that emerge for Mexican Americans from the Treaty of Guadalupe-Hidalgo and for Puerto Ricans from the Treaty of Paris.

## **7. A Right to a Jury Trial Should Exist in all Title VII Actions Involving Colleges and Universities.**

The almost universal failure of plaintiffs to successfully press claims of employment discrimination that touch upon the issue of tenure denial by colleges and universities is in part a refusal of the judiciary to intervene in what is deemed a highly subjective process. Almost any basis for a tenure denial will be sustained by the courts. In cases where tenure denial is the issue, Title VII should be amended to allow the plaintiff to request a jury trial on the tenure denial claim. This will make the jury the trier of fact and its determination on the tenure denial claim would be binding on the court.

## **8. The Civil Rights Act of 1866, 42 U.S.C. Section 1981 Should Be Amended to Explicitly Allow Claims of Disparate Impact.**

The Supreme Court has determined that only acts of intentional discrimination are covered by the Civil Rights Act of 1866, 42 U.S.C. Section 1981 and, most recently, that contrary to prior precedent the statute does not cover all terms and conditions of employment. The burden of proof should be allocated to the employer which is in line with arbitral authority. Congress should amend the statute as follows:

All persons of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evi-

dence, and to the full benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other. Claims of disparate impact are cognizable under this statute as is every claim involving a term, condition or privilege of employment. The burden of proof in an employment claim shall be on the employer.

This amendment to 42 U.S.C Section 1981 would allow claims of disparate impact thus making it easier to allege and prove a claim of discrimination. This would return the statute to the use made by civil rights litigants prior to the Supreme Court's 1982 ruling in *General Building Contractors Association, Inc. v. Pennsylvania*,<sup>74</sup> where the Court held that proof of intentional discrimination was necessary for Section 1981 liability. It would reverse several recent Supreme Court rulings.

## CONCLUSION

The process of employment discrimination involves the distinctions made by employers with respect to employment decisions that concern compensation, terms, conditions, or privileges accorded employees in the workplace; one consequence of the distinctions which are allowed in law to be used against Hispanics has been discrimination on the basis of their language. This is a far cry from the perfect equality in fact necessary for genuine and effective equality. The movement to make English the official language of each of the states and of the United States belies the genius of the American polity; the adoption of a federal English-only policy would be to impose English as the official language of all business and schools in Puerto Rico and in the territories still under American supervision.

This counters the tide of international precedent in which American Supreme Court jurisprudence has been a leader. This is a challenge to all American institutions, including employers, and yet America has met such challenges before. The Hispanic in America deserves neither more nor less than equality in law and in fact; the dream to be realized is the quest for genuine and effective equality. The outcome of this quest will shape the quality of life and opportunity for all Americans.

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## ENDNOTES

1. Cf. Advisory Opinion on Minority Schools in Albania, PCIJ (A./B. 64) 4 (1935) at 17-18.
2. International jurisprudence has long acknowledged the existence of language as a basis upon which minorities have been discriminated against. The treaty response has been universal and that is to prohibit discrimination on the basis on language. The United Nations Charter

provides that its members will take joint and separate action to achieve the purposes set forth in Article 55 which include the promotion of "universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion." United Nations Charter, Articles 55 and 56 reprinted in Brownlie, *Basic Documents on Human Rights* 5-6 (1981). One of the purposes of the United Nations as an organization is to achieve respect for human rights and for fundamental freedoms without distinction as to race, sex, language, or religion. See Article 1, United Nations Charter reprinted in *id.* at 4.

The Universal Declaration of Human Rights promulgated by the General Assembly of the United States in 1948 proclaims that everyone is entitled to all the rights and freedoms set out in the Declaration "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." See Article 2, Universal Declaration of Human Rights reprinted in *id.* at 22.

The position of international bodies on language discrimination has been unequivocal. The United Nations General Assembly Resolution 1514 (XV) constituting a Declaration of the Granting of Independence to Colonial Countries and Peoples sought respect for and observance of human rights without distinction as to race, sex, language or religion. *Id.* at 29. The American Declaration of the Rights and Duties of Man issued by the Ninth International Conference of American States also proscribed language distinction by providing that "all persons are equal before (sic) the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor." See Article II of the American Declaration of the Rights and Duties of Man (1948) reprinted in *Id.* at 382.

That such a norm means a prohibition on language-based discrimination one need only look to Article 1 of the American Convention on Human Rights, which proscribes "discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." See Article 1 of the American Convention on Human Rights (1969) reprinted in *Id.* at 392.

3. J.W. Bruegel, "A Neglected Field: The Protection of Minorities," *Journal of Human Rights* 413, 414-15 (1971); see also Dinstein, "Collective Human Rights of Peoples and Minorities", *25 International Comparative Law Quarterly* 113-114 (1976).

4. (A./B. 64) 4 (1935).

5. *Id.* at 11.

6. This argument is similar to that of the San Francisco School District in *Lau v. Nichols*, 414 U.S. 563 (1974), which argued that by providing non-English speaking Chinese students with the same teachers, textbooks and materials in the same schools as English-speaking students it had afforded these students equal treatment. A unanimous Supreme Court disagreed and found failure to provide for the specific needs of non-English speaking students to conduct a denial of effective participation in the educational program offered by the district.

7. 118 U.S. 356 (1886).

8. *Id.* at 19; cf. 118 U.S. 355 (1866).

9. 262 U.S. 390 (1923).

10. 262 U.S. 404 (1923).

11. 1935 P.C.I.J., serv. A/B 64 at 20.

12. *Id.* at 22.

13. *Meyer v. Nebraska, supra.*

14. Article 14 of the European Convention on Human Rights (1950) reprinted in *id.* at 247. Cf. Article 2(2) of the International Covenant on Economic, Social, and Cultural Rights (1966) which provides that "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," reprinted in *id.* at 119; see also Article 2(1) International Covenant on Civil and Political Rights (1966) which provides "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," reprinted in *id.* at 129.

15. *Id.* at 87.

16. 613. *Parolulek v. Ward*, 197 New York Law Journal 13, col. 1 (February 24, 1987).

17. 1928 P.C.I.J., Judgment No. 12, Series A., No. 15, 4-88 (April 26, 1928).

18. *Id.*

19. 163 U.S. 537 (1896).

20. 347 U.S. 475 (1954).

21. *Id.* 480 n.12.

22. Mexican Americans have historically been the victims of unlawful segregation of their children in public schools on the basis of language. This is yet another example of the language-based national origin discrimination sustained by Hispanics in the United States. See, e.g. *Alvarado v. El Paso Ind. School District*, 426 F. Supp. 575 (1976), *aff'd* 593 F.2d 277 (5th Cir. 1979)(Mexican School founded in 1887, Mexican District, 1922); *Soria v. Oxnard School District Board of Trustees*, 386 F. Supp. 539 (C.D.Cal. 1974)(Mexican children segregated by schools and classrooms for more than forty years, with the exception of the "brightest" and "cleanest" Mexican children who were placed in white classes when these white classes were too small in pupil size); *Morales v. Shannon*, 516 F.2d 411 (5th Cir. 1975)(Mexican School founded as early as 1907 as result of the "language problem"; *Mendez v. Westminster School District*, 64 F. Supp. 544 (S.D.Cal. 1946), *aff'd* 161 F.2d 774 (9th Cir. 1947)(Mexican children segregated on the basis of language without bona fide basis); *Gonzalez v.*

*Sheely*, 96 F. Supp. 1004 (D. Ariz. 1951) (Mexican children segregated on the basis of language without bona fide basis).

23. *Hernandez v. Texas*, *supra*, at 479 & n.10, 480.

24. *Id.*

25. See *Katzenbach v. Morgan*, 384 U.S. 641 (1966).

26. 1928 P.C.I.J., Judgment No. 12, Series A, No. 15, 4-88 (April 26, 1928).

27. See Treaty of Guadalupe Hidalgo of 1848, *infra* note 45; Treaty of Paris of 1898, *infra* note 49; Second Organic Act ("Jones Act") of 1917, *infra* note 50.

28. See *Katzenbach v. Morgan*, *supra*.

29. See note 27.

30. Peace, Friendship, Limits and Settlement (Treaty of Guadalupe-Hidalgo), February 2, 1848, United States-Mexico, art. VIII, 9 Stat. 222., T.S. No. 207.

31. *Id.*

32. *Id.*, Article IX.

33. Article IX of the Treaty of Paris provided in relevant part:

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress. United States-Spain, 30 Stat. 1754, T.S. No. 343 reprinted in Commonwealth of Puerto Rico, Documents on the Constitutional History of Puerto Rico 51 (1964). The treaty was concluded at Paris, December 10, 1898; ratification advised by the Senate February 6, 1899; ratified by the President, February 6, 1899; ratifications exchanged and treaty proclaimed on April 11, 1899.

34. Section 5 of the Jones Act, 39 Stat. 951 (1917).

35. 325 F. Supp. 1341 (N.D. Cal. 1971), affirmed 475 F.2d 738 (1973); *accord*, *Guerrero v. Carlson*, 9 Cal. 3d 808, 512 P.2d 833, 109 Cal. Rpt. 201 (1973), *cert. denied* 414 U.S. 1137 (1974) (the failure to provide welfare notices in Spanish did not violate the due process clause).

36. See *Pabon v. Levine*, 70 F.R.D. 674 (S.D.N.Y. 1976) (where the Court refused to dismiss the claims of non-English speaking Puerto Rican claimants seeking bilingual services and materials from the unemployment insurance division of the State of New York).

37. 609 F.2d 156 (5th Cir. 1980), withdrawn and substituted 618 F.2d 264 (5th Cir. 1980), *cert. denied* 449 U.S. 113 (1981).

38. *Id.* 618 F.2d at 270.

39. See *Katzenbach v. Morgan*, *supra*.

40. The National Origin Guidelines concerning "Speak-English-only-rules" provide at 29 CFR Section 1606.7 (1984):

(a) When applied at all times. A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times, in the workplace, from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment. Therefore, the Commission will presume that such a rule violates Title VII and will closely scrutinize it.

(b) When applied only at certain times. An employer may have a rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity.

(c) Notice of the rule. It is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Therefore, if an employer believes it has a business necessity for a speak-English-only rule at certain times, the employer should inform its employees of the general circumstances when speaking only in English is required and of the consequences of violating the rule. If an employer fails to effectively notify its employees of the rule and makes an adverse employment decision against an individual based on a violation of the rule, the Commission will consider the employer's application of the rule as evidence of discrimination on the basis of national origin. *Id.* (footnotes omitted).

41. See Voting Rights Act of 1970 as amended, 42 U.S.C. Section 1973 *et seq.*, which provides for a bilingual election apparatus for linguistic minorities obtaining a certain threshold percentage in the relevant population. Spanish-speaking Hispanics have made use of this legislation to effectively make use of their franchise throughout the United States.

42. See generally McKean, "The Meaning of Discrimination in International and Municipal Law," 44 B.Y.I.L. 183 (1970); McKean, *Equality and Discrimination under International Law* (1983).

43. 118 U.S. 355 (1866). The Supreme Court held:

Though the law itself be fair on its face, and impartial in appliance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution. *Id.*

44. *Id.*

45. 263 U.S. 390 (1923).

46. *Bartels v. State of Iowa*, 262 U.S. 404 (1923).

47. 271 U.S. 500 (1926).

48. *Id.* at 524-25.

49. *Farrington v. Tokushige*, 11 F.2d 710 (9th Cir. 1926).

50. *Id.* at 225; article II, section 1 of the California state constitution provided:  
No person who shall not be able to read the Constitution in the English language and write his or her name shall ever exercise the privileges of an elector in this State; . . . *Id.*

51. See *Katzenbach v. Morgan*, *supra*, at 644 n.2.

52. See, e.g. *Camacho v. Rogers*, 199 F. Supp. 155 (S.D.N.Y. 1961).

53. 384 U.S. 654 & n.14.

54. *Id.* at 654.

55. 258 U.S. 298 (1922).

56. *Id.*; see also Manuel del Valle, "Puerto Rico Before the United States Supreme Court," 19 *Rev. Jur. Inter.P.R.* 13 (1984). However, despite the U.S. Supreme Court's consistent view that Puerto Rico is an unincorporated territory, that is, a colony of the United States, the author is in agreement with the thesis of Justice Harlan's dissent in *Downes v. Bidwell*, 182 U.S. 244, 379-380 (1901):

"The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces - the people inhabiting them to enjoy only such rights as Congress chooses to accord them - is wholly inconsistent with the spirit and genius as well as with the words of the Constitution."

57. 79 Stat. 439, 42 U.S.C. Section 1937b(e)(1964 ed., Supp. I) reprinted at 384 U.S. at 643.

58. 384 U.S. at 644 n.2.

59. *Id.* at 652.

60. *Id.* at 654-55.

61. *Aspira of New York, Inc. v. Board of Education of the City of New York*, 58 F.R.D. 62 (S.D.N.Y. 1973).

62. 329 F.Supp. 131 (W.D.Tex. 1970).

63. 350 F.Supp. 606 (N.D.Ill. 1972), *aff'd* 490 F.2d 575 (7th Cir. 1973).

64. 490 F.2d at 580.

65. 350 F.Supp. at 611-12.

66. 490 F.2d at 580.

67. 381 F.Supp. 309 (S.D.N.Y. 1974).

68. *Arroyo v. Tucker*, 372 F.Supp. 764 (E.D.Pa. 1974); see also *Lopez v. Dinkins*, 73 Civ. 695 (S.D.N.Y. Feb. 14, 1973) (district court required bilingual ballots and assistance in community school board elections in New York City).

69. 2 C.3d 223 (1970).

70. *Katzenbach v. Morgan*, *supra*, note 562, at 654 n.15.

71. 42 U.S.C. Section 1973aa-1a (1981).

72. Pub.L. 97-205, 96 Stat. 134 (1982). Sections (b) and (c) of the Bilingual Election requirements were amended in 1982.

73. The Supreme Court refused to sustain a Texas statute which denied a public education to the children of persons not "legally admitted" into the United States in *Plyler v. Doe*, 457 U.S. 202, 222 (1982).

74. 458 U.S. 375 (1982).



# FINDING, NURTURING, AND PROMOTING HISPANICS IN THE DADE COUNTY PUBLIC SCHOOLS

**Joseph A. Fernandez**

At the time this article was written, Dr. Fernandez was the Superintendent of the Dade County Public Schools. He is now the Chancellor of the New York City Board of Education.

## DADE COUNTY—THE COMMUNITY AND THE SCHOOL DISTRICT

### **A Look at the Dade County School District**

Dade County, situated in the State of Florida, is an urban area composed of 27 different municipalities and townships. It has a population of approximately 1.8 million reflecting three major ethnic groups: (1) White non-Hispanic, which constitutes approximately 33% of the population; (2) Black non-Hispanic, which constitutes approximately 20% of the population; and (3) Hispanic, which constitutes approximately 46% of the population. Other minorities constitute the remaining 1%. There is a total of 314,356 school-age youngsters in Dade County. Of these, 268,293 representing 84.6% attend public schools and 46,063 representing 15.4% attend non-public schools.

Hispanics in Dade County have become a major economic and political force. There are many businesses owned by Hispanics. They also fill many critical leadership positions in the private and public sectors. The number of elected officials and Hispanic organizations is dramatically increasing. The constant lobbying and involvement of the Hispanic community have been instrumental in refocusing the trends and policies affecting the Dade County community and the School District.

Dade County Public Schools is the largest employer in Dade County and has an operating budget of \$1.4 billion, one of the largest in the State of Florida. The school district has 16,639 full-time teachers, as of June 16, 1989, and 1,624 administrators, chiefly school-site. The ethnic composition of the total administrative staff is 864 White non-Hispanic, representing 53.2%; 430 Black,

representing 26.5%; 312 Hispanics, representing 19.2%; and 18 other ethnicities, representing 1.1%.

