civil rights digest

SUMMER 1977

BATTERED WOMEN

IN THIS ISSUE . . . five writers explore a variety of topics.

First is Beverly Jacobson, who opens with an article on battered women—a subject that is receiving greatly increased attention. Jacobson delves into the historical framework of the problem, the psychological and social consequences, and the failures of the judicial system, as well as the efforts underway to protect women who have been beaten.

John Bannon analyzes recent Supreme Court decisions in school desegregation cases, concluding that the era of far-reaching rulings in favor of desegregation is coming to an end, if indeed it is not already past.

The removal of American Indian children from their homes to boarding schools, foster homes, and adoption agencies is the focus of William Byler's article. He notes that possibly one-third of all Indian children have been separated from their parents and relatives, frequently with disastrous results.

Clifford Lytle injects a hopeful note by exploring how the 1866 Civil Rights Act has been revived by the Supreme Court to become a viable tool in the legal battle against racial discrimination.

Finally, Gilbert Ware traces the story of black lawyers, including earlier exclusion of blacks from law schools and current controversies surrounding some black judges.

For more copies of the *Digest* or inclusion on our free mailing list, please write to the Editor, *Civil Rights Digest,* U. S. Commission on Civil Rights, Washington, D.C. 20425.

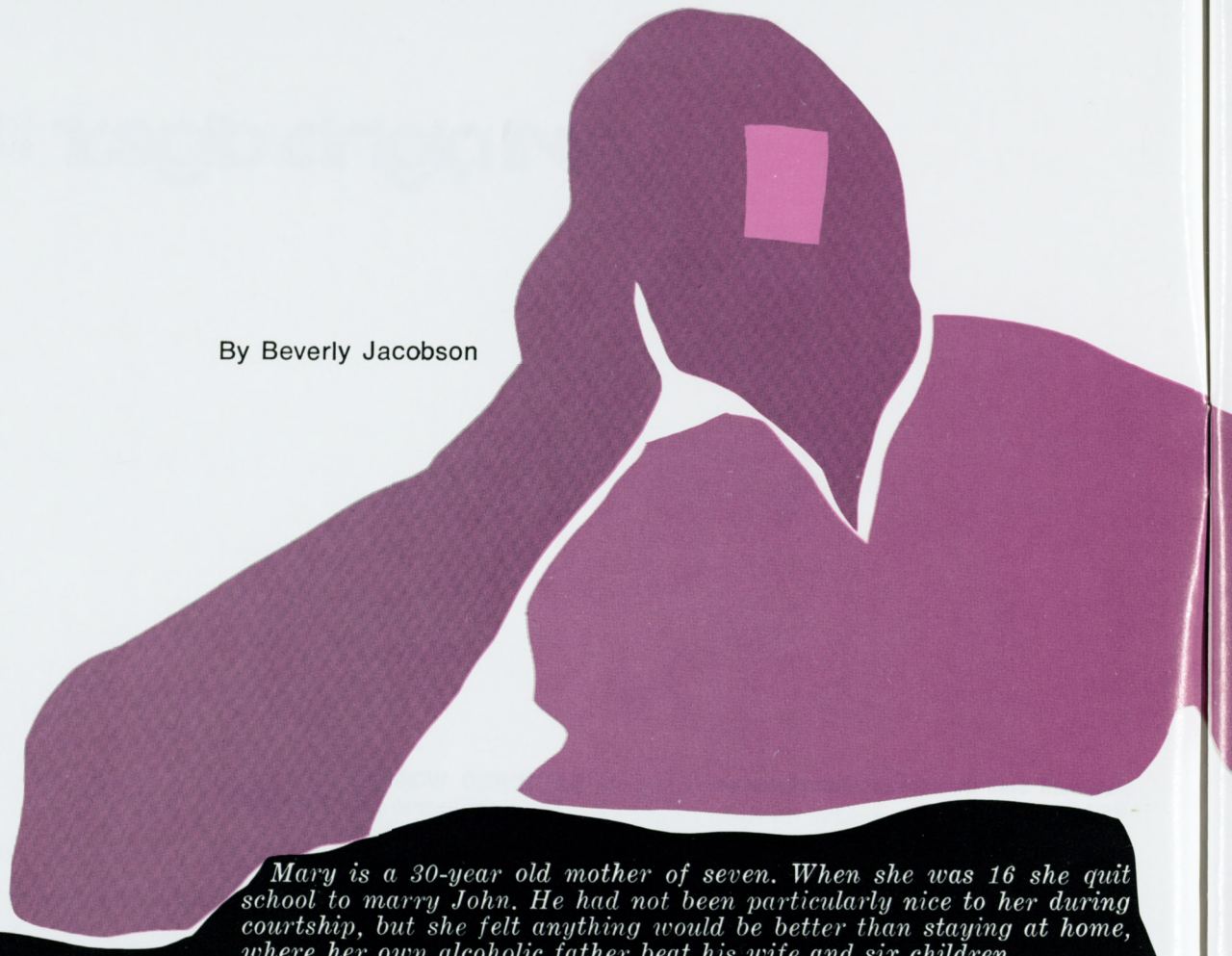
The *Civil Rights Digest* is published quarterly by the U.S. Commission on Civil Rights as part of its clearinghouse responsibilities. Funds for printing the *Digest* were approved by the Director of Bureau of the Budget on January 29, 1963. Correspondence related to the *Digest* should be addressed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

civil rights digest Volume 9 Number 4
SUMMER 1977

CREDITS: Front Cover, 2, 4–5, 6–7, 10– Harrod; 12, 16—U.S. Commission on Civil Rights; 18, 21, 23, 26—N.E.W.S. Photo; 32, 36–37—Michael David Brown; Inside Back Cover—N.E.W.S. Photo.

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:
Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;
Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and
Submit reports, findings, and recommendations to the President and Congress.

By Beverly Jacobson



Mary is a 30-year old mother of seven. When she was 16 she quit school to marry John. He had not been particularly nice to her during courtship, but she felt anything would be better than staying at home, where her own alcoholic father beat his wife and six children.

After the marriage, John beat Mary whenever she disagreed with him or he had a few drinks. The violence increased when she became pregnant. John was suspicious and jealous, claimed the child was not his. Mary begged him not to hit her lest he hurt the baby, to no avail. He would punch her face and body, knock her down, leave her lying there. John had been a boxer; Mary soon learned to fall at the first blow.

During Mary's third pregnancy the violence accelerated. John had started to use drugs, was being 'hassled' by police and pushers. He took his anger out on his wife, attacking her so severely this time that she lost consciousness. The police were called, took her to the hospital, where she delivered a stillborn child. Questioned about her injuries, Mary lied, saying she had fallen down the stairs. She was ashamed to admit her husband beat her.

As soon as she got out of the hospital Mary went to Family Court for an order of protection. This did not deter John, who continued to beat her. Over the next 4 years there were more children and increased violence. Sometimes she called the police, often they failed to respond, or, if they did come, it was not until John had vanished. The police told her there was nothing they could do to help her.

Mary convinced the Welfare Department to allow her to move to a new neighborhood. John tracked her down, beat and stabbed her. The police came, took her to the hospital, but refused to arrest John because the order of protection had expired. With her broken fingers in splints and her face a mass of stitches, Mary went again to Family Court for that familiar yellow sheet of paper. This time John broke into her apartment and beat her savagely for taking him to court. The police arrived, saw that the court had mistakenly given her an order of support, and refused to arrest John.

In despair Mary decided to end it all. She took five sleeping pills the doctor had given her. The next morning she was dismayed to find herself still alive. She went to the local priest, who told her she had sinned by

THE FIGHT TO END WIFE-BEATING

BATTERED WOMEN

trying to take her own life, and that the beatings were her cross to bear.

Mary gave up and sank into apathy. She avoided everyone, rarely left her apartment, sent the children for groceries. When John came and took the welfare money, she and the children went hungry.

Finally John was arrested for robbery. He called Mary and demanded she bail him out. She told him she had no money. When his father posted bail, John broke into her apartment and stabbed her, hit her over the head with a kitchen chair, and attempted to strangle her. The older children tried to help her and John attacked them. This time the police arrested John. Mary was suffering from a concussion, needed ten stitches in her head, two in her foot, and was black and blue from head to toe.

A nurse in the emergency room, who had seen Mary there before, told her she did not have to take this treatment, that she could get a divorce. The hospital pastor advised her to go to Family Court. They sent her to the Supreme Court. A clerk took one look at her and, seeing she was ill and desperate, referred her to Brooklyn Legal Services.

Stony-faced and shaking with exhaustion, Mary told us she would kill herself if we could not help her and that this time she would not fail. She said her children would be better off in foster homes, where they would not have to live in fear and go hungry. I told Mary we could get her a divorce, and started proceedings. A move to a new neighborhood was arranged through the welfare department.

John was indicted for attempted murder. He was sentenced to three years in jail, a term he is now serving.

Mary is starting to come back to life. She is looking ahead, planning to go back to school, anxious to help other women in her position.

—from the files of Marjory D. Fields, attorney with the Brooklyn Legal Services Corporation B, a federally funded program providing legal services to the poor.

Beverly Jacobson is a free lance writer based in the New York City area.

Mary is not an esoteric example of the family structure gone awry. Del Martin, in her authoritative study of *Battered Wives*, estimates conservatively that there are well over a million brutalized women in the United States. Journalist Roger Langley, co-author of a new book on wife-beating, told a subcommittee of the New York State legislature in April of this year that he believes the number is closer to 28 million. Sociology professor Murray Straus, who has studied family violence for the past 20 years, testified the same day that he thinks accuracy lies somewhere between 3 and 6 million.

All three agree that whatever the total number, wife beating cuts across class lines. Proportionately, there are just as many family violence calls to the police in well-to-do Fairfax County, Virginia, as there are in middle class Norwalk, Connecticut, or the 30th precinct of West Harlem—which explains why the

National Organization for women (NOW) proclaimed marital violence a major issue in 1975 and established a task force on the subject which has been working to identify and correct the problem. Internationally, vague concern turned to stunned dismay as the International Tribunal on Crimes Against Women, meeting in Brussels in 1976, heard evidence on the world wide victimization of females.

Statistics in our own country support the contention that there are a lot of Marys. FBI figures show that one-fourth of all murders in the United States occur within the family, and half of these are husband-wife killings. While murder victims are almost equally divided between husbands and wives, a 1969 government commission on violence reported that women who kill are motivated by self-defense seven times as often as men. A 1970-71 Kansas City study revealed that in 50 percent of all domestic homicide cases the police were called 5 times or more before the murder occurred. And, of all women murder victims, roughly one-fourth are killed by their husbands, while about one-twelfth of all men murdered are killed by their wives.

The cost of violence in the home is enormous. Straus believes that at least 10 per cent of the children who witness parental violence became adult batterers themselves. There is no accurate accounting of the abused, disturbed, neglected, and orphaned children, or the drain on medical facilities, social and governmental agencies, law enforcement departments. The police suffer directly: more of them die answering domestic violence calls than any other single category. One out of every five officers who lost his life in 1974 did so trying to break up a family fight.

What *is* unusual about Mary is the fact that her husband landed in jail. Of the more than 2,000 women Brooklyn Legal Services has represented in the

last 5 years, John is the first husband put behind bars. Only 2 percent of battering males are ever prosecuted. While assault and battery is a readily punished crime when it occurs between strangers, give a man a marriage license and the key to his "castle" and he is free to inflict savage damage to his wife for years before the State intervenes.

Why?

Dealing with that why is not a simple matter. Experts cite historical, economic, psychological, social, legal, legislative reasons. Del Martin gives a good historical perspective, pegging the beginning of the problem to the advent of protective mating. Western-style monogamy turned out to be a poor deal for women, at least legally. They gave up whatever power they had in primitive times and became their husbands' property. (The word family is from the Latin *familia*, meaning a collection of slaves belonging to one master.) It took several centuries until Blackstone codified it all, as follows:

> By marriage, the husband and wife are one person in law. . . . The very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of her husband, under whose wing, protection, and cover she performs everything.

