Chapter 3: Undocumented Children[1]

Preface

In its advocacy role, IDRA has been deeply involved in the education of immigrant and undocumented children. The following article is the fruit of an early attempt to gather research information about the children of undocumented workers. Subsequent to this study, IDRA provided extensive information for the first court case dealing with the education of undocumented children in Texas, *Doe v. Plyler* (*Doe v. Plyler*, 1978). I served as an expert witness for the Mexican American Legal Defense and Educational Fund (MALDEF) during the trial in Tyler.

Since the court decision in *Doe v. Plyler* applied solely to the Tyler school district, the federal decision resulted in similar court cases being filed in a number of other districts. IDRA provided information and testimony in these court cases until it was apparent to both plaintiffs and defendants that it would be advantageous to merge all the court cases into one. IDRA hosted a meeting of the various entities interested in the litigation and supported the merger of the various court cases. The result was *Multiple District Litigation*, which was heard before Judge Woodrow Seals in Houston (*In Re Multiple District Litigation*, 1980). I provided expert testimony in this case, similar to the testimony I had presented in *Doe v. Plyler*.

The reason for the litigation was due to the exclusion of undocumented children from Texas public schools. During one of the legislative sessions, a representative from the Mexican border area had inserted a sleeper amendment that changed the eligibility for public school attendance by specifying a legal residence requirement. Undocumented children could still attend school, provided the school had the necessary space for them, but they were required to pay tuition upon enrolling. Since few undocumented individuals received even the minimum wage for work performed, the tuition requirement precluded school attendance.

Much of the harsh treatment afforded undocumented people and their children was based on myths. In addition, within the individual school districts, children were commonly used as scapegoats for deficiencies in the state educational system. School administrators commonly argued that the poverty status of low wealth school districts was attributed to the extensive number of undocumented children. In contrast, the school finance staff at IDRA found it readily apparent that the districts' poverty status could be attributed to an unfair and inequitable system of school finance, and districts with low local taxable wealth would remain poor with or without undocumented children.

Similar complaints were heard and are still being heard today. The argument exists that poor school performance of students in low-wealth and minority districts can be attributed the extensive number of immigrant children, though as in the school finance issue, the performance of native-born children in these districts is far from exemplary. In fact, immigrant children – undocumented or not – in this country who have attended school in their country of origin consistently outperform native-born minority and economically disadvantaged children in our schools.

I consider my participation in the undocumented immigrant children litigation as one of the most

[1] This chapter is from the book, *Multicultural Education – A Generation of Advocacy*, by José A. Cárdenas, published in 1995. Some portions originally appeared in the IDRA Newsletter and are marked with the date of initial article. For this posting, we have made some copy edits, particularly regarding the use if the term "alien," which we have replaced in most cases with "undocumented," "America" (United States), poor (students in families with low incomes), limited-English-proficient students (emergent bilingual students). Other edits involve such updates as capitalization, punctuation and use of accents in names as appropriate. Some terms that were not changed include "minorities" and "Mexican American" due to the demographics of the time.

satisfying educational experiences of my life. It exemplifies the altruistic nature of IDRA and its staff. I was asked frequently what hidden strategy underlined our participation in the suits and how such participation related to some master plan. There was no hidden strategy; there was no master plan. The undocumented children were being abused by the educational system of Texas, and as advocates for children we came to their aid.

Although our participation was conducive to the success of the court cases, that undocumented children have a right to equal educational opportunity while in this country, the experience left more than just a bitter taste in my mouth.

The temporary exclusion of the children was contrary to the United Nations' resolution on the rights of children. Although the United States ratified this resolution declaring that all children have a right to be educated, this right was clearly violated in the Texas schools. Legal counsel was aware of this resolution, although the legal implications were not clear enough to pursue this as a legal argument in court. Nevertheless, it is disillusioning to find the United States' commitment to children to be as shallow as was evident during this period of undocumented children exclusion.

To this day, I fail to comprehend the viciousness and tenacity of the educational leadership of this state. The Texas Education Agency and some administrators from affected school districts displayed a callousness to children which defies explanation. The Texas Education Agency fought the case tooth and nail in the courts, pursuing the appellate route through the Fifth Circuit Court of Appeals in New Orleans, and all the way to the Supreme Court of the United States. During the entire litigation, the educational leadership of the state was unique in providing objections, excuses, false estimates, invalid research findings and erroneous testimony in an incomprehensible attempt to exclude these children from the public schools of Texas.

Equally incomprehensible was the short-sightedness of the state's educational leadership. Witnesses from the federal Immigration and Naturalization Service (INS) testified repeatedly that most of the undocumented children would eventually become legal residents under the Fifth Preference section of the immigration code (*i.e.,* most of them had siblings born in this country who would enhance their legal immigration). Members of the educational leadership continued to oppose the enrollment of the children without regard to the fact that children would subsequently become adult legal residents of this country without any school attendance nor academic skills.

There was extensive irony in the use of a double standard for undocumented individuals. Government agencies were more than aware of the presence of the undocumented individuals, although little action was taken for deportation due to their contribution to the workforce; yet their children were denied school services.

Throughout the litigation the children were treated as scapegoats for school financial and performance problems. This scapegoating of the children paralleled the scapegoating of their parents who were accused of not contributing to the support of government services while helping themselves to generous portions of social programs. In reality, it was the other way around. They made substantial tax payments while making few demands upon government supported social services.

Perhaps the biggest concern is the apparent lack of public understanding and appreciation for the equal protection clause of the U.S. Constitution. This protection is extended to all persons in the country, regardless of citizenship, residence or documented status. During the trial, it was mentioned by the state that Mexico and other countries did not extend civil rights nor educational privileges to undocumented immigrants. It is demeaning for us to lower our civil rights status in keeping with standards of Third World countries, rather than serve as a model for them to emulate.

The issue of immigrant children and their education comes up again with the imminent ratification of the North American Free Trade Agreement (NAFTA). Although the expected influx of

immigrants may not be necessarily undocumented, similar educational problems may be expected to arise. The number of foreign-born children expected to enroll may be as exaggerated as the state estimates of undocumented children during the litigation. Texas educators may have as negative and prejudicial perceptions of the NAFTA immigrant children as was evident during the litigation. And the NAFTA immigrant children may again serve as scapegoats for the inadequacies and inefficiencies of the state system of education.

It would be gratifying to see the educational system projecting and preparing for any new influx of immigrant children. One can only hope that such preparation will prevent the negative stereotyping of the past and will lead to the development and implementation of sound educational programs responsive to the needs and characteristics of immigrant children.

The Education of Undocumented Children

1978

The past few years have seen a growing controversy concerning the education of children of undocumented parents. In recent months, this controversy has been highlighted by extensive media coverage, with television and radio stations transmitting news programs on this topic, and newspapers and magazines publishing extensive information.

Unfortunately, it appears that much of the coverage given to this topic and many of the arguments promulgated, both pro and con, are based on emotional reactions to the problems, conclusions based on erroneous information, and information based on myth rather than the scientific collection of data.

IDRA was founded in order to provide information necessary for decision-makers to act wisely in affording a better education to all children. In this light, IDRA summarizes the limited information available on undocumented people, and the impact this information has on the education of children.

Legality of Educational Exclusion

At the present time, limited numbers of undocumented children are enrolled in Texas public schools. The exclusion of undocumented children located in the state of Texas from free public schooling is based on Section 21.031 of the Texas Education Code, enacted by the State Legislature in 1975. The constitutionality of this law was recently tested in *Hernandez v. Houston Independent School District*, with the State District Court in Travis County supporting the law (*Hernandez v. Houston ISD,1977*). On the other hand, the Texas Education Agency, on the basis of the federal case of *Silva v. Levi*, precluded the application of this state law to undocumented children in the process of legitimizing their residence in this country. The *Silva v. Levi* interpretation applies to children who entered the United States, and whose families have applied for a U.S. visa or residence status between July 1968 and December 1976 and have received a priority date from the U.S. Consulate.

Still pending is the case of *Doe v. Plyler* in the Federal Court for the Eastern District of Texas, in which the 1975 Texas law is attacked as unconstitutional in that it denies equal protection to poor, undocumented children, since undocumented children with sufficient economic resources to pay tuition continue to be enrolled in the Texas public schools (*Doe v. Plyler*, 1978).