### The Nature of the Problem

The ethnic composition of the Dade County community, and the Dade County Public Schools student population and administrative staff, is presented in Table 1.

**Table 1**  
Ethnic Composition Dade County Population,  
Student Population and Administrative Staff, 1988-89

Ethnic Groups	% Dade County Population	% Student Population	% Administrative Staff
Hispanic	46 %	45.4%	19.2%
Black non-Hispanic	20 %	32.8%	26.5%
White non-Hispanic	33 %	20.6%	53.2%
Others	1 %	1.2%	1.1%

It is evident from the data provided that Hispanics need greater representation on the administrative staff of Dade County Public Schools. In order to overcome this problem, the school system has established policies and programs which have produced positive results. On July 8, 1987, the Dade County School Board appointed the first Hispanic Superintendent. Under this administration, Dade County Public Schools is implementing challenging, aggressive and innovative programs to increase the number of Hispanic administrators in the school district. The direct and strong leadership style of the administration has minimized bureaucratic or administrative resistance to these programs. The administration has a clear vision of the direction desired for the district and how to move the district in that direction. Strong support of the School Board and the community of the programs facilitate their implementation.

It is noteworthy that in 1988-89, the teaching pool (from which most school-site administrators come) consisted of 16,639 teachers. During this year 874 Hispanic teachers were hired, increasing the number of Hispanics to 3,389. This represents 20.4% of the instructional staff, an increase of 1.9% over the previous year.

### Further Analysis of the Problem

Minority under-representation in Dade County, specifically of Hispanics, is part of a larger problem and national trend of decreasing numbers of young people entering the education profession and especially the drastic reduction in the number of minorities joining the teaching field. Following are some facts supporting the national trend in education, which were presented by Denise A. Alston at the National Governor's Association Conference in 1988:



- Between 1979 and 1985, the number of minority teachers decreased by about 20,000.
- Between 1975 and 1982, the number of bachelor's degrees in education awarded to minorities decreased 50% from 20,000 to 10,000.
- By 1995, minorities will make up 30% of the student population.
- If current trends continue, by 1995, only 5% of the teaching population will be minorities.
- In order to achieve proportionate parity, at least 500,000 of the 1.5 million teachers needed by the mid-1990's should be minorities.<sup>1</sup>

It is at the teacher's level that Dade County Public Schools is exerting effort to increase the pool of qualified minority teachers in order to increase the number of Hispanic administrators. To achieve this purpose, the School Board has approved for implementation an ambitious Affirmative Action Plan to be implemented by every Bureau, Office, Division, Department and school in the district. This plan has already made a difference and is expected to yield the positive expected outcomes in the near future.

## SCHOOL DISTRICT PROGRAMS AND POLICIES

### **Critical Steps Taken to Solve the Problem**

In order to develop a work force that will provide the role models necessary for achieving the harmony, communication, understanding and commitment to Dade County's multi-ethnic community, the school district began a campaign to attract persons of under-represented groups to teach in the school district. Dade County Public Schools has taken an affirmative step by making teaching an attractive career option and implementing an aggressive recruitment program, with emphasis on increasing the hiring of minorities.

The school district has also implemented programs to support, motivate and help the professional development of teachers entering the teaching field. Among them is the Beginning Teacher Program, which seeks to increase the success rate of new teachers joining the school district. A peer teacher is assigned to work with the Beginning Teacher during his/her first year of employment. In addition, the program provides district and school-site training and support. The School-Based Management/Shared Decision-Making schools and Professionalization of Teaching provide opportunities for talented teachers with leadership abilities to participate in school-based decisions that will not only improve the instructional programs provided to students but also offer opportunities for teachers to grow professionally.

Through these programs, Dade County Public Schools specifically provides for persons of under-represented groups greater opportunities to participate in activities that were not readily available in the past.

The Dade Academy of Teaching Arts (DATA) offers qualified teachers the opportunity to conduct research and serve as role models for other teachers by demonstrating exemplary teaching methods and techniques. Through these programs, the district provides a nurturing environment and framework in which the teacher, potentially a leader of a tri-ethnic community, is able to grasp and meet the diverse needs of the Dade County Public Schools.

## Teacher Recruitment - Part of the Solution

Dade County Public Schools has realized that attracting minority teachers of high quality is becoming increasingly difficult. To meet the demands of the complex task of recruitment, the school district in January, 1984 appointed a Chief Recruiting Officer.

In addition, on November 5, 1986, the School Board of Dade County took an affirmative step to enhance the representation of minorities throughout the district by approving an Affirmative Action Plan:

- Intensify the teacher recruitment strategies to ensure that geographic areas which have high concentration of Hispanic and Black candidates are included in all recruiting efforts; and
- Revise recruiting strategies in order to advise minorities of current initiatives which will provide career ladder opportunities for teachers. Include comprehensive information about management opportunities within the Dade County Public Schools. Young college graduates looking for management opportunities perceive that the only career opportunity in an educational system exists in the classroom. Candidates are seldom made aware of the attractive salary packages and challenging management opportunities which are available in this school district.

This affirmative plan produced some positive outcomes in increasing the number of minority instructional staff, especially Hispanics, employed by the Dade County Public Schools during the 1986-87 and 1987-88 school years as evidenced by data provided in Table 2. Better results were needed and to achieve them, a more aggressive campaign was launched in 1988-89.

### More Efforts to Promote Minority Recruitment

In an effort to achieve more positive results, Dade County Public Schools is implementing the following activities to promote minority recruitment during the 1988-89 school year:

- Recruiting trips to colleges and universities with large minority enrollment (by multi-ethnic recruiting teams)
- Mail and telephone campaigns to colleges and universities with large minority enrollment
- Continuous advertisements in publications with large minority readership (Black Collegian, Haiti-Observateur, Hispanic Times, etc.)
- Periodic advertisements on radio stations with predominantly minority clientele
- Long-range recruitment in elementary through twelfth grade for Future Educators of America clubs and chapters (includes scholarships for seniors)
- Collaboration with minority sororities, fraternities, and civic organizations in persuading high school students that teaching is a viable career choice (including trips by recruiters to national conferences)
- Collaboration with University of Miami in development and implementation of grants that support minority recruitment
- One program in progress provides full scholarships for 25 Haitian and Hispanic students some of whom are already paraprofessionals in the

system. One planned program will subsidize two or four years of education for minority students

- Collaboration with colleges and universities with large minority enrollment to arrange for student teaching in Dade County Public Schools
- "Teacher to Teacher," a recruitment effort that will yield a portfolio of personal invitations from professionals in the Dade County Public Schools to prospective teachers (minorities emphasized)
- Brochures addressed to minority groups to publicize the personal, social, and professional lives of minority teachers in Dade County (If You're Hispanic (Black, Indian, etc.), There's a Place for You in Miami)
- Representation at state and national advisory committees and conferences for minority recruitment
- Inclusion of minority teachers in alternative certification programs co-sponsored by the state of Florida, Dade County Public Schools, and the United Teachers of Dade
- Education campaign within the Dade County Public Schools and the community to raise the level of consciousness regarding the need for minority teachers (including participation on talk shows, speakers at community functions, articles in professional and community publications, etc.)<sup>2</sup>

### Some Positive Results

The affirmative steps taken by the Dade County Public Schools have yielded dramatic positive results by increasing the number of minority instructional staff, specifically Hispanics, hired by the school district. A comparative analysis by ethnic classification from 1984-85 to June 16, 1989 reveals that the percentage of Hispanics has increased from 15.8% (2,126) to 20.4% (3,389). A comparison of the number and percentage of the Hispanic instructional staff from 1986 until June 16, 1989, shows a dramatic increase of 863 teachers representing a 34.2% increase. (Table 2)

**Table 2**  
Comparison of Full-time Instructional Staff  
Dade County Public Schools, 1984-85 to 1988-89

Ethnic Group	1984-85 %	1985-86 %	1986-87 %	1987-88 %	1988-89 %	%+
Hispanic	15.8%	16.4%	17.3%	18.5%	20.4%	+4.6%
Black non Hispanic	27.2%	27.4%	27.3%	26.9%	26.6%	-0.6%
White non Hispanic	56.8%	56.0%	55.1%	54.3%	52.6%	-4.2%
Asian & Amer. Ind.	0.2%	0.2%	0.3%	0.3%	0.4%	-0.2%

As evidenced by the data provided, Hispanics experienced the highest increase of instructional staff from 1984-85 to June 16, 1989, an increase of 3.9%.

### **Affirmative Action Plan to Increase the Number of Minorities in Administrative Positions**

On November 5, 1986, the School Board of Dade County took another affirmative step to increase the minority representation in administration throughout all levels of the district. At this meeting, the Board directed the Superintendent of Schools to bring back a plan which would initiate a fact-finding process in order to ascertain whether there have been past and/or existing hiring and promotion practices, which negatively impacted the promotion of minorities in the Dade County Public Schools. As a result of this directive, the following affirmative action strategies to strengthen Dade County Public Schools efforts in this area were developed:

- Continue to implement the Leadership Experience Opportunity for Teachers (LEO-T) Program
- Expand the Leadership Experience Opportunity for Administrators (LEO-A) Program by increasing the number of participants from the 1985-86 school year and ensuring that appropriate minority group representation is recruited
- Explore ways of providing experience credit for teachers applying for administrative positions or administrators seeking promotions who have professional experiences in inner-city schools and multicultural educational environments
- Provide additional credit to candidates for Dade County Public Schools management positions who speak two or more languages where such qualifications enhance job performance
- Identify and train more administrators representative of minority groups to serve as assessors in the Dade County Public Schools Management Assessment Center
- Direct Bureau/Office heads to formulate plans, subject to legal review, designed to increase minority representation
- Provide a semi-annual report to the School Board indicating the progress made in improving minority representation throughout all levels of the district

## **SPECIFIC PROGRAMS TO CLOSE THE GAP**

### **Leadership Experience Opportunity for Teachers (LEO-T) Program**

The LEO-T Program was implemented in the Dade County Public Schools in 1985. The objective of the program is to identify and train talented teachers who are aspiring administrators by assigning them to work at a school under the leadership of a principal and assistant principal. In addition, the LEO-T Program provides for many other activities and skills necessary for the success of potential leaders. Training workshops supplement and expand the traditional approach to administrator training and preparation.

The LEO-T Program is process-oriented and utilizes a combination of a theoretical as well as a practical base within its framework. The targeted in-service program includes: communication skills (written and verbal), labor relations, curriculum and instruction; student services, teacher observation and evaluation; budget and finance; School Board Rules, as well as the general organization of the school system. The program encourages principals/supervisors to nominate individuals from under-represented groups for participation in the LEO-T Program. After nomination, candidates undergo an extensive screening and interview process, ultimately leading to final participant selections.

### Positive Results

The Leadership Experience Opportunity for Teachers (LEO-T) Program is currently in its fourth year of operation. The program has been successful in increasing the number of minority, including Hispanic, administrators. The program has trained 110 teachers, 71 who are now functioning as administrators, six in district offices and 65 at school sites. The number of participants who have been promoted to administrative positions represent 65% of the total number of participants. Of these, 34 are Hispanic, representing 48%; 21 are Black non-Hispanic, representing 30%; 15 are White non-Hispanic, representing 21%; and 1 is Haitian/Black, representing 1%.

**Table 3**  
LEO-T Participants

	85-86	86-87	87-88	88-89
<b>Ethnic Composition</b>				
White	7	8	10	4
Black	10	10	8	12
Hispanic	9	9	8	10
<b>F/M Delineation</b>				
Female	20	20	18	18
Male	6	7	8	8
<b>School Level Involvement</b>				
Elementary	14	14	15	14
Junior Middle	7	17	7	6
Senior	5	5	4	4
Vocational		1		2
<b>Current Employment Status of Participants</b>				
Teachers on Eligible Candidate Roster (ECR)				
Teachers not on ECR	7	17	15	12
School-Site Administrators	5	10	11	24
District Administrators	11	1	11	
Area Administrators	2		1	
<b>Total No. of LEO-T Participants</b>	<b>26</b>	<b>27</b>	<b>26</b>	<b>26</b>

## **Leadership Experience Opportunity for Assistant Principals (LEO-AP) Program**

The (LEO-AP) Program was established in 1985 to provide professional growth for qualified assistant principals to gain experience as principals. As part of the Executive Training Program that involves assistant principals, this effort insures the district of an available pool of skilled professionals who meet all of the state-required principal competencies.

Assistant principals are provided an opportunity to manage selected summer school centers during the summer session. In addition to the school site experience, participants have an orientation session, in-service courses and site visits prior to the management of the Summer School Center.

### **Positive Results**

The Leadership Experience Opportunity Program for Assistant Principals (LEO-AP) Program is in its fourth year of operation and has been very successful in increasing the number of minority, especially Hispanic, administrators. A total of 91 assistant principals have participated in this program. Of these, 16 have been promoted to principalship positions and one to the district office. The number of participants who have been promoted to principalship positions represent 18% of the total number of participants. Of these, 4 are Hispanic, representing 27%; 7 are Black non-Hispanic, representing 46%; and 4 are White non-Hispanic, representing 27% of those promoted to principalship positions.

It should be noted that the number of administrators leaving the district due to retirements, resignations, leaves and other attritional factors is very low. There were only 41 administrators retiring in 1987-88, but this number will increase dramatically in the next three to five years.

## **Leadership Experience Opportunity for Principals (LEO-P) Program**

The LEO-P Program was initiated during the 1986-87 school year to provide management experiences for selected principals at the area or district level during the summer session. Principals who are selected for the LEO-P Program have the opportunity to gain first-hand experiences by working either at an area or district office.

This program is in its third year of operation and has been very successful in providing opportunities for principals to broaden their experiences. Twenty-three principals have participated in the program. Of these, four are Hispanic (17%); 10 are White non-Hispanic (43%), 8 are Black non-Hispanic (35%) and 1 is Asian (4%). Efforts are already underway, through mentoring and special counseling, to increase the Hispanic participation.

The reduction of the overall number of participants from the LEO-T to the LEO-P Programs is due to the reduction in number of positions in the School District for higher administrative levels.

**Table 4**  
LEO-AP Participants

	85-86	86-87	87-88
<b>Ethnic Composition</b>			
White	8	12	19
Black	13	9	8
Hispanic	6	11	5
<b>F/M Delineation</b>			
Female	13	18	16
Male	14	14	16
<b>School Level Involvement</b>			
Elementary	15	17	14
Junior/Middle	6	10	12
Senior	6	4	5
Vocational		1	1
<b>Current Employment Status of Participants</b>			
Principals	3		
Associate Intern			
Interns		4	
Assistant Principals			24
<b>Total Number of LEO-AP Participants</b>	<b>27</b>	<b>32</b>	<b>32</b>

### **Leadership Experience Opportunity for School, Area, Central Office Personnel**

#### **(LEO-SAC) 1988-89 Pilot Program**

The Leadership Experience Opportunity for School, Area, Central Office personnel (LEO-SAC) is a pilot program designed to provide administrators an opportunity for new career potentials, varying management experience and professional growth.

Through this program, assistant principals, area and district personnel will have an opportunity to participate in a pilot exchange program. Participants in low to middle management administrative positions will be provided an opportunity to exchange positions with other administrators in similar pay grades. All participants will maintain the salary structure of their regular assignments while participating in the program.

Individual administrators apply for this program. Supervisors were requested to encourage individuals of under-represented groups. The Bureau of Human Resource Development was encouraged to select under-represented groups for participation. Because this is a pilot program, the number is limited to 15 participants. The exchange of administrative assignments will be for one semester, 18 weeks. Upon evaluating the results of this program, future decisions will be made.

