

# BECOMING PREEMINENT IN EDUCATION: AMERICA'S GREATEST CHALLENGE

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## I. INTRODUCTION

As we embark on the last decade of the Twentieth Century, a broad national consensus has formed around the critical importance of ensuring a well-educated citizenry. From the President of the United States to local elected officials, from the boardrooms of Fortune 500 companies to the living rooms of American families, quality and excellence in education have been discussed as a top priority on the nation's agenda. Despite this widespread interest, however, the nation's commitment to action is weak, and the will of the people is disregarded in policymaking circles. Our educational foundations are rapidly being eroded beyond repair.

The most influential warning that we are drifting into disaster came from the landmark 1983 report, *A Nation At Risk: The Imperative for Educational Reform*.<sup>1</sup> Commissioned during the Reagan administration and the tenure of Terrell H. Bell as Secretary of Education, *A Nation At Risk* contained a warning that "for the first time in the history of our country, the educational skills of one generation will not surpass, will not equal, will not even approach, those of their parents."<sup>2</sup> The report continued, "[o]ur once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world."<sup>3</sup>

International comparisons of student achievement confirm that the United States is falling behind in virtually all subject areas, particularly in the immensely important fields of mathematics and the sciences—areas that are critical to addressing the challenges of the ever more technological world. The achievement of American pupils in science and mathematics,

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1. NAT'L COMM'N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* (1983).

2. *Id.* at 11.

3. *Id.* at 5.

especially among high school seniors, is substantially below that of pupils from virtually every other developed nation.<sup>4</sup> Employers have documented a gross inadequacy in the educational and skills levels of their entry level employees, and warn of an increasing shortage of an adequate pool of workers capable of handling higher-order, complex tasks.<sup>5</sup> The business community has, in fact, become extremely vocal in calling for increased investment in the education of America's children.<sup>6</sup> The Committee for Economic Development, a research group comprised of over 200 business executives and educators, stated that

[t]his nation cannot continue to compete and prosper in the global arena when more than one-fifth of our children live in poverty and a third grow up in ignorance. And if the nation cannot compete, it cannot lead. If we continue to squander the talents of millions of our children, America will become a nation of limited human potential. It would be tragic if we allow this to happen. America must become a land of opportunity—for every child.<sup>7</sup>

Interest in reform has been sparked by the low performance level of American elementary and secondary education. At the same time, national economic, demographic, and political trends have caused greater problems in the schools. Most notably, the disparity between achievement of children from affluent families and their less advantaged peers has increased, while the number of so-called at-risk children has risen.

The recession at the beginning of the 1980s left more poor and near-poor people in the United States.<sup>8</sup> Because many of these people lacked adequate education, skills, and training,

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4. See K. REDD & W. RIDDLE, *COMPARATIVE EDUCATION: STATISTICS ON EDUCATION IN THE UNITED STATES AND SELECTED FOREIGN NATIONS* 64-65 (Congressional Research Service Report No. 88-764 EPW, 1988).

5. The Business Council for Effective Literacy reports that about 14 million workers read at a fourth-grade level and 23 million, or 20 percent of the nation's workers, read at no better than an eighth-grade level. See Daniels, *Illiteracy Seen as Threat to U.S. Economic Edge*, N.Y. Times, Sept. 7, 1988, at B8, col. 3.

6. See, e.g., COMM. FOR ECON. DEV., *CHILDREN IN NEED: INVESTMENT STRATEGIES FOR THE EDUCATIONALLY DISADVANTAGED* 17 (1987). Reports in a similar vein have been issued by the Business Roundtable, the Business-Higher Education Forum, and other groups.

7. COMM. FOR ECON. DEV., *supra* note 6, at 1.

8. "[F]rom 1978 to 1983, the poverty rate increased by one-third, from 11.4 percent to 15.2 percent, and the number of [persons below the poverty level] increased from 24.5 million to 35.3 million." See U.S. BUREAU OF THE CENSUS, *CURRENT POPULATION REPORTS, SERIES P-60, NO. 168, MONEY INCOME AND POVERTY STATUS IN THE UNITED STATES: 1989*, at 15 (1990) (advance data from the March 1990 *Current Population Sur-*

and because few or no programs existed to ease their entry or re-entry into an economy that had shifted toward service industries, many workers and their families slipped from the comfortable middle class to the expanding ranks of the working poor. They struggled to meet monthly obligations, delayed or abandoned college plans, and sharply cut back on all family endeavors. Families came face-to-face with limited options, reduced expectations, and restricted opportunities. The burgeoning of the so-called underclass—the underemployed who lack the skills and proper education to obtain better paying jobs, the long-term unemployed, the documented and undocumented immigrants who have come to the United States from nations with weak educational and economic systems, the adolescent parents, the people who have become caught in the cycle of drugs and despair that poverty can cause—has served to create a monumental challenge for society in general, but particularly for our schools.

Young children are now the fastest growing group among the poor. Presently, one in five children is raised in a poverty-level household.<sup>9</sup> Additionally, for certain groups, such as African-Americans, almost one of every two children grows up in an environment characterized by limited opportunities, substandard housing, inadequate schools, and improper nutrition and health care.<sup>10</sup> Illiteracy in America is again on the rise. One study estimates that twenty-three to twenty-seven million adults cannot read and write well enough to meet basic demands of everyday life.<sup>11</sup> The 1980s also again saw an increase in the number of high school dropouts. Thirteen percent of all eighteen-to-twenty-one year-olds lacked a high school diploma in 1987. Among all poor youths, the proportion was 28.5 percent.<sup>12</sup>

Our nation's future is inextricably tied to finding the best way to increase the achievement of all students and to providing a quality education for those children who suffer enormous

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vey). While the number of poor persons and the poverty rate have declined since that time, both remained above their 1978 levels in 1989. *See id.*

9. *See CHILDREN'S DEFENSE FUND, A VISION FOR AMERICA'S FUTURE—AN AGENDA FOR THE 1990S: A CHILDREN'S DEFENSE BUDGET* 16 (1989).

10. *See U.S. BUREAU OF THE CENSUS, supra* note 8, at 9.

11. *See Daniels, supra* note 5. The United States Department of Education estimates that 17 to 21 million persons are functionally illiterate. *See U.S. DEP'T OF EDUC., ADULT LITERACY ESTIMATES FOR STATES* 6 (1986).

12. *See CHILDREN'S DEFENSE FUND, supra* note 9, at 71.

economic and social disadvantage. It is the mark of a moral and humane society to assist all human development to its fullest potential; it is a virtual economic necessity to properly educate and train all of society's members.<sup>13</sup> Our nation's refusal to assist these citizens adequately in gaining the education and skills necessary to enter the mainstream of American society tears away at the very foundations of our democratic way of life, threatening our living standards at home, in terms of economic viability, and our national security abroad.

If we were "a nation at risk" in 1983, then the trends of the remainder of the decade, hardly indicating tangible improvement, bring us to the declaration of a genuine crisis of enormous proportions for the 1990s. While increased national attention to educational achievement has led to a variety of school reforms in states, localities, and individual school districts across the country, their fragmented and limited scope have failed to make a dent in the overall condition of education in America. The missing ingredient has been a comprehensive and coordinated approach. To achieve our objectives within a certain timeframe, we need clearly articulated goals and a pledge of adequate resources to implement specific policies and programs. Nothing short of a major national commitment of the three "R's"—resources, reforms, and results—will have the required impact needed to ensure a quality education for all children in the American school system. Herein lies not only America's ultimate challenge, but also a reservoir of opportunity for our nation's future.

This Article provides an overview of the American public educational system and the economic, political, and social developments that have impacted it. By looking at the current status of education, the need for a far more comprehensive approach, encompassing all levels of government and the private sector, coordinated and stimulated by the federal government, becomes evident.<sup>14</sup>

Part II presents a review of the historical development of public education in the United States, showing over 200 years

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13. See W. JOHNSTON, *WORKFORCE 2000: WORK AND WORKERS FOR THE TWENTY-FIRST CENTURY* 116 (1987). This report projects that the workforce will grow more slowly and will have fewer young people; more minorities, women, and immigrants; and larger numbers of disadvantaged persons. All these groups suffer disproportionately from lack of quality educational experiences and poor skills. See *id.* at 75-76.