Studies of Undocumented People

Very little reliable information is available on undocumented individuals. The nature of this population makes it difficult to study.

Attempts to gather data are hampered by the underground characteristic of the undocumented population, but also by governmental and economic interests in the population concerned. Therefore, estimates on the number of undocumented individuals in this country may range from 4 million to 20 million, depending on who is doing the estimating and the purpose of the estimate. The past practice of collecting estimates from district offices of the Immigration and Naturalization Service, when such estimates also form the basis for budgetary consideration and staff allocations, most probably produced inflated counts of up to five times the number of undocumented individuals that could exist. More scientific estimates of the number of undocumented individuals in this country indicate that there are some 4 million undocumented individuals in the United States with approximately 2.7 million of them being of Mexican extraction.

Since studies indicate that one-fourth of all undocumented Mexicans are located in the state of Texas, it is plausible that there are 675,000 undocumented Mexicans residing in that state.

Although few successful studies have been conducted on undocumented individuals, the information which has surfaced from these studies is drastically different from popular stereotypes. One example is the Bob Dale cartoon published by the *San Antonio Express-News*, showing an undocumented individual feasting at a table of welfare benefits and free education, served by a harassed, legal population

One of the most scientific studies of undocumented individuals was conducted by David S. North and Marion F. Houston of Linton and Company, Washington, D.C. (North and Houston, 1981). This study is based on the analyses of 793 apprehended undocumented individuals, 481 being Mexican. The data from this study indicate that 90% came to the United States to get a job, 91% were male, 17% had spouses in the U.S., but only 5% had undocumented spouses in this country. The undocumented Mexican averaged a $117 weekly income, even though he worked more (8.6 hours per week more) than legal workers in this country. About 24% of the undocumented individuals received unlawful wages, less than the minimum wage prescribed by law.

Information on the undocumented individuals apprehended indicated that 73% paid federal income taxes, 77% paid social security, and 44% paid some form of hospitalization insurance.

In contrast, 0.5% received welfare payments, 1% obtained food stamps, 1% participated in U.S.-funded job training programs, and 4% collected unemployment insurance. Although 27.4% received medical attention, 83% of those who received medical services paid for the medical services with their own funds, their medical insurance, or through their employer. Thus, only 4.7% of the undocumented individuals received free medical attention.

Undocumented Children

Information concerning the children of undocumented individuals obtained in this study also deviates from common stereotypes. Only 3.7% of the undocumented individuals had children in U.S. schools. Since it has been estimated that there are 675,000 undocumented Mexicans in Texas, the number of children one would expect to find is 25,000-substantially lower than the number estimated by the Texas Education Agency. This figure is highly inflated since only 29% of the undocumented individuals who had spouses in this country had undocumented spouses, or of the 25,000 children, 71% were from spouses legally residing in the United States. Therefore, after subtracting probable legal residents, the total number of undocumented children in Texas may be no more than 7,243. Still to be subtracted from this number are children not of school age, and since the average age of the undocumented adult apprehended was only 28.5, the number of preschool-age children may be substantial.

Educational Considerations

The information gleaned from the North Houston study and related information indicates that perhaps the state of Texas acted too hastily in attempting to solve the problem through school exclusion.

1. The number of undocumented individual children in the state of Texas may not constitute a major problem requiring such drastic measures as absolute deprivation of educational benefits.
2. Total exclusion from school is not a humane manner of dealing with this problem, particularly when the larger society utilizes the work contribution of the undocumented

adults.

3. Many of the problems in the education of undocumented individual children stem from inadequacies in the Texas system of financing schools which are aggravated or compounded by the undocumented population. Most school superintendents who have complained about undocumented children have done so because of the shortage of school facilities for housing the undocumented children. This shortage of school facilities in low property wealth school districts stems from the failure of the state of Texas to provide state funds for school construction, a problem that exists with or without undocumented children. A similar situation exists in terms of emergent bilingual students. There is little hope to meet the language needs of undocumented Mexican when very few of the many U.S. citizens having a similar characteristic are being afforded adequate programs.
4. There is evidence to indicate that many of the undocumented children in Texas are in the process of legalizing their residence. A study reported by Dr. Gilbert Cárdenas of the University of Texas at Austin indicated that 60% of all Mexican immigrants in the United States, who became legal residents, had been in this country before as undocumented individuals (Weintraub & Cárdenas, 1984). The problem of educating undocumented children in Texas may be insignificant compared to the problem of educating immigrant children who have been kept out of school for a number of years in previous undocumented visits to the state. Other states have better addressed this problem by providing categorical funds for the education of undocumented children rather than the Texas policy of total exclusion.
5. The undocumented individual participates in the support of the school. More than 80% of all state taxes that are collected and disbursed for education are consumer taxes that the undocumented individuals pay. Local property taxes are paid by the undocumented individuals either directly or indirectly
6. Little effort has been exerted in attempting to obtain the resources of the federal government in responding to what is obviously a federal problem. A federal impact program, such as the one directed toward relief of problems caused by concentrations of federal employees, could do much to diminish local problems in the education of undocumented children.

Federal Judge Rules in Favor of Undocumented Children

September 1979

Federal Judge D.W. Suttle has issued a temporary injunction ordering the Ector County Independent School District (ISD) to admit undocumented children into its schools. The hearing was held August 14, 1979, in the U.S. District Court, Western District of Texas, Midland Odessa Division, for the purposes of determining the judiciabilty of the case, *Roe v. Holm*, and demonstrating the irreparable harm vested on the excluded class of children.

Section 21.031 of the Texas Education Code, as amended in 1975, provides for the education of children who are citizens or legally admitted individuals and denies undocumented children admission to the state's public schools. Undocumented children are typically excluded from Texas schools unless they can pay a prohibitive tuition. Prior to the injunction, Ector County ISD tuitions were $1,209.39, $1,213.26, and $1,610.42 for admission into elementary, junior high and high schools, respectively. Tuitions such as these effectively bar the majority of undocumented children from receiving a basic education.

Plaintiffs' attorney in *Roe v. Holm* is Warren Burnett of Odessa, Texas (*Roe v. Holm*,1979). In his motion for the preliminary injunction, Mr. Burnett stated that the courts have generally looked to four factors in determining the propriety of issuing a preliminary injunction: (1) the plaintiffs' likelihood of prevailing on the merits of the case, (2) the possibility of irreparable harm to the plaintiffs, (3) the counterbalancing risk of harm to the defendants, and (4) the service of the public interest. The first factor does not require absolute certainty before an injunction is issued. *Roe v. Holm* raises serious questions of constitutional and statutory law, and there is sufficient legal support of the plaintiffs' position to suggest that the court may rule in their favor. The second factor, the possibility of irreparable harm to the plaintiffs, is of utmost importance in this case. According to Dr. Clarence Kron, chairman of the Education Department at the University of Texas - Permian Basin, who was present to testify at the hearing, children who are deprived of an education during their critical formative years suffer substantial harm in their personal, affective and cognitive development.

With regard to the third factor, Burnett illustrated that any harm to the defendant school district as a result of the injunction would be minimal. According to Burnett, prior to the 1978-79 school year, undocumented children were enrolled in and attended the Ector County schools without apparent harm to the district. Furthermore, after the change in policy and the resulting exclusion of undocumented children, the budget of the Ector County school district did not decrease, school taxes were not lowered, and the district received no perceptible benefits. Therefore, enrollment of the undocumented children would not cause hardships for which the district is unequipped, or which it has not handled adequately and smoothly in the past. The final factor, service of the public interest, clearly lies on the side that believes extension of education is to the benefit of society.

As of this writing, there are five other cases of this nature in progress throughout Texas. Affected school districts include Dallas, Houston, Pasadena, Goose Creek and Tyler (on appeal). Other suits are being contemplated and may have been filed before the publication of this newsletter. With this proliferation of like cases, consolidation is probable for the purposes of statewide application. Perhaps the prohibition on the allocation of state money as enacted by the 64th Texas Legislature in 1975 will be removed by the courts, and the human rights of undocumented children will prevail.

