as well be *The Way West*: when it's the tired comic spectacle of rich old men degrading themselves for more money and fame and power, does it much matter if it's done poorly or with chic? In some ways the chic is more offensive.

The classic Western theme is the doomed hero – the man without a future because the way of life is changing, the frontier is vanishing, and the sheriff and the schoolteacher are representatives of progress and a new order. The hero is the living antique who represents the best of the old order just as it is disappearing. But star-centered movies and TV gave the Westerner a new future: he's got to keep the series alive. The toilets won't run him down because that would be flushing away good money. Douglas in *The War Wagon* has metamorphosed back into his post-World War II character – the heel. He's now the too-smart Westerner, mercenary and untrustworthy in a way the audience is supposed to like. His Westerner is a swinger – a wisecracking fancy-talker with intentionally anachronistic modern attitudes.

El Dorado combines Wayne and Mitchum, both looking exhausted. The director, Howard Hawks, is also tired, and like Ford, he doesn't want to go out on location. The theory of why Westerns are such a great form is that directors can show what they can really do in the framework of a ritualized genre and the beauty of the West. But the directors are old and rich, too. (Ford was born in 1895 and directed his first movie in 1917; Hawks was born in 1896 and has been in films since 1918, directing them since the mid-twenties.) Their recent movies look as if they were made for television. Except for a few opening shots, *El Dorado* is a studio job – and it has the second-worst lighting of any movie in recent years (the worst: *A Countess from Hong Kong*). When the movie starts, you have the sense of having come in on a late episode of a TV serial. Mitchum plays a drunken old sheriff (like Charles Winninger in *Destry Rides Again*), and there are home remedies for alcoholism, vomiting scenes that are supposed to be hilarious, and girls who hide their curls under cowboy hats and are mistaken for boys until the heroes start to wrestle with them. Wayne has a beautiful horse in this one – but when he's hoisted onto it and you hear the thud, you don't know whether to feel sorrier for man or beast.

The Old West was a dream landscape with simple masculine values; the code of the old Western heroes probably wouldn't have much to say to audiences today. But the old stars, battling through stories that have lost their ritual meaning, are part of a new ritual that does have meaning. There's nothing dreamy about it: these men have made themselves movie-stars – which impresses audiences all over the world. The fact that they can draw audiences to a genre as empty as the contemporary Western is proof of their power. Writers and painters now act out their fantasies by becoming the superstars of their own movies (and of the mass media); Wayne and Douglas and Mitchum and the rest of them do it on a bigger scale. When it makes money, it's not just their fantasy. The heroes nobody believes in – except as movie-stars – are the result of a corrupted art-form. Going to a Western these days for simplicity or heroism or grandeur or meaning is about like trying to mate with an ox.

PAULINE KAEL

A COMMUNICATION

In Defense of Skelly Wright

Professor Alexander M. Bickel has sharply censured Judge J. Skelly Wright (July 8) for attempting to deal with some of the more odious features of the Washington, D.C., school system. I confess a certain puzzlement

about his opening remark that "the Constitution does not put at the disposal of judges the resources to prevent, abolish, or even alleviate poverty" or other social ills. This statement is either self-evident – and therefor trivial – or naïve. Certainly judges have not the power to fund a "War on Poverty." They can and do insist, however, that when the law touches the poor, it does so fairly and equably. The right to counsel, to be informed about rights in the police station of which most ghetto residents are ignorant, to a free transcript on appeal, to vote without payment of a poll tax – all of these Supreme Court-established rights alleviate poverty – in a direct and immediate sense.

Let us look at the District's schools. The median per pupil expenditure in District of Columbia elementary schools for 1963-64 was $292 for schools with 85 to 100 percent Negro enrollment, and $392 for schools with 0 to 15 percent Negro enrollment. In the 13 schools in the wealthy area west of Rock Creek Park, the median per pupil expenditure was $424.