14. Federal coordination should not be confused with federal control.

of governmental commitment to expanding educational opportunity and increasing educational excellence. Part III examines the convergence of a variety of economic, demographic, social, and political trends during the 1980s that resulted in retrenchment in the drive for universal educational quality. The analysis demonstrates how an increase in the number of economically disadvantaged children in the schools, inadequate resources, and a shift in emphasis to rewarding the few as opposed to encouraging achievement for all resulted in a benign neglect of education weaknesses and inequities. Part IV reviews the emergence of public awareness, the resultant political attention to the education crisis today, and the building of a consensus for additional investment in education. Finally, Part V proposes federal legislative remedies and associated state and local actions for achieving the historically accepted goals of equity and excellence for the greatest number of people possible. A comprehensive agenda for public education is proposed to make America first in education among its international competitors.

## II. EQUITY AND EXCELLENCE IN PUBLIC EDUCATION IN THE UNITED STATES—AN HISTORICAL PERSPECTIVE

Today, the federal government has a relatively limited role in the public and private systems of education serving almost fifty-eight million students in about 16,000 local school districts and 3,000 institutions of higher education.<sup>15</sup> Federal financial support represents approximately nine percent of the more than \$300 billion spent annually on all levels of education (six percent for elementary and secondary education, thirteen percent for higher education).<sup>16</sup> Despite the limited role of the federal government and the lack of educational guarantees in the Constitution, the influence of the federal government on the necessity and quality of public schools is historically well-documented.<sup>17</sup>

The federal role in education is not a recent phenomenon. Even before the Constitution was ratified, the Land Ordinance Act of 1785 and Northwest Ordinance of 1787, both passed by

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15. See NAT'L CENTER FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., DIGEST OF EDUCATION STATISTICS 9, 90, 166 (1989).

16. See *id.* at 32.

17. See, e.g., Tyack & James, *Education for a Republic: Federal Influence on Public Schooling in the Nation's First Century*, THIS CONSTITUTION, Winter 1985, at 17; Unks, *The Illusion of Intrusion: A Chronicle of Federal Aid to Public Education*, 49 EDUC. FORUM 134 (1985).

the Congress established under the Articles of Confederation, linked the drawing of property lines to inclusion of schools. That Congress also established a land allocation to promote schooling for the territory northwest of the Ohio River.<sup>18</sup> The Northwest Ordinance, in particular, became the model for rules relating to schools, governing the organization of almost all of the other territories. Beginning with the admission of Ohio into statehood in 1803, Congress required that new states provide for education in their constitutions as a condition for admission to statehood.<sup>19</sup>

The overall pattern of governmental interest in education has been clear throughout our history, as evidenced by the desire for achievement of the common welfare and the view that an educated citizenry is essential to the success of democracy. James Madison, in a letter dated August 4, 1822, wrote: "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both."<sup>20</sup> Thus, although the United States Constitution did not mention education *per se*, the States established education as a major governmental function. As Thomas Jefferson wrote: "Preach, my dear Sir, a crusade against ignorance: establish [and] improve the law for educating the common people."<sup>21</sup>

From the beginning of our country, however, education has not been an equal-opportunity endeavor. As had been the case in the European countries of the founding fathers, education was primarily available as an opportunity only for the children of the wealthy landholders. Jefferson's "common people," along with women and slaves, were not recipients of quality educations.

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18. See Tyack & James, *supra* note 17, at 17. The Land Ordinance Act of 1785 provided that "[t]here shall be reserved the lot No. 16, of every township, for the maintenance of public schools, within the said township." Two years later, the Northwest Ordinance of 1787 stated that "religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." See *id.*

19. See Unks, *supra* note 17, at 136.

20. P. PADOVER, *THE COMPLETE MADISON: HIS BASIC WRITINGS* 346 (1953) (quoting James Madison). It is interesting to note, however, that no southern state, including that of Messrs. Madison and Jefferson (Virginia), had a comprehensive public education system until after the Civil War. See C. KAESTLE, *PILLARS OF THE REPUBLIC: COMMON SCHOOLS IN AMERICAN SOCIETY, 1780-1860*, at 182-217 (1983).

21. Tyack & James, *supra* note 17, at 22 (quoting Thomas Jefferson).

The federal Morrill Act of 1862<sup>22</sup> began to change that, however, because it set a major precedent by creating land grants for agricultural colleges and the study of military tactics and required states to document the establishment of the colleges and to make annual reports to the nation's capitol. While not leading to universal public elementary and secondary education in all of the states, the Morrill Act was based on population, thus demonstrating that the federal government had begun to respond specifically to national educational needs on a somewhat more egalitarian basis.<sup>23</sup> Through other actions, the federal government continued to wade into the waters of ensuring equity in its promotion of educational opportunity. At the end of the Civil War, the newly formed Freedmen's Bureau, which had been set up to assist recently freed slaves assimilate into society, helped to establish schools and other educational and vocational opportunities for former slaves.<sup>24</sup>

Until the early part of the Twentieth Century, the federal government was involved mainly in promoting higher education. This focus changed with the passage of the Smith-Hughes Vocational Education Act of 1917,<sup>25</sup> which was closely tied to the perceived defense needs of World War I and which authorized money for vocational education and home economics training in high schools.<sup>26</sup> The federal interest in educating all children, regardless of class, was gaining a firmer foundation.<sup>27</sup>

During World War II, the Lanham Public War Housing Act<sup>28</sup> financed the construction of schools in federally-affected areas and helped women working in the defense industries by funding nursery schools and child care centers. The Servicemen's

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22. Morrill Act of 1862, ch. 130, 12 Stat. 503 (codified as amended at 7 U.S.C. §§ 301-308 (1988)).

23. See Unks, *supra* note 17, at 138-40.

24. See 2 S. MORRISON & H. COMMAGER, *THE GROWTH OF THE AMERICAN REPUBLIC* 81-82 (1969). Congress created the Freedmen's Bureau of the War Department on March 3, 1865, Act of Mar. 3, 1865, ch. 90, 13 Stat. 507, and for four years, as part of its general relief work, it helped to establish over 4,000 schools for black children. See Act of June 25, 1864, ch. 156, §§ 17-18, 13 Stat. 187, 191 (providing for education of black children).

25. Smith-Hughes Vocational Education Act of 1917, ch. 114, 39 Stat. 929 (codified at 20 U.S.C. § 11 (1988)).

26. See Unks, *supra* note 17, at 141.

27. See, e.g., S. TIEDT, *THE ROLE OF THE FEDERAL GOVERNMENT IN EDUCATION* 23 (1966).

28. Act approved Apr. 29, 1941, ch. 80, 55 Stat. 147.

Readjustment Act of 1944<sup>29</sup>—more commonly known as the G.I. Bill of Rights—is arguably the most comprehensive federal legislation from this time period. Providing \$14 billion in education, job training, and other loan benefits for 7.8 million veterans, this measure opened the door to the American dream of opportunity for advancement to an entire generation of young Americans.<sup>30</sup> According to one analysis prepared recently by the Joint Economic Committee of the Congress, for every dollar the government invested in education under the G.I. bill, the nation received between \$5.00 and \$12.50 of benefits.<sup>31</sup>

In the eighty-two years between enactment of the Morrill Act and enactment of the G.I. Bill of Rights, the federal government's promotion of equity moved from ensuring that each state offered education to its citizens to addressing the educational needs of particular groups within our society, such as the young veterans whom our nation wanted to compensate for national service and lost time. The equity assurances became more interwoven with the drive for meeting national priority needs as the century progressed. The National Science Foundation was created in 1950 to provide support to struggling scientists and to increase support for research projects deemed to be of national importance.<sup>32</sup> The National Defense Education Act of 1958 (NDEA)<sup>33</sup> provided financial support for an increased emphasis on science, mathematics, and foreign languages in order to address the perceived weakness of the United States in science, industry, government, and military capability. There were also several failed attempts to authorize general education assistance programs during the Truman and Eisenhower administrations.<sup>34</sup> It was not until the 1960s, however, that the equity movement was to move forcefully ahead.

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29. Servicemen's Readjustment Act of 1944 (G.I. Bill of Rights), ch. 268, 58 Stat. 284 (codified as amended in scattered sections of United States Code).

30. See STAFF OF JOINT ECONOMIC COMM., SUBCOMM. ON EDUCATION AND HEALTH, 100TH CONG., 2D SESS., *A COST-BENEFIT ANALYSIS OF GOVERNMENT INVESTMENT IN POST-SECONDARY EDUCATION UNDER THE WORLD WAR II GI BILL I* (1988), reprinted in *Future of Head Start: Hearing Before the Subcomm. on Education and Health of the Joint Economic Comm.*, 101st Cong., 2d Sess. 93, 94 (1990).