The Undocumented Children Case and the Ghost of Rodríguez

1980

The July 21, 1980, decision by Judge Woodrow Seals in the U.S. District Court of the Southern District of Texas, in the case of undocumented children, struck down a state law barring their access to the public schools (*In Re Multiple District Litigation*, 1980). The multidistrict litigation led to a decision, rendering section 21.031 of the Texas Education Code, which permits local school officials to exclude undocumented children from the public schools, as unconstitutional. This finding was not unexpected, particularly since a similar case, *Doe v. Plyler* in the Eastern District of Texas, had resulted in similar findings, although that case affected only one school district (*Doe v. Plyler*,1978).

The purpose of this article is not to analyze the history, evidence and findings in the case, but to look deeper into social and educational problems related to this matter. Arguments and evidence presented by the Texas Education Agency and the state of Texas raise serious questions as to the structure of public education in Texas, identify problems in the state system of education, and highlight a need for administrative and legislative action.

This analysis of the case of undocumented children has been fairly consistent with the purposes and activities of IDRA these past eight years and is closely related to most of its project activities. It serves to summarize what IDRA has been saying over the years about problems in the education of atypical populations, the failure of the system to respond to special student characteristics, the absence of equity, and the need for change.

The case of the undocumented children is consistent with a past history of dysfunctional responses to educational problems, with the responses frequently aggravating the problems rather than resolving them.

It is surprising and regrettable that the Texas Education Agency (TEA) and defendant school districts would fight so bitterly to exclude undocumented children from the public schools. One would assume that they would have more advocacy for children – any children – but their role in this case belies this assumption. Attorneys, community organizations, the U.S. Department of Justice, the Immigration and Naturalization Service, and the public media have shown more humaneness, compassion and understanding than the educators opposed to the education of these children. In opposing the education of undocumented children, defendants consistently displayed amazing naiveness, short-sightedness and mis-information; their tactics relied heavily on playing both ends against the middle.

To start with, defendants have consistently failed to take into account that the population in question is here to stay. Regardless of desirability, arguments on behalf of the education of undocumented children indicate that this is not a transient population, but one that can be expected to remain in the state and the country indefinitely. In both *Doe v. Plyler*, and in the multidistrict case, there was ample evidence that the majority of these children will subsequently become U.S. citizens. The Immigration and Naturalization Service (INS) has given up hope of apprehension and deportation. A former commissioner of INS testified that the inability of INS to deport undocumented individuals constitutes a de facto amnesty. The administration has recommended legalizing amnesty. As pointed out by Judge Woodrow Seals, the state of Texas has considered and consistently rejected legislation to make the undocumented individuals stay in this country more tenuous.

Considering this reality, one is hard pressed to understand defendants' arguments that the education of these children is a financial imposition. Almost every social scientist involved in the case felt that the non-education of these permanent residents represented more social problems and a higher cost than educating them.

A second characteristic in the defendants' position in this case is the general lack of information concerning the target population. In 1975, the Legislature amended the Texas Education Code, inserting the citizenship requirement. There were no studies conducted on the number of students then enrolled in the public schools, no studies of their impact, special characteristics, or of special programs required. No hearings were held, nor was testimony presented about the cost of their education or the subsequent cost of non-education. The Legislature simply barred them from the schools with a minimum of consideration. During the four years that the undocumented children were barred from the public schools of Texas, no study was conducted on numbers, potential cost, nor location. The one and only study that surfaced was commissioned by TEA for the trial, and the court's analysis of this study would prove embarrassing to TEA and the state of Texas.

This leads one to the arguments presented by the defendants in this case. These arguments center around numbers, quality of education, impact on desegregation, impact on bilingual education, and the cost of education.

Numbers

As stated earlier, until immediately before the trial, no studies had been conducted on the number of students involved. The state's study in preparation for this case calculated the number of undocumented children by taking census estimates of Hispanic school-age children in Texas and subtracting from this figure enrollees in public and private schools and known school dropouts. The resulting figure was the state's estimate of the number of undocumented Hispanic children.

Needless to say, the study's estimate of more than 100,000 undocumented school-age children in Texas did not greatly impress the court.

There are no high quality studies of school dropouts in Texas. School districts' estimates are consistently low. Furthermore, the Court stated that to assume that the children not enrolled in school are undocumented is simply unsound. The Court further criticizes the state's study as using poor methodology, being illogical, unsound and unreliable. At one point Judge Seals notes that using the same TEA methodology on other populations "results in the rather bizarre and untenable conclusion that there are at least 100,000 undocumented Black and white children in Texas."

All other studies presented to the Court estimate the number of undocumented school-age children at approximately 20,000, or less than one-fifth of the number estimated by the TEA study (This author testified before a U.S. committee on immigration that there were less than 30,000 such children.)

Yet, during the trial, after the trial, and in all state reactions to the court decision, the Texas Education Agency and the state of Texas continued to use the 100,000 figure. Governor Clements, Attorney General Mark White, Commissioner of Education Alton Bowen, and several superintendents argued the need to appeal the case because of the financial impact of having to educate 100,000 additional children. It is this author's opinion that even if there is a concerted statewide effort to enroll undocumented children, less than 10,000 will show up to register in September.

The only area where undocumented children could have an impact would be in the border school districts. The basis for this impact would be that the state has consistently failed to address the long-existing problem of the impact of legally admitted (documented) children. If this issue had been resolved rather than ignored, the impact of undocumented children would be minimal.

Quality of Education

A second defendant's argument has been that the enrollment of undocumented children would lower the quality of education for all children in Texas. As in the case of numbers of children, no evidence is available to substantiate this claim. Apparently, feeling that turnabout is fair play, Judge Seals notes, "There is no data which show that the academic performance of students has improved since undocumented children were excluded."

In general, the enrollment of undocumented children should have little effect on the quality of education in Texas. As indicated by the early findings of the statewide Texas Assessment of Basic Skills this past year, the quality of education for middle-class white children in Texas has been fairly adequate. The education of Latino students, Black students, students in families with low incomes, and emergent bilingual students leaves a lot to be desired. The inclusion of undocumented children could not make matters much worse, no more than their exclusion will make it any better. Instruction, resources and teacher training for these groups will have to be improved with or without undocumented children. In fact, the experience of Texas educators dealing with immigrant children shows that if these immigrant children have attended school in Mexico prior to coming to Texas, they will consistently outperform native-born Mexican American, Black and disadvantaged children. This phenomenon should be intensively studied by Texas educators.

Bilingual Education and Desegregation

A third argument used by defendants concerns the impact of the admission of undocumented children on bilingual education and desegregation. The Court was not impressed by the arguments presented in these areas. There is nothing in the desegregation process that could suffer from an influx of minority undocumented children. The majority of these children will probably enroll in impacted districts, that is, districts in which the percentage of Mexican American children is so high that there aren't enough non-minority children for any practical desegregation.

Similarly, the impact on bilingual education should be minimal. The border districts have no shortage of bilingual teachers, whereas districts where shortages exist have never had any great pressure from the state to comply with federal and state bilingual education legislation.

The motion to enforce in *U.S. v. Texas* recently heard in Tyler should soon reveal the extent of state concern in providing understandable instruction to children of limited English proficiency (*United States v. Texas*,1971).

It is interesting to note that in a recent session of the Texas Legislature, the TEA recommendation for the funding of bilingual education was little more than one-half of the amount appropriated in the preceding session.

Of much more consequence than the defendants' arguments regarding desegregation and bilingual education needs is the growing tendency of defendants to play both ends against the middle. Desegregation, bilingual education, and undocumented children are three problems to which the state and school districts must respond. Instead, there is a growing tendency to play one against the other. For some time now, one has heard the argument that desegregation and bilingual education are contradictory. One school district in Texas presented testimony in its desegregation court case that emergent bilingual Mexican American children could not be desegregated because bilingual education legislation at the state and federal levels prohibits the desegregation of children in bilingual education classes. This testimony was presented to the Court in spite of the fact that both federal and state regulations explicitly prohibit the segregation of children in bilingual programs.

It now appears that the undocumented children will be played against both of the other programs. One can even visualize the state of Texas testifying in future desegregation and bilingual education cases that their inability to meet the requirements of the law is due to the presence of undocumented children, in spite of the fact that these past four years without undocumented children have not been exceptional as far as the state's response to desegregation or bilingual education.