## Plans Designed by Bureau/Office Heads to Increase Minority Representation

In order to increase minority representation, all Bureau/Office Heads were directed on February 12, 1987, to submit a proposal designed to increase minority representation in their respective bureaus/offices. Some of the most important strategies being implemented to increase the qualified pool of minority candidates are as follows:

- Provide in-service activities, including interviewing techniques and technical job related skills designed to increase the qualified pool of minority candidates.
- Increase commitment by all bureau/office heads to hire qualified minority personnel by periodically reviewing selection procedures impact on minorities.
- Intensify efforts to recruit minority personnel by bureaus/offices by advertising in specially targeted publications.
- Target under-represented groups (Hispanics, Blacks and Females) for recruitment and hiring in open maintenance positions.
- Monitor all screening instruments and employee selection procedures to ensure there is no adverse impact on minority applicants.
- Develop training models for positions in which minorities are under-represented by working cooperatively with the Office of Vocational/Adult/Community Education (OVACE) and the Bureau of Personnel Management. Courses were developed for candidates interested in applying for such positions.
- Students and potential employees will be provided counseling and career education in cooperation with the Department of Career Education.

There has been a great deal of support for programs benefiting minorities, including Hispanics. This is due to the Dade County Public Schools' practice of involving citizens, employees, and those with responsibility to implement programs in the decision making process. Their input is sought through participation in task forces, advisory committees and interest groups, which make recommendations to implement, revise and change policies and procedures affecting the School District. At the work locations, shared decisions and consensus are encouraged, to elicit input from all staff members when decisions are being made which affect the employees and the students.

The different bargaining units, especially the United Teachers of Dade, and the Dade County Public Schools have an exemplary harmonious labor/management relationship, which makes possible the aggressive and progressive hiring and promotion practices to help minorities in the School District.

## PROCEDURES FOR MANAGEMENT SELECTION

### Selecting a New Breed of Educational Leaders

A necessary step in appointing a new breed of dynamic educational leaders who are representative of Dade County's multi-ethnic community, capa-



ble of addressing its diverse needs and who can respond effectively to diversity and constant change, is to establish and implement management selection procedures to achieve this objective. These procedures are also utilized in selecting participants for the Leadership Experience Opportunity Programs. The School Board Rules on selection and appointment of administrators provides for:

- Appointment of the best qualified administrative candidates
- An objective, broad, job-related selection process
- Fair and equitable treatment of all applicants.

The accomplishment of these objectives is the responsibility of the Division of Management Selection in the Bureau of Personnel Management. To guarantee community input in the administrative selection procedures, an 11-member citizen's oversight committee has been established. The members of this committee are representative of the ethnic groups in the Dade County community. Citizens are appointed for their experiences in selection procedures, management, equal employment practice, and/or assessment strategies, or for their demonstrated interest and involvement in public education.

#### **Weighted Evaluation for Selection of School-Site Administrators**

In order to provide experience credit for teachers applying for school-site administrative positions or school-site administrators seeking promotions who have professional experiences in multicultural educational environments, a weighted evaluation form is used to rate individuals applying for administrative positions. In addition to assessing generic competencies, this weighted evaluation establishes a point system to provide credit for the following:

- Successful work experiences in different school settings and multicultural environments
- Leadership in professional experiences at the school-site
- Successful completion of one of the Leadership Experience Opportunity Programs.

#### **Increasing the Number of Minority Assessors to Serve in the Minority Assessment Center**

The Management Assessment Center was established in 1982. The center assesses generic administrative competencies which are critical to effective performance for school-site administrators. Successful candidates are placed on an Eligible Candidate Roster, making them eligible to apply for school-site administrative positions. In order to identify and train more administrators representative of minority groups to serve as assessors in the Management Assessment Center, on January 7, 1987, the Office of the Deputy Superintendent recommended that 40 administrators, representative of minority groups, be identified and trained as assessors in the Dade County Public Schools' Management Assessment Center. As a result of this training activity, the current Dade County Public Schools assessor work force more accurately reflects the demographics of the community. In 1983, there were 88 assessors; 70% of them were White non-Hispanic, 16% were Black non-Hispanic; and 8% were Hispanic. In 1988-89, there are 112 assessors: 46.3%

are White non-Hispanic; 29.3% are Black non-Hispanic; and 24.4% are Hispanic. By adding these trained professionals to the Dade County Public Schools assessor work force, every candidate scheduled to go through the management assessment process is assessed by a team which represents the ethnic makeup of the community.

### **Selection of School-Site Administrators**

The first step in selecting school-site administrators is an assessment of candidates by the Management Assessment Center, using techniques for identifying and measuring managerial and administrative potential which are widely used in business, industry and government. The purpose of the Center is to identify candidates who have the highest probability of success as school administrators and to identify the training needs of prospective administrators.

Candidates are observed as they perform a series of tasks that simulate the tasks encountered in actual school operations and administration, as determined by rigorous job analyses. The simulations demonstrate the candidates' abilities to deal with aspects of educational administration that have been proven necessary to supervise a school competently. Multi-ethnic review boards play an important role in the process.

### **Selection of Non-School-Site Administrators**

The procedures for selecting non-school-site administrators are similar to the school-site selection, except the procedures do not include Assessment Center evaluations, since the jobs are so varied in responsibilities. Depending on the level of the open position, it is advertised within the school district, in local newspapers, national newspapers, professional journals, and other sources deemed appropriate for the position. Additionally, when interviewing for critical, technical or sensitive positions, the interview committee may include citizens who are knowledgeable in the field, if the School Board approves.

Career counseling is provided by the Division of Management Selection for candidates, who at any step of the process, fail to meet the established standards. The purpose of the counseling is to assist the applicant in appraising the assessment of his/her qualifications and to review alternate career paths and developmental training opportunities. This is especially of value, it is felt, to minority candidates.

### **Future Outlook**

A comparative analysis by ethnic classification of the administrative staff from 1984-85 to 1988-89 reveals that the percentage of Hispanic administrators has increased from 13.1% (128) to 19.2% (312), representing a gain of 6.1%.

**Table 3**  
**Comparison of Administrative Staff**  
**Dade County Public Schools, 1984-85 to 1988-89**

Ethnic Group	1984-85	1985-86	1986-87	1987-88	1988-89
Hispanic	13.1%	13.5%	15.1%	16.5%	19.2%
Black Non-Hispanic	27.8%	28.0%	27.1%	27.7%	26.5%
White Non-Hispanic	58.7%	58.1%	57.4%	55.4%	53.2%
Asian & American Indian	0.4%	0.4%	0.4%	0.4%	1.1%

After implementation of the Board Affirmative Action Plan, under the leadership of the Superintendent of Schools and the Board, the school district is pleased with the results. As evidenced from the data provided, Hispanics are the ethnic group with the highest increase in numbers and percentages of the administrative staff from the 1984-85 to the current school year, a growth of 6.1%. The Superintendent and the Board recognize the importance of the tasks ahead if the district is to achieve its affirmative action goals over the coming years. Dade County Public Schools' aggressive attitude toward increasing the number of minority administrators, with needed special emphasis on Hispanics, continues.

On July 14, 1989, the superintendent, in a memorandum to all work locations, reaffirmed the district's commitment to affirmative action initiatives, desegregation and educational equity. The commitment of the school district has been communicated through administrative directives reflecting this philosophy. Dade County Public Schools administrators are sensitive to the district's goals, and are cognizant of the Superintendent's directive that any unfair or prejudicial treatment of anyone at a work location should be recognized and dealt with in a timely and firm manner. It is clear that under the present administration, such tactics will not be tolerated. The monitoring procedures established by the current administration ensure a constant awareness of the need to continue to make progress with the affirmative action goals. The key to the success experienced so far by the Dade County Public Schools is strong administrative leadership at all levels and support of the School Board. This writer has a clear vision of the goals and objectives we want to achieve in this school district, and those must continue to be communicated in clear guidelines, administrative directives, and policies.

Also not to be overlooked is the strong support by the community for the school system's affirmative action strategies. Progress in career advancement opportunity is already evident. Minorities and women have made significant gains because of aggressive hiring and training strategies implemented in the Dade County Public Schools. From these practices, everyone benefits—the students, the staff, and the community, because the result will continue to be high quality in leadership.

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## ENDNOTES

1. Denise A. Alston, *Recruiting Minority Classroom Teachers: A National Challenge*. Washington, D.C. National Governor's Association, 1988.
2. Billy F. Birnie "Activities to Promote Minority Recruitment," Dade County Public Schools, 1988-89.

# HISTORICAL PERSPECTIVES

## INDUSTRIAL POLICY BY ACCIDENT: THE UNITED STATES IN PUERTO RICO

Gary D. Martin

Dr. Martin is the Economic and Trade Consultant to the Resident Commissioner of Puerto Rico, Puerto Rico Federal Affairs Administration.

"The fundamental question which needs to be answered before the possessions tax credit can be tackled is the same one asked at the time Puerto Rico was ceded to the United States. 'How should the United States treat her dependencies?'"

Ann Davidson<sup>1</sup>

At this writing, the economy of Puerto Rico is doing quite well, at least in a macroeconomic sense. Unemployment, the scourge of the island since world oil prices began to take off and the U.S. economy slid into recession in 1975, stood at 15.1 percent in Puerto Rico in August of 1989. While this might appear to be a shockingly high rate by U.S. standards, it is so low in contemporary Puerto Rico as to be a cause for celebration and was doubtless an important factor in the November, 1988, re-election of Governor Rafael Hernandez Colon. In 1983 the average unemployment rate for the year had been 23.5 percent, and the average for the period 1976-1986 was 20 percent.<sup>2</sup>

Puerto Rico, which, as is typically the case, felt the effects of the recession of the early 1980s more strongly than the United States, has bounced back well. Over the past three years, with the construction industry leading the way, island gross product grew at an annual rate of 4.6 percent versus 3.6 percent in the U.S. Electric energy consumption, which is something of a bellwether of macroeconomic activity, grew at the extraordinary annual rate of 5.8 percent over the three-year period.<sup>3</sup>

In light of these recent developments and the long absence of Puerto Rico from the headlines of U.S. newspapers, it is tempting to conclude that Washington policy makers must be doing something right. Still, the nagging worry remains that they have simply been lucky for a very long time and that, like Hugo ending Puerto Rico's long but uncharacteristic freedom from destructive hurricanes, the luck must inevitably run out. How often is it true in the affairs of nations, after all, that the correct policy should be no policy?

Make no mistake about it. The United States government, ninety-two years after its conquest of La Isla Bella, still lacks anything resembling a co-

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herent policy toward Puerto Rico, and it lacks the institutional organization for setting such a policy. More than that, the case can be made that the United States never has had a policy toward Puerto Rico to which it has given much collective thought, going back to the initial decision to retain the island as part of the spoils of victory in the Spanish American War. At that time Puerto Rico was considered nothing more than a naval station on the way to the potentially vast market of the Orient and a military outpost through which the United States could begin to establish its hegemony in the Caribbean region. For its own sake this island of nearly one million inhabitants at the time was, according to one astute American observer, not as well known in the United States as even Japan or Madagascar.<sup>4</sup> Now Puerto Rico has 3.3 million inhabitants, more than about half the states of the U.S. Since 1917 they have been United States citizens. The island is at least better known in the rest of the U.S. than Madagascar if for no other reason than the fact that generations of U.S. social scientists have found it to be a convenient nearby laboratory under the U.S. flag, but their storehouse of knowledge has not systematically found its way into the decision-making process of the federal government.<sup>5</sup>

The federal policy disarray—and the luck—can perhaps best be seen, and is certainly of greatest consequence, in the area of industrial development. Had it not been for the remarkable amount of manufacturing investment that Puerto Rico has been able to attract with practically no conscious federal government assistance the chances are good that Puerto Rico would be as poor or poorer than many of its Caribbean or Central American neighbors. After the first half century of United States control Puerto Rico was, in fact, about that poor. Here is how Harvey S. Perloff began his 1950 book on the island's economy:

"Puerto Rico is a Caribbean island of extraordinary beauty—with economic and population problems of extraordinary difficulty. Most of the people of Puerto Rico live under wretched conditions. Their employment is generally seasonal and their annual income is very low. The diet of the lower-income group is totally inadequate, consisting almost entirely of rice and beans, black coffee, starchy vegetables, and a flavoring of codfish. Many suffer from malnutrition. In rural areas they live in ramshackle huts of one or two rooms, crudely assembled of available materials. In urban areas many live in slums under equally primitive conditions. They have practically no furniture or kitchen utensils. Sanitary facilities at best are inadequate; more often there are none. Year after year diseases directly traceable to faulty sanitation and to malnutrition lead in the causes of death. The people cannot properly feed, clothe, house, or educate the many children they produce."<sup>6</sup>

Income per capita in 1940 was \$120 a year which was only one fifth that of the United States, and average life expectancy was only 46 years. Noticeable improvements took place in the decade of the 1940s though not enough to begin to close the gap between the island and the mainland. The 1940s, however, witnessed the beginning of the great irony upon which Puerto Rico's modern economy is based. As the federal government stopped paying the kind of attention to the island's economy that it had in the 1930s with first the Puerto Rican Emergency Relief Administration and later the Puerto Rican Reconstruction Administration, plus various other New Deal programs, it began to provide genuine economic development assistance to Puerto Rico

in ways that it did not intend.

The earlier intentional assistance in the final analysis had done "... little more than mitigate suffering and fill empty stomachs."<sup>7</sup> The later and still continuing unintentional assistance produced what has been widely acclaimed as an "economic miracle". Gross product per capita grew at an annual rate of 4.7 percent in the 1950s and 5.5 percent in the 1960s compared to an annual U.S. growth rate of 2.2 percent over the 1950-1970 period.<sup>8</sup> The dramatically improved living standards that resulted raised average life expectancy to 72 years which is comparable to that of the United States. The index of the physical of life (composed of measures of infant mortality, life expectancy at age one, and literacy) improved more in Puerto Rico from the 1950s to the 1970s than in any country except Taiwan.<sup>9</sup>

The unintentional assistance was of three kinds, war-related expenditures, federal excise tax collections on Puerto Rican products refunded to the government of Puerto Rico, and federal tax exemption for U.S. corporations in Puerto Rico. Puerto Rico income directly resulting from war-related federal expenditures grew from \$8.1 million in 1940 to \$106.4 million in 1944 or to 22 percent of Puerto Rico net income.<sup>10</sup> Thanks to this hefty military contribution, Puerto Rico net income originating in federal government activities grew from about 10 percent to about 25 percent over the period.<sup>11</sup>

Benefit payments to Puerto Rican World War II veterans provided a lingering stimulus to the economy after 1945, but military spending generally has declined greatly in importance in Puerto Rico. In 1988 the Defense Department spent \$523 million in Puerto Rico which is 3.5 percent of island net income or only \$159 per capita. Hawaii, by contrast, which shares some of Puerto Rico's location handicaps, got \$2.56 billion in Defense Department expenditures in 1988 or \$2,344 per capita.<sup>12</sup>

### INDUSTRIALIZATION THROUGH PUERTO RICO GOVERNMENT IMPETUS

In the 1940s the government of Puerto Rico began its push to industrialize, which it christened "Operation Bootstrap", by building and operating factories making glass bottles, cement, paper, and shoes. A main source of finance for such ambitious projects was the windfall of federal funds that the island received from the refund of federal excise taxes on Puerto Rico products, principally rum, sold in the U.S. mainland. Such a "cover over" of federal taxes to Puerto Rico has been a feature of Puerto Rico's connection with the United States since the Jones Act of 1917, but it had never amounted to very much. World War II changed the situation significantly as many U.S. and British distilleries converted to fuel production and the sale of Puerto Rican rum on the mainland soared. Related excise taxes grew from \$4.48 million in 1941 to \$63.9 million in 1944 or from 22 percent to 61 percent of total revenues of the insular government.<sup>13</sup> After the war, receipts fell to below pre-war levels but then began a long steady climb. In 1988 \$188 million was rebated to Puerto Rico, but this represented only 5.3 percent of Commonwealth government revenues.<sup>14</sup>

By far the most important and lasting development of the 1940's involv-

ing federal policy was the income tax exemption for U.S. corporations operating in Puerto Rico which since the Tax Reform Act of 1976 has been included in section 936 of the Internal Revenue Code.<sup>15</sup> Not only was this the biggest of the big three unintended economic stimuli, but it was the most inadvertent. The U.S. Congress never even saw it as a tool to help Puerto Rico; rather it was meant to be an aid to U.S. corporations operating in the then-U.S. colony of the Philippines. The justification ran as follows: Foreign corporations operating in the Philippines, typically not taxed on their worldwide income as U.S. corporations are, paid only the relatively small Philippine tax. U.S. companies also paid the Philippine tax, for which they could take a credit against their U.S. tax obligation, but then they had to pay the U.S. tax which the credit didn't fully cover. Foreign corporations, therefore, had a tax and competitive advantage over U.S. corporations while operating in a U.S. colony. The Revenue Act of 1921 corrected this perceived inequity by creating in section 262 "possessions corporations" which, if they derived at least 80 percent of their income from within a U.S. "possession" (territory) and 50 percent of that income came from the "active conduct of a trade or business" (as opposed to a passive financial investment) their income would be exempt from federal taxation.