The cultural and psychological ramifications of this setup were enormous for women. If her place was in the home, then the home was her responsibility. If there was dust on the window sill it was her fault; if the marriage was rotten it was her fault too. If she was beaten by her husband it was probably just what she deserved. This attitude haunts women today. Judges and policemen assume that "she" provoked "him" and in courtroom after courtroom it remains the responsibility of the battered woman to convince the judge she is truly a victim. Marjory Fields says, on the basis of five and a half years spent handling matrimonial cases,

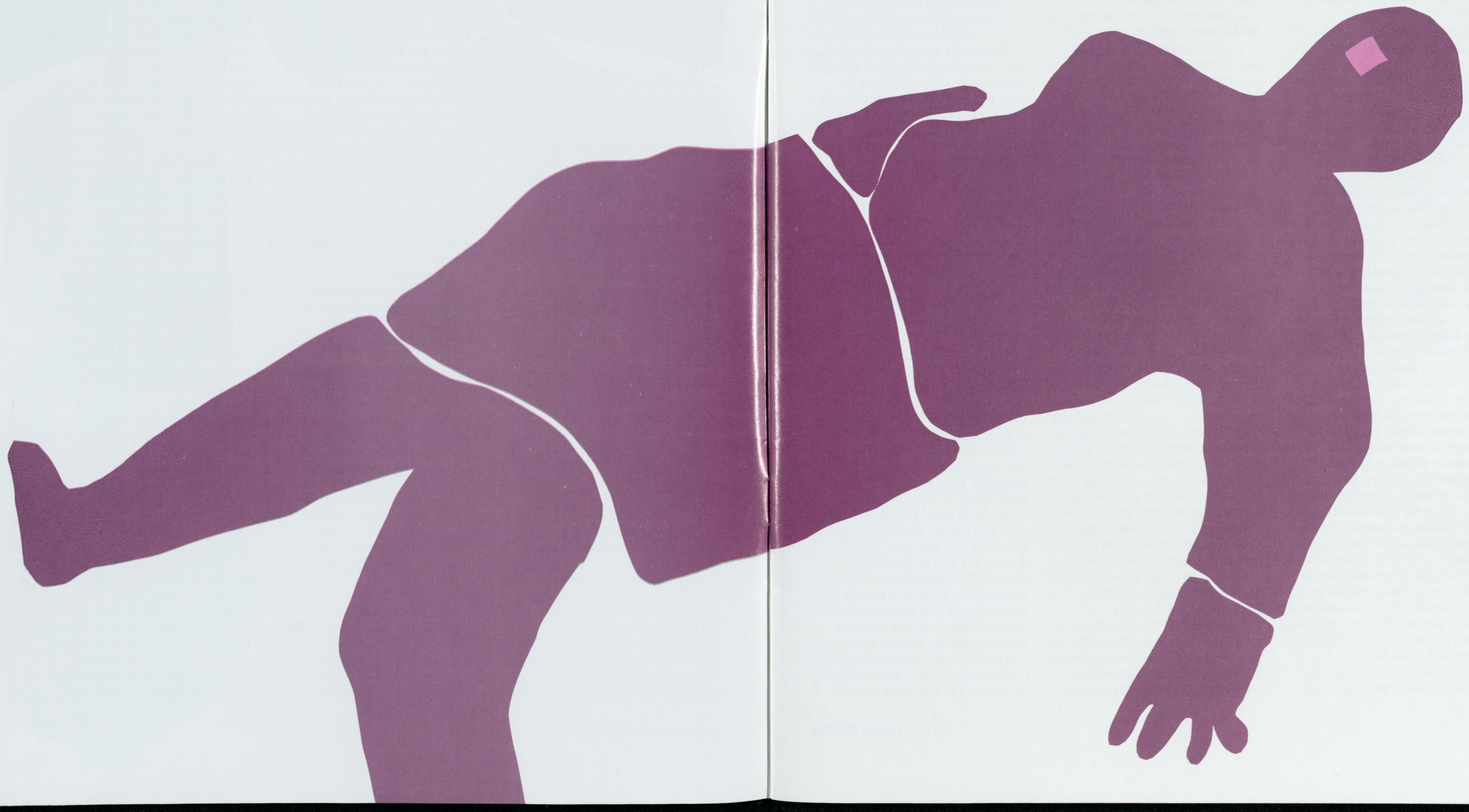
> The police, in my experience, ignore the victim's need for protection and medical assistance. . . . Prosecutors impose extraordinary conditions on a woman complaining of assaults and harrassment by her husband or former husband. After she passes these tests of her intent to prosecute, pleas to minor infractions are accepted, and suspended sentences, or adjournments in contemplation of dismissal, are recommended to the court. Judges impose light or suspended sentences. . . . Thus, the injured wife who persists does not receive the protection of having her assaultive husband jailed.

Civil and family court judges do not treat the beaten wife any better. They frequently ask what the wife did to provoke her husband's attack. This vindicates the husband, and renders a restraining order or injunction without moral effect. These failures of the legal system restrict the victim's liberty, forcing her to suffer beatings which over the years increase in frequency and severity.

If battered women find themselves in a psychological and cultural bind, with a law enforcement and judicial system that does not work for them, it is only part of the problem. Another part is money. Psychologists and sociologists have found that battering husbands usually have control of the family finances; it is part of what Fields calls "their power trip." The women do not and sometimes cannot work, either because they lack education and marketable skills, or have young children. If they are employed they earn less than their husbands (41 percent less). Yet they know that, upon separation, they will not only get the children but full financial responsibility for same.

Middle class women face similar choices; they may possess greater educational and financial resources, but what they can earn, either immediately or in the future, is a fraction of what their husbands bring in. They have more to lose, particularly in the States that do not allow the courts to assign assets from one partner in the marriage to another in divorce actions, even if both contributed to the accumulation of those assets. The best a woman who finds the joint property in her husband's name can hope for is use of that property and alimony. In practice, the only path to a settlement that maintains her married living standard is to have her own money, a good lawyer, or a rich husband who also wants the divorce.

Fear plays a significant role in explaining the battered wife syndrome. Women are scared into silence and submission, many of them feeling that the way to avoid punishment and/or death is to placate their husbands. Rita Jensen, an ex-battered wife now studying journalism at Columbia University, described how she used to iron the diapers in the hope that exceptional houskeeping would keep her abusive husband in line. She endured 6 years of



brutality and says that only when she realized there was nothing she could do, that it was his problem, that no amount of groveling would get him to put away the fly swatter with which he beat her when enraged, was she able to take money earmarked for household bills and make her escape.

Little concrete data exists on the male who batters. Three psychiatrists assigned to study 37 men charged with assault and battery by their wives in Massachusetts ended up reporting on the women because the men refused to talk. Other students of the problem put forth assorted opinions. Abusive men are described as losers and statistics show that wife beating rises during strikes or times of excessive unemployment. They are men who take their career frustrations out on their wives and who harbor mixed feelings of hostility and dependency toward their spouses and let out the hostility when the dependency is threatened, either by the arrival of a child, a rival lover, or the wife's assertion she is going to work. Erin Pizzey, the British authority, describes them as alcoholics, psychotics, or plain and simple bullies. There is some evidence to show that while alcohol is a factor, it is vastly overrated. Whatever, the women who have finally come forward to testify agree that there is no way of avoiding violence with placatory behavior. The triggers of violence are too diverse and unpredictable. Hortense Barber, a computer systems analyst with Merrill Lynch, describes how her husband beat her for talking back, for being silent; ordered her out of the house, then beat her for trying to leave. "It's impossible," said Ms. Barber, "to describe the depth of the fear."

Perhaps the simplest answer to the "why?" posed earlier came from Maria Roy, who heads the Abused Women's Aid in Crisis (AWAIC).

"Why do women stay in these violent marriages? Because they have no place to go. Why do men beat their wives? Because nobody stops them."

The practical efforts to protect women and stop men are proceeding on many fronts. Marjory Fields is involved in all of them. Fields describes herself as a "natural feminist," doesn't know why, points out that when she married in the early sixties it never occurred to her to give up her name, credits Sidney Ditzion, a feminist historian with whom she studied as an undergraduate at City College, as a major influence in shaping her adult attitudes. Her activities include individual client advocacy; publicity—to bring the problem out of the closet; legislative reform—to provide multiple options for women dealing with violent men; and writing, for lawyers, clients, professionals, the public. She is peripherally involved in two other areas; one is a class action lawsuit on behalf of battered wives against the New York City police department for refusing to arrest abusive husbands and family court officers for denying these women access to judges; the second, the movement toward shelters for abused women, which is in its formative stages in this country.

Fields is the only attorney handling marital cases with Brooklyn Legal Services Corporation B. She keeps three paralegal employees busy and processes about 15 divorces a week. She has turned her unit into an information center and clearinghouse on abused women but is quick to explain that the waiting list contains over a thousand cases. Her caseload, 14 percent of the corporation's total, meets only 41 percent of the demand; that means a lot of battered women are out there with no one to turn to. Fields estimates that two more attorneys and six secretaries might bring the backlog under control.

Meanwhile she is busy sharing her expertise, and has just published an article in the *Family Law Reporter* (available through the Bureau of National Affairs, Inc., monograph 25, April 5, 1977) detailing how to represent a battered wife. It covers interviewing techniques, protecting the client during the proceedings, legal obstacles, settlement and trial, enforcing judgments, and attacking the failure of the legal system. Since 54 percent of the women represented by the corporation in divorce actions have been beaten, the staff keeps a camera on hand to preserve evidence.

Fields won an important case in the Court of Appeals last year. Although beating became grounds for divorce in New York in 1966, the law requires a continual course of cruel conduct. As Fields puts it, "One or two slaps will not do, but if you have four attempted chokings, you're in." In *Echeverria v. Echeverria,* the lower court ruled that because the wife was beaten once shortly after marriage and not again for 4 years she had no grounds for divorce. The judge denied support payments as well, even though the wife testified that continuous harrassment from her husband made her too nervous to work. The higher court's reversal means that women in New York State do not have to risk their health

and lives enduring continuous abuse to establish physical cruelty as grounds for divorce.

Fields has produced a small, purse-size handbook for beaten women that says in its first paragraph, "It is *against the law* for a man to beat or threaten his wife or girlfriend," and outlines the difficulties involved in taking a man to court. It cautions women that the police and courts do not take family quarrels seriously because more than half the women who complain drop their cases, often because of the time, work, and patience involved in following through.

"Even a woman who has been badly injured must fight hard just to get her case before a judge, and then to get the judge to believe her story instead of her husband's," the handbook warns. It then advises women to move out in case of violence but not to leave the children behind (to avoid charges of neglect) and not to move in with a man who lives alone, unless he is a brother, father, or grandfather (to avoid charges of adultery). It discusses emergency shelters, the police, the courts, orders of protection, arrest warrants, probation officers, how to obtain a lawyer, emergency assistance, and welfare applications. The handbook's publication was privately funded by an anonymous foundation grant and will be distributed statewide in New York by the National Organization for Women.

Fields has been active, along with other civil rights lawyers, feminists, social workers, doctors, lawyers, authors, ex-battered wives, and judges, in seeking legislative changes in Albany. New York State is the only one in the Union which has given exclusive jurisdiction of cases involving family violence to its family court. While the intent of the 1962 statute was laudatory, stressing reconciliation, in practice, as former Family Court Judge Sybil Hart Cooper told the State legislative subcommittee, it "signalled the beginning of open season on wife beating."

There were no practical criminal options retained by the Family Court Act. Less than 2 percent of the family abuse cases have been referred back to criminal court over the years and those that have had to be as blatant and severe as John's attacks on his wife. The Family Court Act abolished joint jurisdiction. If a case does go to criminal court, the civil court loses all control. Because of delays, enforced mediation even where the marriage is beyond hope, red tape, poor counselling, understaffed courts, large judicial caseloads, and the lack of punishment, a green light has existed for continued violence. State Senator Carol Bellamy and Assembly Speaker Stanley Steingut have introduced legislation that would give victims the option to seek remedies in either criminal or civil court.

Fields, pointing out that 19 percent of all American murders occur between spouses or lovers, says "prompt and certain punishment" is the only answer to wife abuse. "I don't know if we can ever rehabilitate, we can only deter; if jail is ever a deterent it is one that should be used in violent family situations." Acknowledging that judicial reluctance to jail offending husbands stems in part from a concern over loss of income and the subsequent responsibility of the State to take over through the welfare system, Fields asks, "Is it better to wait until one spouse murders the other, thereby creating orphans?"

She says she would be happy with civil injunctions, since with them there is no loss of job, no criminal record, and civil contempt sentences can be served on evenings and weekends. "But," she points out, "judges don't enforce civil injunctions. I have never, in five and half years, had a client go to . . . jail [for violating an injunction]." Fields is convinced that 25 to 50 percent of battering husbands can be stopped by divorce and punishment. "The batterer who is on a power trip rarely goes after an ex-wife. The 10 to 15 percent who are seriously disturbed will continue to behave violently, and they must be locked away, like any other violent criminal."

In the other 49 States the legal problem is the opposite. Criminal courts have jurisdiction and civil options must be created. Legislation is now under consideration in Pennsylvania, Oregon, and Connecticut, and in these States, as a result of the New York experience, the criminal sanctions are not being revoked.

There is some difference of opinion on what legislation is needed nationally. Some lawyers and legislators claim there are enough laws and only enforcement is lacking. Martin disagrees. "I think that laws which do apply to wife battering are ambiguous or not explicit. As a result, buck passing occurs: conflicts arise between criminal and civil laws, and different branches of the criminal justice system squabble endlessly over who has primary jurisdiction. . . ."

A good example of this sort of fuzziness can be found in New York City. There is no question

among poverty lawyers and abused women that the police do not arrest offenders even when they have authority, and fail to inform victims of their right of citizen arrest. Fields puts it succinctly. "They do nothing." The class action suit which was filed in Manhattan Supreme Court last December by a coalition of four NYC legal organizations charges the police department (and officers of the Family Court) with failure to carry out their legal mandate.

