

Separate ≠ Equal: Mexican Americans Before *Brown v. Board*

by Philippa Strum

It was September 1943, more than a decade before *Brown v. Board of Education* was decided by the Supreme Court, when Soledad Vidaurri walked up to a schoolhouse door with five little children in her wake. American soldiers were still fighting overseas—almost two more years of battles lay ahead before World War II would end—but Orange County, California, in the heart of citrus-growing country, was peaceful and bustling economically because of the wartime demand for agricultural products and war factory materiel. Mrs. Vidaurri had come to the Westminster Main School to enroll her two daughters—Alice and Virginia Vidaurri—and her

niece and two nephews—Sylvia Méndez, Gonzalo Méndez Jr. and Jerome Méndez—in the neighborhood public school.

Mrs. Vidaurri was welcomed to the school and was told that her daughters could be registered. Their father had a French ancestor, and their last name sounded acceptably French or Belgian to the teacher in charge of admissions. Besides, the Vidaurri girls were light-skinned. The Méndez children, however, were visibly darker and, to the teacher, their last name was all too clearly Mexican. They would have to be taken to the “Mexican” school a few blocks away. Little Gonzalo Jr. would remember the teacher telling his aunt, “We’ll take those,” indicating the two Vidaurri girls, “but we won’t take those three.” “We were too dark,” Gonzalo recalled.

“No way,” an outraged Mrs. Vidaurri replied, and marched all the children home. Her equally outraged brother and sister-in-law, Gonzalo and Felícitas Méndez, simply refused to send their children to the “Mexican” school. Two years later, the Méndezes would lead a group of Mexican-American parents into federal court, challenging the segregation of their children, and *Mendez v. Westminster* would become the first case in which a federal court declared that “separate but equal” was not equal at all.

* * * * *

Mexicans had migrated to the United States in large numbers in the first decades of the twentieth century, driven by Mexico’s political and economic turmoil and the promise of jobs up north. Historians estimate that more than 1 million Mexicans—one-eighth to one-tenth of the Mexican population—arrived between 1910 and 1930. They settled primarily in the Southwest. By the 1940s, Mexicans and Mexican-Americans constituted the entire picking force for California agriculture, which produced a major share of the state’s income.

Discrimination was endemic. Most of the workers and their families lived in wooden-shacked *colonias* on the outskirts of towns or farms, with no paved streets, sewers, toilets or re-

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Philippa Strum (Philippa.Strum@wilsoncenter.org) is Senior Scholar and former Director of U.S. Studies at the Woodrow Wilson International Center for Scholars in Washington, DC, as well as the Broeklundian Professor of Political Science Emerita at the City University of New York.

Her previous books include biographies of Louis Dembitz Brandeis; When The Nazis Came to Skokie; Freedom for the Speech We Hate; and Women in the Barracks: The VMI Case and Women’s Rights.

This article is drawn from Strum’s book, Mendez v. Westminster: School Desegregation and Mexican-American Rights (University Press of Kansas, 2010).

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frigerators. Tuberculosis was a constant threat and affected the Mexican-American community at a rate three to five times that of the Anglo community. A survey of conditions in 1927 found that the average Mexican couple had buried two children, and many had buried three or more. Work was not always available. When it was, the average wage for men was 38¢ an hour; for women, 27¢. (The average wage for all male workers in the United States that year was 61¢; for women, 40¢.) Their wages, in other words, could not provide adequate food, shelter and clothing. There was no sick pay; no payment for injuries sustained on the job; no guarantee that even an underpaid job would be waiting for someone who had to stop working temporarily.

The children of the *colonias* were consigned to rundown schools that taught the boys gardening and wood-working and the girls sewing and housekeeping. The assumption of school authorities was that there was no point in grooming the students for anything other than low-paying jobs, and the curriculum followed in “Mexican” schools insured their being prepared for nothing else. One former Orange County student recalled the difference between the curriculum at the “white” Roosevelt School and that

at the “Mexican” Lincoln School in the town of El Modena: “I remember math . . . a little bit of biology, science, we’d never really heard of that at Lincoln and I know they were being taught stuff like that at Roosevelt.” Many of the “Mexican” schools opened at 7:30 in the morning and ended the day at 12:30, so the children could go to work in the citrus groves. Students were routinely permitted to miss school during the two weeks when the walnut harvest was in. The ostensible reason for the segregation was the children’s lack of English language skills, but in fact school districts simply directed children with Hispanic surnames to the “Mexican” schools without giving

“We were too dark.”

them language tests. Instruction was in English, provided by teachers who spoke no Spanish. Many students were kept in each grade for two years.