By 1948, with rum tax rebates drying up as a source of industrial subsidy, it had become apparent that government-run industry was not the answer for Puerto Rico. The idea was hit upon to lure private manufacturing concerns to Puerto Rico by making them totally exempt from Puerto Rico taxes until 1959 followed by a tax phase-in period ending with full taxation in 1962. And here is where the law to correct inequities toward U.S. corporations in the Philippines came into play as an inducement because, if the investing corporations were from the United States, they could qualify as possessions corporations and therefore also be exempt from U.S. corporate income taxes.

The combination of total exemption from tax on income, the absence of tariff or quota barriers on trade with the mainland, rapidly improving basic facilities, low wages, and an eager and abundant work force proved irresistible to many U.S. manufacturers. Add to that the fact that Puerto Rico actively recruited them with advertisements and offices in the U.S. before such things were fashionable and offered ample start-up assistance once the companies arrived, and it should not be any surprise that this second phase of Operation Bootstrap was a huge success.<sup>16</sup> By the end of 1953 the Puerto Rico government was able to report that its incentive program had resulted in the start-up of 273 industrial plants with 24,000 workers and an annual payroll of over \$20 million.<sup>17</sup> Puerto Rico was well on its way to becoming the world's first industrialized tropical island.

In 1966 manufacturing, with 123,000 employees, up from 55,000 in 1950, surpassed agriculture in employment for the first time. In 1950 there were 214,000 workers in agriculture although many were only marginally employed. In 1988 there were 157,000 employees in manufacturing and 31,000 in agriculture. In terms of income generated the transformation is even more striking. In 1950 agriculture accounted for two thirds more income than did manufactures. In 1988 manufacturing generated 20 times the income of agriculture.

This industrialization was the primary factor in the dramatic improvements in living standards noted earlier, and at the heart of the industrialization has been Puerto Rico's skillful exploitation of the possessions corporation system of taxation. In its two-volume Economic Study of Puerto Rico in



1979, the U.S. Department of Commerce was unequivocal throughout in its assessment of the seminal and continuing importance of the tax exemption program:

“Federal and Commonwealth tax policies have been extremely important in stimulating industrial growth throughout the post-World War II period. (Volume I, page 8).

Another important role of the Federal Government is that of a stimulator of Puerto Rican industrial growth through tax policies. The U.S. tax exemptions granted to firms investing in Puerto Rico go back many years. But the Internal Revenue Code revisions of 1976 and the changed economic environment which ultimately diminished the importance of low labor costs and tariff-free entry of products into the United States—two particularly advantageous features of Puerto Rico in the earlier development—have made the tax concessions greater value in recent years. (Volume I, page 9).

Continuation of the present exemption from Federal income tax of repatriated dividends from Puerto Rican enterprises, however, is virtually a *sine qua non* for attracting more U.S. investment capital to Puerto Rican industry. (Volume I, page 24).

The Possessions Corporation System of Taxation under section 936 is of central importance to continued Puerto Rican industrial development. Aside from section 936, however, existing Federal Government programs have only a marginal impact on industrial development. (Volume II, page 12).”

## THE ATTITUDE IN WASHINGTON

The various organs of the federal government have reacted differently to Puerto Rico's creative use of federal tax exemption. Those federal entities with the broadest knowledge and the greatest empathy, in another of the ironies of the situation, have generally had the least power to influence policy. Familiar as they are with the difficult process of economic development, both foreign and domestic, and with the political stake of the United States in a stable and prosperous Puerto Rico, the Departments of State and Commerce have generally been very supportive. At the suggestion of Governor Luis Muñoz Marín, President Harry Truman arranged for Puerto Rico to be used as a training center for technicians from developing countries under the Point Four assistance program. Teodoro Moscoso, the long-time Administrator of Puerto Rico's Economic Development Administration and originator of the tax exemption program, was chosen by President John F. Kennedy as the first U.S. coordinator of the Pan-American Alliance for Progress. The State Department continues to sponsor visits to Puerto Rico by government officials from Third World countries. The Commerce Department has not only weighed in, at the behest of President Jimmy Carter, with the balanced and thoughtful Economic Study but more recently has worked closely and cooperatively with Puerto Rico in promoting the Reagan Administration's Caribbean Basin Initiative

(CBI). Neither of these departments, however, has historically had much say when it comes to the most important issues related to Puerto Rico.

In the legislative branch the Interior and Insular Affairs Committee in the House of Representatives and the Energy and Commerce Committee in the Senate have jurisdictional responsibility for Puerto Rico and the "insular territories," and they can usually be counted on to view Puerto Rico's concerns sympathetically. However, their power, too, is quite limited as is their expertise. The Resident Commissioner of Puerto Rico, elected for a four year term, is one of the 41 members of the Interior and Insular Affairs Committee, and he has a vote there but not on the House floor. No one in recent memory on the permanent staff of either committee has been a native of Puerto Rico nor does anyone have any particular first hand experience with the island. This is probably just as well because both committees are usually excluded from major tax or appropriations bills, even if those bills should contain provisions of major consequence to Puerto Rico.<sup>18</sup>

Because tax policy has become the *sine qua non* for industrial development in Puerto Rico, the committees which deal with federal taxation, Ways and Means in the House and Finance in the Senate and their Joint Tax Committee, along with the Treasury Department in the executive branch, have come to possess a power over Puerto Rico's economy that borders on the god-like. From time to time, when it comes to section 936, they have appeared from the Puerto Rican perspective to be angry and capricious gods. Again it probably goes without saying that none of these organizations has a native Puerto Rican in its employ at the policy-making level. Purely as a result of good fortune in recent years two influential New York Democrats on these committees with large ethnic Puerto Rican constituencies, Daniel Patrick Moynihan in the Senate and Charles Rangel in the House, who represents the Harlem district, have exhibited a particular empathy for the people of the island. Congressman Rangel, making full use of his powers as chairman of the Subcommittee on Select Revenue Measures has, on at least one occasion which we shall discuss later, been a veritable Horatius at the bridge in defense of the key elements of Puerto Rico's tax exemption.

### THE GROWTH OF TAX POLICY DEPENDENCE: A CASE OF LIMITED OPTIONS

The federal tax authorities have acquired their power through a process of evolution set in motion by the initial fateful decision of Puerto Rico's leaders to lure investors with tax breaks. Although Puerto Rico's first tax exemption law was successful beyond even the expectations of its formulators it had an important weakness. As the tax exemption phase-out period of 1959-1962 approached, Puerto Rico became less and less attractive to new investors, and new investors were needed to continue Puerto Rico's industrialization. Therefore, a new industrial incentives act was passed in 1954 giving tax exemption to qualifying new manufacturers for a fixed 10-year period, beginning with the start-up of the operation. Further modifications were made in 1963, 1978, and 1987. Exemption periods have been increased for plants locating in Puerto Rico's more remote areas, exemption has been extended to the income from specific re-investments in Puerto Rico, a small "toll gate" tax has been added

on dividends sent to parent companies, and the 100 percent exemption has been reduced to 90 percent. Modifications have also been made at the federal level which will be discussed later, but the basic attraction of dual federal and Puerto Rico tax exemption has not been fundamentally altered since its 1948 inception.

From what had been contemplated as a sort of temporary pump-priming exercise attracting investors with tax advantages who, in time, would be weaned from them, an economy has emerged which is heavily dependent upon the tax exemption expedient. Even with the benefit of hindsight it is not easy to find acceptable, realistic alternatives to this turn of events considering Puerto Rico's very difficult demographic and geographic situation. It is easy to say, as many have done, that Puerto Rico should have prevented the decline of its agriculture even as it promoted manufacturing, but one does so by overlooking some basic economic facts of life.<sup>19</sup> The 140,000 workers who left agriculture from 1950 to 1970 left to find a standard of living that agriculture did not and could not provide them. With all the workers who have left the land there is still one agricultural employee for every 31 acres of farm land in Puerto Rico versus one for every 317 acres in the United States.<sup>20</sup> Compared to the population as a whole there is one quarter acre of farm land per person in Puerto Rico versus four and one half acres of farm land per person in the U.S. In light of its severe land shortage, Puerto Rico's agricultural production of \$105 per resident of the island per year versus \$582 per resident in the U.S. mainland is not as low as it seems.<sup>21</sup>

In our land-labor calculation we have used a very generous Puerto Rico Agriculture Department definition of farm land which encompasses 80 percent of Puerto Rico's total land area. In fact, a cursory examination of a topographic map of the island reveals a rugged landscape largely unfit for modern large-scale agriculture. Only a narrow band of land around most of the island is suitable for the type of modernized U.S. farming techniques which can generate agricultural incomes competitive with other employment, but much of that has now been taken up by urban development. The remainder of the island resembles no state so much as West Virginia. West Virginia has a population density of 80.4 per square mile or 8 percent that of Puerto Rico. If Puerto Rico had the same population density as West Virginia instead of one that is 42 percent greater than El Salvador, the most densely populated country in Latin America, it would have fewer than 300,000 residents. The other 3 million would have to find someplace else to live.

Some have suggested that tourism could supplement agriculture as a substitute for tax-exemption aided manufacturing.<sup>22</sup> Puerto Rico certainly does have a nice, tropical location with many beautiful beaches. The main problem here is that many other Caribbean islands have very similar attractions, and they don't have Puerto Rico's large population to support. Hawaii, to which Puerto Rico might be compared, has a location which is much more advantageous for tourism because it has no nearby competition for the two largest markets in the world, Japan and the United States, and the numbers show it. In 1987 visitors to Hawaii spent \$6.6 billion or \$6,094 for every resident of the state.<sup>23</sup> In Puerto Rico they spent \$896 million or \$273 per resident.<sup>24</sup> Hawaii has 69,012 available rooms for tourists while Puerto Rico has 5,424.<sup>25</sup> Puerto Rico's tiny neighbors of Barbados and the Bahamas have more.<sup>26</sup> Comparisons with the other states of the U.S. are also instructive. In 1987 only North Dakota received less per resident in visitor expenditures than Puerto Rico, and the average state received over four times as much.<sup>27</sup>

## FALLOUT FROM OTHER FEDERAL POLICY

But what about the original goal, that after a period of industrial growth fostered by tax exemption manufacturing on the island could, as the workers and managers developed the necessary skill and the infrastructure improved, get by without any exceptional tax treatment for new investors? Unfortunately, even though the skill and infrastructure improvements have occurred, circumstances have been such that manufacturing in Puerto Rico has become not less but substantially more dependent on tax exemption than in the early years of Bootstrap. That is what the Commerce Department study meant when it said ". . .the changed economic environment (has) made the tax concessions of greater value in recent years." A study by a group headed by Nobel Prize winning economist, James Tobin, put it more bluntly in 1975 when it concluded that ". . .tax exemption is increasingly the main reason for outside investment in the island. . . ."28

Outside investment also continues to represent the core of the manufacturing sector which, in turn, is the core of the economy. A recent survey by *Caribbean Business* found that 42 of the largest 50 manufacturing employers in Puerto Rico are U.S.-based.<sup>29</sup> Section 936 alone accounted directly for 61 percent of all Puerto Rico manufacturing employment in 1984.<sup>30</sup> Locally-owned industry is concentrated in industries such as food products, furniture, and building materials which are oriented exclusively toward the local market, a market which would be far smaller without the purchasing power and re-investments of the 936 companies and the income of their employees. Except for tourism, the same thing can be said for every other sector of the economy, and we have already seen how truly minuscule the tourism sector is.

Agriculture, which was once made up mainly of the export crops of sugar, coffee, and tobacco, now is aimed almost exclusively at the local market. Livestock, dairy, and poultry products, almost all for local consumption, generate 63 percent of net agricultural income. The area planted in the once dominant crop of sugar cane has fallen from 380,000 acres in 1952 to 50,000 acres currently, and at that, sugar is a government-subsidized money loser. No export crop has yet been found to take its place. Trade, services, construction, and the government sector are all derivative enterprises. Services and trade as export activities offer some promise, but they are handicapped by the extreme weakness of the economies of the other Caribbean islands and the dominance of South Florida in the larger Latin American region.<sup>31</sup>

The circumstances which have changed since the early days of Operation Bootstrap, as Commerce observed, are higher wages in Puerto Rico and heightened foreign competition. Average hourly wages of production workers in the apparel industry rose from 35 percent of the U.S. average in 1955 to 72 percent of the U.S. average in 1980.<sup>32</sup> An important element in the increase has been the gradual application of federal minimum wages to Puerto Rico, culminating in virtual full parity with the U.S. in 1981. The Kennedy round of tariff negotiations under the General Agreement on Tariffs and Trade (GATT) cut U.S. tariffs by an average of 40 to 50 percent in the 1960s and this coincided with the emergence of severe competition from low-wage industries in the Far East, competition which has increased up to the present.<sup>33</sup> Wages in the apparel industry in South Korea, Taiwan, and Hong Kong were, respectively, 23 percent, 35 percent, and 48 percent of Puerto Rico apparel

industry wages in 1986.<sup>34</sup> In 1967 Puerto Rico's clothing shipments to the United States were 31.1 percent as great as total U.S. clothing imports from foreign countries. By 1986 Puerto Rico's clothing shipments amounted to only 3.3 percent of U.S. clothing imports.<sup>35</sup>

The 1980's have also seen the rise of major new competition in apparel from the countries of the Caribbean Basin. From 1983 to 1987 apparel exports from the Dominican Republic, Jamaica, and Costa Rica to the U.S. tripled while Puerto Rico's apparel exports to the U.S. declined by 19 percent.<sup>36</sup> Overall, the value of Caribbean exports of textiles and apparel to the U.S. grew over the period from \$416.2 million to \$1.19 billion while the value of Puerto Rico's apparel exports fell from \$613.9 million to \$500.0 million.<sup>37</sup> The Dominican Republic, Jamaica, and Costa Rica have apparel wages 13 percent, 21 percent, and 27 percent, respectively, of Puerto Rico's average wage in the apparel industry.<sup>38</sup>

Companies which cannot make profits in a particular location will choose a location where they can. Puerto Rico has never held much attraction for heavy industry because it lacks natural mineral resources, electricity prices are from 50 percent to over 100 percent higher than in the U.S. depending upon the price of the imported oil that Puerto Rico uses to generate nearly all its electricity<sup>39</sup>, its internal market is still relatively small, and the cost of transportation to and from the U.S. mainland is inflated by the Jones Act requirement that all shipping be done in U.S.-made, U.S. flagships. From the beginning Puerto Rico has had to concentrate on light manufactures in which labor is the primary cost. Foremost among them is apparel making, and with some 33,000 workers or 21 percent of its active manufacturing work force so employed Puerto Rico still has a larger share of its manufacturing employment in apparel than does any state. But in 1969 apparel employed over 40,000 Puerto Rican workers or 29 percent of the total employed in manufacturing.<sup>40</sup>

## THE MIXED BLESSING OF HIGH TECHNOLOGY

What is left for Puerto Rico to manufacture competitively? Like Japan it might move up the scale and make ever more technologically sophisticated products. In fact this is just what Puerto Rico has done. In 1969 the industries of electrical and electronic machinery, non-electrical machinery, instruments, and chemicals (primarily pharmaceuticals) accounted for 15 percent of manufacturing employment. In 1988 they accounted for 38 percent.