John Corwin, of the Center for Constitutional Rights, anticipates there will be similar actions nationwide since he has already received correspondence from

attorneys in more than half of the 50 States. But the NYC police department has filed an answer to the suit denying all allegations. Detective Adolph Hart of the 28th precinct, who received some notoriety last year for a story he published in *The New York Times* about a husband he arrested on five separate occasions for assaulting his wife, says that in his precinct arrests are made where indicated. Hart blames the judges for light, suspended, or ineffectual sentences and says this is a good example of how revolving door justice is at fault.

While legislators, policemen, lawyers, and judges argue over blame, battered women ride the subways all night with their infants because they have no place to go. Until recently there were no shelters in NYC; now there are two, one each in Manhattan and Brooklyn, both addresses secret to prevent enraged husbands from tracking down their wives. Nationally about a dozen shelters, in California, Arizona, Pennsylvania, Oregon, Idaho, Minnesota, have been started on shoestring budgets by women who could not ignore the need. (Britain has 70, all full to overflowing.)

There is, however, a civil rights issue raised by the shelter movement that needs to be explored. It is a clear denial of a woman's civil (if not human) rights to remove her from the home because her husband has broken the law. We already have "shelters" for criminals; they are called jails, and in any rational system of justice the perpetrator would be harrassed, not the victim. Fields objects in theory to the concept of the woman in hiding while the man goes free. But in practice she has received too many calls from women huddled in phone booths with their children, asking where they should go, to question the movement for shelters. The need is enormous, proved by the fact that as each shelter opens it is immediately overcrowded.

But getting a shelter started is no simple matter. Yolanda Bako, coordinator of the Women's Survival Space in New York City, describes her group's battle:

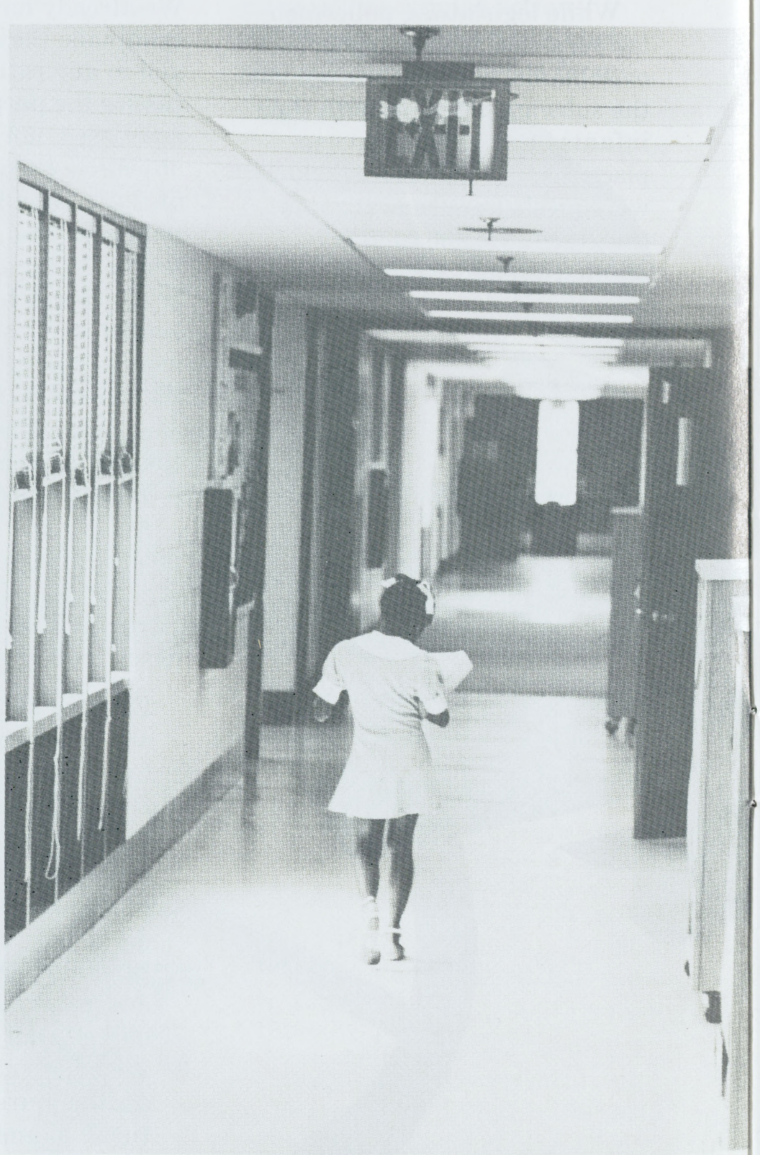
> Even with our qualifications and the help of State Senators Carol Bellamy and Manfred Ohrenstein, it took a year and a half of continous, uphill, unfunded, heroic effort to pull together a project that was doing nothing more controversial than saving the lives, health, and sanity of women and children all over NYC. We had to circumnavigate endless bureaucratic, architectural, financial, and legal obstacles, including social service and not-for-profit laws which forbid women from being housed with their children in New York State, and a Family Court Law which accuses a woman who flees from her home in the middle of the night in order to save her own life or her children's lives of abandonment.

As a result of Bako's experience two laws have been introduced in the State legislature. One amends the domestic relations laws to make beating or cruelty a defense to a divorce action for abandonment. This allows a woman to leave without giving up grounds for divorce or alimony. Another provides private groups seeking to establish shelters for injured spouses and their children the right to do so.

Marjory Fields is a distaff Sisyphus who will continue to roll the cause of the battered woman up the mountain, no matter how far away the top may be. Aware of the problem since she first started with Brooklyn Legal Services, she is cautiously pleased by the growing public concern. The bill to establish criminal as well as civil jurisdiction has passed the Assembly; she is hopeful, though not optimistic, about its chances in the more conservative Senate. If she and her colleagues win the class action suit it will vastly strengthen the situation in the police department and the courts.

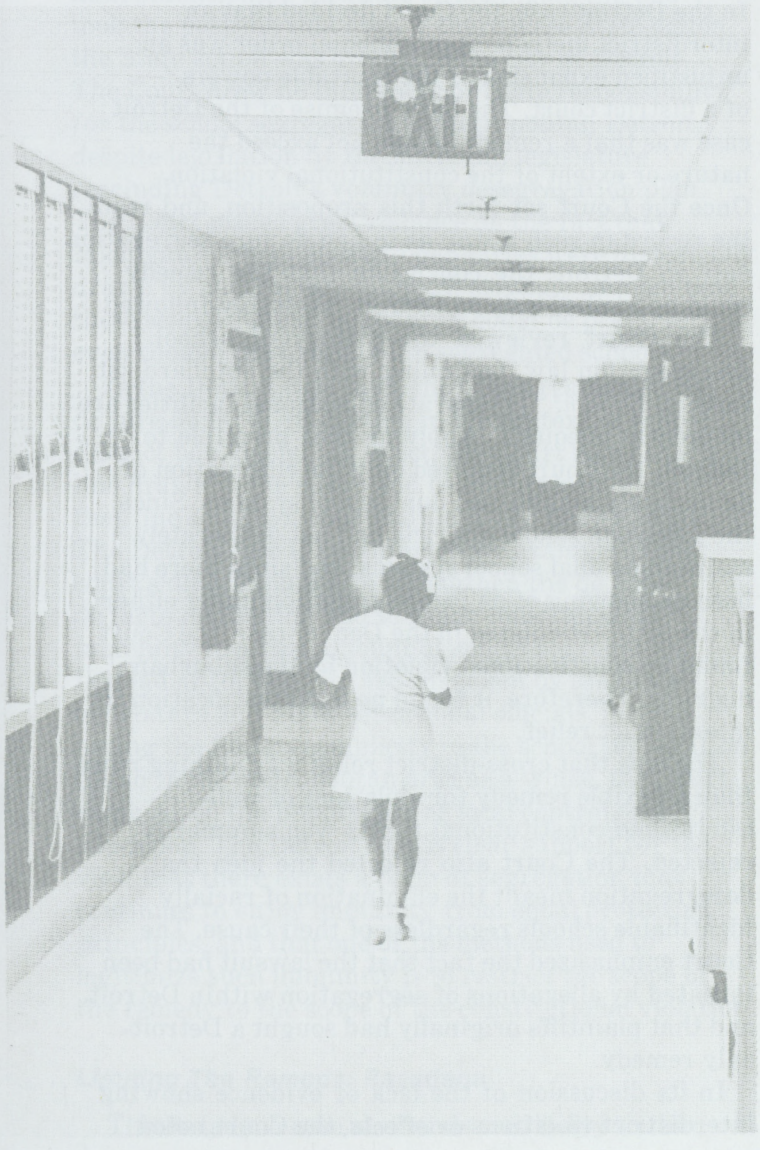
Nothing significant will happen until the criminal justice system starts to live up to its moral and legal obligation to these women, but with the help of the legislature and the judiciary a time may be approaching when the law and society will at last say to the violent man: you, sir, may not beat your wife.

By John Bannon



LEGITIMIZING SEGREGATION

THE SUPREME COURT'S RECENT SCHOOL DESEGREGATION DECISIONS



The Supreme Court of the United States, in its recent school desegregation decisions, has firmly embedded in our jurisprudence the misleading distinction between de jure and de facto segregation. De jure segregation is imposed by law; de facto segregation is assumed to occur because of neutral factors such as residence. It seems that, for the foreseeable future, the de jure-de facto distinction will be used to allow and legitimize segregation in the Nation's schools. The Court's decisions in the Detroit, Pasadena, and Austin school desegregation cases make this clear.

These recent cases have strengthened the de jure-de facto distinction in two ways: first, by limiting the scope of the remedy to the scope of the constitutional violation, and second, by refusing to allow intent to segregate to be inferred from racially disproportionate impact or effect. Before examining how the Court's recent decisions have strengthened the de jure-de facto distinction, it is necessary to examine briefly the Court's reasoning in the Charlotte-Mecklenburg and Denver school desegregation cases.

The Charlotte-Mecklenburg case, like school desegregation cases before it, involved a Southern school system with a long history of legally enforced segregation. The Court's decision applied only to those school systems with a background of de jure segregation, that is, school systems that prior to the 1954 *Brown* decision had been segregated by law. After *Brown,* State-imposed racial segregation was a violation of the equal protection clause of the 14th amendment, and school authorities had a legal obligation to eliminate all existing invidious racial distinctions. However, one nagging problem

---

John Bannon is an attorney in the Office of General Counsel, Civil Rights Division, U.S. Department of Health, Education, and Welfare. The views expressed here are his own and not those of HEW.

remained—the failure of the courts to develop consistent standards for determining when a constitutional violation existed in a district where the schools were racially imbalanced.

In the Charlotte-Mecklenburg case, the Court focused primarily on the remedial devices that could appropriately be used to overcome the Court's finding of State-imposed segregation. The Court was careful to point out that racial balancing was not required by the Constitution, but that mathematical ratios reflecting the racial composition of the school system could be used as a starting point in shaping a remedy.

The Court said that a presumption existed against one-race schools, but it refused to hold that the mere existence of these one-race schools constituted a violation of the Constitution per se. The decision provided little guidance for determining when segregation should be considered State-imposed. In short, the Court in the Charlotte-Mecklenburg case did not answer the troubling question of whether the 14th amendment applied to the so-called de facto segregation of the North and West.

In the Denver school desegregation case, the Supreme Court handed down a decision that differed considerably from earlier school desegregation decisions. Since State-ordered segregation was not present in the Denver school district, the Denver case was viewed by many as the Court's first opportunity to confront head-on the question of de facto segregation. The Court, however, continued to adhere to the de jure-de facto distinction. Certain forms of segregation, termed de facto, would be constitutionally permissible.

In the North and West, it would not be enough for plaintiffs in school desegregation cases to simply show the existence of segregation. Plaintiffs would have to show that the segregation was brought about or maintained by intentional State action. The Court pointed out that the constitutionally forbidden de jure segregation could be proved in two ways: first, plaintiffs could show that discriminatory action by school officials in one part of the district influenced the racial composition of other schools in the district, and second, plaintiffs could show intentional discriminatory action by school officials in a meaningful portion of the district, along with a showing that segregation existed in other part of the district.

If plaintiffs were successful in making either showing, the burden of proof would then shift to school officials. They would then have to prove that their discriminatory action in one part of the district did not infect the rest of the district, or that discriminatory intent was not a factor which motivated their actions in the rest of the district. While in the Denver case the Court maintained the dejure-de facto distinction, it considerably expanded the concept of de jure segregation. After the Denver case, all that was required to turn de facto segregation into de jure segregation was a showing of intent to segregate. It is against this background that the recent school desegregation cases must be examined.

