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Symposium: Minority Rights

Foreword

Senator Edward M. Kennedy*

This volume of the *California Law Review* represents a significant break with the past neglect of Spanish-speaking and Indian minorities by American legal periodicals. For years, the legal rights and privileges accorded by state and federal Constitutions have too often bypassed the Spanish-speaking and Native American populations.

I have sat in hearings of the Senate Health Subcommittee, the Senate Education Subcommittee, and the Senate Subcommittee on Constitutional Rights. I have traveled across the country to the valleys of California to investigate the condition of the nation’s farm workers, and I have heard witnesses on many Indian reservations detail flagrant denials of constitutional rights. And I have tried to publicize and reverse the record of discrimination and neglect that has characterized so much of the nation’s conduct toward its Spanish-speaking and Indian minorities.

Perhaps the greatest irony has occurred here, in California, where the original state constitution was written in both English and Spanish and where one-third of the signatories were Spanish-surnamed Californians. In many instances, even to the present moment, the quest for equal justice remains unfulfilled. The impact of that failure can be measured by statistics, but it is made more compelling by the words of one young Chicana from Blythe, California. She wrote me after reading the United States Civil Rights Commission report on the administration of justice in the Southwest. Her letter contained these lines:

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* United States Senator, Massachusetts.
Every morning at the beginning of school, we stand to say the pledge of allegiance. Toward the end of this pledge it says “Liberty and Justice for all”. But seeing and reading what has happened to the Mexican American in this country, I find it very hard to believe that there is equal justice for all.

It is difficult to answer this young American when less than five years ago, the United States Civil Rights Commission found “evidence of widespread patterns of police misconduct against Mexican Americans in the Southwest.” Its report stated:

Such patterns include: (a) incidents of excessive police violence against Mexican Americans; (b) discriminatory treatment of juveniles by law enforcement officers; (c) discourtesy toward Mexican Americans; (d) discriminatory enforcement of motor vehicle ordinances; (e) excessive use of arrests for “investigation” and of “stop and frisk”; (f) interference with attempts to rehabilitate narcotics addicts.

In testimony to the Senate Judiciary Subcommittee on Improvements in Judicial Machinery last year, the United States Civil Rights Commission acknowledged that the denial of equal justice includes the lack of translators for limited English-speaking persons and the lack of representation on both grand and petit juries for many of these same minority groups. Thus, a California Rural Legal Assistance study prepared for the Commission found only four of 478,000 Spanish-surnamed persons named to grand jury duty in 12 years in Los Angeles County. Similar statistics are presented in 20 other California counties, and it is clear that de facto discrimination is the only explanation for the small number of Spanish-surnamed persons selected for grand jury duty.

It also should be noted that Senate testimony disclosed only four full-time Spanish-speaking court interpreters are available in federal courts in the Southwest. In this one limited area of concern, there is evidence that a start has been made in reversing past denials of equal justice. In Negron v. New York, a federal court of appeal held that the sixth amendment to the Constitution entitled a non-English-speaking defendant to a competent translation of the proceedings. Perhaps even more important, the Senate recently passed S. 1724, the Bilingual

2. Id.
6. 434 F.2d 386 (2d Cir. 1970).
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Court Act, introduced by Senator John Tunney, which I, and 17 other Senators, co-sponsored. That bill will require the Administrative Office of the United States Courts to establish a procedure for the selection and certification of qualified interpreters for use in the district courts. In all criminal cases, the court will be required to provide oral simultaneous translation, and it will be available at the discretion of the judge in civil cases, as well.

Although this measure was not passed by the House, it has been reintroduced as S. 565 and hopefully this measure will be approved during the current session. This represents progress; but it is progress at a snail’s pace, a pace that the nation can ill afford, a pace that the legal profession must accelerate.

Similarly, there continues to be a flagrant failure by schools and colleges to provide limited English-speaking children with the right to equal educational opportunities. The Senate Labor and Public Welfare Committee Report on S. 1539, the Education Amendments of 1974, notes:

[fifty percent of Spanish-speaking students in California drop out by the eighth grade; 87 percent of Puerto Ricans over 25 years of age in New York City have not completed high school; the average number of school years completed by the Mexican-American in the Southwest is 7.1 years; . . . in Chicago, the dropout rate for Spanish-speaking is approximately 60 percent.]

The United States Civil Rights Commission found in Boston that some 2,300 of the more than 10,000 Spanish-speaking school-age children were not in school at all. Even these statistics pale beside the Commission’s finding in the final portion of its Mexican American Education Study Toward Quality Education for Mexican Americans, that 14 of 30 school districts studied “were found to be assigning Mexican-American students into EMR—educable mentally retarded—classes on the basis of criteria which essentially measure English language skills.”

These studies and testimony at our hearings produced the documentation necessary to obtain congressional approval for a major expansion of the federal bilingual education program. The legislation, which was a combination of bills Senator Cranston and I had introduced, will expand substantially the availability of bilingual education professionals, promote additional research and curriculum develop-

8. MASS. STATE ADVISORY COMMITTEE TO U.S. COMM’N ON CIVIL RIGHTS, ISSUES OF CONCERN TO PUERTO RICANS IN BOSTON AND SPRINGFIELD (1972).
ment, and support further bilingual education projects at the local levels.

Yet, we still are far from meeting the requirement of providing equal educational opportunities to children from those Mexican-American, Puerto Rican, Cuban, French, Asian, Portuguese, Italian, and Native American homes where English is not the dominant language. The federal program reaches perhaps three percent of the limited English-speaking students eligible for the program in the Southwest. It reaches even fewer of the total population of limited English speakers. However, it does provide a federal direction for the education of limited English speakers, stressing the need for bilingual programs which incorporate not only the language but the culture of the limited English-speaking child as well. It also provides a strong impetus for the development of the educational infra-structure necessary for these programs.

Ultimately, the best hope is that the federal direction will combine with the clear mandate of the Supreme Court in Lau v. Nichols\(^1\) that school districts must meet the special needs of the limited English-speaking student. The result would be the establishment of bilingual programs not in a few but in every school district where limited English-speaking students study.

The legal issues affecting the Spanish-speaking, the Native American and other ethnic minorities do not end with the issues of the administration of justice or equal educational opportunity. They span virtually every area where the society and the individual interact. In public and private employment, in immigration, in housing, in farm labor conditions, in health, in political participation—in all of these areas, there is need for examination of the legal status of the Spanish-speaking and the Native American. In all of these areas, there is much left undone for the nation to make good on its commitment to equal justice. Hopefully, this volume of the California Law Review will be a further step in the direction of fulfilling that goal.

\(^1\) 414 U.S. 563 (1974).