In 1928, two University of Southern California professors were asked by the Santa Ana school district in Orange County to conduct a survey of all its schools. The professors concluded that Delhi, one of the “Mexican” schools, was a wooden fire hazard. They reported that another, the Artesia School, “has a low single roof with no air space, which makes the temperature in many of the rooms almost unbearable. Since no artificial light is provided in the building, it is impossible to do satisfactory reading without serious eye strain on many days of the year.” Had they investigated Westminster, they would have found its “white” school surrounded by lawns and shrubs. The “Mexican” school was a simple building on bare earth next to a cow pasture, and the children sitting on the ground to eat their lunch (there was no lunchroom) would be covered by flies.

Discouraged, most Mexican-American students left school when they turned 16, bound for low-wage jobs.

The Méndezes, like other Latino families in southern California, knew

nonetheless that education was the way out of the life of the *colonias*—but not the kind of inferior education provided by the “Mexican” schools. They had moved to Westminster to live and work on a farm leased from Japanese Americans who were interned in Arizona during the war, and assumed that their children would go to the nearby public school. That turned out to be the “white” school. Told that the children would have to go elsewhere, the Méndezes repeatedly petitioned school authorities, to no effect.

Turning to Litigation

The Méndezes then turned to attorney David C. Marcus, the Jewish-American son of immigrants who specialized in immigration and civil liberties law and was himself married to a Mexican American. Marcus had recently won an order from a federal court in nearby San Bernardino, admitting Mexican Americans to the city’s only public park and swimming pool. He believed that the Méndezes’ case would be stronger if they could document additional instances of educational discrimination in Orange County, and so for a year Gonzalo Méndez and Marcus drove from *colonia* to *colonia*, locating families in other school districts who had also tried to put their children into “white” schools.

Felicitas Méndez, who had migrated from Puerto Rico as a child and was insistent on her and her children’s rights as Americans, ran the 40-acre farm for that year. “We always tell our children they are Americans,” she would testify in court, “and we thought that they shouldn’t be segregated like that, they shouldn’t be treated the way they are. So we thought we were doing the right thing and just asking for the right thing, to put our children together with the rest of the children there.” She initiated 151 meetings with parents and helped turn their enthusiasm into a group, the *Asociacion de Padres de Niños*
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around these discriminatory impacts. Third, the capacity of state and local legal advocacy groups needs to be enhanced to support the prosecution of these complex claims over a period of years.

Finally, for a Title VI administrative enforcement strategy to succeed, the federal government's investigative and enforcement budget will need to be dramatically increased—impact claims are complex and time-consuming, and many agency Offices of Civil Rights (OCRs) are laboring under large backlogs, and not enough staff. In a series of reports from the U.S. Civil Rights Commission from 2002-2006 (before the Commission was taken over by opponents of civil rights), the Commission found that “insufficient funding and inefficient, thus ineffective, use of available funds” across agencies and departments were the “greatest hindrances to fulfilling... civil rights obligations.” Similarly, in *Rosemere Neighborhood Association v. EPA* (2009), the 9th Circuit observed that the “EPA failed to process a single complaint from

2006 or 2007 in accordance with its regulatory deadlines,” and showed a “pattern of delay.” (EPA's backlog of Title VI complaints has since then been significantly reduced.) And at least one federal agency—the Department of Treasury—still has no Title VI rules or enforcement mechanism.

In response to these concerns, the Obama Administration has begun the process of restoring Title VI investigative and enforcement capability across federal agencies. The Civil Rights Division at the Department of Justice is taking a lead role in this process, through its federal Coordination and Compliance Section. The Division is also taking a more active role in its own Title VI enforcement work, exemplified by the recent complaint against the Maricopa County (AZ) Sheriff's Office for its failure to turn over documents in an investigation of the County's police practices and jail operations.