Limiting The Remedy: Detroit

The first way in which the Supreme Court has strengthened the de jure-de facto distinction is by narrowing the rule that limits the scope of the remedy to the scope of the constitutional violation. In the Detroit case, the Court decided that an interdistrict metropolitan remedial order was an unjustified expansion of the equitable powers of a district court. The basic premise of the Detroit case was that a remedy should not exceed the nature or extent of the constitutional violation. Once the Court set forth this proposition, and read the record in such a way as to find de jure segregation only in Detroit, the conclusion that the remedy could be applied only to Detroit inevitably followed.

The Court reviewed the history of school desegregation law, beginning with the standard set forth in *Brown:* "[s]eparate educational facilities are inherently unequal." Applying that principle to Detroit, the Court required only the elimination of deliberately maintained dual school systems. Since the suburban school districts had not deliberately maintained dual school systems, and since there had been no showing of de jure segregation under either of the tests articulated in the Denver case, the Court found no constitutional violation by the suburban districts. Therefore, it found no legal justification for interdistrict relief.

The idea that cross-district relief was nothing more than a flexible remedy for violations of well-established constitutional rights was summarily rejected. The Court also rejected the idea that desegregation meant the elimination of racially identifiable schools regardless of their cause. The Court emphasized the fact that the lawsuit had been initiated by allegations of segregation within Detroit, and that plaintiffs originally had sought a Detroit-only remedy.

In its discussion of the lack of evidence showing interdistrict violations or effects, the Court noted

one exception. Its treatment of the exception is informative. The exception involved the district court's finding of interdistrict violation and segregative effect resulting from a predominantly black suburban district having contracted to send its high school students to a predominantly black school in Detroit. Accepting the district court's finding that the black students were transported past white schools to a more distant black school in Detroit, and that this transportation of black students past white schools was caused by the refusal of white suburban districts to accept them, the Court adopted a "substantiality" test and took the position that an isolated instance affecting two school districts would not justify a metropolitan remedy involving more than 50 suburban school districts.

With respect to the district court's finding of racial discrimination by the State of Michigan, the Court took the position that even if there were State action, the State action was limited to the city of Detroit. The Court drew no inferences of State responsibility for the school segregation in metropolitan Detroit, despite legislation by the Michigan legislature rescinding Detroit's voluntary desegregation plan. The Court placed great reliance on the fact that Michigan's school district boundaries were historically drawn by neutral legislation; it strongly implied that these school district boundaries could be preserved, even though they resulted in segregated schools.

In the Detroit case then, the Court reaffirmed the de jure-de facto distinction in the context of school district boundaries; in effect, the Court ruled that a line drawn in the past could be maintained, even if that line could not constitutionally be drawn today. The Detroit case is an unfortunate example of the court's determination to strengthen the de jure-de facto distinction and to grant constitutional immunity to a vast amount of school segregation. Instead of focusing on actions taken by the State legislature and State educational officials, instead of noting the State's complicity in the school segregation found in the metropolitan area as a whole, the Court emphasized the importance of local control over education. The Detroit case is clear support for the view that there exists a form of segregation that continues to enjoy immunity from equal protection principles, and that one of the methods used to legitimize such immunity is to restrict the scope of the remedy to the scope of the constitutional violation.

Limiting The Remedy: Pasadena

The Pasadena case also lends credibility to the view that the Supreme Court is legitimizing school segregation by restricting the scope of the remedy to the scope of the constitutional violation. In 1970, a district court held that various policies and practices of the Pasadena Unified School District violated the equal protection clause of the 14th amendment. The school district was ordered to submit a plan for desegregating the Pasadena schools to the district court. The district court ordered school officials to draw the student assignment plan in such a way that, by the beginning of the 1970–71 school year, no school in the district would have a majority of nonwhite students enrolled. The school district then submitted a plan that was approved by the district court.

In 1974, the school district sought a modification of the district court's 1970 order; it requested the district court to dissolve the injunction requiring that there be no school in the district with a majority of minority students enrolled. The district court refused; it did so because, over a 4-year period, black student enrollment at 5 of the 32 schools in the district exceeded 50 percent. The district court took the position that its order required annual reassignment of students in order to take into account population shifts and residential patterns. The court of appeals affirmed. The Supreme Court reversed, holding that the school district had clearly established its right to relief from the district court's order, insofar as the order required the district to alter school attendance zones in response to population shifts within the district.

Citing the Charlotte-Mecklenburg ruling that there is "no substantive constitutional right [to a] particular degree of racial balance or mixing," the Court held that the district court had exceeded its authority. The implementation of the school district's 1970 plan established a racially neutral system of student assignment in the district.

There was no showing by the plaintiffs that the changes in the racial composition of the schools after 1971 were in any way caused by segregative acts attributable to the school system. The increase in black student enrollment in five schools between 1970 to 1974 resulted from people randomly moving into and out of the school district. The Court viewed this as a "normal pattern of human migration" that resulted in shifting residential patterns in Pasadena, which in turn resulted in shifts in the racial makeup of some of the schools in the district.

Since none of these shifts were attributable to segregative action on the part of the school system, the Court viewed the case as one in which neither


air
chair stair pair
f
fish fan

school authorities nor the district court were constitutionally required to make yearly adjustments of the racial composition of schools once the affirmative duty to desegregate had been accomplished. The affirmative duty accomplished, inaction by the school district became constitutionally permissible.

Thus the Pasadena case is another example of the Court's determination to strengthen the de jure-de facto distinction. In the Detroit case the scope of the remedy was limited geographically; in the Pasadena case the scope of the remedy was limited in duration. In both cases, the de jure-de facto distinction has been strengthened by restricting the scope of the remedy to the scope of the constitutional violation.

Intent and Disproportionate Impact

The second way in which the Supreme Court has strengthened the de jure-de facto distinction is by refusing to allow segregative intent to be inferred from racially disproportionate impact. In December 1976, the Court handed down its decision in the Austin school desegregation case. Earlier in the year, the Fifth Circuit Court of Appeals held that, in a residentially segregated city, a neighborhood student assignment policy that resulted in segregated schools constituted a prima facie case of de jure segregation in violation of the 14th amendment. The Supreme Court set aside the decision; it sent the case back to the court of appeals for reconsideration in light of a Washington, D.C., job discrimination case. The Supreme Court decided that case after the court of appeals handed down its Austin decision.

The D.C. case involved the validity of a qualifying test administered to applicants for position as police officers in the District of Columbia police department. The written qualifying test excluded a disproportionately high number of black applicants, and this, it was asserted, was a violation of the due process clause of the fifth amendment. Addressing the due process issue, the court of appeals took as guidance the Supreme Court's decision in a previous testing case that involved Title VII of the 1964 Civil Rights Act. The court of appeals said that whether the test was intended to be discriminatory was irrelevant; the critical fact was that a greater proportion of blacks failed the test than did whites. To the court of appeals, this disproportionate impact, by itself, was sufficient to establish a constitutional violation.

The Supreme Court reversed, on the grounds that the court of appeals erroneously applied a legal standard applicable in Title VII cases to a fifth amendment due process case. The Court noted that while the central purpose of the equal protection clause of the 14th amendment (which is incorporated in the due process clause of the fifth amendment) is the prevention of official conduct which discriminates on the basis of race, the case law has not embraced the proposition that a law or other official act, without regard to whether it reflects a racially discriminatory purpose, is unconstitutional solely because it has a racially disproportionate impact.

Given the Court's decision in the Washington, D.C., testing case, it is clear that the Austin school district's utilization of a neighborhood assignment policy does not, by itself, constitute de jure segregation. Despite the school district's awareness of the residential segregation in Austin, despite the school district's knowledge that a neighborhood assignment policy in a residentially segregated city inevitably would result in segregated schools, there is no de jure segregation without intent.

The Austin case is yet another example of the Court's determination to strengthen the de jure-de facto distinction; it differs from the Detroit and Pasadena cases because in Austin the Court was dealing with intent to segregate, rather than the appropriate remedy to apply after intent to segregate had been established. All three decisions, however, strengthen the de jure-de facto distinction.

After the Charlotte-Mecklenburg and Denver decisions, there was good reason to believe that the concept of de jure segregation would be expanded; many believed that such an expansion of the de jure concept eventually would obliterate the distinction between de jure and de facto segregation. The Supreme Court's recent school desegregation decisions have dashed these hopes. By refusing to allow discriminatory intent to be inferred from racially disproportionate impact or effect, the Court has made it much more difficult for civil rights lawyers to prove discriminatory intent. By insisting that the scope of the remedy be commensurate with the scope of the constitutional violation, the Court has made it much more difficult for civil rights lawyers to obtain meaningful remedies.

In short, the Court has bolstered and strengthened the de jure-de facto distinction in such a way that the distinction serves to legitimize segregation in the Nation's schools. The Court must bear a heavy responsibility for its part in ensuring that vast numbers of the Nation's schoolchildren will sit in segregated classrooms. That so many schoolchildren will be the recipients of a segregated education is tragic.

REMOVING CHILDREN

THE DESTRUCTION OF AMERICAN INDIAN FAMILIES

By William Byler

The wholesale separation of Indian children from their families is perhaps the most tragic and destructive aspect of American Indian life today.

Surveys of States with large Indian populations conducted by the Association on American Indian Affairs (AAIA) in 1969 and again in 1974 indicate that approximately 25-35 percent of all Indian children are separated from their families and placed in foster homes, adoptive homes, or institutions. In some States the problem is getting worse: in Minnesota, one in every eight Indian children under 18 years of age is living in an adoptive home; and, in 1971-72, nearly one in every four Indian children under 1 year of age was adopted.

The disparity in placement rates for Indian and non-Indians is shocking. In Minnesota, Indian children are placed in foster care or in adoptive homes at a per capita rate five times greater than non-Indian children. In Montana, the ratio of Indian foster care placement is at least 13 times greater. In South Dakota, 40 percent of all adoptions made by the State's Department of Public Welfare since 1967-68 are of Indian children, yet Indians make up only 7 percent of the juvenile population. The number of South Dakota Indian children living in foster homes is, per capita, nearly 16 times greater than the non-Indian rate. In the State of Washington, the Indian adoption rate is 19 times greater and the foster care rate 10 times greater. In Wisconsin, the risk run by Indian children of being separated from their parents is nearly 1600 percent greater than it is for non-Indian children. Just as Indian children are exposed to these great hazards, their parents are too.

The Federal boarding school and dormitory programs also contribute to the destruction of Indian family and community life. The Bureau of Indian Affairs (BIA), in its school census for 1971, indicates that 34,538 children live in its institutional facilities rather than at home. This represents more than 17 percent of the Indian school age population of federally-recognized reservations and 60 percent of the children enrolled in BIA schools. On the Navajo Reservation, about 20,000 children or 90 percent of the BIA school population in grades K-12, live at boarding schools. A number of Indian children are also institutionalized in mission schools, training schools, etc.

William Byler is Executive Director of the Association on American Indian Affairs, Inc. This article is adopted from a recent book The Destruction of American Indian Families *(ed. Steven Unger) published by the Association.*

In addition to the trauma of separation from their families, most Indian children in placement or in institutions have to cope with the problems of adjusting to a social and cultural environment much different from their own. In 16 states surveyed in 1969, approximately 85 percent of all Indian children in foster care were living in non-Indian homes. In Minnesota today, according to State figures, more than 90 percent of non-related adoptions of Indian children are made by non-Indian couples. Few States keep as careful or complete child welfare statistics as Minnesota does, but informed estimates by welfare officials elsewhere suggest that this rate is the norm. In most Federal and mission boarding schools, a majority of the personnel is non-Indian.

It is clear then that the Indian child welfare crisis is of massive proportions and that Indian families face vastly greater risks of involuntary separation than are typical of our society as a whole.

How are we to account for this disastrous situation? The reasons appear very complex, and we are far from perceiving them clearly or in their entirety. Here we can only offer a rough sketch of some of the factors. These include a lack of rational Federal and State standards governing child welfare matters, a breakdown in due process, economic incentives, and the harsh social conditions in so many Indian communities. Our observations are based on a number of years experience working with Indian communities and in the courts in defense of Indian family life.

The Lack of Standards

The Indian child welfare crisis will continue until the standards for defining mistreatment are revised. Very few Indian children are removed from their families on the grounds of physical abuse. One study of a North Dakota reservation showed that these grounds were advanced in only 1 percent of the cases. Another study of a tribe in the Northwest showed the same incidence. The remaining 99 percent of the cases were argued on such vague grounds as "neglect" or "social deprivation" and on allegations of the emotional damage the children were subjected to by living with their parents. Indian communities are often shocked to learn that parents they regard as excellent care-givers have been judged unfit by non-Indian social workers.

In judging the fitness of a particular family, many social workers, ignorant of Indian cultural values and social norms, make decisions that are wholly inappropriate in the context of Indian family life and so they frequently discover neglect or abandonment where none exists.

For example, the dynamics of Indian extended families are largely misunderstood. An Indian child may have scores of, perhaps more than a hundred, relatives who are counted as close, responsible members of the family. Many social workers, untutored in the ways of Indian family life or assuming them to be socially irresponsible, consider leaving the child with persons outside the nuclear family as neglect and thus as grounds for terminating parental rights.