Professor Bickel assumes that this difference is due to higher teacher salaries in the white schools. In fact, the evidence before Judge Wright showed that only a fraction of the disparity could be thus accounted for. Moreover, higher teacher salaries are an index of superior training – graduate degrees, experience, and the like. The disparity also reflects underutilization of white schools, to which the obvious solution is to redraw school lines and transfer in Negro children.

Another central feature of District education is the track system, the abolition of which by Judge Wright's order does not at all (as Professor Bickel suggests) betoken an end to classification of children for educational purposes. Judge Wright insists only that the basic constitutional command of equality be followed: If children are to be classified, some to receive one kind of educational experience and some another, the system must treat alike all those similarly situated, and must not judge those differently situated by standards appropriate to one group but not to another.

In the field of education, these choices are difficult. But must a court stand idle when it is shown that children are consigned to an education fitting them for unskilled or semiskilled labor upon the basis of tests designed so that only white middle-class children do well on them? This is precisely the vice of the track system. The testing program applies a single standard to all socioeconomic groups, finds (not unexpectedly) that the white children do well when tested, consigns the poor and black to an inferior education which contributes to lack of social mobility, then in a few years begins the process over again on the children of these "rejects."

Finally, Judge Wright's opinion deals with segregation. Professor Bickel ignores the court's finding that the Board of Education has been affirmatively satisfied when neighborhood schools result in segregation. And the fact is that as Washington's racial population changed, school lines were redrawn to minimize the number of white students trapped in schools suddenly become Negro. Too, underutilization of white schools combined with often-egregious overcrowding of Negro schools bespeaks an intent not only to tolerate segregation but to permit it to be augmented with discrimination in the kind and quality of educational experience received by white and Negro children.

Let us consider Judge Wright's response to these problems in the context of the District of Columbia's unique governmental structure. The District's citizens do not govern themselves. The Congress, in which they have neither voice nor vote, legislates for them. The District Committee of the House of Representatives is chaired by John McMillan of South Carolina and is dominated by white conservatives of both parties. The Senate District Commitee is a little better, but still suffers under the chairmanship of Alan Bible (D, Nev.). The school board is appointed by the United States District Judges for the District of Columbia. Thus, the District's citizens have no political body which is responsive to their criticisms and complaints, except, it now appears, an enlightened court.

Finally, the United States District Court for the District of Columbia is not like an ordinary federal court. When a federal court in, say New York, orders schools desegregated, it must approach its task with the diffidence commanded by the federal system. Its rulings must be anchored in the federal Constitution and laws before it can justify interfering with New York state law and policy. By contrast, the District's courts fulfill the same role for District citizens as do state courts, and are therefore justified in blending constitutional, statutory, common law and public policy considerations to reach the results. Hence, the judge may be justified in assessing the results of Board of Education conduct upon juvenile delinquency, unemployment and other social ills.

Besides, what would Professor Bickel suggest the plantiffs do? Sit in voteless impotence while Superintendent of Schools Hansen played God with the lives and futures of their children until, in the fullness of time, the District achieves home rule? With the growth of the District's poor Negro population, the increase in social problems requiring public attention, and a rising congressional indifference, inaction now means that when (and if) we get home rule, our duly-elected officials will preside over slum, pestilence, famine and ignorance in the midst of the Federal City's official pomp and opulence.

In short, the judiciary was the only body available to hear the plantiff's complaint, and it was, by virtue of its unique position, justified in doing so.

What then, of Judge Wright's opinion? A "jeremiad," "hortatory," says Professor Bickel. The courts, he says, cannot redeem Judge Wright's promises. Judge Wright, one should be careful to note, does not promise to rescue the District school system. He promises only to see that certain constitutional decencies are respected: Don't discriminate on the basis of race or wealth in the allocation of funds; don't use an irrational ethnocentric value system in classifying children; integrate faculties; use underutilized classrooms to aid integration, and so on. The Board and the Superintendent will draw plans to meet these commands. Judge Wright will either approve or disapprove and in the end certain guidelines will be set down in a final decree. By this means, constitutional and legal minima

will be set. The Board is free to do better than it is ordered to, to do more than it must, to remedy the schools' ugly state.