Most federal agencies have requested budget increases for 2011 for their OCRs—increases that would help agencies continue to reduce their investigative backlogs. And at least one administrative complaint—in *Urban*

Habitat Program et al. v. Bay Area Rapid Transit (2009), filed with the OCR at the Department of Transportation by the Public Advocates office in California, met with substantial success in redirecting federal transportation funding from a high-priced airport connector to uses benefiting low-income and minority residents of the region (see *Poverty & Race*, July/August 2010).

The political tensions that Bill Taylor describes at the inception of Title VI are still with us today, and preserving and enforcing the adverse impact standard is as important today as it was in 1964. Ultimately, the ruling in *Sandoval* needs to be reversed in Congress to restore the ability to file lawsuits to enforce the racial impact standard against state and local governments and other federal grantees (the Civil Rights Act of 2009 was the most recent legislative effort). In the meantime, advocates need to expand their use of the Title VI administrative process to attack structural discrimination embedded in government policies and practices. □

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Mexico-Americans, which provided moral support for the lawsuit.

Marcus filed the case in federal court, arguing that segregated schools for Mexican Americans violated the Fourteenth Amendment's Equal Protection clause (“No State shall...deny to any person within its jurisdiction the equal protection of the laws”). As with many clauses of the Constitution, the meaning of “equal protection of the laws” was not immediately apparent. The Supreme Court had held in *Plessy v. Ferguson* (1896), however, that the demands of equal protection were met if states separated people on racial grounds but provided them with equal facilities. In 1945, when Marcus had to choose his strategy, it was so clear that the Supreme Court was not about to undo *Plessy* that the NAACP had adopted the approach of challeng-

ing segregated higher education on the grounds of unequal educational facilities. It hoped that if the South had to provide separate institutions that were truly equal, the additional cost would convince Southern legislatures that segregation was simply not worth the expense.

Discrimination was endemic.

Marcus chose a different route. He could have emulated the NAACP strategy, or he could have focused on a California law that specifically permitted segregation of Asian-American and Indian students but made no mention of Mexican Americans. He was eager to attack segregation against Latinos frontally, however, and argued instead that the segregation itself resulted in an inferior education

and therefore constituted a violation of equal protection. In carrying out a “common plan, design and purpose” to keep the children from specific schools solely because of their “Mexican or Latin descent or extraction,” the four Orange County school districts named as defendants had caused the parents and their children “great and irreparable damage.” Segregation was hurting the Mexican-American students' ability to improve their language skills and become more knowledgeable about and more familiar with the larger society in which they lived. Marcus differentiated the case from *Plessy* by saying that it was not about race, because Mexicans and Mexican Americans were white—as they had been labeled in the 1940 Census. Rather, he asserted, this was intra-race discrimination. The litigation, in his formulation, was about ethnicity rather than race.

The case was assigned to federal District Court judge Paul J. McCormick, a prominent Los Angeles Irish Catholic Republican who had been appointed to the bench by President Calvin Coolidge in 1924. McCormick was initially skeptical about his court's jurisdiction over the case, as education was traditionally treated as a state matter rather than one appropriate for the intervention of federal officials and institutions. In addition, and bound by the Supreme Court's ruling in *Plessy* and subsequent cases, McCormick was far from certain that segregation was to be equated with discrimination and denial of equal protection of the laws.

At trial, Marcus had parents testify about the refusal of school authorities to move their children out of the "Mexican" schools and the officials' insistence that the children could not speak English and were dirty to boot. One of the mothers had tried to get her eight-year-old son into a Santa Ana "white" school. Denying her request, the school district's assistant superintendent had asked her why the Mexican people were so dirty. Joe, her oldest son, was in the U.S. Navy, stationed in the Philippines. "I told him that if our Mexican people were dirty, and all that," she testified, "why didn't they have all of our boys that are fighting overseas, and all that, why didn't they bring them back and let us have them home ... I told him if Joe wasn't qualified, why didn't they let me have him and not take him overseas, as he is right now."