In the DeCoteau case, the South Dakota Department of Public Welfare petitioned a State court to terminate the rights of a Sisseton-Wahpeton Sioux mother to one of her two children on the grounds that he was sometimes left with his 69-year-old great-grandmother. In response to questioning by the attorney who represented the

mother, the social worker admitted that Mrs. DeCoteau's 4-year-old son, John, was well cared for, but added that the great-grandmother "is worried at times."

Because in some communities the social workers have, in a sense, become a part of the extended family, parents will sometimes turn to the welfare department for temporary care of their children, failing to realize that their action is perceived quite differently by non-Indians.

Indian childrearing practices are also misinterpreted in evaluating a child's behavior and parental concern. It may appear that the child is running wild and that the parents do not care. What is labelled "permissiveness" may often, in fact, simply be a different but effective way of disciplining children. BIA boarding schools are full of children with such spurious "behavioral problems."

Poverty, poor housing, lack of modern plumbing, and overcrowding are often cited by social workers as proof of parental neglect and are used as grounds for beginning custody proceedings. In a recent California case, the State tried to apply poverty as a standard against a Rosebud Sioux mother and child. At the mother's bidding, the child's aunt took 3-year-old Blossom Lavone from the Rosebud Reservation in South Dakota to California. The mother was to follow. By the time she arrived one week later, the child had been placed in a pre-adoptive home by California social workers. The social workers asserted that, although they had no evidence that the mother was unfit, it was their belief that an Indian reservation is an unsuitable environment for a child and that the pre-adoptive parents were financially able to provide a home and a way of life superior to the one furnished by the natural mother. Counsel was successful in returning the child to her mother.

Ironically, tribes that were forced onto reservations at gunpoint and prohibited from leaving without a permit are now being told that they live in a place unfit for raising their children.

One of the grounds most frequently advanced for taking Indian children from their parents is the abuse of alcohol. However, this standard is applied unequally. In areas where rates of problem drinking among Indians and non-Indians are the same, it is rarely applied against non-Indian parents. Once again cultural biases frequently affect decisionmaking. The late Dr. Edward P. Dozier of Santa Clara Pueblo and other observers have argued that there are important cultural differences in the use of alcohol. Yet, by and large, non-Indian social workers draw conclusions about the meaning of acts or conduct in ignorance of these distinctions.

The courts tend to rely on the testimony of social workers who often lack the training and insights necessary to measure the emotional risk the child is running at home. In a number of cases, the AAIA has obtained evidence from competent psychiatrists who, after examining the defendants, have been able to contradict the allegations offered by the social workers. Rejecting the notion that poverty and cultural differences constitute social deprivation and psychological abuse, the association argues that the State must prove that there is actual physical or emotional harm resulting from the acts of the parents.

The abusive actions of social workers would largely be nullified if more judges were themselves knowledgeable about Indian life and required a sharper definition of the standards of child abuse and neglect.

Discriminatory standards have made it virtually impossible for most Indian couples to qualify as foster or adoptive parents, since they are based on middle class values. Recognizing that in some instances it is necessary to remove children from their homes, community leaders argue that there are Indian families within the tribe who could provide excellent care, although they are of modest means. While some progress is being made here and there, the figures cited above indicate that non-Indian parents continue to furnish almost all the foster and adoptive care for Indian children.

Lack of Due Process

The decision to take Indian children from their natural homes is, in most cases, carried out without due process of law. For example, it is rare for either Indian children or their parents to be represented by counsel or to have the supporting testimony of expert witnesses.

Many cases do not go through an adjudicatory process at all, since the voluntary waiver of parental rights is a device widely employed by social workers to gain custody of children. Because of the availability of the waiver and because a great number of Indian parents depend on welfare payments for survival, they are exposed to the sometimes coercive arguments of welfare departments. In a current South Dakota entrapment case, an Indian parent in a time of trouble was persuaded to sign a waiver granting temporary custody to the State, only to find that this is now being

advanced as evidence of neglect and grounds for the permanent termination of parental rights. It is an unfortunate fact of life for many Indian parents that the primary service agency to which they must turn for financial help also exercises police powers over their family life and is, most frequently, the agency that initiates custody proceedings.

The conflict between Indian and non-Indian social systems operates to defeat due process. The extended family provides an example. By sharing the responsibility of child-rearing, the extended family tends to strengthen the community's commitment to the child. At the same time, however, it diminishes the possibility that the nuclear family will be able to mobilize itself quickly enough when an outside agency acts to assume custody. Because it is not unusual for Indian children to spend considerable time away with other relatives, there is no immediate realization of what is happening—possibly not until the opportunity for due process has slipped away.

There are the simple abductions. Benita Rowland was taken by two Wisconsin women with the collusion of a local missionary after her Oglala Sioux mother was tricked into signing a form purportedly granting them permission to take the child on a short visit, but in fact, agreeing to her adoption. It was months before Mrs. Rowland could obtain counsel and regain her daughter.

It appears that custody proceedings against Indian people are also sometimes begun, not to rescue the children from dangerous circumstances, but to punish parents and children unjustly for conduct that is disapproved of. In a recent Nevada case, a Paiute mother had to go to court to recover her children following her arrest for a motor-vehicle violation. Parents of Nevada's Duckwater Band of Paiutes were threatened with the loss of their children when they sought to open their own school under an approved Federal grant and refused to send their children to a county-run school.

A few years ago, South Dakota tried to send an Oglala Sioux child to a State training school simply because she changed boarding schools twice in two months. In a report sent to us by a Minnesota social worker, she unashamedly recounts threatening her Indian client with the loss of her children if she is "indiscreet."

And it can be so casual—sometimes just a telephone call from an attorney or even the mere rumor that there is an attorney in the offing is enough to persuade a welfare department to drop the case. Sometimes it can be desperate. Ivan Brown was saved because the sheriff, the social worker, and the prospective foster parent fled when

the tribal chairman ran to get a camera to photograph their efforts to wrest the child from his Indian guardian's arms.

In some instances, financial considerations contribute to the crisis. For example, agencies established to place children have an incentive to find children to place. In towns with large Federal boarding facilities, merchants may fight to prevent their closing. Not long ago, in response to political intervention, one boarding school in the Great Plains was being phased out as unnecessary because the children could do better at home. The merchants complained and, again as a result of political pressure, the full school enrollment was restored. Very recently merchants protested the proposed closing of Intermountain School with its large Navajo enrollment, despite the fact the closing was advocated by the Navajo Tribe.

The Bureau of Indian Affairs and the Department of Health, Education, and Welfare (HEW) bear a part of the responsibility for the current child welfare crisis. The BIA and HEW both provide substantial funding to State agencies for foster care and thus, in effect, subsidize the taking of Indian children.

Neither the BIA nor HEW effectively monitor the use of these Federal funds. Indian community leaders charge that federally-subsidized foster care programs encourage some non-Indian families to start "baby farms" in order to supplement their meager farm income with foster care payments and to obtain extra hands for farm work. The disparity between the ratio of Indian children in foster care versus the number of Indian children that are adopted seems to bear this out. For example, in Wyoming in 1969, Indians accounted for 70 per cent of foster care placements but only 8 per cent of adoptive placements. Foster care payments usually cease when a child is adopted.

In addition, there are economic disincentives. It will cost the Federal and State governments a great deal of money to provide Indian communities with the means to remedy their situation. But over the long run, it will cost a great deal more money not to. At the very least, as a first step, we should find new and more effective ways to spend present funds.

The Impact of Social Conditions

Low income, joblessness, poor health, substandard housing, and low educational attainment—these are the reasons most often cited for the disintegration of Indian family life. It is not that clear-cut. Not all impoverished societies, whether Indian or non-Indian, suffer from catastrophically high rates of family breakdown.

Cultural disorientation, a person's sense of powerlessness, his loss of self-esteem—these may be the most potent forces at work. They arise, in large measure, from our national attitudes as reflected in long-established Federal policy and from arbitrary acts of government.

The main thrust of Federal policy, since the close of the Indian wars, has been to break up the extended family, the clan structure, to detribalize and assimilate Indian populations. The practice of Indian religions was banned; children were, and sometimes still are, punished for speaking their native tongue; even making beadwork was prohibited by Federal officials. The Dawes Act (1887), the Indian Reorganization Act (1934), Public Law 83-280 (1953), and House Congressional Resolution 108 (1953) became the instruments of that policy. They represent some of our experiments to reform Indian family and community life.

One of the effects of our national paternalism has been to so alienate some Indian parents from their society that they abandon their children at hospitals or to welfare departments rather than entrust them to the care of relatives in the extended family. Another expression of it is the involuntary, arbitrary, and unwarranted separation of families.

One of the most disturbing aspects of the whole child welfare tragedy is how little Indian resistance there is in so many cases—and how much fear. CBS News once taped an interview with an Indian woman who wept that she did not dare protest the taking of her children for fear of going to jail. In the Great Plains, one Indian judge, an employee of the BIA, dumbfounded when she learned she had had the power to reject the hundred custody petitions presented to her by the county welfare department, grieved that she "would not have placed one of those children off the reservation" and left her job.

But then the crisis is largely invisible—the children are gone. Over the years there has been, uniformly, a great concern among tribal officials about land and water rights, economic development, and the quality of education. In most communities, neither the BIA nor the county welfare department has deemed it necessary to report to the tribes on the extent of the crisis. In those cases where information is available, tribal governments act swiftly. Too often they lack the financial and legal means to undertake comprehensive programs.

It has already been noted that the harsh living conditions in many Indian communities may prompt a welfare department to make unwarranted placements and that they make it difficult for Indian people to qualify as foster or adoptive parents. Additionally, because these conditions are often viewed as the primary cause of family breakdown and because generally there is no end to Indian poverty in sight, agencies of government often fail to recognize immediate, practical means to reduce the incidence of neglect or separation.

As surely as poverty imposes severe strains on the ability of families to function—sometimes the extra burden that is too much to bear—so too family breakdown contributes to the cycle of poverty.

Because the family is the most fundamental economic, educational, and health-care unit in society and the center of an individual's emotional life, assaults on Indian families help cause the conditions that characterize those cultures of poverty where large numbers of people feel hopeless, powerless, and unworthy.

Parents who fear they may lose their children may have their self-confidence so undermined that their ability to function successfully as parents is impaired, with the result that they lose their children. When the welfare department removes the children, it also removes much of the parents' incentive to struggle against the conditions under which they live.

Children separated from their parents may suffer such severe distress that it interferes with their physical, mental, and social growth and development.

In her recent study, *A Long Way from Home*, Judith Kleinfeld observes that the boarding home programs and regional high schools for Alaska Natives are "helping to destroy a generation of village children."

She reports that their high school experience led to school-related social and emotional problems in 76 percent of the students in the rural boarding-home program, 74 percent of the students in the boarding school, and 58 percent of the students in the urban boarding-home program.

She found that "the majority of the students studied either dropped out of school and received no further education or else transferred from school to school in a nomadic pattern that can create identity problems."

Kleinfeld adds that the high school programs created other severe costs such as:

- Identity confusion, which contributed to the problems many students had in meeting the demands of adult life.
- Development of self-defeating styles of behavior and attitudes.
- Grief of village parents, not only at their children's leaving home, but also at their children's personal disintegration away from home.

The average program operating costs totaled over $5,000 per student.

A National Institute of Mental Health publication, *Suicide, Homicide, and Alcoholism among American Indians*, reports:

> The American Indian population has a suicide rate about *twice the national average*. Some Indian reservations have suicide rates at least five or six times that of the Nation, especially among younger age groups . . . While the national rate has changed but little over the last three decades, there has been a notable increase in suicide among Indians, especially in the younger age groups.

On a list of nine social characteristics of the Indian most inclined toward a completed suicide, the report includes: "He has lived with a number of ineffective or inappropriate parental substitutes because of family disruption . . . He has spent time in boarding schools and has been moved from one to another."

In our efforts to make Indian children "white" we can destroy them.

The Role of Congress

Congress could greatly improve the situation. It has plenary power over Indian affairs. Abuses described involve constitutional issues. They frequently occur in the administration of Federal programs and often have the active participation or tacit approval of Federal officials. Congress has the power to help correct these abuses and to help Indian families and communities overcome the social and economic hardships they face. Legislation should be passed to:

> (1) Revise the standards governing Indian child-welfare issues to provide for a more rational and humane approach to questions of custody and to encourage more adequate training of welfare officials.
> (2) Strengthen due process by extending to Indian children and their parents the right to counsel in custody cases and to the services of expert witnesses; by subjecting voluntary waivers

to judicial review; and by encouraging officers of the court who consider Indian child welfare cases to acquaint themselves with Indian cultural values and social norms.

(3) Eliminate the economic incentives to perpetuating the crisis.