31. See *id.*

32. See National Science Foundation Act of 1950, ch. 171, 64 Stat. 149 (codified as amended at 42 U.S.C. §§ 1861-1875 (1988)).

33. Pub. L. No. 85-864, 72 Stat. 1580 (codified as amended at 20 U.S.C. §§ 401-602 (1988)).

34. See GOVERNORS' CONFERENCE, *IS EDUCATION THE BUSINESS OF THE FEDERAL GOVERNMENT?* (1964).

The Civil Rights Act of 1964<sup>35</sup> codified the mandate for the desegregation of public schools determined to be a constitutional necessity by the Supreme Court ten years earlier in *Brown v. Board of Education of Topeka*.<sup>36</sup> The culmination of the civil rights movement of the 1950s, and the commitment of Lyndon B. Johnson to enacting equity-based legislation, gave enormous and unstoppable impetus to efforts to broaden the concept of equity in virtually all aspects of American society. As a result, education programs received a dramatic increase in federal resources.<sup>37</sup>

With the enactment of the Elementary and Secondary Education Act of 1965 (ESEA),<sup>38</sup> the federal government firmly cemented its already established role in striving to ensure a quality education for all children. Targeted at increasing the basic skills achievement of children from low-income families, the ESEA and its subsequent amendments have succeeded in raising the reading and mathematics achievement of millions of elementary and secondary school children.<sup>39</sup> The Higher Education Act of 1965,<sup>40</sup> which established a broad array of financial assistance and other supportive programs for college students and higher education institutions; the Education Amendments of 1972,<sup>41</sup> which greatly expanded the student assistance programs of the Higher Education Act and included prohibitions on discrimination against women in education programs; and the Education for All Handicapped Children

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35. Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 28 and 42 U.S.C.). Title VI of the Act prohibits the use of any federal funds for the institution or perpetuation of segregation and discrimination. *See* 42 U.S.C. § 2000d (1988).

36. 347 U.S. 483 (1954).

37. The Elementary and Secondary Education Act of 1965 (ESEA), Pub. L. No. 89-10, 79 Stat. 27 (codified as amended at 20 U.S.C. §§ 2701-3386 (1988)), was funded at almost \$2 billion by 1970. *See ESEA 25th Anniversary Hearing: Hearing Before the Subcomm. on Elementary, Secondary, and Vocational Education, House Education and Labor Comm.*, 101st Cong., 2d Sess. 25 (1990) (statement of Jule M. Sugarman, Executive Director, Special Olympics, International). By 1990, funding for Chapter One of the ESEA alone exceeded \$5 billion. *See* Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1990, Pub. L. No. 101-166, 1989 U.S. CODE CONG. & ADMIN. NEWS (103 Stat.) 1159, 1179.

38. Pub. L. No. 89-10, 79 Stat. 27 (codified as amended at 20 U.S.C. §§ 2701-3386 (1988)).

39. *See* OFFICE OF EDUC. RESEARCH AND IMPROVEMENT, U.S. DEP'T OF EDUC., NATIONAL ASSESSMENTS OF CHAPTER ONE: THE EFFECTIVENESS OF CHAPTER ONE SERVICES 17-44 (July 1986).

40. Pub. L. No. 89-329, 79 Stat. 1219 (current version at 20 U.S.C. §§ 1001-1146a (1988)).

41. Pub. L. No. 92-318, 86 Stat. 235.

Act of 1975,<sup>42</sup> which committed the federal government to ensuring equal educational access to disabled children, all followed the path of federal action geared to expanding educational opportunity. While critics claim such federal action was misguided,<sup>43</sup> federal attempts during the 1960s to eradicate poverty, racism, and inequality were some of the finest national initiatives.

### III. RETRENCHMENT

While great strides have been made through the broadening of educational opportunity in the last twenty-five years, the convergence of negative economic trends, demographic changes, and a more restrictive political environment have resulted in the retrenchment of earlier gains in educational achievement.

#### A. Poverty

The single most significant factor in the backslide of education has been the ever-widening income gap between the "haves and have-nots" over the last decade. Deficient and imbalanced economic performance in the economy, from which government revenues are derived, has resulted in insufficient public outlays and inadequate private economic activity to meet the essential domestic needs of our people and the economy.<sup>44</sup> During the 1980s, family income grew more slowly; while the upper one percent income group experienced significant income growth, the bottom forty percent experienced a decline in income.<sup>45</sup> Middle-class family income grew, but mainly because of the earnings of a second wage-earner, usually a wife. For those families, two or more people had to be actively engaged in the labor force to maintain the standard of living to which they had been accustomed.<sup>46</sup> The United States Bureau

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42. Pub. L. No. 94-142, 89 Stat. 775 (codified as amended at 20 U.S.C. §§ 1400-1485 (1988)).

43. See, e.g., J. COLEMAN, EQUALITY OF EDUCATIONAL OPPORTUNITY 297 (1966); C. JENCKS, INEQUALITY: A REASSESSMENT OF THE EFFECT OF FAMILY AND SCHOOLING IN AMERICA 3 (1972). These critics argue that school resources have less measured effect on student achievement than do family background characteristics.

44. See *Hearings on the 1987 Economic Report of the President Before the Joint Economic Committee*, 100th Cong., 2d Sess. 485 (1988) (statement of Leon H. Keyserling, President, Conference on Economic Progress).

45. See L. MISHEL & D. FRANKEL, THE STATE OF WORKING AMERICA 24 (1991).

46. See *id.* at 40-41.

of the Census reports that 31.5 million Americans were living in poverty in 1989.<sup>47</sup> The income gap between rich and poor was the widest since the Census Bureau began collecting such data in 1947.<sup>48</sup> In the last decades of the Twentieth Century, being poor has become an intractable way of life for many people. It has become increasingly more difficult for individuals and families to pull themselves up by the bootstraps as so many of their predecessors had done.<sup>49</sup>

Children have been the greatest losers in this tragic scenario. Due primarily to the recession at the early part of the decade, the poverty rate for children rose from 16.0 percent in 1979 to 21.8 percent in 1983.<sup>50</sup> Importantly, family poverty has been found to be correlated with failure in school.<sup>51</sup>

### B. *Demographics*

At the same time that poverty was increasing, the demographics of the student population in the United States shifted. Increases in the number of children in poverty and in the number of children of immigrants from non-English speaking countries, scores of whom were also educationally and economically disadvantaged, have combined to place enormous strains on the school systems attended by many of those children. Conservative estimates show that disadvantaged students constitute thirty percent of the school population.<sup>52</sup>

Additionally, the number of educationally and economically disadvantaged school children receiving Chapter One compensatory educational assistance<sup>53</sup> fell from 5.2 million in 1980 to

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47. See U.S. BUREAU OF THE CENSUS, *supra* note 8, at 2. The preliminary 1990 poverty level for a family of four was \$13,360 annually; for a family of three, it was \$10,419 annually. Telephone interview with Eleanor Baugher, Statistician, Housing and Household Economics Statistics Division, U.S. Bureau of the Census.

48. See CHILDREN'S DEFENSE FUND, *supra* note 9, at 17.

49. See Comer, *Poverty, Family and the Black Experience*, in *GIVING CHILDREN A CHANCE: THE CASE FOR MORE EFFECTIVE NATIONAL POLICIES* 109 (G. Miller ed. 1989).

50. See CHILDREN'S DEFENSE BUDGET, *supra* note 9, at 16.

51. See L. SCHORR & D. SCHORR, *WITHIN OUR REACH, BREAKING THE CYCLE OF DISADVANTAGE* 7 (1988). See also Webb, *The Public Economic Benefits of a High School Education*, in *EDUCATIONAL NEEDS IN THE PUBLIC ECONOMY* 79 (K. Alexander & K.F. Jordan eds. 1976).

52. See H. LEVIN, *EDUCATIONAL REFORM FOR DISADVANTAGED STUDENTS: AN EMERGING CRISIS* 9 (1988).

53. Chapter One of the Educational Consolidation and Improvement Act of 1981, which amended the original Title I of the Elementary and Secondary Education Act, provides funds, through the States, to local education agencies, for reading and mathematics basic skills supplemental assistance to economically and educationally at-risk students. See 20 U.S.C. § 2701 (1988).