Unfortunately, from the point of view of many federal government tax professionals this is neither a natural, normal, nor welcome development. The problem is that companies on the cutting edge of technological advance tend to have much larger profit margins than the industries which Puerto Rico has traditionally attracted, which also means they have larger tax bills. Not being heavy industry with huge investments in plant and equipment they have not been able to make so much use of investment tax credits or depreciation write-offs. They have turned to section 936 and Puerto Rico to reduce their tax bills just as Puerto Rico, running out of options of its own, has turned eagerly to high technology companies which also pay relatively high wages, have greater linkages to the rest of the economy than the traditional indus-

tries, and make better use of the skills that the Puerto Rico work force has developed.

The Treasury's main interest in all this is summed up neatly by the following table:

**Federal Revenue Cost Estimates, Possessions  
Corporation Provisions, 1973-1983**  
(millions of dollars)

	Receipts Foregone
1973	269
1974	393
1975	473
1976	692
1977	763
1978	988
1979	1,156
1980	1,312
1981	1,694
1982	1,662
1983	1,641

*Source: Office of the Secretary of the Treasury Office of Tax Analysis. Reproduced in "The Operation and Effect of the Possessions Corporation System of Taxation, Fifth Report", July, 1985, p. 58; 1983 is from the Sixth Report, p. 45*

These estimates are based upon the somewhat questionable assumption that, in the absence of the opportunity to manufacture in Puerto Rico, the possessions corporations would have manufactured the same things and declared the same income in the United States mainland.

The response of the Treasury and the tax committees to what they have seen as the growing tax cost of 936 since an extended period before the Tax Reform Act of 1976 has been, as judged by their initial proposals in each case, along one of three lines:

1. Eliminate section 936 entirely.
2. Forbid the transfer of "intangible property" from the U.S. parent companies to the 936 affiliates in Puerto Rico.
3. Structure the tax exemption in such a way that it will be attractive only to the traditional, labor-using industries such as apparel and footwear but not to high technology industries such as electronics and pharmaceutical.

Each of these approaches, in its own way, threatens dire harm to Puerto Rico's economy as it has evolved. The contentious atmosphere that has developed around the Puerto Rico tax question and the apparent caprice of the federal government in dealing with it have become, in themselves, important discouragements to potential U.S. investors in Puerto Rico. The 3.3 million U.S. citizens residing in Puerto Rico, with their livelihoods on the line, have been the victims of one traumatic shock after another for more than a decade. As we have seen, federal policy-by-accident has been, on balance, a boon to Puerto Rico, but it carries with it very substantial risks. For the past

dozen years, with Puerto Rico's dependence on special federal tax treatment at its greatest, so, too, has been the threat to eliminate the special treatment.

## TAX WARS

The first assault on 936, that leading up to the 1976 Reform Act, was aimed at its complete elimination, but with more time to consider the question than has since been devoted to it—extensive Ways and Means Committee hearings began in 1973—the Congress decided only to make changes which actually enhanced the tax attractiveness of investment in Puerto Rico. Their reasoning was that Puerto Rico needed some special incentive for investors to counteract such federally-imposed handicaps as minimum wage laws and Jones Act shipping restrictions. But they also gave the Treasury Department, not the Commerce Department or Congress' own General Accounting Office, the opportunity to get in the last word over and over by requiring it to submit to the Congress an annual report on 936. "Among other things," they said, "the report is to include an analysis of the revenue effects of the provision as well as the effects on investment and employment in the possessions."<sup>41</sup> This report, which reflects very well Treasury's perspective on the issue, has been used as ammunition for the periodic attacks on 936 which have since been mounted.

The next two assaults, commencing in 1980 and 1982, the first originating in Treasury's Internal Revenue Service and the second in the Senate Finance Committee, pursued the second avenue of attack, that of limiting intangible property transfer. The one thing that the new wave of manufactures in Puerto Rico have in common is that they are rich in intangible property, that which is reflected in patents, copyrights, trademarks, etc., or the enhanced image that they get from their companies' sales efforts and general reputations. Generally speaking, patents and unique features derived from superior methods of production are categorized as manufacturing intangibles while the others are defined as marketing intangibles, and the possession of either permits the seller to charge a premium. If a manufacturer in Puerto Rico cannot incorporate at least some of that intangible property into his product the island, for the aforementioned cost reasons, quickly loses its investment attractiveness.

In July of 1980 the IRS issued a technical advice memorandum which seemed to reverse rulings it had made in 1963 and in 1968 permitting the transfer of intangible property from U.S. manufacturers to Puerto Rico affiliates.<sup>42</sup> These were the rulings upon which many of the companies had made their decisions to come to Puerto Rico in the first place. The new memorandum stated that the 936 companies should be treated by their U.S. affiliates as "contract manufacturers" who were due only the profit such a "contract processor" would ordinarily receive and that all else should go to the parent company.

It is not by accident that the greater part of contract manufacturing that U.S. companies farm out goes to places like China, Taiwan, and Mexico and not to Puerto Rico. These countries with their low wages simply have major

cost advantages. What was being attempted was a removal of taxes from the investment equation, and this fact was not lost on the government of Puerto Rico. Protracted negotiations with the Treasury Department ensued.

A compromise was near to accomplishment in the summer of 1982 when section 936 collided head on with what was widely perceived as a federal budget crisis. The federal deficit had begun to balloon largely as a result of the tax cuts made in the Economic Recovery Tax Act of 1981. To make up some of the lost revenue without simply reversing itself on tax rates the Congress hastily turned to a grab bag of tax base broadening measures. Actually, as these things work, it was not the whole Congress which turned at first but the Senate Finance Committee. The proposed 936 revision appeared on a long menu of proposals to the committee members prepared by the committee staff working closely, as they usually do, with the staff of the Joint Committee on Taxation. On 936 the staff suggested three options to the members: eliminate it, leave it alone, or forbid the transfer of intangible property to 936 companies. The options were accompanied by a brief pro and con argument on each and an estimate of the revenue to be generated in the coming years as a result of each change. No secondary cost estimates such as those that would result from the wholesale departure of U.S. investors from Puerto Rico were attempted.

The climate was one of emergency because of fear that the budget deficit projections were so scary that the business community would not regain sufficient confidence to pull the nation out of recession. No hearings were held on the 936 proposal—or on any other proposal for that matter. Senator Robert Dole, the Chairman of the Senate Finance Committee, took upon his own shoulders the responsibility, as he saw it, of representing the larger good against the clamoring of the special interests by pushing for quick action on the bill. The Finance Committee promptly and predictably, with all Republicans voting for and all Democrats voting against, chose what they probably saw as the compromise middle position on 936, that is, to forbid the transfer of intangible property to 936 companies.

From the perspective of Puerto Rico and the 936 companies this was no compromise at all but a hardening into law of the IRS technical advice memorandum of 1980. The lion's share of their profits was to be assigned to their U.S. affiliates and Puerto Rico tax exemption would be rendered almost meaningless. Two years of negotiations with the Treasury were almost down the drain as Puerto Rico's economic fate was about to be decided by the concern of the moment in the Congress.

Forty years ago, describing U.S. economic policy toward Puerto Rico, Harvey Perloff wrote, "The United States government has acted very much like a generous but absent minded, and sometimes even inconsiderate, uncle." He didn't yet know how cruelly inconsiderate Uncle Sam could be.<sup>43</sup>

The Constitution requires that all revenue bills originate in the House of Representatives, but a resourceful Congress can get around the requirement, as this one did. The Tax Equity and Fiscal Responsibility Act (TEFRA), as the legislation was eventually called, was a substantial enlargement of a minor tax bill from the House. Preferring to let the Republican-controlled Senate take all the political heat, the Ways and Means Committee offered no revenue-raising bill of its own. The last line of defense was in the deliberations of the selected members of the two tax committees who would hammer out the final version of the bill in conference. The notion that a major tax bill might



be rejected by the entire House or the entire Senate or might be vetoed by the President just because one of its minor provisions might wreck Puerto Rico's economy was never seriously entertained by anyone.

By a coincidence of timing Puerto Rico did have one trump card to play. Perhaps the most important item on the agenda of the Reagan administration during the 97th Congress was the Caribbean Basin Initiative (CBI). From the inception of the idea the White House recognized that opposition by Puerto Rico and the U.S. Virgin Islands could prevent the CBI's passage in Congress, not because of any inherent power or influence they might possess but because many members of Congress, fearful of the major provision eliminating import duties on Caribbean products, were looking for a good excuse to vote against it. Opposition by the two U.S. dependencies in the region would have presented just such an excuse. Conscious of this fact, the Puerto Rico government threatened to withhold its support from the CBI unless the 936 provision was withdrawn. The strategy seemed to bear fruit as President Reagan wrote a letter to Chairman Dan Rostenkowski of the Ways and Means Committee urging him "to make changes in the Senate bill which would limit the abuses of section 936 without causing severe economic distress in Puerto Rico."

The possession credit was the last item taken up by the conference committee. Chairmen Dole and Rostenkowski announced that they would drop the 936 provision in favor of a "wage credit" which would be based upon the payrolls of the 936 companies. In effect, one eleventh hour measure was to be replaced by another. At this point fellow conferee and subcommittee Chairman Rangel voiced his strong objection, and the calamity was forestalled. A caucus was convened, and subsequently the conference committee adopted as law the compromise that had finally been reached between the U.S. Treasury and the Government of Puerto Rico. The compromise permits the transfer of manufacturing but not marketing intangibles to the 936 subsidiaries (Puerto Rico had insisted on both) if the 936 company pays an appropriate share of the research and development costs, or the 936 company may choose simply to split its profits 50-50 with the parent company (an option which the Treasury had opposed).

For two years an uneasy truce reigned on the 936 front, but the federal budget situation was not improving and federal government tax professionals continued to exhibit their disquiet over the possessions credit. In a paper delivered to a September, 1983 conference on Puerto Rico policy, Peter Merrill, at that time the ranking economist on the Joint Tax Committee dealing with 936, wrote:

"A wage credit or similar tax system would be far simpler to administer than the current section 936 intangible income provisions and would prevent a company from claiming credits far in excess of its payroll in the possessions. An additional advantage of a wage credit or similar tax system is that it would stimulate a more balanced pattern of industrial development. The current possessions tax credit is unbalanced in that it promotes industries that have no natural comparative advantage and consequently are completely dependent on continued subsidization. The main comparative advantage of the Puerto Rican economy is its ample labor supply; yet the current tax incentive system encourages capital, relative to labor utilization."<sup>44</sup>

Very similar thinking was exhibited by the U.S. Treasury in November of 1984 when it unveiled its bombshell proposal, at the behest of President Reagan, with a name as high minded as the TEFRA, **Tax Reform for Fairness, Simplicity, and Economic Growth**. This massive tax reform proposal, which defies acronym labeling, was to be the centerpiece of President Reagan's second term. The reforms aimed at 936 were partly justified by the Treasury as follows:

"The TEFRA changes were designed to reduce the revenue cost of this program. There remains, however, no direct incentive under current law to increase employment in the possessions. As a result, we have a system which is one of the most complex in the tax law, expensive, difficult to administer and yet has not been effective in creating jobs in the possessions."<sup>45</sup>

Missing in this assessment was any empirical evaluation of the TEFRA, slanted or otherwise, because not enough time had passed for the post-TEFRA tax returns to be analyzed. The timetable that was being followed had nothing to do with Puerto Rico. The proposal that accompanied the assessment was for a wage credit pure and simple set at 60 percent of the federal minimum wage from 1987 through 1992, and then it would decline in 10 percent increments each year until it was totally eliminated in 1998. The anticipated consequences were summarized as follows:

"The proposal will simplify the law considerably and will provide a more direct and more cost-effective incentive to create jobs in the possessions. Since the tax benefits received by some current section 936 corporations will be substantially reduced under a wage credit, these corporations, primarily in the pharmaceutical and electronics industries, may decide to restructure or even close their operations in the possessions. However, the proposal should attract more labor intensive industries."<sup>46</sup>

The soothing words of concern over employment in "the possessions" to the contrary, this proposal was immediately recognized by the government of Puerto Rico and the 936 companies as a declaration of war against section 936 and a broadside assault on the economy of Puerto Rico potentially more devastating than the original TEFRA proposal. What the Treasury had recommended was a tax credit initially worth \$2801 per employee annually (after a loss of wages-paid deductions is factored in)<sup>47</sup> when in 1982 the labor-intensive apparel industry itself obtained credits of \$3030 per employee in Puerto Rico, and the overall average tax credit was \$20,656 per employee.<sup>48</sup> This initial drastic reduction in tax benefits would be followed by still more reductions until the whole program was eliminated in 1998.

A more candid justification and analysis by Treasury would have gone something like the following:

"Companies investing in Puerto Rico receive very generous and attractive federal tax benefits, which is to say that they are costly to the U.S. Treasury. In spite of this assistance Puerto Rico's economy has not done very well by U.S. standards in recent years. We know that reduced U.S. tariffs, increased Puerto Rico wages partly caused by federal minimum wages, and growing foreign competition in low wage industries are

largely responsible.<sup>49</sup> Nevertheless, we propose that section 936 be drastically curtailed and what remains of it then be quickly phased out. Pharmaceuticals, electronics, and high technology industries in general can be expected to start closing their doors immediately, but we hope we have left enough tax incentive in the system for apparel and other labor intensive industries to hang on a while longer."

The concern expressed over the ineffectiveness of 936 because it was not aimed directly at job creation had a hollow ring when accompanied by a proposal certain to do serious harm to Puerto Rico's economy. Furthermore, the argument that 936 by its nature encourages capital intensive as opposed to labor intensive investment is without economic foundation. No such worries were voiced for the first twenty years of the program when employment was soaring and the tax costs were acceptably low, and it was essentially the same program then as it is now. In a market system job creation is always a by-product of profit making. Manufacturers, in the jargon of economists, combine the factors of production, labor, land, machinery, etc., in such a way as to maximize profit. Depending on existing technology for making the product and the relative prices of the factors of production that may entail using a smaller or larger number of workers and therefore generating a smaller or larger level of employment per dollar invested or earned. Taxing the business' profits merely dampens its incentive to attempt to make profits in that particular line of endeavor. It does not encourage the business to substitute labor for capital any more than excusing it from taxes on its profits encourages it to substitute capital for labor. The 936 credit in that respect is quite different from investment tax credits, accelerated depreciation schemes, and artificially low official prices for capital goods imports into developing countries, all of which bias the production process and a country's entire industry mix against labor and in favor of capital.

Treasury officials privately recognized that the proposal as written provided no substantive incentives for new employment-generating industries to replace the high-tech industries which would surely leave the island. There was only one small stimulative provision permitting the wage credit to be carried forward through the year 2000. That would have allowed a company to make eventual use of the credit even though it might suffer losses in some early years, and that might have attracted some marginal new companies. Such a meager sweetener was hardly enough to counteract the major reduction in benefits and pre-announced phase out of the entire program, however.