(4) End coercive detribalization and assimilation of Indian families and communities and restore civil and criminal jurisdiction to tribal governments deprived of the latter by Public Law 83–280.

(5) Provide Indian communities with the means to regulate child welfare matters themselves.

(6) Provide Indian communities with adequate means to overcome their economic, educational, and health handicaps.

(7) Provide Indian families and foster or adoptive parents with adequate means to meet the needs of Indian children in their care.

(8) Provide for oversight hearings with respect to child welfare issues on a regular basis and for investigation of the extent of the problem by the General Accounting Office.

(9) End the child welfare crisis, both rural and urban, and the unwarranted intrusion of government into Indian family life.

The ultimate responsibility for correcting the child welfare crisis must rest properly with the Indian communities themselves. A number are demonstrating today that, informed of the scope of the problem and having available even some of the means, dramatic progress can be made. Adoptive and foster care placements out of the Indian community have virtually ceased on the Warm Springs, Lake Traverse, Blackfeet, and a number of other reservations. Given the opportunity, Indian people will initiate their own, more effective programs for families and children, such as those developed by the Devils Lake Sioux, the Eastern Band of Cherokee Indians, the Winnebago of Nebraska, and the Wisconsin American Indian Child Welfare Service Agency.

The training and employment of Indian lawyers, teachers, boarding-school personnel, social workers, pediatricians, mental health professionals, and professional foster parents is vitally important. Tribal judges and police need more adequate training.

Measured in numbers, measured in terms of human suffering, and as a measure of the condition of our society and our government, the Indian child welfare crisis is appalling.

The American public will support the remedial measures that are necessary. In one New York community alone, 20,000 citizens signed petitions calling for oversight hearings and volunteers raised funds to enable some of the witnesses to appear.

Indians, blacks, Chicanos, the poor, and parents that do not meet our social norms are all exposed to extraordinary risks of losing their children. If even one child is taken unjustly, all children are threatened. In the words of John Woodenlegs, a Northern Cheyenne, "There is only one child, and her name is Children."

Readers interested in Indian child welfare may wish to contact the Association on American Indian Affairs, Inc., 432 Park Avenue, New York, N.Y. 10016 for information on the Indian Child Welfare Act of 1977 (S. 1214) recently introduced by Senator James Abourezk.

By Clifford M. Lytle

RESURRECTING THE 1866 CIVIL RIGHTS ACT

OUTLAWING DISCRIMINATION IN THE PRIVATE SECTOR

Traditionally, the private sector has been immune from constitutional attempts to eradicate discrimination. This immunity has resulted in pervasive patterns of segregation in neighborhood housing, private schools, country clubs, and a host of other private areas of concern. The legality of such discrimination was established as far back as 1883 in **The Civil Rights Cases,** when the Supreme Court, in a literal interpretation, restricted the 14th amendment to what the Court called "State action". This simply meant that the 14th amendment was intended to limit State legislation and/or State governmental conduct and not to regulate the rights of private persons. This norm, once established, erected an effective barrier to most attempts to end discrimination in the private sector.

Within the past few years, the Court has made significant inroads challenging the idea that the private sector is beyond the reach of the law. The focal point in eroding this doctrine of immunity, interestingly enough, has not been the 14th amendment; rather, it has been an ancient relic of law that Congress passed immediately following the Civil War—the Civil Rights Act of 1866. This comprehensive piece of legislation was designed to eliminate vestiges of discrimination and slavery. The act provided that citizens of every race and color shall have the same right, in every State and territory, to inherit, purchase, lease, sell, hold, or convey real and personal property as that enjoyed by white citizens.

The breadth of the 1866 act is astonishing. Its thrust is to the very heart of the private sector. The tragedy of it all, however, is that the

---

Clifford Lytle is a professor of political science at the University of Arizona in Tucson.

act was never really implemented. It became a symbolic gesture of transitory political rhetoric, soon to vanish into antiquity. And there it lay, dormant and gathering dust among a wealth of other forgotten pieces of legislation.

While the past witnessed a number of legal attempts to thwart discrimination in the private sector, few were successful. One of the notable exceptions occurred in the **Restrictive Covenant Cases** in 1948. In two cases brought before the Court, black families had been enjoined by State and Federal courts from purchasing property in violation of racially restrictive covenants.

In the first of these cases, **Shelley v. Kraemer,** the Supreme Court held that a restrictive covenant standing alone did not violate the 14th amendment since the covenant involved a private transaction as opposed to State action. However, enforcement of the discriminatory covenant by a State court cloaked the procedure with State action, thus violating the equal protection clause of the 14th amendment.

In the second decision, **Hurd v. Hodge,** the Court was confronted with a more complex problem. Since the **Hurd** case arose in the District of Columbia, which involves Federal as opposed to State jurisdiction, the Court could not use the equal protection clause as a foundation for its decision. Hence, it turned to the Civil Rights Act of 1866 and concluded that Federal judicial enforcement of the restrictive covenant violated the 1866 act. The **Hurd** decision, however, like that of **Shelley v. Kraemer,** focused attention on the judicial enforcement of the covenant and not upon the 1866 act per se. So while the 1866 act did not serve as the precise point upon which the **Hurd** case was decided, at least the Court recognized the existence of the act and began to restore its viability.

The legal ramifications flowing from the **Restrictive Covenant Cases** were vast. Literally speaking, these cases could be interpreted as precluding any legal enforcement of private discriminatory agreements. Unfortunately, neither the legal profession nor litigating groups were prepared to take the **Restrictive Covenant Cases** precedent to its logical conclusion. Hence, the cases were limited to their facts and the novel doctrine of the Court was relegated to an academic exercise in classes in constitutional law.

For the next 20 years, the Supreme Court fixed its attention upon the eradication of discriminatory practices in the public sector, particularly in the field of education. Congress, responding to the turmoil of the late fifties and early sixties, did attempt to deal with some aspects of private discrimination by including a public accommodations and a fair employment practices provision in the Civil Rights Act of 1964. In addition, a 1968 law was passed to promote open housing, but on a limited basis. There remained, however, a largely untouched enclave of private activity that appeared to be beyond the reach of governmental attack.

Launching the Attack

To overcome this perplexing obstacle, civil rights advocates turned to the 1866 Civil Rights Act. If life could be breathed into the 1866 act, the possibilities for

attacking discrimination in the private sector would be immense. This strategy was adopted and successfully employed in three important Supreme Court decisions.

The first in this trilogy of cases involved open housing. Joseph Lee Jones had attempted to purchase a home in Paddock Woods, Missouri, but the owner refused to sell, for the sole reason that Jones was black. This refusal, Jones alleged, constituted a violation of the civil Rights Act of 1866. While the lower courts ruled against Jones, stating that the 1866 act was limited to State action and could not reach into the private sector, the United States Supreme Court disagreed.

In a 7–2 decision, Justice Potter Stewart noted that the 13th amendment, under which the 1866 act was passed, was not merely a prohibition on State action, but an absolute declaration that "slavery or involuntary servitude shall not exist in any part of the United States" (**Jones v. Alfred H. Mayer Company,** 1968). Congress, in passing the Civil Rights Act of 1866, Stewart reasoned, had viewed the denial of the right to purchase property on account of race as a badge of slavery that should be eliminated through legislation.

Much of the underlying philosophy of Stewart's opinion in the **Jones** case was borrowed from Justice John Marshall Harlan's dissenting opinion in the **Civil Rights Cases** in 1883. In arguing that the 13th amendment involved more than simply the abolition of slavery, Harlan noted:

> That there are burdens and disabilities which constitute badges of slavery and servitude, and that the power to enforce by appropriate legislation the Thirteenth Amendment may be exerted by legislation of a direct and primary character, for the eradication, not simply of the institution, but of its badges and incidents, are propositions which ought to be deemed indisputable.

It took more than 90 years for the Court to vindicate Harlan's views. Finally, the Court decided that Congress had ample authority under the 13th amendment to pass legislation, like the Civil Rights Act of 1866, that could reach private as well as public discrimination. No longer could a person be denied the right to purchase a home because of his or her race.

As Stewart noted in the **Jones** case:

> Negro citizens, North and South, who saw in the Thirteenth Amendment a promise of freedom—freedom to "go and come at pleasure" and "buy and sell when they please"—would be left with a mere paper guarantee if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man.
>
> At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep.

Using the Weapon

The 1866 Civil Rights Act was now fully resurrected and could be used

as a potent weapon to attack discrimination in the private sector involving a host of private contractural transactions. In 1969, in the second major decision based on the 1866 act, the Court faced the problem of discriminatory practices involving a private community swimming pool. In **Sullivan v. Little Hunting Park, Inc.,** a black family leased a home in Little Hunting Park and was denied access to the community recreational facilities available to other residents of the area. The owner of the home had assigned his membership in the community pool to the black family in conjunction with the house-lease. The community association, however, refused to recognize this assignment because the family was black.

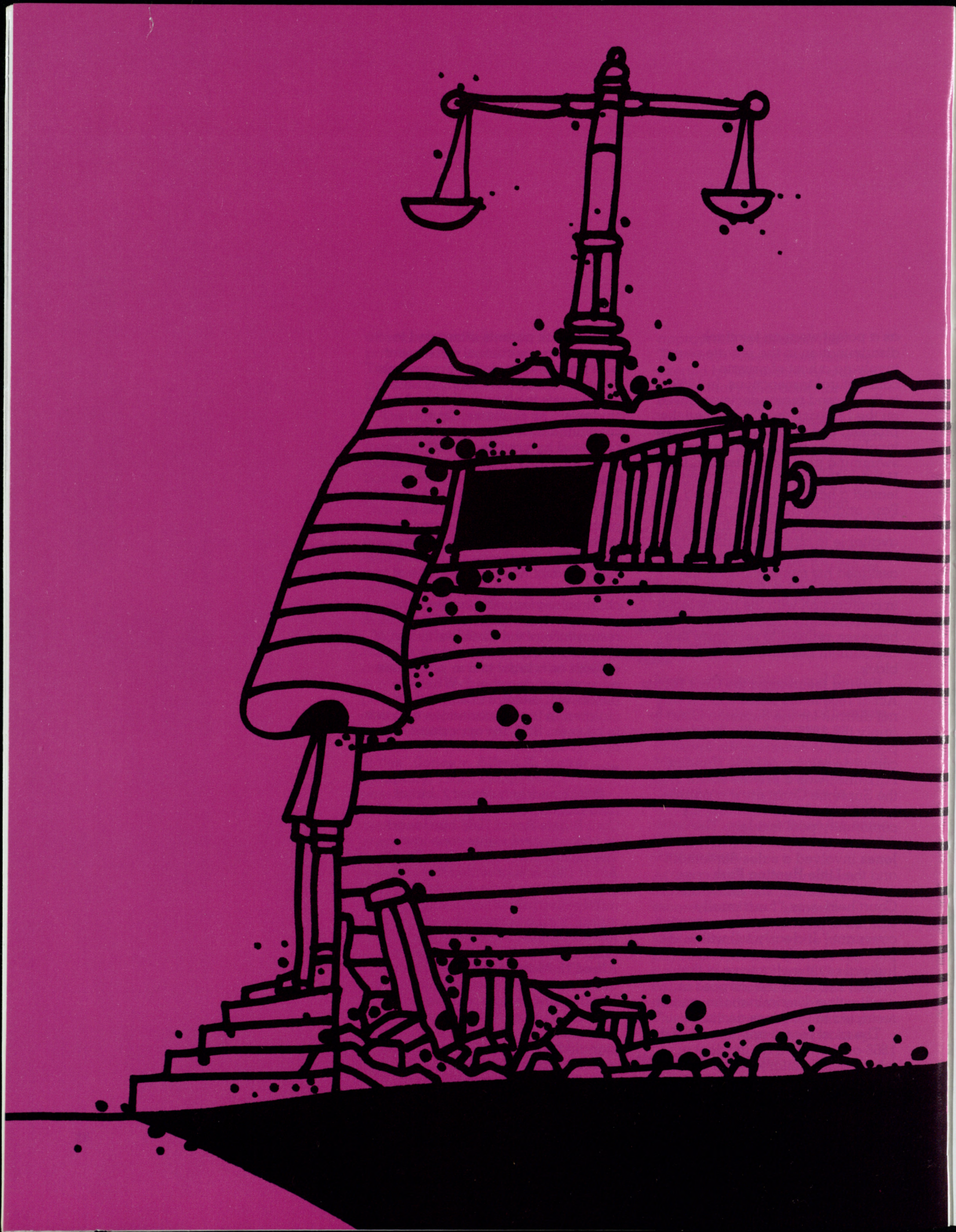
Having resurrected the Civil Rights Act of 1866 in the **Jones** case, it was not difficult for the Supreme Court to apply the 1866 act to the swimming pool case. In reversing the lower courts decision that Little Hunting Park, Inc., was a private social club, the Supreme Court drew a parallel between the **Jones** case and the community pool incident. The only difference between the two was that **Jones** involved a sales agreement and the **Little Hunting Park** case involved a lease. The lease, the Court held, was "functionally comparable to a racially restrictive covenant." It clearly fell within the purview of the 1866 act. Hence, judicial review of actions in the private sector for the purpose of eradicating discrimination was not restricted to the **Jones** decision.