4.9 million in 1987.<sup>54</sup> In the 1989-90 school year, only approximately one-half of the children eligible for Chapter One reading and mathematics instruction received the compensatory assistance to which they were entitled.<sup>55</sup> School systems have therefore attempted to address the special educational needs of increased numbers of disadvantaged and non-English speaking children, or both, through existing instructional programs not designed for those purposes. Many school systems across the country, already struggling with tight budgets, worsening teacher-to-student-ratios in the classroom, and crumbling facilities, were unable to obtain the financial or human resources necessary to meet the special compensatory and support needs of the larger numbers of economically disadvantaged children.<sup>56</sup>

### C. *Social and Political Trends*

As the demographic and economic hardship factors throughout the decade took hold, equally revolutionary social and political changes occurred. Beginning in 1981, the Reagan Revolution brought an end to an activist federal government. Swept into office on anti-federal government sentiment,<sup>57</sup> and on the tail of recession with double-digit inflation rates, the Reagan administration reduced the central debates of the day to the quest for less for and from the federal government: less government involvement, less government regulation, less money for federal programs, and less implementation and enforcement of federal laws, particularly those safeguarding civil rights. In word and deed, a deliberate and successful effort was undertaken to redistribute income and wealth.<sup>58</sup> The intent

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54. See U.S. DEP'T OF EDUC., A SUMMARY OF STATE CHAPTER 1 PARTICIPATION AND ACHIEVEMENT INFORMATION FOR 1987-88, at 9 (1990).

55. See COMM. FOR EDUC. FUNDING, EDUCATION BUDGET IMPACT ALERT FOR FISCAL YEAR 1991—A COMPILATION OF FEDERAL EDUCATION PROGRAMS 3 (A. Sumberg ed. 1990).

56. Such support needs to include more one-on-one instruction geared to the individual student's abilities, more substantial and wide-ranging parental support and involvement, greater bilingual education assistance, more comprehensive social, health, and nutritional services, and increased development of educational programs appropriate for at-risk children.

57. This sentiment actually began with the election of Reagan's predecessor, Jimmy Carter.

58. See K. PHILLIPS, POLITICS OF RICH AND POOR: WEALTH AND THE AMERICAN ELECTORATE IN THE REAGAN ADMINISTRATION xvii, xxiii (1990) ("The 1980s were the triumph of upper America—an ostentatious celebration of wealth, the political ascendancy of the rich, and a glorification of capitalism, free markets, and finance. . . .

could not have been more clearly stated: Make the wealthy richer in order to help the less fortunate through economic growth initiated by the spending of the wealthy.

Between 1962 and 1980, spending for federal domestic programs as a percentage of gross national product (GNP) rose from less than eight percent to about fifteen percent.<sup>59</sup> From 1980 to 1989, domestic program expenditures fell to 14.3 percent, with domestic discretionary spending, which includes education, falling from 5.9 percent to 3.7 percent of GNP.<sup>60</sup> In the years 1979 and 1980, 11.4 percent of all education spending, and 9.1 percent of spending for elementary and secondary schools, was federal. By mid-decade, the federal share was 8.7 percent of all spending, and 6.1 percent of spending for elementary and secondary schools.<sup>61</sup> Funding for Chapter One, which like Title I of the original Elementary and Secondary Education Act of 1965 sought to help poor children at risk of falling behind in school, fell by an estimated eleven percent from fiscal year 1980 through fiscal year 1990.<sup>62</sup> These actions, taken with the acquiescence of a politically weakened Congress, were without subterfuge, and unfortunately, without calculation of the enormous costs that inadequate funding would bring about in future years. For instance, Terrell Bell, who served as Secretary of Education from 1981 to 1984, said that

the President intended to push for [the Department of Education's] abolition. . . . [The President] was also going to insist on . . . deep budget slashes. There was simply no commitment to a federal leadership role to assist states and their local school districts in carrying out the recommendations of *A Nation at Risk*.<sup>63</sup>

At the same time that poverty was increasing and the clientele of the nation's public school system was becoming more economically disadvantaged, more diverse, and more needful of special services, cuts in educational resources targeted to en-

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Not only did the distribution of wealth quietly intensify, but the sums involved took a megaleap." See also Lekachman, *The Economy*, in WHAT REAGAN IS DOING TO US 197 (A. Gartner, C. Greer & F. Riessman eds. 1982).

59. See A. RIVLIN, *ECONOMIC CHOICES* 1984, at 47 (1984).

60. See CONGRESSIONAL BUDGET OFFICE, *THE ECONOMIC AND BUDGET OUTLOOK: FISCAL YEARS 1991-1995*, at 127 (1990).

61. See U.S. DEP'T OF EDUC., *DIGEST OF EDUCATION STATISTICS* 32 (1986) (reporting statistics for the 1985-86 school year).

62. See CONGRESSIONAL RESEARCH SERVICE, *U.S. DEPARTMENT OF EDUCATION: MAJOR PROGRAM TRENDS, FISCAL YEARS 1980-1990*, at 11 (Report No. 89-144 EPW, 1989).

63. T.H. BELL, *THE THIRTEENTH MAN* 160 (1988).

sure equity and excellence for those very children were proposed at the federal level.<sup>64</sup> Even though there were more children in need of compensatory education, vocational education, health, social services, and job training, the funds for those programs were nonetheless drying up. As a result, educational weaknesses were not addressed. As the at-risk children became at-risk adolescents and teenagers, the problems of the schools were compounded. Not only were there more children coming into the schools ill-prepared and developmentally unready for the rigors of learning, these children—in light of their early achievement difficulties—were unable to equal their peers' educational results. Resources that previously had been available to assist the basic skills attainment of those children were no longer available; as a result, millions of potential scientists, doctors, lawyers, teachers, skilled technicians, and engineers have been lost because of our unwillingness to address our economic, social, and moral problems.

To make matters even more complex, during this same period of restrictive funding of equity programs, efforts to bolster the talented few and to tighten school standards, evidenced in the school "reform" movement,<sup>65</sup> took funding and programmatic resources away from programs addressing the needs of so-called average and disadvantaged students. For example, the 1980s saw great experimentation with so-called "open enrollment" schemes, such as magnet schools. Intended to foster desegregation in the schools, de facto segregated because of housing patterns, a few selected schools located in predominantly minority communities received massive influxes of resources.<sup>66</sup> Concentrating on these few schools, the best teachers in the system were brought in, the latest technological educational tools were utilized, and specialized curriculums were promoted (for example, math and sciences, foreign lan-

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64. For example, for fiscal year 1983, the Reagan Administration proposed an overall budget cut of 33 percent for the Department of Education and, for fiscal year 1988, a 29-percent cut. Congress, however, appropriated 55 percent more than requested for 1983 and 45 percent more in 1988. See CONGRESSIONAL RESEARCH SERVICE, *supra* note 62, at 3.

65. The school reform movement has promoted excellence in general education without necessarily showing concern for equity. This approach assumes that lumping the problems of any special class together with the general education of all eventually would yield benefits.

66. See, e.g., R. BLANK, R. DENTLER, D. BALTZELL & K. CHABOTAR, SURVEY OF MAGNET SCHOOLS: ANALYZING A MODEL FOR QUALITY INTEGRATED EDUCATION (1983).

guages, the arts, et cetera).<sup>67</sup>

Parents from within an entire school district can attempt to enroll their children in magnet schools, even if they are located outside the schools' normal enrollment areas. While these schools are unquestionably successful in improving the achievement of the children who are able to take advantage of these programs,<sup>68</sup> and somewhat successful in achieving the desired racial and ethnic integration,<sup>69</sup> questions of equity have begun to surface. Not all children are accepted in such schools because of lack of space or the effort to maintain racial balance. Indeed, parents sometimes camp out on school grounds overnight to try to get their children a slot in successful magnet schools. Minority children from low-income families living in the communities where the magnets are located may be unable to register in their own local schools, and if they are lucky enough to get in, some may remain segregated if they are unable to participate in the accelerated programs.<sup>70</sup>

The question of equity arises in the popular movement known as "parental choice" as well. Like magnet schools, choice programs are based on offering parents an opportunity to choose among the various public schools in the school district.<sup>71</sup> Proponents of this "market approach" to education believe that competition among schools for students will result in schools offering a better product. "Bad" schools would lose their clientele and close, with only the "good" schools surviving.<sup>72</sup>

Officials of the Bush administration have not only expressed support for the concept of parental choice, but have allocated scarce federal resources to its promotion. The administration has also supported efforts to codify choice as a federal educational option.<sup>73</sup> Many criticisms of the choice policy exist, how-

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67. See D. MOORE & S. DAVENPORT, *THE NEW IMPROVED SORTING MACHINE 6-7* (presentation to Education Writers Association, April 15, 1988) (available in office of *Harvard Journal of Law & Public Policy*).