That is no doubt why the Presidential tax reform proposal to Congress which followed in May of 1985 contained a new inducement for labor intensive industries in Puerto Rico. Not only was the wage credit to be substantially increased and made "permanent," but it was to be applicable to income from any source, not just to income from Puerto Rico.<sup>50</sup>

Now this was a new incentive to be taken seriously. The credit would be 60 percent of the minimum wage and 20 percent of any wages paid above the minimum up to a maximum of four times the minimum wage. For companies with other profits against which they could apply the Puerto Rico credits it would have amounted to a handsome new subsidy for hiring workers in Puerto Rico. In light of political reality one can't help but wonder if the administration was really serious about this proposal. A numerical example will illustrate two important new biases that this arrangement would have introduced, against local ownership in Puerto Rico and against labor intensive

manufacturing in competing U.S. locations.

Suppose a 936 company sets up a sewing operation in Puerto Rico and pays the average compensation for that industry in Puerto Rico in 1982 of \$8954 a year. If 100 workers are employed for the full year, the parent company has profits elsewhere against which it can take the credit, and the 936 company does no better than break even, the company gains \$306,726 after taxes.<sup>51</sup> That same break-even operation in South Carolina or Georgia would earn the owner nothing, and the same operation owned by a resident Puerto Rican with no off-island income would earn the Puerto Rican nothing.

It had not taken the administration long to depart from the ideal set forth in Treasury's initial proposal that a tax system should not produce economic distortions.<sup>52</sup> This new proposed arrangement would have encouraged the elimination of Puerto Rican ownership in the manufacturing industry in which it is most heavily represented, apparel. It would also have given Puerto Rico, in effect, a substantial artificial advantage in labor cost over any mainland U.S. location. Even if the proposal had been able to sneak through the Congress one can't help but wonder how permanent it could have been as soon as failing factories started closing down in the U.S. to re-open and claim the wage credit in Puerto Rico.

A significant reason why the tax arrangement which has evolved between the federal government and Puerto Rico has generated so little grass roots opposition among the members of Congress is that it has attracted expanding industries to Puerto Rico, and by allowing them to plow back more of their profits into their business has permitted them to expand faster both in Puerto Rico and in the United States. The pharmaceutical industry in the U.S., for example, grew from 147,000 employees in 1970 to 164,000 in 1985 while manufacturing employment in general fell from 19,349,000 to 18,791,000.<sup>53</sup> The arrangement has also provided partial redress for a tax problem which we commented on earlier and which Treasury proposed to correct, in part, with its reforms:

"High technology companies are put at a particular disadvantage (under the existing tax code). Since they do not require large capital investments that benefit from preferential tax treatment they bear the full brunt of high tax rates."<sup>54</sup>

Puerto Rico government officials were understandably quick to oppose the new proposed changes in 936. Apart from the shortcomings that have already been pointed out, the new wage credit would still have amounted to a drastic reduction in incentives for high technology companies. Even by the new more generous standard the maximum tax credit that a company could get would be \$5602 per employee or 27 percent of the average per-employee credit in 1982.<sup>55</sup> With the proposed new maximum rate on corporate taxes in the U.S. of 33 percent versus the then-existing 46 percent, to acquiesce in a parallel additional loss of tax incentive to invest in Puerto Rico was too big a risk for Puerto Rico's elected officials to take. Furthermore, apart from the political dangers and threat to Puerto Rican ownership of the new *de facto* wage subsidy, it was still not enough to assure that Puerto Rico would be competitive in the labor intensive industries with those foreign locations where wages are a fraction of those in Puerto Rico.

In spite of the strength of their argument against the wage credit as a replacement for 936, the leaders of the Puerto Rico government decided that

going head on against the Treasury in a fight over numbers was too daunting a task. A defense strategy was decided upon that closely resembled the successful defense during the TEFRA crisis. Other power centers within the executive branch would be appealed to by once again making 936 a Caribbean issue rather than simply a tax issue involving Puerto Rico and a collection of U.S. corporations. But the CBI legislation had already been passed and no successor was on the table. The problem in 1985 was how to make the CBI work, and because of sharp declines in the price of key primary products such as oil and bauxite and substantial cuts in the U.S. sugar import quotas in order to maintain legally mandated domestic price levels, the CBI did not appear to be working very well. Governor Hernandez Colon proposed to help it work better through the creation of a Caribbean loan fund from that part of the re-invested profits of 936 companies which had been channeled, by Puerto Rico Treasury regulation, to the Government Development Bank of Puerto Rico. The Puerto Rico government then directed most of its executive-branch lobbying efforts toward the National Security Council of the White House.<sup>56</sup>

Either because of the effectiveness of the Caribbean strategy or the misgivings of the Treasury over its proposed wage credit, or a combination of the two, the Administration gave ground one more time and produced a third 936 proposal just days before the expected mark-up of the Tax Reform Bill in the Ways and Means Committee. The wage credit was finally abandoned and the 50-50 profit split method of allocation which, ironically, Puerto Rico's negotiators had first introduced prior to TEFRA, was embraced. But cost sharing as an option would have to go this time, and the amount of income the 936 companies could receive from the re-investment of profits in Puerto Rico financial instruments, the so-called passive income, could not be more than 25 percent of the total in a given year (the TEFRA had already reduced it from 50 percent to 35 percent).

The eventual House of Representatives tax bill concurred with the 25 percent maximum on passive income but did not eliminate the cost-sharing option. Instead, it gave the 936 companies the choice of paying 110 percent of the TEFRA cost-sharing requirement or making an annual royalty payment to the U.S. affiliate "commensurate with the annual income stream" generated by the intangible property transferred to the 936 company, whichever of the two is larger. The House bill also gave a nod of recognition to the ambitious efforts of the government of Puerto Rico to turn 936 into a vehicle for Caribbean development. It did this by permitting the funds deposited in the Government Development Bank to be used for direct loans in the Caribbean. Up to that time they had been directed only to the Puerto Rico portion of twin-plant ventures.

The Senate made two changes that were retained in the final version of the bill. Dividends paid by 936 corporations to affiliated U.S. companies are to be included in "book income" used as the basis for determining corporate alternative-minimum-tax income, and the Senate further broadened the possibilities for Puerto Rican contribution to Caribbean development by permitting commercial banks in Puerto Rico to make direct loans of 936 funds to CBI eligible countries.

The Tax Reform Act of 1986, as the eventual legislation was called, was, at long last, another victory for Puerto Rico, but it had been won at considerable emotional cost. The island's vulnerability as it stands in a crossfire be-

tween the U.S. Treasury and U.S. manufacturing investors in Puerto Rico had once again been starkly demonstrated as had the wholly uncoordinated and unsystematic nature of federal government Puerto Rico policy.

## THE AFTERMATH

Now that the latest storm from Washington has been weathered and the island's economy is demonstrating surprising vigor there is reason to be hopeful. The new found strength of the economy combined with the cutbacks in 936 tax benefits that were made in both 1982 and 1986 should weaken Treasury arguments that 936 is both too costly and ineffective as an employment generator in Puerto Rico. With a major tax reform now behind it, Congress gives no indication that it is in the mood to tinker with the tax code again anytime soon. But the horizon is hardly free from clouds. The federal budget situation has not improved, and the legislative resistance to spending cuts creates pressures eventually to raise revenues in the TEFRA fashion, by broadening the tax base. Section 936 remains a target of opportunity without a strong electoral constituency.

That little item in the 1986 Tax Reform Act about the royalty payment "commensurate with the annual income stream" from transferred intangible property has also been sitting there like a time bomb waiting for the interpretation of the Internal Revenue Service. In late 1988 the IRS issued a White Paper, or preliminary draft regulation for public comment, and it appears that they mean to use this provision to consign a 936 company using the cost-sharing method of profit allocation to contract-manufacturer status once again. If true, we are back to the battleground of 1980 with the exception that the 50-50 profit split option is now available and the 936 companies have powerful allies in the fight. This new super royalty would apply to all foreign subsidiaries of U.S. companies, not just to 936 companies.

The Caribbean strategy, too, while it gained allies both within and without the administration for its promise to give a boost to regional economic development, could have some negative consequences if there is a perception that the promise is not being realized. In view of the inherent difficulties in fostering economic development, especially through the use of bank loans, such a perception is a real possibility. Already we have had at least one public utterance of displeasure from outside the federal tax professional axis. Expressing his frustration with the slow (but explainable) pace of loans from Puerto Rico to the Caribbean, J.F. Morris, Deputy Administrator for the U.S. Agency for International Development, told a panel at the annual Miami Conference on the Caribbean in December, 1988, "Further failure to make progress in this direction has many of us in the executive branch and Congress wondering whether continuing 936 is worth the price to the U.S. budget deficit." His statement produced banner headlines in the *San Juan Star*.<sup>57</sup>

That all Puerto Rico should hang breathlessly on the words of a relatively low level federal official vividly illustrates the truly unsatisfactory nature of Puerto Rico's current dependent situation. That that same federal official should see fit to threaten the severing of Puerto Rico's economic lifeline over a purely tangential issue completes the unsettling picture.

The picture may be clarified or confused all the more by developments which began in early 1989 when, in his swearing-in speech on January 2, Governor Hernandez Colon called for a plebiscite on Puerto Rico's political status. The voters of Puerto Rico would be asked to choose between statehood, independence, or the status favored by the Governor, an enhanced version of the current commonwealth arrangement in which both Puerto Rico's autonomy under the U.S. flag and its participation in federal programs would be increased. A plebiscite was last held on Puerto Rico's political status in 1967 with commonwealth receiving 60.4 percent of the vote, statehood 38.9 percent, and independence .06 percent, but in a dispute over the perceived partisan nature of the proceedings the independence party and a large faction of the statehood party boycotted. Since that time, in 1968, 1976, and 1980 advocates of statehood have been elected Governor which many perceive as an indication of growing sentiment for that status option.

To get some assurance of consistency between what the Congress would be willing to grant and what the voters would be asked to approve the presidents of each of the three major parties co-signed a letter to the members of the U.S. Congress requesting that federal legislation be enacted sanctioning a Puerto Rico status plebiscite. In February, at the conclusion of his State of the Union message to Congress, President George Bush expressed his desire for a resolution of Puerto Rico's political status through the free expression of the Puerto Rican people in a referendum, and then he went on to say that his personal preference is for statehood.<sup>58</sup>

The ball was then picked up by Senator Bennett Johnston of Louisiana, Chairman of the Committee on Energy and Natural Resources, who introduced legislation in April containing a rough outline of the terms of transition to statehood, independence, or enhanced commonwealth. The terms were crystallized after hearings in Washington and San Juan, with one of the most important being that should the voters of Puerto Rico approve statehood in a plebiscite to take place in the summer of 1991, the section 936 tax credit would remain in place until January 1, 1994, and would then be reduced to 80 percent of qualified Puerto Rico income for 1994, 60 percent for 1995, 40 percent for 1996, and 20 percent for 1997, and eliminated thereafter. This legislation was reported out of the Energy and Natural Resources Committee in September and referred to the Finance Committee to put its stamp of approval on the taxation and spending portions within its jurisdiction.

From these developments it would appear that Washington's long period of "benevolent neglect" of Puerto Rico might be coming to an end. Closer examination reveals a very different reality, however. First, through the 1989 session of Congress the drive on Capitol Hill to bring about a resolution of the political status question for Puerto Rico looked like a very lonely, one-man crusade by Senator Johnston. While the hearings have been televised and avidly watched in Puerto Rico they have been very sparsely attended by the Senate committee members themselves. Often Chairman Johnston was the only one of the nineteen-member Senate panel present, and there were seldom more than three Senators in attendance. The vote of 11 for and 8 against reporting the bill out of committee was, in a way, symbolic of the lukewarm interest of the Congress in the whole issue.

Second, and more important from our perspective, is that while Puerto Rico's political situation may be receiving some official attention its economic situation, so far, has not. A major item of concern has been the net cost

to the federal treasury of statehood for Puerto Rico, but all the estimates produced have begun with the convenient assumption of no economic change resulting from the phasing out of federal tax exemption for Puerto Rico.<sup>59</sup> The Treasury, speaking for the administration, has embraced the six and one-half year phase-out of section 936 should Puerto Rico become a state while almost wistfully adding that "...a uniform phase-out of section 936 under both the statehood and commonwealth options would eliminate what is perceived by many as a bias in the bill toward commonwealth."<sup>60</sup> The Treasury testimony also contained the extraordinary suggestion that its failure to assess the likely economic consequences of these changes was intentional. The full explanation bears repeating:

"As I indicated in testimony before the Committee on Energy and Natural Resources earlier this year, the Administration firmly believes that the Puerto Rican people should be given an opportunity to express their will in a manner that recognizes the historic and fundamentally political nature of their decision of self-determination. The importance of the decision they face as a people transcends narrow concerns about specific aspects of economic or fiscal structures."<sup>61</sup>

Would that it were so.

The chief project officer for the U.S. Commerce Department on the Economic Study of Puerto Rico, Randolph Mye, was prophetic when he wrote in 1983, "...there is no federal institutional structure that can address the broader issue raised by the Treasury Department—what is a viable development strategy that relies less on special federal treatment? Neither the Congress nor the executive branch is prepared currently to deal with substantive economic issues in Puerto Rico, and, therefore, Puerto Ricans will view their problems as increasingly political phenomena."<sup>62</sup>

Mr. Mye is, of course, right about the lack of a development strategy, but the situation he decries is certainly not new in the history of U.S. policy toward Puerto Rico. He is also right about the Puerto Ricans, and the Puerto Ricans are right, too, but it's not just their problems which are political phenomena. If one lesson only is to be learned from this historical essay it is that, for better and for worse, Puerto Rico's economy is very much a political phenomenon. As such, it is the stake in an increasingly risky political game in which the main participant seems hardly aware that he is playing.

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## ENDNOTES

1. Ann Davidson, "A Credit for All Reasons: The Ambivalent Role of Section 936," *The University of Miami Inter-American Law Review*, Vol. 19, No. 1, Fall, 1987, p. 136.

2. Except where otherwise noted, all Puerto Rico statistics are from the Puerto Rico Planning Board, usually the annual *Economic Report to the Governor*.

3. "Progress in Puerto Rico," Banco Popular de Puerto Rico, Vol. XXV-1, 1989; U.S. Bureau of Economic Analysis.



4. Robert T. Hill, *Cuba and Puerto Rico with the Other Islands of the West Indies* (New York, 1988) pp. 148-149. Cited in Arturo Morales Carrion, *Puerto Rico, a Political and Cultural History* (New York: W. W. Norton and Company, Inc., 1983) p. 134. No less an authority than Rexford Guy Tugwell has also weighed in more than once with the opinion that the U.S. has simply had no policy toward Puerto Rico. Tugwell is best known as an important member of President Franklin D. Roosevelt's "Brains Trust." He was also by far the most effective appointed Governor that Puerto Rico has ever had, serving in the early 1940's. For Tugwell's cited observations on U.S. policy see his *Puerto Rican Public Papers* (San Juan: Government of Puerto Rico, 1945) p. 153, and *The Stricken Land: The Story of Puerto Rico* (Garden City: Doubleday, 1947) p. 71.

5. One might argue that this is just as well because, for about the last 20 years, the subject of Puerto Rico in the field of economics, at least, has been dominated by scholars whose orientation is more ideological than practical. Concerned as they are to show Puerto Rico as an archetype of one or another economic model they have demonstrated a marked tendency to miss the real trees for their own imagined forest.

6. Harvey S. Perloff, *Puerto Rico's Economic Future, a Study in Planned Development* (Chicago: The University of Chicago Press, 1950), p. 3.

7. *Ibid.*, p. 32.

8. "The Operation and Effect of the Possessions Corporation System of Taxation, Fifth Report," U.S. Department of the Treasury, July, 1985, p. 18.

9. James P. Grant, "A New Speedometer to Track Social Progress," *Development*, Vol. XXI, No. 1, 1979, pp. 13-17.

10. In noting the huge growth in federal expenditures in Puerto Rico during the 1940s we do not by any means intend to discount the importance of the enlightened leadership and important governmental reforms of Governor Tugwell and Puerto Rico Senate President, Luis Muñoz Marín. Muñoz became Puerto Rico's first elected Governor in 1948 and continued his inspired leadership through 1964. It would have been easy—and it is certainly not without precedent in the developing world—for the money to have been squandered. For a good appreciation of the quality of their public service and that of many of their subordinates see Charles T. Goodsell, *Administration of a Revolution* (Cambridge: Harvard University Press, 1965).