The most recent application of the 1866 act involved an incident in which black children were denied admission to a private school in Virginia. In **Runyon v. McCrary** (1976), black parents attempted to enter into a contractual agreement with private schools but the schools refused to offer their services on an equal basis to white and nonwhite students. The Supreme Court concluded that racial discrimination practiced by private schools amounted to a "classic" violation of the Civil Rights Act of 1866. The primary purpose of the 1866 act, the Court said, was designed to prohibit racial discrimination in the making and enforcing of private contracts.

For nearly two decades, one of the devices used to keep school-children segregated has been the use of private academies. The resurgence of the Civil Rights Act of 1866 has eliminated this device at least as a legal tool in practicing educational apartheid. Whether blacks will attempt to enroll their children in these academies remains to be seen. Still, the opportunity is now available.

Extending Enforcement

It took nearly a century, but at long last the spirit and purpose of the Civil Rights Act of 1866 has found its place in civil rights case law. The resurrection of the Civil Rights Act of 1866 has provided the government with an effective tool to nullify discriminatory practices in virtually all contractual relationships. Fortunately, the precedent established in **Jones v. Alfred H. Mayer Company** has not been limited to the facts of that case. In extending the enforcement of the 1866 act to other facets of private discrimination, the government has signaled its intention to champion equal opportunity for all races in the private arena as well as the public one.



STRANGERS IN A STRANGE LAND

By Gilbert Ware

BLACK LAWYERS

Malcolm met racism where so many black children meet it—in school—when he told his white teacher that he wanted to be a lawyer. "A lawyer—that's no realistic goal for a nigger," the teacher replied. "You need to think of something you *can* be." And what was that? "Everybody admires your carpentry work. Why don't you plan on carpentry?"

No one knows how many Malcolms have had their aspirations crushed by racists, nor how many blacks, some younger and some older than Malcolm, will be undercut by those complaining of so-called reverse discrimination in legal education. Harvard Law Professor Derrick A. Bell, Jr., has quoted Harriet Tubman to dramatize the plight of black law students. "I was free, but there was no one to welcome me to the land of freedom," she lamented. "I was a stranger in a strange land. . . ."

To grasp Bell's point, we must examine the history of blacks in the legal profession. We might begin with the University of Maryland, which turned away Thurgood Marshall. Marshall went on to Howard University School of Law, studied under William Henry Hastie and Charles Hamilton Houston, and later returned with Houston to force open those doors for Donald Murray. In 1936 they persuaded the Maryland Court of Appeals to invalidate out-of-State tuition payments, a practice by which Maryland and other states without law schools for blacks underwrote black legal education elsewhere.

Gilbert Ware, editor of From The Black Bar: Voices for Equal Justice, *is an associate professor of politics at Drexel University, Philadelphia, Pa. A Ford Foundation Fellowship supported research for this article.*

Gaining Admission

In 1938 the U.S. Supreme Court outlawed the scheme, disapproving Missouri's intention to subsidize Lloyd Gaines' legal education out of State. The Court, however, sanctioned the establishment of separate law schools for blacks within a State, and Missouri opened one at Lincoln University. Gaines' disappearance precluded a challenge to the adequacy of that school.

Oklahoma, like Missouri, had a law school for whites but none for blacks. Ada Lois Sipuel went to court to gain admission to the school. She lost. On appeal in 1948 the Supreme Court held that she had a right to a legal education just as whites had. The State complied with that ruling by opening the Langston School of Law, which was a roped-off section of the State capitol. Rather than attend, Ms. Sipuel returned to the courts. No court, the Supreme Court included, granted relief, but the State legislature authorized her enrollment in the white school. (Its stipulation that she be segregated was not enforced.)

In 1950 the Supreme Court considered the question of racially separate law schools in Texas, where State officials went to some lengths to keep Herman Marion Sweatt from studying at the University of Texas Law School. To provide legal

training for blacks, they opened a two-faculty school in Houston, later abandoning it to open a school in Austin. Sweatt insisted on studying at the University, and after the State had established another school at a cost of $2 million, his counsel set out to convince the Supreme Court that denial of that privilege violated the 14th amendment. They succeeded. The Court declared the two schools unequal, describing the white school as superior in faculty, curriculum, library, and (in the words of Chief Justice Frederick M. Vinson) "those qualities which are incapable of objective measurement but which make for greatness in a law school."

For blacks the journey to and through the world of law has always been rough. First traveled by Macon B. Allen, who became a lawyer in 1843 in Maine and passed the Massachusetts bar examination in 1845, their road is best described in the words of another black lawyer, James Weldon Johnson:

> Stony the road we trod,
> Bitter the chastening rod,
> Felt in the days
> when hope unborn had died.

Travelers on that road include Robert Morris, who filed the first school desegregation suit in Boston in 1849; Robert B. Elliot and William J. Whipper, who with Allen founded the first black law firm (Charleston, 1873); D. Augustus Straker, who secured public accomodations rights for blacks in Detroit in 1890; Ashbie Hawkins, who fought restrictive covenants in Baltimore in 1912–13; Ida Platt and Lutie A. Little, the first black women admitted to practice in Illinois (1894) and Tennessee (1897), respectively; Violette Neatly Anderson, the first woman admitted to practice before the Supreme Court (1926); John Mercer Langston, who opened the law department at Howard University Law School (1868) and was one of the black lawyers in Congress during and after Reconstruction; Houston, Hastie, Marshall, and their fellow warriors with the NAACP Legal Defense and Education Fund; and George H. Woodson, Charles P. Howard, Sr., C. Francis Stradford, and their eight co-founders (1925–26) of the National Bar Association.

Some black lawyers have moved onto the bench.

Among them: Jonathan Jasper Wright, first black State Supreme Court Justice (South Carolina, 1870–77); Mifflin W. Gibbs, first on the municipal bench (Little Rock, 1873); Washington, D. C., judges Robert H. Terrell (1901–26) and James A. Cobb (1926–36); Jane Bolin, first black woman appointed judge (New York, 1939); William H. Hastie, first black Federal District (1937–39) and later appellate court judge (1949–76); Juanita Kidd Stout, first black woman elected judge (1959); and Thurgood Marshall, first and only Supreme Court Justice (1967).

Blacks on the Bench

To some it might appear that elevation to the bench is tantamount to having made it. Not necessarily for black judges. Several contemporary examples illustrate the point. The most significant development in Detroit, said Judge Samuel C. Gardner in August 1973, was the appellate court's curtailment of discretion exercised by black trial judges. Gardner recounted his own experience in a case involving a black defendant. Three blacks, accused of murdering one policeman and assaulting with intent to kill seven others, were the quarry in a manhunt that some called the biggest in Michigan history. Two suspects were killed by police in Atlanta; the third was captured and, under a blind-draw system, was scheduled for trial before Gardner. Both Gardner and George W. Crockett, Jr., his alternate, refused to disqualify themselves, as the prosecutor requested. Forced to choose between the two, the prosecutor chose Gardner. Within one half-hour after he had granted defense motions for dismissal of the murder and arson charges and for reduction of bond from $72,000 to $9,000, the Court of Appeals, acting on the prosecutor's motion, directed Gardner to stay all orders. Within a week, it overruled him, removed him from the case, and reinstated the $72,000 bond.

The decisions, Gardner complained, were based on pressure from the prosecutor and the public. Never did the appellate court request transcripts or records. Subsequently, Brown was found innocent in two jury trials before Crockett, and in a final jury trial before Gardner, held after the State Supreme Court (to which the defense had appealed) unanimously reversed the Court of Appeals and returned the case to Judge Gardner.

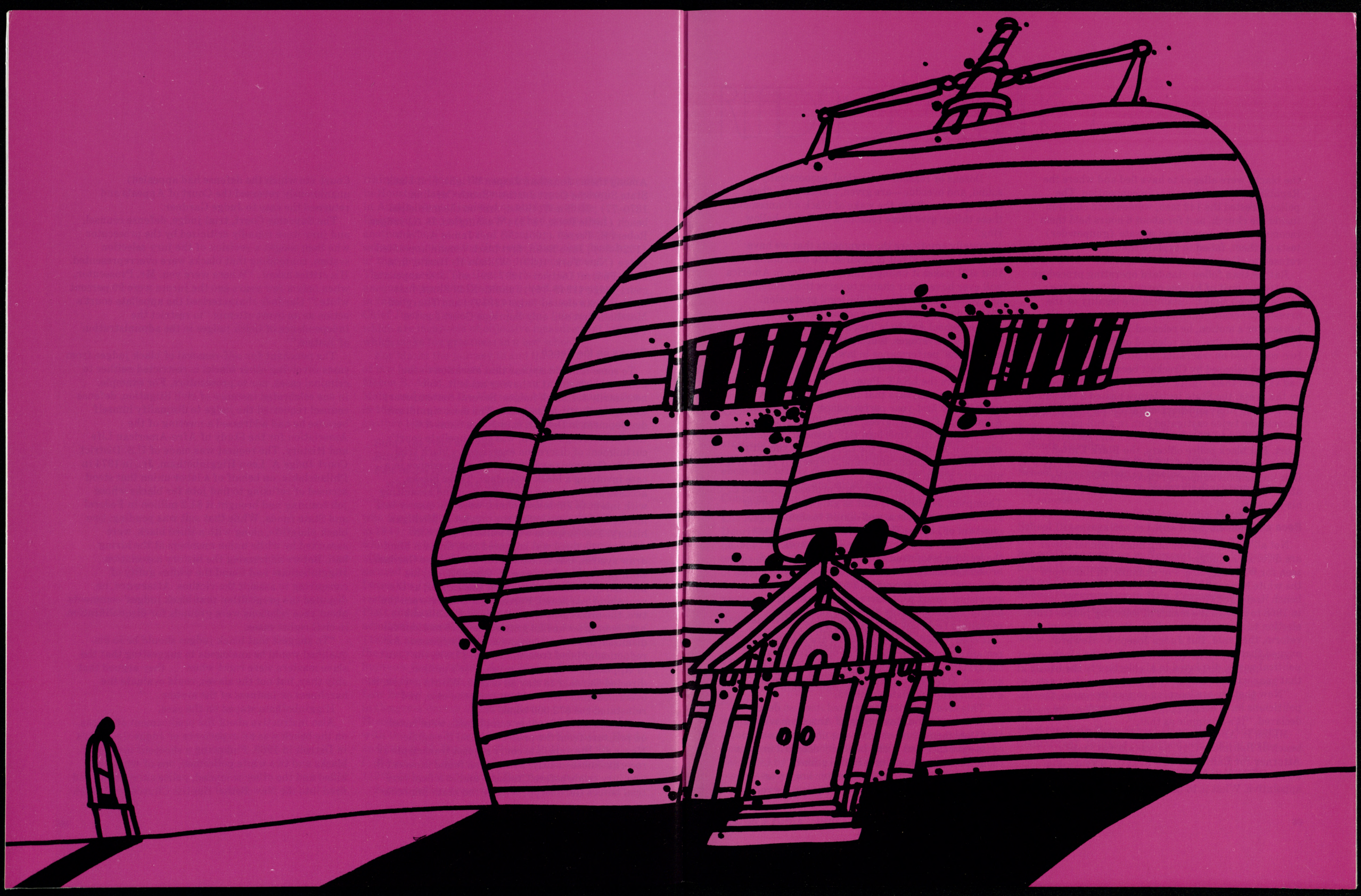
The Supreme Court, trial judge, defense counsel, and jury were roundly criticized by the prosecutor who then sought a revision of the jury selection system, contending that blacks were overrepresented. His critics asked: "Where were you, Mr. Prosecutor, when only a few years ago the jurors were 90 percent white?" Gardner characterized the appellate court's action as an overt attempt "to restrict the independence of black judges in the administration of justice."

The penchant for self-removal of black judges from cases involving other blacks is restricted neither to criminal cases, nor to prosecutors. For example, in one celebrated instance of civil litigation, defense counsel requested the judge to disqualify himself because he had addressed a meeting of the Association for the Study of Afro-American Life and History. The request was made of U.S. District Court Judge A. Leon Higginbotham, Jr., in 1974 in Philadelphia, on behalf of a labor union that stood accused of refusing to find jobs for blacks whose job training had brought it $1.2 million in Federal and State funds. While that suit was pending, two black plaintiffs, along with a third black, were assaulted by white union members at the hiring hall. Before addressing the history association, Higginbotham had found the whites guilty of conspiring to assault the victims. Afterward, he disputed the proposition that black judges' comments about race relations were grounds for disqualification in civil rights cases.

"To suggest that black judges should be so disqualified would be analogous to suggesting that the slave masters were right when . . . they argued that only they, but not the slaves, could evaluate the harshness or justness of the system. . ."

Higginbotham stayed on the case.