Financing

The fourth argument presented by the defendants in the multidistrict litigation on undocumented children is the argument most closely related with the past goals and activities of IDRA.

The state of Texas and the defendant school districts argued that the cost of educating these children is prohibitive. Reading defendants' press releases and media announcements, one would conclude that the state was at the point of bankruptcy and that the inclusion of undocumented children would push it over the brink.

This assumption is just not true. In the first place, the fiscal situation is not even bad. As noted by the Court, the Texas General Revenue Fund has had a surplus for the last 12 years, over $600 million a year for at least the last three years. The cost to the state of educating 20,000 undocumented children would be as little as $16 million a year.

Much of the public controversy over this case centers on the concept of educating, at the public's expense, kids whose parents do not pay taxes. Nothing could be further from the truth, Evidence in this case and in *Doe v. Plyler* shows conclusively that parents of undocumented children pay as much in taxes as any other group of their own economic level. In addition, the clandestine nature of the population leads to their making less demands on state services

Undocumented children counts contribute to the allocation of federal funds, such as Title I, although in the past four years undocumented children have not been included in these benefits.

The most frustrating aspect of the fiscal impact arguments, in that what the state of Texas claims as the inability of the state to finance the education of undocumented children, is really a criticism of the inadequacy, the unfairness, and the lack of equity in the Texas system of school finance.

Judge Woodrow Seals in this case joins Judge William Wayne Justice in *Doe v. Plyler* in noting that "any spectator watching the state's presentation might easily have mistaken it for a retrial of the Rodríguez case, with the state of Texas acting as *amicus curiae* for the plaintiffs, emphasizing the plight of property-poor border school districts under the state's educational financing scheme" (*San Antonio ISD v. Rodríguez,* 1973).

In the Rodríguez case, the state defended the existing system of school finance in Texas. According to the state of Texas, all school districts had sufficient resources for an adequate education. In the multidistrict litigation, the state paraded a host of witnesses from property- poor and inner-city schools showing the drastic unavailability of resources in these districts. I repeat what I think could be the most important outcome of this case, namely that the financial problems in the education of undocumented children should be attributed to the inadequacies in the present finance system and to a lack of interest in its reform, rather than to the inability of the state to afford.

For the past three sessions of the Texas Legislature, bills have been introduced to provide state aid for school construction desperately needed in the border districts, with or without undocumented students. In the last legislative session, not one single state official, not one single TEA official, not one single school district official testified on behalf of the bill. The bill again died

in committee with the author bitterly noting that there was not enough interest on the part of school officials to bring it up for consideration. To exclude the education of undocumented children in Texas (which is one of the few states without any form of state aid for school construction) on the grounds that the school districts cannot afford the facilities for them, reminds one of the story of the young man who murdered his parents and requested leniency from the courts on the grounds that he was an orphan. It appears that educators in Texas have their share of chutzpah.

The children of the state of Texas deserve better. The entire state needs better. In the light of the increasing need for education in this technological society, a failure of the state to educate any segment of the population has severe implications for all.

Arguments concerning the quality of education in Texas are moot. The education of atypical populations, specifically the minorities and the disadvantaged, needs vast improvement. The state of Texas needs educational leadership. It is high time that this leadership be acquired or developed. Foot-dragging, scare tactics based on exaggerations, red herrings and rationalizing will not bring about this improvement. Only through the efforts of concerned educators, laypersons and decisionmakers at the local and federal levels, in finding functional solutions to the problems of educating children, will Texas see the arrival of equal educational opportunities for all children.

The Impact of Doe V. Plyler Upon Texas Public Schools

Dr. José A. Cárdenas and Dr. Albert Cortez

Introduction

Up until 1973, undocumented children had been enrolled in Texas schools without a special classification. It is doubtful that many teachers or other school authorities were aware of the immigration status of most of the Hispanic children in public schools. The only awareness of a problem existed in border cities where large numbers of Mexican American children routinely crossed the state line for the sole purpose of attending public schools in Texas.

The controversy surrounding the exclusion of undocumented children from Texas public schools was created by a 1975 revision in the state's public school admission and funding statute that limited eligibility for some state funds to students who are legally admitted individuals or citizens of the United States. Before 1975, all children between 6 and 21 years of age were required to be enrolled; in fact, in 1975 (before the revision in state law) the attorney general ruled that undocumented children were entitled to attend public schools whether they were documented or undocumented residents. However, with the1975 revision, undocumented children were subsequently excluded from tuition-free admission to Texas public schools.

As currently written, the statute reads:

> All children who are citizens of the United States or legally admitted and who are over 5 years and under the age of 21 years shall be entitled to the benefits of the available school fund [and]... shall be permitted to attend the public free schools of the district in which he resides or in which his parents, guardian, or the person having lawful control over him resides at the time he applies for admission.[1]

By nature of the wording, the state determined that children not meeting the criteria were not entitled to tuition-free admission; they may not be counted by the district in reports used to calculate their state aid entitlement. Decisions concerning the admission or exclusion of these students, given the absence of state aid for them, were left to the individual school district's discretion. In response to these developments, many school districts initiated policies that called for the total exclusion of undocumented children, usually basing their rates on the average amount spent for each student enrolled in the school system.

Within two years, growing parent and interest group concern with the impact that the state's exclusionary policy was having on undocumented children led to legal challenges of the provisions.

The Legal Challenges

In February 1977, the parents of children who were denied admission to the Houston Independent School District filed suit in state district court arguing that the exclusionary provisions in the state's admission law was unconstitutional. In *Hernández v. Houston Independent School District*,[2] the state court ruled in favor of Houston and the Texas Education Agency, which were co-defendants in the action.

Although *Hernández* was recognized as a serious setback in the challenge of state and local policies concerning undocumented children, advocates recognized that federal courts were available as alternative courses of action. In September 1977 a new wave of litigation was triggered with the filing of *Doe v. Plyler* in the U.S. District Court for the Eastern District of Texas. In his final ruling, delivered in September 1978, Judge William Wayne Justice struck down the state and local district's exclusionary policy as it applied to the Tyler Independent School District,

and issued a permanent injunction forbidding Tyler's continued enforcement of the policy.[3] The case was appealed to the U.S. Fifth Circuit Court of Appeals, where it awaited consideration. Although significant as a precedent setter, Judge Justice's ruling was restricted solely to the Tyler school district; by implication, the issue remained open to individual challenges in school districts throughout Texas.

The second wave of litigation was initiated by the filing in Houston of *Garza v. Reagan*,[4] which challenged the exclusionary provisions enforced by the Houston school district. Following closely on its heels were *Roe v. Holm*[5] which challenged the exclusion of undocumented children by the Ector County school system; *Boe v. Wright*[6] which dealt with the exclusionary policy of the Dallas Independent School District; and *Doe v. Lodestro*[7] which challenged similar policies of the Port Arthur school system.

In the cases involving the Ector County and Port Arthur school districts, the federal judges for the respective cases granted a preliminary injunction and mandated that the plaintiffs and the class of undocumented children residing in the district be allowed to enroll in the school systems in question.

In each case, the court also mandated that the state agency provide the corresponding state aid which the added enrollment would qualify the school systems to receive. In Houston, the federal judge involved allowed the named plaintiffs to enroll; however, action on the class of undocumented children residing in the Houston Independent School District was postponed for a future hearing on the matter.[8]

In Dallas, Federal Judge Robert Hill broke the pattern established by his predecessors and denied the plaintiff class a preliminary injunction which would have allowed them to enroll in the Dallas Independent School District.[9] The cases against the state were eventually consolidated, and the trial was conducted in the Federal District Court for the Southern District of Texas in Houston before Judge Woodrow Seals. The case is hereafter referred to as *In Re Alien Children's Education Litigation*.[10]

The trial required 24 days of testimony and arguments, with the court requiring an additional three months to consider the record of proceedings and render its conclusions. On July 21, 1980, the court ruled in favor of the plaintiff children. The order permanently enjoined the state and selected school systems from denying admission and from charging tuition to the class of children involved.[11] The state requested a postponement which was denied by Judge Seals. The state then proceeded to appeal the decision.

To fully understand the rationale for the judge's decision requires a review of the court's opinion. What follows are selected excerpts from the court's 87-page opinion.