68. See R. BLANK, R. DENTLER, D. BALTZELL & K. CHABOTAR, *supra* note 66, at 27.

69. See *id.* at 32.

70. Such problems may occur in "school within a school" magnets. See, e.g., Norris, *P.G. Not Alone with Racial Trends Hurting Magnet Strategy*, *Wash. Post*, Jan. 25, 1990, at D1, col. 2.

71. In at least one city, Milwaukee, Wisconsin, private schools are available as a choice as well. In addition, in some areas, choice allows parents to choose public schools in other districts.

72. See J. CHUBB & T. MOE, *POLITICS, MARKETS AND AMERICA'S SCHOOLS* 190 (1990).

73. The Department of Education sponsored several regional meetings promoting

ever. Choice has had little significant evaluation, is based on a selection rather than on an instructional process, and can result in a two-tiered local educational system. Under choice programs, students, as well as money and other education resources, may be drained from less viable schools and districts to be channelled to the more sought-after schools.<sup>74</sup>

Parental choice, without federal authorization, is already a legitimate local option. The determination of school attendance zones has traditionally been viewed as a local matter<sup>75</sup> and therefore an inappropriate activity for federal involvement. If local school districts decide to experiment with choice, they should use non-federal resources. All such programs should provide adequate attention to nondiscriminatory admission policies, parent involvement and information, opportunities for educators to create unique instructional programs, and support for transportation costs for all students.

Those who are proponents of parental choice as the national answer to our educational problems would have us see choice as a cheap, quick-fix program with public relations appeal.<sup>76</sup> In reality, however, choice per se is an idea that does not address improvement of instruction and will not lead to equity and excellence for all public school students. More importantly, choice should not be used as a diversionary tactic to shift the focus away from real school improvement and caring for the needs of the vast majority of children.

Other proposals, touted as choices for parents, include government-funded educational vouchers and tuition tax credits. These ostensibly give parents increased choice over school enrollment decisions.<sup>77</sup> Vouchers and tuition tax credits, however, pose even greater threats to quality public education than

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choice throughout the country in 1989 and 1990. During congressional consideration of H.R. 5115, the Equity and Excellence in Education Act of 1990, the Bush Administration supported an amendment by Representative Steve Bartlett (R-Texas) that would have authorized the use of federal funds for open enrollment plans. See 136 CONG. REC. E3521 (daily ed. Oct. 26, 1990) (statement of Rep. Goodling).

74. See Snider, *School Choice: New, More Efficient "Sorting Machine"?*, Educ. Week, May 18, 1988, at 1, col. 1.

75. The major exception to local zone determination is federal desegregation requirements.

76. See Finch, *The Claims for School Choice and Snake Oil Have a Lot in Common*, AM. SCHOOL BD. J., July 1989, at 31.

77. Vouchers in this context refer to direct federal distributions of funds to parents to be used to pay for, or supplement, their child's attendance at non-public schools. Tuition tax credits are similar, except that the parents would be reimbursed by receiving an income tax credit for such educational expenditures.

does simple parental choice. These schemes threaten the very continuation of public education as we know it in our country today. Their wide-spread implementation would transfer public money to private schools at the very time a consensus of opinion supports greater federal resource investment in public education.<sup>78</sup> By their nature, private schools are reluctant to match requirements, submit to regulations, open admissions policies, and meet the non-sectarian demands made of public schools. Otherwise, they would not be private. They have a proper place in the scheme of education in America, but not at the expense of public education and equity.

Vouchers and tax credits for education are not comparable to products in the marketplace. Policies that work to encourage consumers to purchase durable goods efficiently do not necessarily translate into policies to invest in the education of human beings. They ignore the social value of common schools in an increasingly diverse, pluralistic society. The amount of buying power the vouchers would provide parents, and the small credits that would accrue to parents from tuition tax credits, are inadequate to provide genuinely the same school enrollment choices for low-income parents that more affluent parents already have.<sup>79</sup>

In addition to spawning a plethora of quick-fix schemes as a byproduct, the school reform movement of the 1980s called for the requirement of higher standards and expectations for all students and increased performance expectations of teachers. This push for excellence, while welcome in its own right, came simultaneously with reductions in programs to assist individuals unable to meet those standards without compensatory or additional assistance. This combination has brought us to a crossroads in our educational policy. Focusing on the achievement of the so-called best and brightest has its place in seeking excellence. Increased standards for all students are both important and necessary. But if we are going to require these objectives, then students who are already struggling to meet inadequate standards must be helped to meet the higher ones.

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78. See Gallup & Clark, *19th Annual Gallup Poll of the Public's Attitudes Towards the Public Schools*, PHI DELTA KAPPAN, Sept. 1987, at 23.

79. See STAFF OF SUBCOMM. ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION OF HOUSE OF REPRESENTATIVES COMM. ON EDUCATION AND LABOR, 101ST CONG., 2D SESS., PROBLEMS CONCERNING EDUCATION VOUCHER PROPOSALS AND ISSUES RELATED TO CHOICE 2-3 (Comm. Print 1990).

Failure to do so will result in a two-tiered system. The "forgotten half,"<sup>80</sup> already inadequately served by the traditional instruction in schools and by current compensatory, vocational, and basic skills programs, will continue to grow.

#### IV. SUPPORT FOR EDUCATIONAL INVESTMENTS

Ignited by *A Nation at Risk*, the decade of the 1980s was marked by an explosion of analyses and calls for action to address these many documented educational weaknesses. From chief executive officers of major corporations to the halls of academia, America was clamoring for attention to the country's educational deficits.<sup>81</sup> This monumental change in climate, supporting educational investment and creative attempts to meet the needs of all children, brought forth a blossoming of educational activity at the federal, state, and local levels. In 1988, the first effort to expand and strengthen the federal role in elementary and secondary education in over fifteen years was undertaken with the enactment of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (School Improvement Amendments).<sup>82</sup>

Drawing on the strengths of the experiences documented in evaluations and assessments of the Chapter One program,<sup>83</sup> the School Improvement Amendments are focused on ensuring that all of America's youngsters will be educationally prepared for the Twenty-First Century.<sup>84</sup> It mandates increased effectiveness and accountability for programs aimed at helping educationally disadvantaged children to succeed in their regular classroom programs, attain grade-level proficiency, and improve achievement in basic and more advanced skills. In addition to reauthorizing virtually every elementary and secondary

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80. See generally WILLIAM T. GRANT FOUND. COMM'N ON WORK, FAMILY AND CITIZENSHIP, *THE FORGOTTEN HALF: PATHWAYS TO SUCCESS FOR AMERICA'S YOUTH AND YOUNG FAMILIES* (1988). This report documents the educational, economic, and social plight of the 20 million non-college-bound 16-to-24 year-olds.

81. See, e.g., CARNEGIE FOUND. FOR ADVANCEMENT OF TEACHING, *AN IMPERILED GENERATION: SAVING URBAN SCHOOLS* xi (1988); COMM. FOR ECON. DEV., *supra* note 6, at 4; QUALITY EDUC. FOR MINORITIES PROJECT, *EDUCATION THAT WORKS: AN ACTION PLAN FOR THE EDUCATION OF MINORITIES* i (1990).

82. Pub. L. No. 100-297, 102 Stat. 130 (codified as amended in scattered sections of 20 U.S.C.).

83. See, e.g., 1983 Amendments to the Educational Consolidation and Improvement Act of 1981, Pub. L. No. 98-211, § 22, 97 Stat. 1412, 1418-19 (requiring the Secretary of Education to conduct a national assessment of Chapter One).

84. See 20 U.S.C. § 2701 (1988).

education program through 1993, the School Improvement Amendments outline strict requirements for increased parental involvement in the planning, design, and implementation of Chapter One programs and required consultation and review of programs both before and after execution.<sup>85</sup> Reports on children's progress, and incentives for parents to participate in classrooms, are also required.<sup>86</sup> In contrast to the misguided "parental choice" schemes, the parental involvement requirements of the School Improvement Amendments are intended to involve parents in the instructional program of their children's education and to increase the accountability of the program. While parental choice is based upon open enrollment and transportation, parental involvement emphasizes interaction between the home and school and all phases of academic performance and school improvement.