Also instructive about the predicament of blacks on the bench was an experience of Judge Crockett's in Detroit in 1969. Following a shootout involving blacks and two white policemen, one of whom was killed and the other wounded, police surrounded and fired into the New Bethel Baptist Church into which



the blacks were alleged to have fled and where the Republic of New Africa was in convention. The police arrested the 142 men, women, and children inside the church, and for about 6 hours held them incommunicado, performed nitrate (gunpowder) tests on them, failed to explain their rights, and refused to allow them to obtain counsel.

Rather than follow standard operating procedure and issue a writ of habeas corpus while allowing police enough time to establish the legality of the arrests, Crockett held immediate hearings. On the prosecutor's motion, he released 130 persons. One of the other twelve was released on $1,000 bond, two were held on warrants for other offenses, and nine were released by Crockett because the police had violated their rights. Crockett was criticized by the press; the State legislature passed a resolution condemning him; and the Detroit Police Officers Association twice castigated him in a full-page advertisement in *The Detroit News* and picketed his court. But black police officers, the Black United Front, New Detroit, Inc., and the deans of the city's four law schools supported Crockett. Two weeks after the incident, the U.S. Supreme Court confirmed his decision.

Race and Politics

Not all attempts at curbing black judicial power are directed at judges alone, and not all are easily seen for what they are. For example, in Baltimore the white bar association, *The Baltimore Sun*, the bench itself, and Governor Marvin Mandel set out in 1968 to change the means of selecting judges from election to appointment—all for the love of court reform, they said. But Judge Joseph C. Howard argued that the intention was to offset the black political power displayed in his election to the bench that year without the backing of either major party.

"Now that we are learning to play the game, the politicians have decided to change the rules," he declared. "It's as simple as that."

Milton B. Allen agrees. Now on the supreme bench of Baltimore City, he was elected State's Attorney for Baltimore City in 1970; 4 years later, an effort was mounted to make that 125-year old office appointive. What is to be made of such developments?

"Dozens of reasons—practical, economically sound, and overdue—are given," Allen says, "but coming so rapidly in the wake of black advancement, these things give those reasons a distinctly hollow ring."

Equally empty are the arguments that we have reversed, or are about to reverse, the discrimination that still makes it unlikely that nonwhites in America will ever have a fair chance to serve their community and Nation as members of the legal profession.

Opponents of affirmative action have made fetishes of Law School Aptitude Test scores and college grade point averages, touting them as predictors of students' performance in law school. But at the Educational Testing Service, which designs and administers the LSAT, Peter A. Winograd, director of law programs, says that the LSAT and GPA predict only first-year performance. The Law School Admissions Council agrees. And Millard Rudd, a consultant to the American Bar Association on legal education, cautions that the LSAT is "no substitute for human judgment and value," especially regarding minority group students.

Northwestern University law professor Samuel C. Thompson, Jr., believes that as gateways to power selective law schools are off-limits to significant numbers of blacks. These pockets of power, says Harvard law professor Harry T. Edwards, include the leading law firms, banks, corporations, and brokerage houses. Whatever the school, after admission blacks encounter formidable obstacles: expulsion, racist professors, unsympathetic administrators, hostile students, and biased recruiters from law firms, to list a few.

It does indeed seem that blacks are destined to remain strangers in the land of opportunity and in the system of justice, except as persons suspected, accused, arrested, prosecuted, imprisoned, executed—all in disproportionate numbers.

"This seed of racism has rooted itself so deeply in the subconsciousness of many American whites that they themselves at times are not even aware of its existence, but it can be easily detected in their thoughts, their words, and in their deeds."

Thus spoke Malcolm Little, better known as Malcolm X, who could have been a great lawyer.

READING & VIEWING

COMMISSION REPORTS

Sex Bias in the U.S. Code. An assessment of the status of women under Federal law, this report surveys the U.S. Code identifying sex-based references and briefly discusses two selected areas: the armed forces and social security. Contains findings and recommendations. *230 pp.*

Los Angeles School Desegregation: A Generation Deprived. Report prepared subsequent to the hearing held in Los Angeles, December 13-15, 1976, focusing on the events leading up to and the implementation of school desegregation in the Los Angeles Unified School District. Contains findings and recommendations. *246 pp.*

Federal Civil Rights Enforcement Effort—1974 Vol. VII: To Preserve, Protect, and Defend the Constitution. Evaluates the status of civil rights oversight and policymaking by the White House and the Office of Management and Budget from 1972-76. Contains findings and recommendations. *201 pp.*

Affirmative Action in Employment in Higher Education. Proceedings of a consultation held by the Commission September 9-10, 1975. Includes papers presented by leading scholars and public figures, responses by panel members, and ensuing discussion. *239 pp.*

COMMISSION STAFF REPORTS

School Desegregation in Williamsburg County, South Carolina
School Desegregation in Peoria, Illinois
School Desegregation in Racine, Wisconsin
School Desegregation in Nashville-Davidson County, Tennessee
School Desegregation in Minneapolis, Minnesota
School Desegregation in Little Rock, Arkansas
School Desegregation in Corpus Christi, Texas
School Desegregation in Newport News, Virginia
School Desegregation in Kalamazoo, Michigan
School Desegregation in Ogden, Utah
School Desegregation in Erie, Pennsylvania
School Desegregation in Ossining, New York

SAC REPORTS

Evaluation of Educable Mentally Retarded Programs in California (California Advisory Committee). Studies California's efforts to monitor compliance with State and Federal laws regarding student placement in EMR programs. *32 pp.*

Working With Your School (New Mexico Advisory Committee). Informs concerned community members of their rights in dealing with the public education system, and suggests ways to improve the latter. *132 pp.*

Mantenimento del Orden Publico por una Minoria de Hombres Blancos (Florida Advisory Committee) Spanish translation of *Policed by the White Male Minority*. A study of police-community relations in Florida. *145 pp.*

BOOKS

The Courts, Social Science, and School Desegregation ed. by Betsy Levin and Willis D. Hawley (New Brunswick, New Jersey, Transaction Books, Rutgers University, 1977) A compendium of articles by prominent lawyers and social scientists that attempts to clarify the role played by social science in school desegregation litigation. *432 pp.*

The Dialectics of Legal Repression, by Isaac D. Balbus (New Brunswick, New Jersey, Transaction Books, 1977) Focuses on response of American criminal courts to the black ghetto revolts of the mid-1960s. *269 pp.*

Henry Highland Garnet by Joel Schor (Westport, Conn., Greenwood Press, 1977) Presents the public life of a prominent black abolitionist whose radical ideas made him one of the most militant leaders of his generation. *251 pp.*

Our Appalachia: An Oral History ed. by Laurel Shackelford and Bill Weinberg (New York, Hill and Wang, 1977) A history of Central Appalachia in the twentieth century—through the eyes and words of its inhabitants.

The Lengthening Shadow of Slavery by John E. Fleming (Washington, D.C., Howard University Press, 1976) Chronicles the struggle of American blacks to acquire education; emphasizes the need for committed affirmative action. *158 pp.*

The Equal Rights Amendment ed. by Anita Miller and Hazel Greenberg (Westport, Conn., Greenwood Press, 1976) Comprehensive bibliography includes such special features as chronological indexes of all 20th century American newspapers and *Equal Rights* magazine; listings of previously unindexed women's publications; and address lists of additional sources. *368 pp.*

Human Rights, Bureaucracy, and Public Policy by the Public Administration Student Association (Tucson, Ariz., University of Arizona, 1976) Topical compilation of material on selected human rights issues ranging from criminal justice through privacy, health care, and women's rights. *137 pp.*

The Anti-lynching Reform Movement: 1883–1932 by Donald L. Grant (San Francisco, R. and E. Associates, 1977). Traces the progress of anti-lynching efforts and legislation and discusses the various factors which influenced it. Extensive bibliography.

The American Indian Reference Book (Portage, Michigan, Earth Company, 1977). Catalog/sourcebook includes chronological listing of tribes, publication bibliography, addresses of BIA offices, and sections on schools, organizations, museums, shops, films and radio stations. *308 pp.*

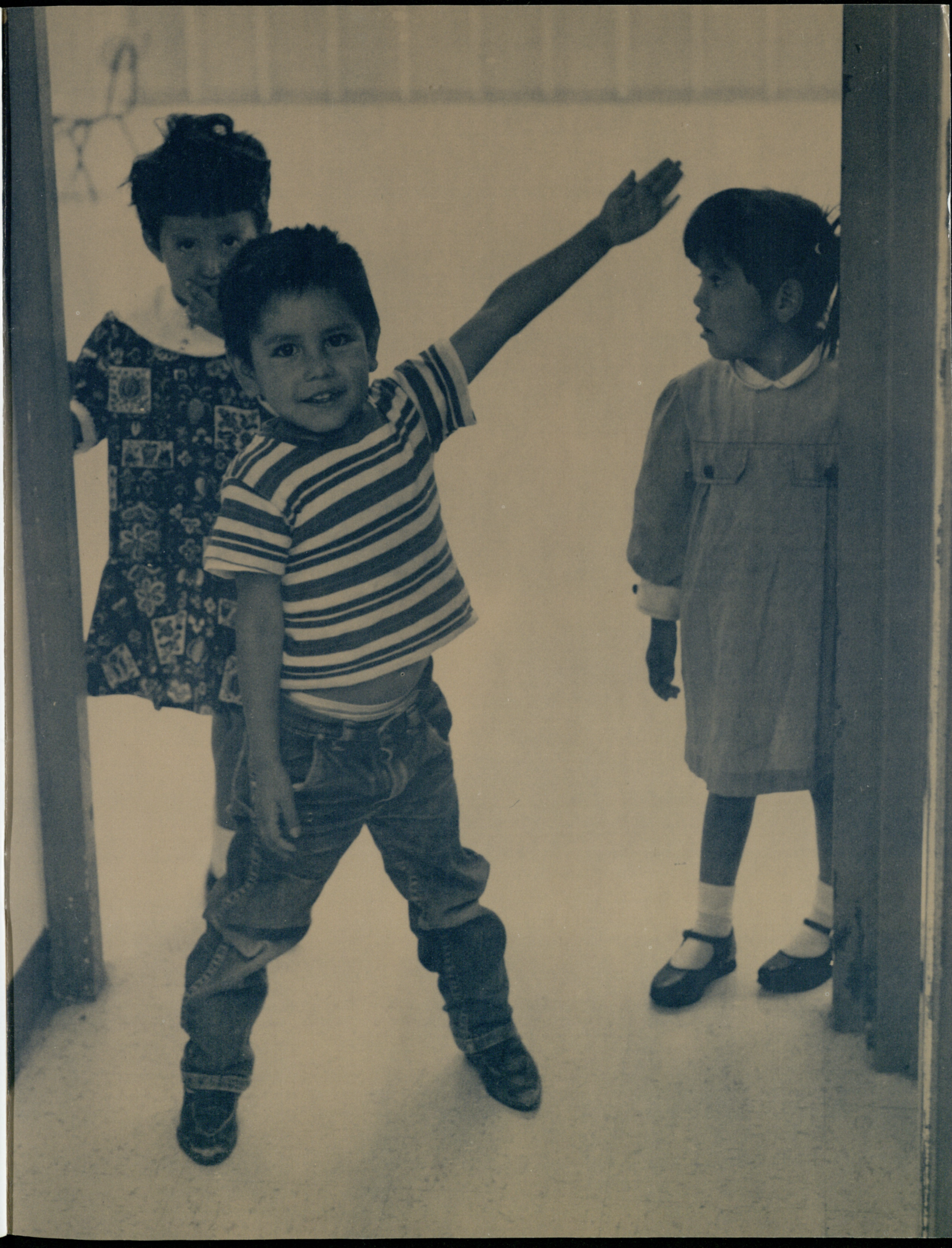
National Directory of Chicano Faculty and Research ed. by Reynaldo Flores Macías and Dr. Juan Gómez-Quiñones (Los Angeles, Aztlan Publications, 1976). Lists 1,400 Mexican American and Mexican scholars and researchers in various disciplines, with emphasis on Chicano studies.

PAMPHLETS

Job Patterns for Minorities and Women in Private Industry—1974 (Washington, D.C., Equal Employment Opportunity Commission, 1976) Based on Employer Information Reports from more than 35,000 companies, this EEO Report reviews the job status of minorities and women in the U.S.

Almost As Fairly (Atlanta, Southeastern Public Education Program, American Friends Service Committee, 1977) A report on the first year of implementing Title IX of the Education Amendments Act of 1972 in six Southern States.

Desegregation Without Turmoil (Washington, D. C., U.S. Department of Justice, 1977). Recommendations and suggestions for establishing community coalitions to work toward successful and peaceful school desegregation. *45 pp.*



U. S. COMMISSION ON CIVIL RIGHTS
WASHINGTON, D. C. 20425

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

POSTAGE AND FEES PAID
U.S. COMMISSION ON CIVIL RIGHTS
CONTROLLED CIRCULATION RATE