Marcus then called Orange County school officials to the stand. James L. Kent, the superintendent of one of the districts, was prominent among them. Kent had written a master's thesis asserting that Mexicans were "an alien race that should be segregated socially." He wrote, in a belief shared by many educators of the time, that Mexican Americans were biologically distinct. "The schools are confronted with the problem of dealing with groups of children of different racial characteristics, with different intellects and different emotions," he declared. "Their racial language handicap seems

to be a severe liability to their advancement in school. This fact, coupled with the fact that the test intelligence of the average Mexican is below that of the average white child, makes it seem probable that a separate curriculum adjusted to them is advisable." It was apparent from their testimony that other school officials agreed.

Marcus brought two students into court, demonstrating their facility in English. Finally, he presented the testimony of two educational experts who testified that, contrary to the Supreme

Boys were taught gardening and woodworking, girls sewing and housekeeping.

Court's holding in *Plessy*, segregation did carry a stigma that affected the students' ability to learn. The Orange County counsel countered that the segregation was in the best interests of both "white" and "Mexican" students, because the great gap in the two groups' language abilities necessitated that they be taught differently. Segregation was not discrimination.

Fostering Antagonisms, Suggesting Inferiority

Judge McCormick was unconvinced. In 1946, in a landmark opinion, he declared that "a paramount requisite in the American system of public education is social equality." He did not specifically cite the language of "separate but equal," but in effect he declared that separate could not possibly be equal. What segregation did, McCormick asserted, was "foster antagonisms in the children and suggest inferiority among them where none exists," and they were thereby deprived of an equal education.

The County appealed to the Ninth Circuit Court of Appeals, sitting in San Francisco. In New York, NAACP Assistant Special Counsel Robert Carter, Thurgood Marshall's second-

in-command and later a federal District Court judge, expressed surprise that the NAACP had known nothing about the case. Marshall was ill, and Carter was temporarily in charge. He immediately understood that if the case reached the Supreme Court, it could be the one to attack segregated education on its face. He had come to believe that sociological evidence, illustrating the psychological and pedagogical effects of school segregation, could be a useful weapon in the litigation arsenal. Other lawyers who worked with the NAACP were less sanguine. The social sciences, they said, were not pure science, so their findings were too weak to use in court. Carter, however, considered the *Mendez* case too good an opportunity to ignore. The NAACP entered the case at the appeals level as an amicus curiae, and Carter drafted a brief that he later described as the NAACP's trial brief for *Brown v. Board of Education*.

The American Jewish Congress, the ACLU, the Japanese American Citizens League and Governor Earl Warren's Attorney General entered the case as well, all in support of the Méndezes. In 1947, the Ninth Circuit struck down the segregation based on California law, which, as noted above, permitted segregation of Indian and Asian-American children but made no mention of Mexican Americans. The California legislature decided that other children should not be segregated, either. They and Governor Warren quickly repealed the law. Orange County decided not to take the case further. Within a few months, its schools were integrated. Mexican Americans throughout the state were enheartened, as were others elsewhere in the Southwest. Parents brought cases and the threat of litigation to school boards throughout California as well as Texas, New Mexico and Arizona, achieving integration.

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Mexican Americans such as Gonzalo Méndez became politically
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active in the years during and following World War II, and found a society newly open to their claims. By the mid-1940s, there were more Mexican Americans—those born in the United States of immigrant parents or of parents themselves born in the United States—than Mexican non-citizens living in the United States. Many of them were ready to become politically involved. Hundreds of thousands of Mexican Americans fought in World War II, returning ready to battle the kind of injustice they had been fighting abroad. They and their compatriots at home reacted to *Méndez* by creating organizations that, among other activities, brought integration to schools throughout the Southwest.