Professor Bickel's error is in assuming that a judge cannot denounce the conduct of litigants unless he is able to provide a complete remedy. As Professor Bickel's own writings have well-recognized, however, one great purpose of revolutionary judicial utterance-like *Brown v. Board of Education*—is to set at large with official imprimatur ideas which have theretofore gone unspoken. This hortatory function of judging serves at times to legitimize struggle elsewhere in society to attain the ends and put into practice the ideas first set out by judges. Certainly this has been one salutary effect of *Brown*.

Perhaps the court will founder in the task it has set. That, however, is a question of practical wisdom.

Michael E. Tigar
Washington, D. C.

In Reply:

1. The assertion about resources to abolish poverty is self-evident, and I suppose it would ordinarily be trivial or naïve, as well. It seemed to me unhappily relevant here, because in my judgment, Judge Wright *is* trying, not to remove unjust and remediable consequences that the state sometimes visits on the poor because of their poverty, but to abolish poverty itself. And for this reason I thought he was issuing a promise he would be unable to redeem.

2. The statistics on per capita expenditures seem to me to be explained by teacher salary differentials – which do not necessarily prove that there is poorer teaching in the Negro schools – and for the rest to be ambiguous and unconvincing. I did not have and do not have the space to go into detail. Judge Wright's opinion is some 65,000 words long.

3. The track system is a well-intentioned educational policy. I might share Judge Wright's and Mr. Tigar's personal preference for its abandonment, but judges do not sit to enforce in the name of the Constitution their personal predilections in educational policy, about which, in any event, they may know less than one might wish. Judge Wright did not find – despite Mr. Tigar's, and, indeed, his own insinuations – that the track system was instituted or used in order to segregate Negro or poor children, merely that like so much in life, and like many other government programs, it classifies the disadvantaged as disadvantaged, in part at least – whether quite wisely or not – in order to help them. I did not suggest that Judge Wright had decreed an end to all classifications of children for educational purposes, although it is a little difficult to see what kind of a system of classification he would accept.

4. The District Court in Washington does exercise general jurisdiction. But I don't know that this interesting fact changes this particular situation. And in any event, Judge Wright, as when he spoke on the same subject at New York University some time ago, invoked the Constitution, not his general jurisdiction.

5. The District may still be under the yoke of Congress, but Mr. Tigar comes uncommonly close to resting on this regrettable circumstance a justification for a coup d'etat. "The judiciary was the only body available. . . ." I don't mean to be offensive, and I am aware of all the differences, but as an argument in support of action – just action, anyhow and by anybody – this sounds for all the world like some banana-republic junta justifying its takeover.

6. Judge Wright stopped short of finding that the Superintendent maneuvered neighborhood lines in order to segregate schools. He held that *de facto* segregation in a city with a school population of well over 90 percent is unconstitutional, even though nobody did anything to bring this situation about, and even though nobody can do anything to alleviate it without a radical rearrangement of the environment – which the District might well be unable to achieve by itself even if it were self-governing, and which nobody, least of all Judge Wright, knows how to achieve. Mr. Tigar pays me the compliment of having read my books. But I nowhere urged that the judiciary should proclaim goals it does not understand and cannot define.

ALEXANDER M. BICKEL

Correspondence

John McNaughton – 1921-1967

Sirs:

One morning from Cambridge I telephoned John McNaughton to tell him that I was going to be in Washington the next day and wanted to see him. There was a major issue which appeared to me, as an outsider, to need some basic rethinking and I wanted to talk with him about it. He told me that his schedule was impossible; that he was booked solid for the next day. After some insistence on my part he invited me to lunch off a tray with him in his office. I was to come at 12:35 and be out by 1:15.

Shortly before 12:30 the next day I was waiting in his outer office, alongside the man with a 12:30 appointment. At 12:30 he went in. At 12:35 he came out, with the paper in his hand apparently approved and signed.

I spent most of our lunch berating John for the split second efficiency with which he was running his office and his life. I suggested that we were looking to him for thinking about what the United States was doing and how it proposed to do it. I used the major issue which had been troubling me as an example and told him that he ought