> Maintaining the fiscal integrity of the public schools is an important and legitimate state interest. States have the responsibility of safeguarding all monies entrusted to them by the taxpayers and these demands are increased when a fundamental state function such as education is involved. That does not mean that any measure which saves money is constitutional. The court has concluded that the absolute deprivation of education should trigger strict judicial scrutiny, particularly when the absolute deprivation is the result of complete inability to pay for the desired benefit. When strict judicial scrutiny is appropriate, important or legitimate governmental interests are not sufficient to justify legislative classifications. The classifications, if they are to be upheld, must be shown to be necessary to promote a compelling governmental interest.
>
> Additionally, the factor which is the basis for differentiating between persons otherwise equal may not be capricious or irrelevant; it must be germane to the effectuation of the State's interest. Finally, the State is required to show that there are no less restrictive

> alternatives available… The State has not carried this heavy burden of justification. (citations omitted)[12]

With regard to the state's asserted rationale for section 21.031, Judge Seals indicated that:

> In defense of its decision to exclude undocumented children from the public schools, the State presented evidence concerning (1) the number of undocumented children in Texas; (2) the financial impact of educating undocumented children on the quality of education and on compliance with desegregation orders. The State contends that the equal protection clause does not apply to undocumented individuals and thus that the discrimination against members of that class is permissible no matter how invidious. Nonetheless, the State offered evidence which it believes demonstrates that section 21.031 is supported by a rational basis.
>
> At the outset, the evidence demonstrated that prior to the passage of the amendment to section 21.031 in 1975, the State never had attempted to determine the number of undocumented children attending Texas public schools nor the impact of educating these children upon the school districts. The current commissioner of the Texas Education Agency was the Deputy Commissioner at the time section 21.031 was enacted and he was then primarily responsible for its implementation. He testified that no one from the Texas Legislature contacted anyone at the Texas Education Agency prior to the amendment. No studies were conducted to determine the number of undocumented children throughout the state or the fiscal impact of educating them. No one attempted to compare the amount of taxes paid by undocumented individuals with the cost of educating undocumented children.
>
> Since the law was amended, the State has done very little to monitor the implementation of the statute by the local school districts. There is no evidence that the State has ever determined the number of local school districts which are excluding undocumented children, the number of school districts that charge tuition, or the number of school districts that provide tuition-free education to all children within their jurisdiction.
>
> Because this basic information has not been gathered, no effort has been made to determine the number of children actually affected by section 21.031. There are no data. which show that the academic performance of students has improved since undocumented children were excluded.
>
> Indeed, the evidence in this case indicates that the State has been concerned primarily with the impact and number of documented Mexican children. With the exception of a study commissioned in connection with this case, the State sponsored studies have concentrated on the characteristics and number of documented immigrant children.[13]

Commenting on the state-financed study conducted by Criterion Analysis, Inc., of Dallas in estimating the potential number of undocumented children residing in the state, the court observed:

> The State's assumption concerning the potential impact of undocumented children on the public schools is based on an estimate of the number of undocumented children presently residing in Texas. It must be emphasized that only the current figure is of concern; no evidence was offered which implied that the number of undocumented children living in Texas and attending the schools in 1975, had an impact on public education. Thus, the State does not argue that the number was so great in1975 that it was necessary to exclude undocumented children, but that once they had been excluded there are too many to incorporate them once again.[14]

On the adequacy of the study itself, the opinion stated, "The court finds that the criterion study does not represent an accurate estimate of the number of undocumented children in Texas."[15]

Responding to the state's contention that free public education will be a magnet that will attract increasing numbers of undocumented persons, the court noted that Texas was the only state with exclusionary legislation, yet "there is no evidence that other states have a disproportionate number of undocumented persons who have been drawn to those states because of the availability of free public education."[16] Thus, "the court [found] that free education would not serve as a significant attraction for undocumented persons."[17]

Turning to the question of fiscal impacts which will result from the enrollment of these children, the court commented:

> Permitting undocumented children to attend the public schools dearly would affect state and local resources. The evidence does not indicate, however, that the State or the school districts lack the necessary funds. Indeed, as counsel for the State noted in closing arguments:
>
> There is no place in this pre-trial order that the State has said the State of Texas doesn't have enough money. Not one place. Texas can come up with the money. If we want to get the legislature to fund certain projects, we will go down and get them to fund it. The State never said it didn't have money in its budget.
>
> Without a reliable estimate of the number of undocumented children in the State, it is difficult to gauge the precise financial savings that can be expected to accrue as a result of excluding children from school pursant to section 21.031. Nonetheless, the evidence indicates that both the State and the local school districts together have sufficient funds to educate the undocumented children.[18]
>
> The current estimate by the Comptroller is that the General Revenue Fund will have a cash balance of $324.4 million at the end of the current biennium. This projected surplus is sufficient to finance completely the education of all undocumented children in Texas even if the State correctly estimated the number of undocumented school age children.[19]

Recognizing that the impact will be more significant in border areas and major urban centers, the Court observed:

> The impact of admitting undocumented children on the local independent school district would not be uniform. It appears that the wealthy metropolitan school districts in which local funds support a larger percentage of the total educational cost and the poor school districts in which local dollars are stretched to the limit would be the most affected. These problems are very real. The conditions in Brownsville require the use of temporary buildings having no air conditioning. In districts like Dallas the high cost of living requires the school districts to adopt a salary structure which exceeds that contemplated by the Foundation School Program. These difficulties are addressed by current school finance laws in only one respect. The school finance laws do not attempt to aid a district like Brownsville with its construction problems... and they do not attempt to compensate for the higher cost of living and of municipal government in the large cities. Instead, the Legislature has attempted to ameliorate these conditions by reducing the number of students.
>
> The State often stated during the hearing that Texas has the duty to protect the fiscal integrity of the local independent school districts. As Judge Justice noted in *Doe v. Plyler*, 458 F. Supp. [at] 589, "any spectator watching the state's presentation might easily have mistaken it for a retrial of the Rodríguez[20] case, with the State of Texas

> acting as amicus curiae for the plaintiffs, emphasizing the plight of property poor border school districts under the State's educational financing scheme."
>
> The Legislature's approach to alleviating overcrowding in the border school districts and to assist the metropolitan school districts with teacher salaries is a drastic one. It is to exclude children from the schools.[21]

The Court concluded with the observation that:

> Whether it be [at present] in the form of modest increases in tuition, in public school operating cost, or… in terms of social cost… 15 years from now, we will pay this bill. It is, of course, the prerogative of the State Legislature to saddle the public with such a future public burden, provided that they do so in conformance with the Constitution. That they have not done.[22]

The final result of Judge Seal's ruling was that undocumented children were to be admitted, and the corresponding state aid was to be provided to school districts throughout the state.

Dissatisfied with the district court's interpretations of the law, the state of Texas decided to appeal the decision to the Fifth Circuit Court of Appeals. At the circuit level, a three-judge panel reviewed the findings in *Doe v. Plyler* and summarily upheld Judge Justice's ruling;[23] a short time thereafter it also upheld Judge Seal's decision in *In Re Alien Children's Education Litigation*.[24] Determined to exhaust all levels of appeal, the state decided to appeal to the U.S. Supreme Court, where the cases were consolidated and arguments were heard from all parties to the suit.[25] In a 5-4 decision, the Court upheld the lower court rulings and permanently enjoined the state from excluding these children from tuition-free enrollment in Texas public schools.[26]

1981 Legislative Action

Prior to the Supreme Court ruling, State Representative Albert Luna introduced legislation that would allow undocumented children to enroll in Texas schools. During the 1981 Texas legislative session, not one single state official, not one single Texas Education Agency official, not one single district official testified on behalf of the bill. The bill again died in committee, with the author bitterly noting that there was not enough interest on the part of the school officials to bring it up for consideration. To exclude the education of undocumented children in Texas (which is one of the few states without any form of state aid for school construction) on the grounds that the school districts cannot afford the programs or facilities for them, should remind one of the story of the young man who murdered his parents and requested leniency from the courts on the ground that he was an orphan. It appears that educators in Texas have a similar nerve.