The 1988 amendments address some of the weaknesses highlighted by the various studies.<sup>87</sup> New provisions address targeting of additional funds to high-poverty areas through concentration grants, greater flexibility in high-poverty schools through schoolwide plans, and greater accountability provisions to identify and improve unsuccessful school programs.<sup>88</sup> Funding from the federal level is further conditioned upon the maintenance by state and local education agencies of current efforts, the prohibition on using Chapter One funds and services to supplant local efforts, and assurance of comparability of services throughout all schools in a local district.<sup>89</sup>

While a decade of reports and studies broadened support for educational reform and investment measures, the School Improvement Amendments helped to translate this popular consensus into appropriate programmatic efforts to strengthen equity and excellence in education. The passage of this law, with broad bipartisan support, should have made it easier for all politicians to support additional educational investment. Additionally, this law gave the United States Department of Ed-

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85. *See id.* § 2726.

86. *See id.*

87. *See, e.g.,* W. RIDDLE, EDUCATION FOR DISADVANTAGED CHILDREN: MAJOR THEMES IN 1988'S REAUTHORIZATION OF CHAPTER 1, at 1 (Congressional Research Service Report No. 89-7 EPW, 1989).

88. *See* 20 U.S.C. §§ 2712, 2725, 2731 (1988).

89. *See id.* § 2728. This last condition, as it relates to the broader inequalities in school financing, obviously has not been monitored or enforced effectively. *See infra* text accompanying notes 105-07.

ucation an opportunity to strengthen its implementation and enforcement role.<sup>90</sup>

In September 1989, President Bush courageously called an education summit with the nation's governors, the first such national summit on the subject. Solidifying and building upon the historic federal education role, President Bush and the nation's governors developed six national goals for education.<sup>91</sup> Propounded by a conservative President and the fifty governors, representing all components of the political spectrum, the proposed national education goals, if approved through congressional action, could signal this country's intent to focus public attention on equity and excellence in education as a national priority. The challenge for the last decade of this century, however, is to provide the resources and programmatic implementation necessary to reach our national goals in education.

#### V. A COMPREHENSIVE EDUCATION AGENDA FOR THE 1990s

National objectives are necessary in setting an agenda for achievement, but they ring hollow without adequate resources and commitment to implementation. Unfortunately, this is where our country stands in the 1990s. The United States has given itself less than ten years to ensure a quality education for every child, but it has yet to produce the necessary resources and programmatic capabilities with which to accomplish this objective.<sup>92</sup> It is therefore imperative that we move beyond the

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90. The United States Department of Education, however, has been lax in this regard. The Department delayed issuing regulations and was late in publishing its Chapter One policy manual. *See, e.g.*, STAFF OF SUBCOMM. ON ELEMENTARY, SECONDARY, AND VOCATIONAL EDUCATION OF HOUSE OF REPRESENTATIVES COMM. ON EDUCATION AND LABOR, 101ST CONG., 2D SESS., CHAPTER 1 SURVEY OF THE HAWKINS-STAFFORD SCHOOL IMPROVEMENT AMENDMENTS 1 (Comm. Print 1990).

91. The goals for the year 2000 are: (1) All children in America will start school ready to learn; (2) the high school graduation rate will increase to at least 90 percent; (3) American students will leave grades four, eight, and twelve having demonstrated competency over challenging subject matter including English, mathematics, science, history, and geography, and every school in America will ensure that all students learn to use their minds well so they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy; (4) United States students will be first in the world in mathematics and science achievement; (5) every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and to exercise the rights and responsibilities of citizenship; and (6) every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning. NAT'L GOVERNORS' ASS'N, NATIONAL EDUCATION GOALS (Feb. 25, 1990).

92. On the state level, the submission of specific legislative proposals to state legisla-

commendatory rhetoric associated with the national education goals to a forthright discussion and action strategy of how to fully implement the programs and policies that will achieve those objectives by or before the Twenty-First Century. Basic prerequisites for achieving the goals include: (1) resources—full funding of proven, cost-effective federal education, health, and nutrition programs that promote equal educational results for all children in the country;<sup>93</sup> (2) reforms—innovative educational strategies and techniques that have shown promising results to facilitate school improvement and student achievement, as well as greater recruitment, retention, and professional development of teachers; and (3) results—appropriate assessment tools to measure progress in meeting the national goals and improvement in each child's educational achievement.

#### A. *Resources: Full Funding of Cost-Effective Programs*

As discussed earlier, the 1980s were characterized by funding restraints on proven, cost-effective programs that have made substantial improvements in the educational achievement and lifetime success of millions of children. Research has shown that the failure to invest adequately in the education of America's children is penny-wise and pound-foolish.<sup>94</sup> The private sector spends \$30 billion annually on employee "training."<sup>95</sup> Illiteracy costs our nation over \$237 billion annually in welfare checks, crime costs, incompetence on the job, remedial

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tures to meet these goals has been elusive, and a comprehensive strategy and adequate resources for such achievement have been lacking. On the federal level, the Equity and Excellence in Education Act of 1990, H.R. 4379, 101st Cong., 2d Sess. (1990), which would have codified the six national goals plus two additional ones dealing with teacher development and post-secondary education, and would have provided the programmatic means for implementation, failed to be enacted at the end of the 101st Congress, due to conservative opposition.

93. See, e.g., Head Start, 42 U.S.C. §§ 9831-9852 (1988); Even Start, 20 U.S.C. §§ 2741-2749 (1988); Education of the All Handicapped Children Act, 20 U.S.C. §§ 1400-1485 (1988); Bilingual Education Act, 20 U.S.C. §§ 3281-3283 (1988); Special Supplement Food Program for Women, Infants and Children, 42 U.S.C. § 1786 (1988).

94. For instance, had we invested \$30 billion in cost-effective education programs instead of the defective supply-side economic policy embodied in the Economic Recovery and Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 172, we would have saved the costs of illiteracy, "in terms of lost production, reduced wages (incomes), industrial and military accidents, welfare programs, crime and other related problems," estimated at \$237 billion a year. CENTER FOR COMMUNITY CHANGE, AMERICA'S THIRD DEFICIT: TOO LITTLE INVESTMENT IN PEOPLE AND INFRASTRUCTURE 9 (1990).

95. See A. CARNEVALE & L. GAINER, *THE LEARNING ENTERPRISE* 17 (1989).

education, and lost revenues.<sup>96</sup> The fact that 800,000 students drop out of high schools per year reduces government revenues by \$68 billion over those students' lifetimes, and those students will lose \$228 billion in lifetime earnings.<sup>97</sup> By contrast, full investment in effective, preventive programs that benefit children can save billions of dollars in long term costs. For each dollar invested in quality preschool education, six dollars are returned in reduced costs of special education, public assistance, and crime.<sup>98</sup> An investment of \$700 in one year of compensatory education can save \$5,600 in the cost of one child repeating a grade level.<sup>99</sup> Early educational intervention has saved school districts \$1,560 per disabled pupil. Remedial education, training, and well-structured work experience, such as that offered under the Federal Job Corps program, returned \$7,400 per participant, compared to \$5,000 in program costs.<sup>100</sup> All of these proven, effective programs are grossly underfunded and serve only a small number of the children and teenagers eligible.<sup>101</sup>

The United States has not made a full commitment to adequately fund its education initiatives. A 1990 study by the Economic Policy Institute in Washington, D.C., found that the United States public and private per capita spending on preprimary, primary, and secondary education ranks fourteenth out of sixteen industrialized countries.<sup>102</sup> The authors of the

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96. See J. CATTERALL, ON THE SOCIAL COSTS OF DROPPING OUT OF SCHOOL 9 (Stanford Education Policy Institute Paper No. 86-SEPI-3, 1985) (citing H. LEVIN, THE COSTS TO THE NATION OF INADEQUATE EDUCATION (1972)).

97. See *id.* at 12.

98. For testimony on the effectiveness of the Head Start program, see SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES OF THE HOUSE OF REPRESENTATIVES, 100TH CONG., 2D SESS., OPPORTUNITIES FOR SUCCESS: COST EFFECTIVE PROGRAMS FOR CHILDREN, UPDATE, 1988, at 7 (Comm. Print 1988) [hereinafter OPPORTUNITIES FOR SUCCESS]; *The Economic and Social Benefits of Early Childhood Education: Hearings Before the Subcomm. on Education and Health of the Joint Economic Comm.*, 101st Cong., 1st Sess. 1 (1990).