11. Perloff, p. 383.

12. "Federal Expenditures by State for Fiscal Year 1988," U.S. Bureau of the Census, p. 37.

13. Perloff, *op. cit.*, p. 383.

14. Official Statement, Puerto Rico Public Buildings Authority, July 20, 1989, p. 1-29.

15. See Davidson, *op. cit.*, for a good summary of tax law changes up to the present.

16. See David F. Ross, *The Long Uphill Path: A Historical Study of Puerto Rico's Program of Economic Development* (San Juan: Talleres Graphics Interamericanos, 1966), for the best narrative description of Operation Bootstrap.

17. Mariano H. Ramirez, "Introduction to the Industrial Incentives Act of 1954," Economic Development Administration of Puerto Rico, p. 4.

18. Here a comparison with the staff-level Congressional representation of the nation's other major conquered population is revealing. In the Senate there is a Select Committee on Indian Affairs. A spokesperson for the committee, in a telephone interview, could think of only 3 of the 20 staff aides who were not Native Americans.

19. Representative of the critics is Richard Weisskoff in his *Factories and Foodstamps: The Puerto Rico Model of Development* (Baltimore: The Johns Hopkins University Press, 1985). Professor Weisskoff is the one exception of recent academic writers on Puerto Rico in that his testimony before the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate in 1981 was influential, and one might say instrumental, in getting Puerto Rico's participation in the federal food stamp program changed to a capped block grant. His prolific writings (13 references to his own publications in his 1985 book's bibliography) on Puerto Rico's economy, though useful to a degree for reference, are most notable for facile and evocative phraseology and very romantic notions about agriculture. Consider the following example from his book:

"The dependency of the island is now complete. Industrialization strategy has cut both ways: backward into the land, where food production has been virtually eradicated; and forward out from the land, from whence the people and industrial products are sent in exchange for federal money and raw materials. Thirty years of antiagrarian policy have ruined the countryside; food stamps are merely the coup de grace." p. 139.

On page 70 he observes, however, that "...the share of imported food to total food consumption (in Puerto Rico) was rather constant at 46 percent throughout the decade 1971-1980. ..." To supply 54 percent of locally-consumed food is not bad, I would say, after food production has been "virtually eradicated". As for "antiagrarian policy", the 1989 Commonwealth of Puerto Rico budget was fairly representative of the last thirty years with its appropriation of \$472 million for the agricultural and \$144 million for the industrial sector.

20. "Facts and Figures on Puerto Rico's Agriculture", Puerto Rico Department of Agriculture, 1984; *The World Almanac and Book of Facts, 1988* (New York: Pharos Books, 1987), pp. 82, 119.

21. U.S. Census of Agriculture, 1982.

22. See, for instance, Peter Merrill, "Trains Passing in the Night: Legislating for Puerto Rico", in Richard J. Bloomfield, editor, *Puerto Rico: The Search for a National Policy* (Boulder: Westview Press, 1985), p. 70.

23. Hawaii Visitors Bureau.

24. Puerto Rico Tourism Corporation.

25. Hawaii Visitor's Bureau; Puerto Rico Tourism Corporation.
26. Barbados had 6,799 in 1986 and the Bahamas had 13,166 in 1985. See "Statistical Bulletin of the Organization of American States," January-June, 1987. p. 93.
27. *World Almanac*, 1990, pp. 620-646.
28. Committee to Study Puerto Rico's Finances, *Report to the Governor* (December 11, 1975), p. 43.
29. *Caribbean Business*, August 25, 1988.
30. Robert R. Nathan Associates, "Section 936 and Economic Development in Puerto Rico," August, 1987, p. 34.
31. Our view of the U.S.-owned manufacturing concerns as the core of Puerto Rico's private sector might be contrasted with that of James L. Dietz in his *Economic History of Puerto Rico: Institutional Change and Capitalist Development* (Princeton: Princeton University Press, 1986). Professor Dietz goes out of his way to downplay their importance but never makes clear what else he thinks might contribute so positively to Puerto Rico's economy. He leaves no doubt about his preference for government solutions to economic problems by, among other things, his solicitous treatment of Puerto Rico's failed industrial ventures in the 1940's and his kind words for the government's money-absorbing Sugar Corporation. Though his book is replete with revealing economic statistics, one series the reader will not see is any measure of the growth of government in Puerto Rico's economy. In 1988 the consolidated Commonwealth budget (including the public corporations) was \$10.2 billion which was 55.4 percent of the gross national product.
32. "Possessions Corporation Fourth Report," U.S. Treasury, p. 44.
33. *Ibid.*, p. 49.
34. Office of Productivity and Technology, Bureau of Labor Statistics, U.S. Department of Labor, September, 1987, unpublished data.
35. *Economic Study of Puerto Rico*, Vol. I., p. 109; *World Almanac*, 1988, p. 137; Puerto Rico Planning Board.
36. "U.S. General Imports (FT 155)," 1983-1987, U.S. Bureau of the Census; "External Trade Statistics," Puerto Rico Planning Board, unpublished data.
37. Kal Wagenheim, *Caribbean Update*, Vol. 4, No. 10, November, 1988, p. 22; Puerto Rico Planning Board.
38. Bobbin Consulting Group, "Sourcing, the Caribbean Option," 1988.
39. Edison Electric Institute, Washington, D.C.; Puerto Rico Electric Power Authority, Official Statement, March, 1984, October, 1987. By contrast, only 5.5 percent of electricity in the U.S. is generated from petroleum. See *World Almanac*, 1988, p. 127.
40. Statistics on manufacturing employment by industry are from the "Annual Census of Manufactures," Puerto Rico Department of Labor and Human Resources; U.S. comparisons are from the "Annual Survey of Manufactures," U.S. Bureau of the Census.
41. *General Explanation of the Tax Reform Act of 1976*, pp. 274-278.
42. Treasury's "Fourth Report", pp. 14-20, has a good discussion of these developments. The main changes made were that possessions companies would no longer have to liquidate their Puerto Rico operations to pay dividends, free of taxes, to their U.S. parent company; earnings from re-invested profits outside Puerto Rico would no longer be free of federal taxes; possessions corporations would not be permitted to consolidate their tax returns with the parent company in years in which they made losses; and the exemption was changed to a tax credit. These changes were incorporated into a new section 936 of the Code, replacing section 931.
43. Perloff, *op. cit.*, p. 118.
44. Merrill, *op. cit.*, pp. 69-70.
45. *The Treasury Department Report to the President*, Vol. 2, p. 328.
46. *Ibid.*, p. 329.
47. At \$3.35 per hour the annual minimum wage is \$6968. Sixty percent of \$6968 equals \$4180.80. With the new maximum corporate tax rate of 33 percent, subtract .33 times \$4180.80 or \$1379.66 for the loss of the wages paid deduction. \$4180.80 - \$1379.66 = \$2801.14.
48. Treasury's "Fifth Report," p. 49.
49. Treasury's "Fourth Report," pp. 42-50.
50. *The President's Tax Proposals to the Congress for Fairness, Growth, and Simplicity*, pp. 307-313.
51. \$4180.80 per worker credit for minimum wage (see note 47) plus .2(\$8954 - \$6968) or \$397.20 credit for wages above the minimum = \$4578. Multiply times 1 - .33 or .67 to reflect loss of wages-paid deduction equals \$3067.26. Multiply times 100 employees in Puerto Rico to claim \$306,726 total annual wage credit.
52. Vol. 1, pp. 4-5.
53. "Annual Survey of Manufactures," U.S. Bureau of the Census.
54. *Report to the President*, *op. cit.* Vol. 1, p. 5.
55. To arrive at this maximum credit of precisely \$5602.27 repeat the per employee calculations of note 51 substituting an annual figure of four times the minimum wage or \$27,872 for the apparel industry average of \$8954.
56. One might ask why Puerto Rico would not direct its appeal to the Commerce Department which not only had principal administrative responsibility for the CBI but also had greater experience on Puerto Rico economic issues. The reason is perhaps best summed up in a quote attributed to former Secretary of Commerce, Peter G. Peterson, "The expression powerful (U.S.) Commerce Secretary is an oxymoron."
57. *San Juan Star*, December 3, 1988.
58. Whether or not to separate the President's personal preference from executive branch policy on a significant policy issue is a question with which members of the executive branch will have to grapple.

59. These include estimates reported by the Energy and Natural Resources Committee based upon testimony by various agencies and departments of the federal government, estimates by the Congressional Budget Office (CBO), and estimates by the Congressional Research Service (CRS) of the Library of Congress. A similar exercise was conducted by the General Accounting Office (GAO) in 1987 in response to a request by the House Ways and Means Committee to determine the effects of extending six major welfare programs and full federal taxation to Puerto Rico and the insular territories. At that time, too, the GAO produced estimates assuming no effects on Puerto Rico's economy from the loss of federal tax exemption. At the end of the second day of Senate Finance Committee hearings on November 15, 1989, Chairman Lloyd Bentsen, the lone Senator remaining in the hearing room, finally ordered the CBO, the GAO, and the CRS to examine explicitly the likely effects on Puerto Rico's economy of the loss of its tax autonomy. The results of that study are eagerly anticipated.

60. Testimony of Kenneth W. Gideon, Assistant Secretary (Tax Policy), Department of the Treasury, before the Committee on Finance, United States Senate, November 14, 1989, p. 2.

61. *Ibid.*, p. 1.

62. Randolph Mye, "Puerto Rico: Economic Development Should Come First," in Bloomfield, *op. cit.*, pp. 87-88.



A BRIEF LOOK AT LATINO UNION  
HISTORY IN THE WEST AND SOUTHWEST:  
A MEXICAN AMERICAN LABOR  
LEADER'S PERSPECTIVE

Alfredo C. Montoya

Alfredo C. Montoya began a career in the labor movement in 1952 as a writer for the International Union of Mine, Mill and Smelter Workers (IUMMSW). He served as an international representative of the IUMMSW and the United Steelworkers of America (USWA), retiring in 1983. Since 1977, he has been Executive Director of the Labor Council for Latin American Advancement (LCLAA) in Washington, D.C.

"The most important determining aspect for the Chicano community is its economic role and position. Thus, it is pre-eminently important to understand Chicano labor history."

*Juan Gomez-Quiñones*

From the very beginning of the U.S. labor movement, Latino<sup>1</sup> workers have played a crucial—sometimes decisive—role in the history of many unions. A stereotype once widely accepted held that Mexican Americans tend not to organize corporate instrumental groups,<sup>2</sup> that is, formal, voluntary associations. In fact, Latinos have a long history and strong tradition of forming or joining such organizations, including labor unions.

By the 1880's, Mexican American workers were struggling, against often bitter and violent opposition, to form their own unions in order to fight concerted battles against exploitation, discrimination, and land-grabbing by Anglo Americans.

There is evidence that Latinos participated in early unions affiliated with the American Federation of Labor (AFL), formed in 1881, and that they were active in the International Workers of the World (IWW), a militant union founded in 1905 by lumbermen and miners.<sup>4</sup>

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In the latter part of the 19th century, Latino farm workers made frequent attempts (sometimes joined by Chinese, Japanese, and Filipino farm workers) to organize unions. Almost always these were usually ruthlessly crushed by the combined forces of employers, police, government agencies, and vigilantes. But these early experiences laid the foundation for farm worker organization, and—eventually—the success of the AFL-CIO United Farm Workers of America under the leadership of Cesar Chavez.<sup>5</sup>

The militant struggles of the miners of Mexican descent in the West's embattled mining camps were an essential contribution to the development of the Western Federation of Miners (WFM), which was associated with the IWW from 1905 to 1908. The WFM was the forerunner of the modern-day International Union of Mine, Mill, and Smelter Workers (IUMMSW), now part of the AFL-CIO United Steelworkers of America, in which Mexican American workers continue to play important roles.

This article will trace, in abbreviated form, the union experience of Latinos in the West and Southwest from the middle of the 19th century to the present day. The historical point at which the tracing of that experience begins is the signing of the Guadalupe-Hidalgo Treaty in 1848, which ended the war between Mexico and the United States.

### **The Background—Segregation and Exploitation**

Mexico, which had won its independence from Spain barely a quarter century earlier, turned over huge tracts of land to the United States in 1848. Mexicans living in the affected areas became aliens within a conquering nation without moving a step from their ancestral homes.

In the words of Joan W. Moore, Mexican Americans became a minority not by immigrating or being brought to this country as a subordinate people, but by being conquered. The early history of the Mexican Americans, beginning in the 19th century, is thus the history of how they became subordinate people.<sup>8</sup>

The Anglo Americans moved forcefully, using both legal and illegal methods, to concentrate control of massive amounts of land, labor, and capital in their own hands. As these potent Anglo controls became socially, politically, and legally institutionalized, large segments of what was now the Mexican American population in the Southwestern United States became landless, were drawn into cheap wage labor pools, and were isolated in barrios and colonias.

The newly created minority was victimized by a pervasive pattern of segregation and exploitation which emerged in varying degrees in Arizona, California, Colorado, New Mexico, and Texas. By 1900 the economic fate of the Mexican American as a major source of cheap labor was fixed throughout the Southwest.

As the 20th century opened, economic and social forces were grinding workers of Mexican descent into the status of a dependent minority, and class distinctions were becoming stratified along racial/cultural lines.<sup>9</sup>

### **The Early Mexican American Unions**

After 1848, Mexicans living in what had become the southwestern part of the United States struggled to improve their lives by attempting to organize in various ways, including the formation of mutual aid societies, communi-

ty organizations, and unions.<sup>10</sup> By the 1880's, Mexican American workers were carrying on the battle against exploitation and discrimination with constant efforts to organize labor unions.

One of the first unions in the Southwest was organized by Mexican Americans in the 1880's—the Caballeros de Labor, patterned after the Knights of Labor.<sup>11</sup> The union concentrated on fighting Anglo land-grabbing schemes, but scored only moderate success. Its major concerns were largely political, rather than the basic trade union issues of wages and hours, and it achieved little influence among the masses of Mexican American workers.

In 1910, a street railway strike began in Los Angeles when Mexican American workers walked off the job and demanded more pay.<sup>12</sup> The strike quickly spread to the metal trades, leather workers, and the brewing industry. The strikes were broken after the bombing of the Los Angeles Times building, although Mexican American workers had no connection with that senseless act of violence.

Mexican American workers in Los Angeles formed their own union in 1927. In November of that year, a committee representing the Federation of Mexican Societies passed a resolution calling on its affiliates to support a drive to organize Mexican American workers of the area. Several local unions were, in fact, organized and they formed the Confederacion de Uniones Obreros Mejicanos (CUOM).<sup>13</sup> A major objective was the organization into unions of all Mexican American workers in the nation.

CUOM became a victim of the Great Depression that hit the nation in 1929. It left an important imprint, however, on the history of Mexican American union organizing. It provided significant leadership experience for workers who later helped establish more successful, enduring labor organizations, such as those in two major industries of central importance to the economies of the Southwest and West: agribusiness and mining.

### **Overcoming Grower Opposition: the Farm Workers**

Almost from the moment Mexican American workers—mainly migrants, following the crops—began to move into the fields in large numbers, they began to form unions, or use some form of collective action to press their demands for better wages and working conditions.