Undocumented Student Counts

Of critical interest to both proponents and opponents of the enrollment of undocumented children in Texas schools is the number of such children attending public schools within individual districts. Prior to their enrollment and throughout the legal battles, speculation abounded on this issue. Due to the clandestine existence of undocumented families, however, little hard data had been available.

Estimates regarding the actual number of such students varied tremendously. In a state-commissioned study by Criterion Analysis, Inc., a Dallas-based firm using census data, it was found that as many as 110,000 such students were present in Texas.[27] Fear exhibited by the state and some school officials of an influx of such magnitude served to fuel the debate concerning their enrollment. Contrary to such inflated projections, IDRA and other researchers proposed that

the estimated counts, based on data regarding the numbers of undocumented persons who migrated with their families, would total no more than 25,000 students statewide.

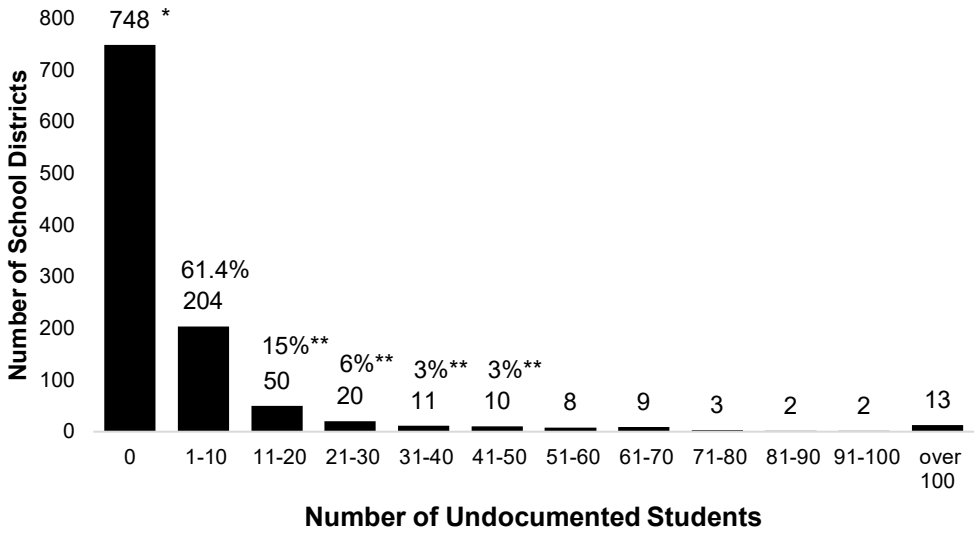
Moreover, IDRA and others proposed that the students would be concentrated in those areas with large numbers of Hispanics, a pattern already observed by previous studies on immigration into the United States. Debate regarding the accuracy of all estimates continued throughout the litigation.[28] Following the mandated enrollment of these students, a result of Judge Seal's decision, actual data regarding the number and distributional characteristics became available.

The TEA Study

Following the district court order in the Houston case, the Texas Education Agency (TEA) conducted a survey in which school districts were asked to indicate the number of undocumented children enrolled in their public schools. IDRA subsequently acquired the data that had been compiled by TEA. These data were merged with official TEA figures on districts' refined average daily attendances (ADA) for the 1979-80 school year, in order to assess the proportion of a district's ADA which was composed of undocumented students. The resulting data base was subsequently analyzed. The following are excerpts from the results of IDRA's analysis of the data pertaining to the registration of undocumented students in Texas school districts.

Most noteworthy among these early statistics is that only 332 of the 1,080 Texas school systems reported the presence of any undocumented students. The majority of Texas school systems (or 748) reported no impact from the court ruling (see Table 1). Of the 332 districts reporting undocumented student enrollment, 204 (61%) reported having ten or fewer undocumented children enrolled (see Table 1). In contrast, only thirteen school districts reported counts in excess of 100 pupils. Not surprising to anyone, the major urban/suburban school districts, which have the greatest pupil enrollment in the state, also had the greatest undocumented student enrollment.

Table 1: Distribution of Undocumented Students by Concentrations Within School Districts

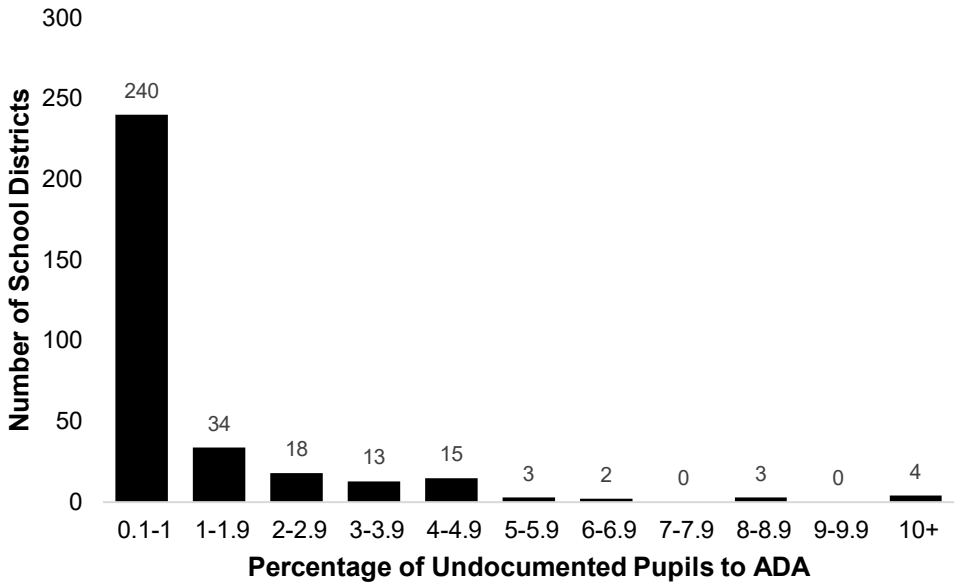


* Not reporting any undocumented students to TEA
** Computed as a percentage of the 332 school districts reporting undocumented counts to TEA.
Source: Reports submitted by school districts to Texas Education Agency, Oct. 1980.

Concentration Characteristics

The IDRA analysis also examined what proportion the undocumented pupils constituted in a district's existing enrollment and, more specifically, the percentage that such pupils represent in a district's ADA. To arrive at these figures, IDRA staff acquired district-refined ADA data for the preceding (the latest available) school year and calculated the percentages. The resulting variables revealed distribution patterns of concentration levels of undocumented pupils within Texas schools. The most striking of these statistics indicates that undocumented students represented less than 1% of the district's ADA in 239 (or 72%) of the 331 districts reporting (see Table 2). In 41 of the remaining 92 districts, undocumented students constituted between 1% and 2% of a district's ADA. At the opposite end of the scale, undocumented students represented more than 5% of a district's ADA in only 11 (or 3.3%) of the 331 districts reporting undocumented enrollment.

Table 2: Statewide Distribution of Undocumented Pupils by Percentage of Undocumented Pupils to District's ADA



Statewide Ave. 1.2%
Total N = 332

Computed as a percentage of the 332 school districts reporting undocumented student counts.
Source: Reports submitted by school districts to Texas Education Agency, Oct. 1980

The relatively low proportions of a district's total attendance, which these students represent, are perhaps most apparent in the accompanying summary listing which ranks districts according to the percentage of undocumented pupils within the school systems. Inspection of the figures reveals that relatively high counts of undocumented students are generally found in relatively high-enrollment districts, with the proportional relationships reflected in the school district's low percentage. Close inspection of districts with unusually high percentages of undocumented pupils reveals that, for the most part, they tend to be low-enrollment districts in which small numerical increases in enrollment constitute substantial proportional changes.