99. See OPPORTUNITIES FOR SUCCESS, *supra* note 98, at 7.

100. See *id.*

101. Head Start serves one in five eligible economically disadvantaged preschoolers. Chapter One serves approximately one-half of the eligible school children nationwide. Under the Education for All Handicapped Children Act, all eligible children must be served. However, the federal share of the costs of serving them is currently only seven percent of the excess costs, and fewer than four percent of the eligible at-risk 16-to-21 year-olds are able to enroll in the Job Corps program. See COMM. FOR EDUC. FUNDING, EDUCATION BUDGET IMPACT ALERT: FOR FISCAL YEAR 1988—A COMPILATION OF FEDERAL EDUCATION PROGRAMS 83 (1988).

102. See ECON. POLICY INST., SHORTCHANGING EDUCATION: HOW U.S. SPENDING ON GRADES K-12 LAGS BEHIND OTHER INDUSTRIAL NATIONS 2 (1990).

report stated that, if the United States were to match the average level of spending for primary and secondary schools in the other fifteen countries in 1985, we would need to increase education spending by some \$25 billion annually.<sup>103</sup> While money alone will not assure excellence and quality, to call for the achievement of such worthy objectives as the national education goals while denying increased resource investment is ludicrous and irresponsible.<sup>104</sup>

For those funds that are available, attention must be given to the method of distribution of the investment. The funding inequities and enormous spending disparities that exist among and between school districts throughout the States must be simultaneously addressed.<sup>105</sup> Wealthy school districts are able to hire more qualified teachers, offer better-equipped facilities, and maintain lower teacher-student ratios. Financially strapped school districts suffer from teacher shortages, lack of science, mathematics, foreign language, and art resources, crumbling school facilities, and over-crowded classrooms.<sup>106</sup> Parents and school advocates have filed constitutional court challenges to disparate systems of financing in thirteen states.<sup>107</sup> Inequities have been documented in school districts throughout the

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103. It should be noted that the authors' methodologies were challenged by the United States Department of Education. See *Hearing on Education Funding: Hearing Before the House Comm. on Education and Labor*, 101st Cong., 2d Sess. 2 (1990) (statement of Dr. Charles Kolb, Deputy Undersecretary for Planning, Budget, and Evaluation, United States Department of Education). The authors responded, however, that comparing expenditures expressed as a share of national income provided the most accurate comparison of education effort and resources provided to students. Further, an analysis prepared by Wayne C. Riddle, Specialist in Education Finance, Congressional Research Service, United States Library of Congress, points out that several methods have been used to compare education expenditures in the United States and other countries, and each method has significant limitations. Riddle ranked the United States third in elementary and secondary education spending. See Memorandum to Honorable Rudy Boschwitz, Subject: Comparisons of Elementary and Secondary Education Expenditures in the United States With Those of Other Nations (Feb. 12, 1990).

104. While methodologies and appropriate rankings may be debated, levels of spending on education continue to be central to discussions pertaining to increasing the achievement and performance of United States students.

105. See A. WISE, *RICH SCHOOLS, POOR SCHOOLS: THE PROMISE OF EQUAL EDUCATIONAL OPPORTUNITY* 4 (1966). See also *The Fair Chance Act: Hearings on H.R. 3850 Before the Subcomm. on Elementary, Secondary, and Vocational Education of the House Comm. on Education and Labor*, 101st Cong., 2d Sess. 7 (1990).

106. See generally A. WISE, *supra* note 105, at 5-6.

107. Cases are pending in Alaska, Connecticut, Indiana, Massachusetts, Michigan, Minnesota, North Dakota, Oregon, and Tennessee. Cases in Kentucky, *Rose v. The Council for Better Educ., Inc.*, 790 S.W.2d 186 (Ky. 1989), and New Jersey, *Borough of Sea Bright v. State Dep't of Educ.*, 242 N.J. Super. 225, 576 A.2d 331 (1990), were decided recently, and the suit in Texas is still active. See Newman, *Legal Challenges to Finance Formulas On Court Dockets in at Least 12 States*, *Educ. Week*, May 2, 1990, at 14,

United States, but progress has been excruciatingly slow. The federal government should require all states to equalize educational resources among school districts as a condition for receipt of federal aid. This is necessary to allow comprehensive improvement efforts to benefit all children and to provide poor districts with the resources necessary to meet state mandates and recommendations. A full discussion of the inequities and their impact on at-risk students is contained in a recent report issued by the United States House Education and Labor Committee.<sup>108</sup>

An additional note of concern must be mentioned at this juncture. Eleventh-hour action by the 101st Congress and the President of the United States to place spending limitations on all federal domestic spending programs as part of the so-called Budget Summit agreement will undoubtedly place restraints on the ability to secure adequate additional funding for education programs.<sup>109</sup> This runs directly counter to the broad consensus of support which exists for fully funding programs such as Head Start, Chapter One, teacher development, and student aid.

We risk a return to the status quo characterized by the 1980s, where increased spending at the close of the decade was still attempting to make up for ground lost to cuts incurred earlier.<sup>110</sup> Faced with at least three years of little growth in services, followed by two years where education programs will continue to be in competition with other worthwhile domestic spending (for example, health, housing, economic and community development), it is incumbent upon us to continue efforts to secure full funding and redouble attempts to find alternative funding sources for educational equity and excellence. For example, an education trust fund financed through federal contract assessments or long-term bonds could ensure expansion

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col. I. Cases are reportedly also being considered in Alabama, Illinois, Pennsylvania, Virginia, and Wyoming.

108. W. TAYLOR & D. PICHÉ, A REPORT ON SHORTCHANGING CHILDREN: THE IMPACT OF FISCAL INEQUITY ON THE EDUCATION OF STUDENTS AT RISK (prepared for Committee on Education and Labor, United States House of Representatives, 101st Cong., 2d Sess., Dec. 1990). The provisions of The Fair Chance Act, H.R. 3850, 101st Cong., 2d Sess. (1990), would have addressed these concerns. It was not enacted.

109. Actual spending for federal elementary and secondary education programs is expected to increase approximately 14.5 percent in fiscal year 1991, but future growth remains questionable.

110. See CONGRESSIONAL RESEARCH SERVICE, *supra* note 62.

of services. If the nation was able to find billions of dollars to bail out failed savings and loans institutions, surely we can double our efforts to educate our children. This would bring federal education financial efforts to approximately \$50 billion annually.

B. *Reforms: Implement Innovative Strategies and Techniques*

In addition to funding fully and implementing properly the proven, cost-effective programs already statutorily mandated, all levels of government, in conjunction with the private sector, must greatly expand the availability of the wide array of promising innovative strategies that increase the educational achievement of all children. Efforts to restructure and reorganize schools—such as school-based management, shared decisionmaking, effective schools programs, cooperative learning, parental involvement in all levels of educational decisionmaking, and encouragement of partnerships between private industry and the school systems—hold enormous promise for providing some of the means for achieving our national educational objectives.<sup>111</sup>

While it is enormously important to focus attention on the educational achievement of the children, we must not forget to address adequately the recruitment, retention, and professional development of the people who are paid to educate the students. “Teachers are a critical linchpin of educational survival, not to mention improvement.”<sup>112</sup> Many aspects of education reform, such as innovation, instructional development, appropriate school-based decisionmaking, and improved quality and achievement, cannot be accomplished without teachers who are competent, experienced, and representative of a broad cultural, ethnic, and racial cross-section. Teachers are the educators who directly affect student learning, achievement, and success. Therefore, greater attention must be given to their needs.

The federal government should assist the improvement,

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111. See, e.g., COMM. FOR ECON. DEV., *supra* note 6, at ix; Edmonds, *Effective Schools for the Urban Poor*, 37 EDUC. LEADERSHIP 15 (1979); J. GOODLAD, *A PLACE CALLED SCHOOL: PROSPECTS FOR THE FUTURE* 272, 318 (1983); T. SIZER, *HORACE'S COMPROMISE: THE DILEMMA OF THE AMERICAN HIGH SCHOOL* 1 (1984).