The American legal elite's ideas had also been affected by the war, and it greeted Judge McCormick's ruling as a harbinger of things to come. His opinion, the *Yale Law Journal* wrote in June 1947, "has questioned the basic assumption of the *Plessy* case and may portend a complete reversal of the doctrine." Drawing on statistics in the NAACP's brief, the *Journal* declared that the facts that 34.5% of African Americans had failed to meet the 1943 minimum educational standards for military service, and that there were too few African-American physicians, dentists and lawyers, indicated that segregated education was counterproductive. The *Michigan Law Review* called the *Mendez* decision "a radical departure from the tacit assumption of the legality of racial segregation" and predicted that it, in concert with the education cases the NAACP had won in the Supreme Court, "may well force a reconsideration of the whole problem." The *Columbia Law Review* urged the Supreme Court to overturn *Plessy*, agreeing that "modern sociological investigation would appear to have conclusively demonstrated" that segregation implies inferiority. The *Southern California Law Review* called segregated education "anomalous" in "a nation priding itself on its solid foundation of basic tolerance and

equality of opportunity."

International Relations Considerations

The societal climate was also affected by considerations of international relations. The Truman Administration, seeking allies in the Cold War, was concerned about the image of the United States in Mexico and other developing nations. "Eager eyes and attentive ears North and South of our borders await the result" of the *Mendez* case, David Marcus had told Judge McCormick. One of the Ninth Circuit judges wrote to Governor Warren after the *Méndez* decision was handed down, saying that if segregation of Mexican Americans was not

ended in California, the ambassadors of 20 Latin American nations would technically be excluded from public facilities. Warren in turn wrote, "I personally do not see how we can carry out the spirit of the United Nations if we deny fundamental rights to our Latin American neighbors."

Mendez both reflected and influenced the new thinking. It nonetheless remains largely unknown, perhaps because it did not go to the Supreme Court, but in 1954 Judge McCormick's language would be echoed by Chief Justice Earl Warren in *Brown v. Board*. It was the plaintiffs in *Méndez*, however, who first got a federal court to declare that the doctrine of "separate but equal" ran counter to American law and American values. □

Mendez is Still With Us. . . .

The issues raised in *Mendez v. Westminster* are still with us, albeit in different form. For follow-up, these are useful resources:

Patricia Gándara and Gary Orfield, "A Return to the 'Mexican Room': The Segregation of Arizona's English Learners" (20 pp., July 2010), available from the UCLA Civil Rights Project/Proyecto Derechos Civiles, 310/267-5562, www.civilrightsproject.ucla.edu.

Patricia Gándara, *The Latino Education Crisis: The Consequences of Failed Social Policies* (Harvard University Press, 2009).

PRRAC Board member José Padilla (jpadilla@crla.org) has information on related litigation and other work of California Rural Legal Assistance.

PRRAC Board member Cathi Tactaquin's ([ctactaquin@nnirr.org](http://www.ctactaquin.org)) organization, the National Network for Immigrant and Refugee Rights, focuses on general concerns re impact/implications of educational access for immigrant children due to various state initiatives and immigration enforcement actions.

PRRAC Board member Maria Blanco's (mblanco@law.berkeley.edu) recent article for the Immigration Policy Center, "The Lasting Impact of *Mendez v. Westminster* in the Struggle for Desegregation," was published in IPC's latest *Perspectives on Immigration*, and can be accessed at <http://www.immigrationpolicy.org>.

Nancy McArdle, Theresa Osypuk & Dolores Acevedo-Garcia, "Segregation and Exposure to High-Poverty Schools in Large Metropolitan Areas: 2008-09," available at diversitydata.org.

Natl. Women's Law Ctr. and MALDEF, "Listening to Latinas: Barriers to High School Graduation" (2009), <http://maldef.org/assets/pdf/ListeningtoLatinas.pdf>.

The UCLA Civil Rights Project/Proyecto Derechos Civiles also has current information on the *Horn v. Flores* case (Arizona Education Equity Project, education of ELL students) and the 9 reports prepared for the case. Reports can be found at <http://civilrightsproject.ucla.edu/research/k-12-education/language-minority-students/>, or contact Laurie Russman (larussman@gmail.com, 310/267-5562).

G. Orfield, G. Siegel-Hawley, J. Wang (forthcoming), "Intensifying School Segregation in the Epicenter of the U.S. Latino Community: Deepening Inequality in Southern California," from the UCLA Civil Rights Project/Proyecto Derechos Civiles—part of a comprehensive look at segregation and inequality in the megalopolis that spans So. Calif. and Baja—a series of working papers will be released soon. Inf. from Genevieve Siegel-Hawley, gsiegelhawley@gmail.com.