Table 3: Summary Listing
Selected School Districts
Reporting High Counts/Percentages of Undocumented Students

School District	1979-80 ADA	Undocumented Students Reported	Percent Undocumented
Houston	173,861	2,506	1.4
Dallas	114,877	810	7
Ector County	20,996	684	3.3
El Paso	53,697	486	9
Mission	6,390	207	3.2
Pasadena	32,244	186	0.6
Brownsville	23,314	182	0.6
Goose Creek	13,887	158	1.1
AIdine	29,489	123	0.4
Spring Branch	31,081	122	0.4
Edgewood	16,239	92	0.6
Grandfalls-Royalty	219	11	5
Sivells Bend	37	2	5.4
Lockney	848	47	5.5
Talpa Centennial	969	6	6.1
Doughtery	24	2	8.3
Booker	289	24	8.3
Dell City	298	25	8.4
Sharyland	1511	170	11.3
Valley View	294	401	3.6
McFaddin	15	3	20
Carta Valley	4	1	25

General Observations

The preceding analysis leads the authors to the following conclusions:

- The actual counts of undocumented students who enrolled in Texas public schools fell far short of many original projections with 1980 enrollments totaling an estimated 13,000 students.
- With the exception of major urban and a few high-enrollment large-city school systems, undocumented students represented insignificant numerical increases in most districts' ADAs
- For the most part, the percentage of undocumented pupils in proportion to a district's ADA was insignificant, falling below 5% in 97% of all districts reporting undocumented student counts.

Following the mandated enrollment of undocumented children, some school districts modified their position and withdrew their opposition to such enrollment. A few, however, maintained that

the enrollment of these undocumented children detracted from the quality of educational programs available to citizen children residing in their districts. Although this may be the case in some very limited instances, these positions were not supported by the data for the great majority of school systems in the state.

Perceptions of the Impact of Undocumented Enrollments

Dating back to Justice Powell's 1980 denial of a stay[29] of the injunction in the *In Re Alien Children's Education Litigation*,[30] Texas policymakers, educators, and special interest groups have debated the fiscal and programmatic implications which the mandated enrollment of undocumented students would have on Texas public schools. In an effort to shed light on the issue, Dr. Leonard Valverde, Director of the Office for Advanced Research in Hispanic Education, and Dr. Albert Cortez, Director of IDRA's Division of Research, Development and Evaluation, conducted research designed to acquire school district personnel's perspectives on these issues. Districts canvassed in the survey included those which had reported 50 or more undocumented students, and those in which undocumented enrollments accounted for 3% or more of a district's average daily attendance (ADA). The survey form collected information relating to the districts' undocumented student enrollments; perceptions about the effect of undocumented students on school operations such as personnel needs, school budgets, and local facilities; and school administrators' preferences regarding impact aid associated with undocumented student enrollment.

The major findings of the study follow:

1. Enrollment counts had decreased in 19 school systems, while 19 others reported increased enrollments. It was not possible to establish the net increase or decrease in the remaining districts due to a lack of updated estimates. Districts with decreasing counts were primarily rural districts, while major urban and south Texas systems reported relatively small to moderate increases in undocumented enrollment.
2. Forty-nine percent of respondents felt that these children had unique needs, with the majority noting these children's limited English proficiency as a need area.
3. Nine school systems observed that undocumented children had unique positive characteristics, with most perceiving those students as being more motivated than some native born children.
4. When asked to indicate the areas most affected by undocumented student enrollments, districts cited (in order of frequency): (a) need for bilingual personnel, (b) facilities, (c) other personnel, and (d) support services.
5. The data reflect that in the majority of districts responding, undocumented student populations were relatively stable, with the great majority remaining enrolled in the same schools. When transferring, most transferred to other schools in the district.
6. When asked if undocumented students helped offset declining enrollments, 32 of 49 districts indicated that they did not, while seven districts perceived that they did.
7. When queried as to what they considered an adequate level of impact aid to offset the effects of undocumented. enrollments, the majority proposed funding levels equal to or over $400 per pupil. The majority of respondents favored use of a formula which considered the percentages that undocumented students comprise of a district's ADA, with respondents divided between the percentage (*i.e.,* 10%, 5%, or 1%) which should constitute the eligibility cutoff.

8. When asked to indicate how such impact aid funds would be used, the majority of districts cited personnel, materials, and facilities; eight districts cited a preference for unrestricted funding.
9. The majority of school personnel responding (69%) felt that such aid should be incorporated into existing foundation school program funding.[31]

The Cluster Hypothesis

In studies of the characteristics of undocumented individuals, a specific characteristic surfaced so frequently that social scientists labeled it as a hypothesis and targeted it for further study. This characteristic is the tendency of undocumented individuals entering the United States to cluster among members of their own ethnic and language group. Thus, undocumented individuals coming from Mexico and Central America tend to locate among the Spanish-speaking Mexican American population, whether the host population is similarly undocumented or enjoys legal status.

The testing of this hypothesis was included in a research study conducted by the Washington D.C.-based firm of Reyes and Associates for the Immigration and Naturalization Service.[32] Although this study was beset by many problems and never achieved the scope originally envisioned, assumptions made about the duster hypothesis held true during the implementation of the study.

The tendency of newly arrived immigrant groups to locate among their cultural peers has positive impact upon the ability of the educational systems to respond to the characteristics of the new population. Seldom, if ever, do newly arrived undocumented individuals settle in communities where their characteristics appear conspicuous and introduce new problems in school participation. The vast majority of undocumented individuals are impoverished and looking for employment. They do not settle in the affluent sections of town where the recipient schools are strangers to compensatory education. Schools which they attend are very familiar with the problems of poverty, minority education and limited English proficiency. Schools that have attempted to address these problems in the past are able to cope with the characteristics of the new arrivals. Schools which have failed to address these problems with their legal minority populations fail to cope with the undocumented children. In either case, the impact of the new students is minimal. They fit in with the children of the previous residents to such an extent that in many cases the school is completely unaware of the legal status of the children.

In spite of the similarity of characteristics between the native-born Mexican American and the immigrant child, regardless of documentation status-there is a difference in their performance in school on the whole, immigrant children who attended school in their native country tend to out-perform native-born Mexican American children. It is easy to speculate on the reason for this phenomenon. The undocumented children have attended school in their native country without the negative expectations associated with Spanish-speaking populations in this country. Their extensive use of native language in school and out of school situations allows for an extensive cognitive development not commonly found in Texas schools with native language restrictions. In general, undocumented children enrolled in Texas schools, regardless of difficulties encountered in the changeover of language, will out-perform native born children in proportion to the amount of schooling which they received in their native country.

Financial Impact

The financial impact of undocumented children on Texas schools in the post-*Doe v. Plyler* era has been minimal. One quick and relatively easy way to measure the impact is to take the average per pupil expenditure in the state and multiply it by the number of undocumented children. Since estimates of per pupil expenditures indicate some $2,000 per pupil is being expended for elementary and secondary education in the state of Texas, this amount can be multiplied by the 13,000 such children estimated to be enrolled in Texas schools. This calculation produces a maximum of $26 million a year as the total cost for education services. Comparing this figure to an annual state expenditure for education of $3 billion, the cost of education for undocumented children is relatively small.

Since approximately 50% of school expenditures in Texas comes from state sources and 50% from local sources, the $26 million figure is probably equally divided between state and local expenditures. The state of Texas expends some $13 million annually, and the other $13 million is expended from local funds by the estimated school districts enrolling undocumented populations.

Unfortunately, enrollments are not evenly divided throughout the school districts enrolling undocumented children; therefore, the cost is not evenly divided among these districts. For the most part, both school districts in geographic proximity to the border and school districts with the largest Mexican American populations, tend to attract the highest numbers of undocumented children. This is also true for large urban centers, although the undocumented children may be a blessing in disguise for urban centers whose predominant problem has been declining enrollments.

Border cities and urban centers bear the brunt of the numbers of undocumented children. Certainly, many of the criticisms of the pre-1975 legislation and the support for the exclusion of undocumented children has come from these districts. However, it is dysfunctional to place the blame for financial hardships on the undocumented children. Texas' system of school finance, denounced as "chaotic and unjust,"[33] places a financial burden on low-tax wealth school districts. Districts like Brownsville, McAllen, Laredo, and El Paso would have financial hardships if no undocumented students were to be enrolled in any of these districts. The presence of undocumented children aggravates an already bad situation. The undocumented children may aggravate the problem, but they are not the cause of the larger disparities in local money existing under the state system of school finance.

In considering the cost of educating undocumented children, it is well to keep in mind certain realities not commonly considered by the state of Texas during the exclusionary years.

The immigration and naturalization service has consistently maintained that most undocumented children old enough to attend public schools in Texas have younger siblings born in this country. By virtue of the U.S. birth, these siblings are United States citizens. Members of the family then qualify for preferential citizenship status under the immigration and naturalization laws.