112. *Status of Education in America and Directions for the Future: Hearings Before the House Committee on Education and Labor*, 101st Cong., 1st Sess. 111 (1989) (statement of Linda Darling-Hammond, Professor, Teacher's College, Columbia University).

preparation, supply, and distribution of teachers. First and foremost, we must attract and retain highly motivated and qualified people in the teaching profession. The federal government can create financial incentives to encourage students to enter the teaching profession, support efforts to restructure the requirements of traditional undergraduate education degrees, and target the recruitment of people with expertise under-represented in the overall teacher workforce.<sup>113</sup> With a teacher shortage projected nationwide, especially in the critical fields of mathematics, science, foreign languages, and special education, as well as a dearth of minority teachers,<sup>114</sup> the federal government must not only assist in making teaching a viable career option for today's young people, but also must support current teachers in developing further their skills through the establishment of teacher institutes and increased access to educational researchers and their peers.

Although the level of teacher pay is a locally determined issue, government at all levels and the private sector, which has the most to gain from creative, motivated teachers in the classroom, should work in a coordinated fashion to provide greater compensation for such highly valued work. All efforts should be made to increase society's view of the value of the teaching profession. As former Secretary of Education William J. Bennett said in comments about the success of Japanese education:

[C]ompetent, dedicated teachers make for good schools. And a society that offers its teachers reasonable remuneration, respected status in the community, an orderly school environment, a substantial measure of collegiality and responsibility, and opportunities to recharge their intellectual and professional batteries—such a society can attract a surfeit of eager, qualified people to the classroom, and can retain them in the teaching profession.<sup>115</sup>

If the United States is serious about educating all of its citizens to their greatest potential, this description should fit the view of teachers in America.

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113. For recommendations on strengthening the teacher profession, see THE HOLMES GROUP, *TOMORROW'S TEACHERS* 4 (1986); and CARNEGIE FORUM ON EDUC. AND THE ECONOMY, *A NATION PREPARED: TEACHERS FOR THE 21ST CENTURY* 55 (1986).

114. See J. STEDMAN, *TEACHERS: ISSUES FOR THE 101ST CONGRESS* 33-45 (Congressional Research Service Report No. 90-117 EPW, Feb. 23, 1990).

115. W. BENNETT, *JAPANESE EDUCATION TODAY* 71 (1987).

C. *Results: Assessment Systems that Develop and Encourage Human Talent*

The overall requirement for accomplishing our national education objectives is to ensure that the methods of assessment accurately measure achievement and promote school improvement. Many institutions in American society rely on test performance as an indicator of knowledge and ability rather than as an indicator of where improvements are needed. The educational reform movement has resulted in increased pressure for accountability. Therefore, testing, in the form of multiple choice, norm-referenced and standardized tests (Nrsts), has become the cornerstone of this movement<sup>116</sup> in part because it is less expensive and easy to implement. Accountability through testing, however, becomes invalid if the benchmarks used are faulty, inadequate, or inappropriate. Because they are not related to the curriculum, these tests do not measure what has actually been taught. Consequently, the results do not provide direct or specific guidance for school improvement.<sup>117</sup>

Comprehensive assessment systems should provide data to address two distinctly different purposes: (1) the need for information to improve student learning, teacher performance, and program design, which derives from diagnostic sets of assessment that are curriculum-referenced; and (2) the need for describing existing levels of student, teacher, or program performance, which derives from evaluative sets of test information that usually are norm-referenced and standardized. Results from Nrsts are used to compare similar individuals, groups of individuals, or institutions. When used over a succession of years, they can trace the major trends in the educational attainment of students within a particular district. On the other hand, results from curriculum-referenced assessments are used to analyze and assess the strengths and weaknesses of students and programs and to prescribe corrective measures. Tests can be extremely well suited for one or the other functions, but rarely, if ever, are they appropriate for both.<sup>118</sup>

Another major limitation of Nrsts is their construction, which

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116. See EDUC. TESTING SERV., *THE EDUCATION REFORM DECADE 5-7* (1990).

117. In a 1990 survey of 47 states by the Educational Testing Services (ETS), only 20 states reported using tests for remediation, the quality of which was not clearly documented. See EDUC. TESTING SERV., *STATE TESTING PROGRAMS AND PURPOSES*, 1990, at 2 (1990).

118. See LeMahieu, *The Effects on Achievement and Instructional Content of a Program of*

practically guarantees that many students will score poorly on them. These tests ensure a bell-shaped distribution of the scores of any representative population of students by selecting deliberately certain items that ensure that approximately half the students will always score below average.<sup>119</sup> This process also produces rankings that are not directly influenced by school learning.<sup>120</sup> Nrstst have traditionally been used to sort and rank students on a normal, bell curve; however, the purpose of education is to educate all students. Because important decisions are made based upon the results of Nrstst, educators and policymakers at all levels must decide whether such tests are consistent with the purpose of education. More importantly, both students and administrators of the tests should be well informed about their functions and limitations. The National Commission on Testing and Public Policy has concluded that America must rethink how it develops and utilizes human talent and potential, arguing that educational and employment testing must be restructured.<sup>121</sup> Every child is educable, and it is our duty to look for ways to evaluate properly educational achievement.<sup>122</sup>

## VI. CONCLUSION

Accomplishing the momentous task of focusing our national resources and energies on preparing America's young people for the rigors of the Twenty-First Century is our nation's premiere challenge. There is no cheap, quick fix available to accomplish such an important goal. As this Article has attempted to show, it will take the commitment of full resources, a coordinated and comprehensive effort on the part of federal, state, and local governments and the private sector, and broad-based coalitions,<sup>123</sup> to put forth the necessary investment to bring about educational equity and excellence.

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*Student Monitoring Through Frequent Testing*, 6 EDUC. EVALUATION & POL'Y ANALYSIS 185 (1984).

119. See D. ARCHBALD & F. NEWMAN, BEYOND STANDARDIZED TESTING: ASSESSING AUTHENTIC ACADEMIC ACHIEVEMENT IN THE SECONDARY SCHOOL 54 (1988).

120. See *id.*

121. See NAT'L COMM. ON TESTING AND PUBLIC POLICY, FROM GATEKEEPER TO GATEWAY: TRANSFORMING TESTING IN AMERICA ix (1990).

122. See Edmonds, *supra* note 111, at 15-24.

123. For a discussion of formation of broad-based coalitions in this area, see BUSINESS ROUNDTABLE, PARTICIPATION GUIDE: A PRIMER FOR BUSINESS ON EDUCATION 5-10 (1990).

We are now faced with an inevitable choice: Do we undertake a costly “catching-up” process of overcoming educational deficits, or do we face the consequences of falling further behind in national literacy and leadership in global markets, in science and technology, and in diplomatic fields? Derek Bok, President of Harvard University, expressed it well: “If you think education is expensive, try ignorance.”<sup>124</sup> Unfortunately, most politicians have failed to recognize that the American people do not want to try ignorance.

Obsessive over-reliance on balancing budgets in the wrong way has led Congress and the administration to ignore vital domestic programs, particularly education, for which cost-benefit ratios clearly favor the investment.<sup>125</sup> As a result, the nation is in a quagmire of debts, deficits, and declining revenues without the promise of increased productivity.<sup>126</sup> Events now force us to choose to be among the first or last—to act now or lose forever the opportunity. As the French writer and philosopher Albert Camus once wrote, “Real generosity toward the future consists in giving all to what is present.”<sup>127</sup> We must be committed to doing whatever must be done, to making whatever sacrifices are needed, and to investing whatever it may cost to ensure that our children’s future is second to none. The people have evidenced the will; it remains for our nation’s leaders to demonstrate the courage.

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124. Cordtz, *Dropouts: Retrieving America’s Labor Lost*, FINANCIAL WORLD, Apr. 4, 1989, at 36, 46 (quoting Derek Bok).

125. Estimated “average rates of return on our investment in schooling range from 7 to 11 percent after inflation . . . . Schooling returns more to the economy than it takes out,” even after the costs of providing education, and exclusive of the noneconomic benefits. COMM. FOR ECON. DEV., INVESTING IN OUR CHILDREN 39 (1985).

126. While part of the problem is low investment in plant and equipment and low investment in research and development, “the most important investment we can make is in our children. . . . Functional illiteracy costs the United States over \$25 billion a year, from lost productivity, accidents in the workplace, damage to equipment, and government support payments.” BUSINESS ROUNDTABLE ON INT’L COMPETITIVENESS, AMERICAN EXCELLENCE IN A WORLD ECONOMY 25-26 (1987).

127. *Thoughts on the Business of Life*, FORBES, Mar. 20, 1989, at 224 (quoting Albert Camus).