In 1903, Mexican American sugar beet workers, together with Japanese field workers, walked out of fields near Ventura, California. They won the right to negotiate directly with the grower, instead of a labor contractor. It is interesting to note that the AFL Los Angeles Labor Council moved to issue a union charter to the Mexican and Japanese field workers, but was thwarted by the AFL Executive Council, which held to the Federation's restrictive practice of opposing the immigration of foreign labor. AFL President Samuel Gompers approved a charter for the Mexican workers, but issued it with the express understanding that under no circumstances would the union take any Chinese or Japanese workers.<sup>14</sup>

In the summer of 1913, Mexican American workers were involved in a strike against the Durst Ranch, near Wheatland, California. A riot was touched off by a deputy sheriff, who reportedly fired a warning shot into the air. Four workers were killed in the riot, and the National Guard was called in. About 100 workers were arrested, and the strike was broken.<sup>15</sup>

However, the resulting publicity led to one of the first reactions of the California government to the demands of agricultural labor. A State Commis-

sion on Immigration and Housing was formed to investigate. Only minimal improvements in working and housing conditions for the Mexican American workers resulted, but for the first time a governmental body had taken some notice of the abysmal living conditions of migrant farm workers.

In the spring of 1928, Mexican American melon pickers established the Mexican Mutual Aid Society of Imperial Valley (MMAS), assisted by the Mexican Consul in the border town of Calexico, California.<sup>16</sup> MMAS served an ultimatum on the growers, demanding pay increases, elimination of labor brokers, and recognition of the organization as spokesman for the melon workers. MMAS thus combined two of the mechanisms long used by Mexican American workers in their protracted struggles: the mutual aid society and the labor union. The melon workers eventually were forced by the usual threats and coercions to accept the terms of the growers, but the action of MMAS helped to advance unionization of Mexican American workers in agriculture.

During the Depression decade of the 1930's, a large number of strikes took place as wages fell below the near-starvation level of the 1920's. Mexican American workers, active in forming unions and leading strikes throughout this period, organized some 40 agricultural unions, largely short-lived. One of the most successful was the Confederación de Uniones de Campesinos y Obreros Mejicanos (CUCOM).<sup>17</sup>

In May 1933, several thousand Mexican American strawberry pickers walked out of fields in El Monte, California, dissatisfied with wages that had dropped to nine cents an hour. The strike became a power struggle between local Mexican American leaders and the ideologically left-wing Cannery and Agricultural Workers Industrial Union (CAWIU). The strike led to the formation of CUCOM, an independent, anti-left-wing union which rapidly became the most active agricultural union in California. By the end of 1933, it had some 50 local unions and more than 5,000 members.

Two years later, in January 1936, CUCOM brought together several independent unions of Spanish-speaking workers in the Los Angeles area. Together, they formed the Federation of Agricultural Worker Unions of America. By April, the new federation had called a strike in the Los Angeles celery fields, and 2,600 workers walked out. Growers broke the strike, but the workers achieved modest gains. The Federation, which succumbed to the intolerable pressures of the growers and the Depression, had won an honorable niche in union history.

The last strike to be called by California farm workers before World War II collapsed only four months after it began. In January 1941, some 1,500 lemon pickers organized the Agricultural and Citrus Workers Union (ACWU), affiliated with the AFL, and went on strike. The growers brought in strike breakers. The workers lost not only the strike, but their jobs as well.

Five years later, the AFL granted a charter to the National Farm Labor Union (NFLU), successor to the Southern Tenant Farmers Union.<sup>18</sup> For the first time, the AFL became involved with farm labor union developments on a nationwide basis. Mexican Americans were deeply involved in the membership and leadership of the NFLU. The late Dr. Ernesto Galarza, who became one of the nation's foremost authorities on migrant workers, served as the union's director of research and education.

In 1947, the NFLU called a strike against the DiGiorgio Food Corporation in Kern County, California, a giant among the huge corporations that dominate agribusiness. The issue was union recognition.<sup>19</sup>



The strike was violently opposed by DiGiorgio, and eventually was broken, principally by the use of braceros, farm workers who were brought in by the thousands from Mexico under an agreement between that country and the United States. Federal government officials openly escorted braceros through the union's picket lines. Loss of the strike brought to an end the NFLU's major effort to organize 200,000 California farm workers.

No successful organizing program could be achieved so long as Mexican braceros were plentifully available to growers who could easily control and exploit them. For two decades, no substantial and enduring union organization of farm workers was realized, despite numerous attempts and futile strikes. But the bracero program was fought constantly by unions, churches, and many civic and community groups, and Congress finally ended the program as of December 31, 1964.

Less than nine months later, on September 8, 1965, Filipino farm workers, who were members of the AFL-CIO Agricultural Workers Organizing Committee (AWOC), led by the late Larry Itliong, walked out of the grape vineyards in Delano, California. Eight days later, on September 16—Mexican Independence Day—they were joined by the independent National Farm Workers Association (NFWA), composed predominantly of Mexican American farm workers. Their leader was Cesar Chavez. From the vineyards of Delano, El Grito—the Cry—of the embattled farm workers rose to be heard across the nation—Huelga!—Strike!<sup>20</sup>

The AFL-CIO United Farm Workers of America, formed during the strike by the merger of AWOC and NFWA and composed principally of Mexican American and Filipino workers, became the first union, in the long history of U.S. farm worker organization, to overcome racial prejudice and the always stubborn, often vicious opposition of the growers, and to win enduring, precedent-shattering gains.

Their dramatic struggle, which continues, smashed through barriers of prejudice, bigotry, and social apathy. It became an important part of the historic civil rights movement of the 1960s, and one of the major fountainheads of the emerging Chicano Movement. It overcame a hundred years of isolation for poverty-stricken farm workers.

The story of the extraordinary penetration of farm workers into the nation's social awareness has a poignant parallel in that of another group of Mexican American workers in the Southwest: the miners.

### **Standing Like a Stone Wall—the Mine Workers**

The long, tenacious struggle of embattled workers in the mining industry was waged in the isolation of scattered mining towns, far from the notice of any big-city media or the social concern of the nation. Mexican American miners and their families were highly vulnerable to the repressive, often violent, tactics of the copper corporations.

A decade before the end of the 19th century, the Western Federation of Miners began to organize copper miners,<sup>21</sup> and Mexican Americans quickly emerged to take leadership positions in that struggle. The copper miners won their fight to organize and bargain collectively, and they were the first large group of substantially concentrated Mexican American workers to organize an enduring union with effective power to improve wages and working conditions.

A strike was initiated in 1903 by Mexican American miners protesting pay

cuts in the copper region of Clifton-Morenci, Arizona.<sup>22</sup> Anglo workers failed to support the walk-out, weakening the strike, and in 1904 a disastrous flash flood took the lives of some 50 persons, damaging the morale of the strikers. The strike was then broken by the arrest, trial, and conviction of its leaders.

Late in 1913, a strike was called by the United Mine Workers against the Colorado Fuel and Iron Co., owned by John D. Rockefeller, in Ludlow, Colorado. The tragic story, which has gone down in labor history as the Ludlow Massacre, produced many accounts of extraordinary bravery on the part of the strikers and their families. The work force was composed of Chicanos, Italians, Slavs, and other immigrants. The company used armed guards and vigilantes to eject workers forcibly from their company-owned homes. The strikers then set up tents and other makeshift dwellings on adjacent land. On April 20, 1914, the militia set fire to the workers' camp, and the Chicano tents and dugouts were among the first hit. The 18 victims included nine Chicanos, five of them children. Among the militia's victims were two women and 11 children, smothered to death in a cave. Despite the violence, the workers continued to strike until the UMW rescinded the strike in December 1914.<sup>23</sup>

The Clifton-Morenci region was again hit by a strike in 1915, when Mexican American miners protested the traditional wage differentials which set higher rates for Anglo workers. A guarantee of equal rates was won five months later—and the miners threw out the Western Federation of Miners for supporting the unfair, racially-biased differential. The Los Angeles Labor Press reported: "Everyone knows that it was the Mexican miners that won the strike at Clifton and Morenci by standing like a stone wall until the bosses came to terms."<sup>24</sup>

Strikes again broke out among Arizona's copper miners in 1917 and 1918.<sup>25</sup> These walkouts were supported by both Mexican American and Anglo workers. The strikes were broken by vigilante action in which hundreds of Mexican miners were forcibly deported. Large numbers of Mexican American workers were rounded up by armed vigilantes, dumped far out on the deadly deserts, and abandoned there without food or water.

The late Dr. Ralph Guzman, eminent Chicano political scientist and scholar, wrote about the Bisbee [Arizona] deportation incident of 1917:

On July 12, a Bisbee posse of civilians, 1,200 strong, marched every Mexican American male who could not prove that he was employed, into the local ball park. Telephone and telegraph offices were guarded by the sheriff, and company officials censored all Associated Press dispatches. Those corralled in the park were then loaded into boxcars and shipped to Columbus, New Mexico, 114 miles from Bisbee. Residents of the area report that the men, taken toward Columbus, were actually left in the desert short of that town without food or water.<sup>26</sup>

The Congress of Industrial Organizations—the CIO—vigorously strode onto the labor movement stage in 1935–36, under the leadership of the indomitable John L. Lewis, president of the United Mine Workers.<sup>27</sup> Among the dynamic unions in the early days of the CIO was the Industrial Union of Mine, Mill and Smelter Workers (IUMMSW). As the result of organizing efforts during the 1930's and 1940's, the IUMMSW became a major union of copper miners in the Southwest and mountain states. Support by the Mexican American copper miners was a decisive factor in the successful organizing efforts of IUMMSW. Their support was also essential to the very existence of IUMMSW, as subsequent history was to record.

By the late 1940's, the nation was heading into a Cold War with the Soviet Union. Waves of anti-communist sentiment and actions, many of them irresponsible and politically-motivated, were jeopardizing legitimate, democratic institutions, which became torn by external attacks and internal controversies. In the labor movement, the intensified Cold War controversy precipitated a split in the CIO.<sup>28</sup> At the CIO convention in 1950, several international unions, accused of Communist domination in their top leadership, were expelled. Among those ejected was the IUMMSW.

The ideological controversy did not, however, destroy the unity of the Mexican American copper miners, who formed a substantial segment of the union's membership. They remained staunchly loyal to each other and to their own leaders.

During this tense Cold War period, Mexican American miners in the IUMMSW moved to hold their forces together in the same way that workers throughout Latino labor history have done often – by organizing themselves. This time, Latino workers in the IUMMSW took the lead in organizing the Asociación Nacional Mexico-Americana (ANMA). ANMA was formed at a conference held February 12–13, 1949, in Phoenix, Arizona, as a national organization committed to the support of Mexican Americans.<sup>29</sup> ANMA fell victim to the Cold War and the split in the CIO and did not endure. It has a place in Latino labor history, however, as a symbol of the enduring dream of a national organization for all Hispanic workers.

To the Mexican American copper miners, well aware of the repression and exploitation of the past, a strong union was considerably more relevant than a political ideology. Consequently, when the AFL-CIO United Steelworkers of America offered an honorable merger in the 1960's to the IUMMSW, which had become weakened as an independent union, the Mexican American miners gave the move unified and decisive support. The AFL and CIO had merged in 1955, and joining with the AFL-CIO Steelworkers brought the Mexican American copper miners back into the mainstream of the nation's labor movement.

A key supporter of the merger was the late Maclovio Barraza, member of the international executive board of IUMMSW and an acknowledged leader of the Mexican American copper miners. Barraza later was to become founder-chairman of the National Council of La Raza (NCLR), and founder-secretary treasurer of the Labor Council for Latin American Advancement (LCLAA).

### **The Birth of LCLAA**

Placed in the context of labor history, the founding of LCLAA was the realization of many decades of struggling to organize Hispanic union members. By the early 1970's, several scattered groups of Hispanic workers within the AFL-CIO had come together to address the long-standing issue of forming an across-the-spectrum organization. The dream of a national organization, capable of bringing together all Hispanics in the labor movement, began to take form. The AFL-CIO provided the network, timely resources, and crucial support; Hispanic unionists provided the initiative, leadership and membership. In November 1973, Hispanic union members convened a LCLAA Founding Conference in Washington, D.C.<sup>30</sup>

As the Hispanic arm of the AFL-CIO, LCLAA represents and speaks for more than one million Hispanic union members. Its membership and leader-

ship reflect the broad spectrum of the national and international unions in the AFL-CIO. It embraces union members from all segments of the growing Hispanic population in the United States—Mexican American, Puerto Rican, Cuban, Central and South American.<sup>31</sup>

### SOME POLICY IMPLICATIONS

The number of Hispanics in the United States reached almost 20 million in 1988. Because of substantial immigration, and because of the high Hispanic birth rate, their number is increasing fast. Hispanics are young, relative to the United States total population. In 1988, according to the Census Bureau, the Hispanic median age was 25.5, while the median age in the nation as a whole was 32.2.<sup>32</sup>

According to Rafael Valdivieso and Cary Davis, the growing Hispanic population presents challenges to U.S. policymakers in nearly every area, but most urgently in education, job training, and welfare. The necessity of addressing Hispanic public policy concerns is underscored by the data. Hispanic young adults will soon become the largest segment of the labor force in many of the nation's major metropolitan areas. And in those same areas, their children will become the majority of the public school population.<sup>33</sup>

In 1988, Hispanics made up 7 percent of the U.S. civilian labor force, and that percentage is certain to grow as the non-Hispanic population ages and as the number of working-age Hispanics increases. Census estimates put at least eight million Hispanic men and women workers in this nation's workforce<sup>34</sup>, and more than one million of them are members of AFL-CIO unions. Hispanic workers are streaming into the labor movement at record-setting rates, especially in the service industries, but also in the smoke-stack industries, the needle trades, crafts, and government unions.

LCLAA—together with the labor movement as a whole—supports an American Family Policy for the nation, to include childcare and parental leave, health and medical care, support for the elderly, housing for low- and middle-income families, and high-quality education that meets the needs of all children. LCLAA—together with the labor movement as a whole—supports an increased minimum wage, national employment policies that include affirmative action, equal job opportunities, job training (and retraining for workers left without resources when businesses and industries close their doors), programs to ease the transition from school to work, and the Equal Rights Amendment for women.

In order to increase our effectiveness in the on-going national dialogue on public policies, we need more research in these areas:

- Is affirmative action working for the Hispanic worker? Why is the Hispanic worker almost always over-represented in low-paying, low-skilled jobs? What will be the status of the Hispanic worker in the nation's future labor force?
- What is the status of U.S. Hispanic women today? In the home? In the job market? In the labor movement? In education?
- What has been the impact of the 1986 Immigration Reform and Control Act?

- What are the causes behind the shocking drop-out rate among Hispanic students in U.S. schools?
- Why are increasing numbers of U.S. Hispanic teenagers becoming parents?
- How can the participation of Hispanics in the democratic political processes of the nation be increased?
- What is behind the English Only movement? Is the use of English language in the United States in fact threatened by the use of Spanish language?

Hispanic concerns are national concerns. It is in the interest of all Americans to focus attention on these questions and on the shaping of public policies that affect U.S. Hispanics. In more than one hundred years of constant struggle, U.S. Hispanic workers have progressed steadily from isolated, scattered, small groups without power or resources to a national organization supported by the strongest labor federation in the free world.

But much remains to be done. And Hispanic workers do not intend to take another hundred years in which to do it.

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## ENDNOTES

1. The terms Latino, Chicano, and Mexican American are used interchangeably in this article.
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12. *Ibid.*, p. 171.
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15. Meier and Rivera, pp. 171-172.
16. *Ibid.*, p. 172.
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23. Joseph G. Rayback, *A History of American Labor*, (New York, The Macmillan Company, 1967), p. 258.

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27. Rayback, pp. 346-355.
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29. The author participated in the founding of ANMA and served as its first president.
30. Henry Santiestevan, *LCLAA at Fifteen: Quince Años de Lucha*, (Washington, D.C., Labor Council for Latin American Advancement, 1989), pp. 7-8.
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33. Rafael Valdivieso and Cary Davis, *U.S. Hispanics: Challenging Issues for the 1990s, Population Trends and Public Policy*, (Washington, D.C., Population Reference Bureau, Number 17, 1988), p. 1.
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