For this reason, it has been substantiated that most of the undocumented school-age children will remain in the United States for the rest of their lives and will eventually attain citizenship. Assuming that this testimony presented by the Immigration and Naturalization Service is accurate, one must wonder about the cost of educating undocumented children as compared to the subsequent cost of non-education. Problems of welfare, health, unemployment, underemployment, incarceration, and rehabilitation would cost the state of Texas many times more than the cost of education. It is generally agreed that including undocumented children in educational systems is much more cost-efficient than exclusion, if they remain in this country.[34]

Summary of Findings

In general, the impact of *Doe v. Plyler* and subsequent court decisions facilitating a free public education for undocumented children has been minimal. It is apparent that throughout the litigation, the Texas Education Agency consistently over-estimated the number of such children enrolled in Texas schools and the extent to which findings in behalf of the children would attract others. Rather than the 110,000 increase in enrollment predicted by the Texas Education Agency during litigation, the actual count was closer to 13,000, and even this number is questionable since school figures did not allow for single student enrollments in multiple districts. The actual enrollment of undocumented children was dispersed over a large number of districts, so that no single school district absorbed a large percentage of the population.

The impact upon curriculum and instructional programs was similarly minimal. The bulk of the undocumented children enrolled were in school districts with large numbers of Mexican American children displaying similar cultural, economic, and language characteristics. The extent to which school districts were able to meet the special needs of the immigrant group was largely dependent on the extent to which they have been able to meet the unique needs of the already existing minority populations.

The enrollment of undocumented children did not create a problem in school finance. The only exception to this was in low tax wealth school districts near the border. But it is generally conceded that a financial problem exists because of the inadequacies of the Texas system of school finance, rather than because of the presence of undocumented children.

The children of Texas deserve better. The entire state needs better. In the light of the increasing need for education in this technological society, a failure of the state to educate any segment of the population has severe implications for all.

Arguments concerning diluting the quality of education in Texas are moot. The education of atypical populations, specifically the minorities and the disadvantaged, needs vast improvement. The state of Texas needs educational leadership. It is high time that this leadership be acquired or developed. Foot-dragging, scare tactics based on exaggerations, red herrings and rationalizing will not bring about this improvement. Only through the efforts of concerned educators, Laypersons and decision makers at the local and federal levels, in finding functional solutions to the problems of educating children, will we see the arrival of equal educational opportunities for all children.

Notes

1. Tex. Educ. Code Ann. s. 21.031 (Vernon 1985 Supp.). The restrictive language was added by 1975 TEX. GEN. LAWS, ch.334, s. 4.

2. 558 S.W. 2d 121 (Tex. Civ. App. 1977), *application for writ or error refused*, *id.*

3. 458 F. Supp. 569 (E.D. Tex. 1978).

4. C.A. No. H-78-2132 (S.D. Tex. 1978).

5. C.A. No. MO-79-CA-49 (W.D. Tex. 1979).

6. C.A. No. 3-79-0440-D (N.D. Tex. 1979).

7. C.A. No. B-79618-CA (E.D. Tex. 1979).

8. See *In Re Alien Children's Education Litigation*, 501 F. Supp. 544,550 (S.D. Tex. 1980).

9. See *Boe v. Wright* ,648 F.2s 432,433 (5th Cir. 1981). The district court reversed itself on this point after Justice William F. Powell's decision sitting as Circuit Justice in *Texas v. Certain Named and Unnamed Non-Citizen Children*, 448 U.S. 1327 (1980) (vacating the Fifth Circuit's stay of Judge Seal's injunction in I*n Re Alien Children's Educ. Litigation*, 501 F. Supp. 544 (S.D. Tex. 1980). 648 F.2d. at 433,433 n.4.

10. 501 F. Supp. 544 (S.D. Tex. 1980).

11. *Id.*

12. *Id.* at 582.

13. *Id.* at 574.

14. *Id.* at 575.

15. *Id.* at 577.

16. *Id.* at 578.

17. *Id.* at 579.

18. *Id.*

19. *Id.* at 582.

20. *San Antonio Indep. School Dist. v. Rodríguez,* 411 U.5.1 (1973) (upholding the Texas school finance system).

21. 501 F. Supp. at 580-81.

22. *Id.* at 597.

23. 628 F.2d 448 (5th Cir. 1980).

24. See *Plyler v. Doe,* 457 U.S. 202,210 (1982).

25. *Texas v. Certain Named an Unnamed Undocumented Alien Children*, 452 U.S. 937 (1981).

26. *Plyler v. Doe*, 457 U.S. 202 (1982).

27. Criterion Study, *Estimates of the Undocumented Hispanic School Age Population* (1980), Defendant's Exhibit No.2-1, *In Re Alien Children's Educ. Litigation,* 501 F. Supp. 544 (S.D. Tex. 1980).

28. See, e.g., 501 F. Supp. at 575. For a critique of the statistical evidence in *In Re Alien Children's Educ. Litigation*, supra note 25, see generally, Flores, *The Impact of Undocumented Migration on the United States Labor Market*, 5 Hous. J. Int'J L. 287 (1983).

29. *Texas v. Certain Named and Unnamed Undocumented Alien Children*, 448 U.S. 1327 (1980). 30. 501 F. Supp. 544 (S.D. Tex. 1980).

31. Valverde and Cortez, *Children of Undocumented Residents in Texas Public Schools: A Follow-Up Survey*, 3 Memo. Hisp. 15 (1982).

32. See generally Flores, *supra* note 27.

33. *San Antonio Indep. School Dist. v. Rodríguez*,411 U.S. l, 59 (1973) (Stewart, J., concurring.) The majority in Rodriguez did not seriously contend that the Texas financing system was "fair" or that there were not inequities. Id. at 54. The state conceded that the system could withstand careful scrutiny. Id. at 16-17. The majority only held that the

system did not discriminate against an identifiable suspect or semi-suspect class, id. at 40, or that it burdened a fundamental right, id. at 37, and that the system was in pursuit of legitimate state goals of providing some educational resources for all children and encouraging local control and encouraging local control and participation in the educational system. Id. at 49. The dissenters concurred with Justice Stewart's assessment of the system. Id.at 70. (White, J., dissenting) Id. at 71 (Marshall, Jr., dissenting).

34. See generally *Plyler v. Doe*, 457 U.S. 202 (1982).

Bibliography

Boe v. Wright, C.A. No. 3-79-0440-D (N.D. Tex. 1979).

Criterion Analysis, Inc., *Estimates of the Undocumented Hispanic School Age Population*, Dallas, 1980.

Doe v. Lodestro, C.A. No. B-79618-CA (E.D. Tex. 1979).

Doe v. Plyler, 458 F. Supp. 569 (E.D. Tex. 1978).

Flores, Esteban, *The Impact of Undocumented Migration on the United States Labor Market*, 5 Hous. J. Int'l L. 287 (1983).

Garza v. Reagan, C.A. No. H-78-2132 (S.D. Tex. 1978).

Henández v. Houston Independent School District, 558 S.W. 2d 121 (Tex. Ov. App.1977).

In Re Multiple District Litigation, 501 F. Supp. 544, 550 (S.D. Tex. 1980).

North, David S. and Marion F. Houston, *The Characteristics and Role of Illegal Aliens in the United States lAbor Market: An Exploratory Study*, Unpublished monograph, Washington, D.C., 1981.

Plyler v. Doe, 457 U.S. 202, 210 (1982).

Roe v. Holm, C.A. No. M0-79-CA-49 (W.D. Tex. 1979).

San Antonio Independent School District v. Rodríguez, 411 U.S.1 (1973).

Silva v. Levi, 76 C 4268, (N.D. ID., 1978).

Texas v. Certain Named and Unnamed Undocumented Alien Children, 448 U.S. 1327 (1980).

United States v. Texas, 342 F. Supp. 24 (E.D. Tex. 1971).

Valverde, Leonard & Albert Cortez, *Children of Undocumented Residents in Texas Public Schools*, 3 MEMO. I-IISP.15 (1982)

Weintraub, S., & G. Cárdenas, *The Use of Public Services by Undocumented Aliens in Texas*, Lyndon B. Johnson School of Public Affairs, The University of Texas, Austin, 1984.