

Para Todos Los Niños - *Mendez v. Westminster*:
A Seminal Case Toward Desegregation

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Knocking on the Schoolhouse Door: *Mendez v. Westminster*, Equal Protection, Public Education, and Mexican Americans in the 1940's

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INTRODUCTION

[T]he problem with American schools has been not their lack of purpose but their continued commitment to purposes rooted in social inequality and its attendant culture.¹

When the United States invaded Mexico and annexed half of its territory in 1848, a process of domination and subordination was set in motion that relegated Mexican Americans² to the status of second-class citizens. Among the many principal American institutions that maintained a subordinate position for Mexican Americans, none were more effective than the public schools. This study of schools in Orange County, California, in particular the small town of El Modena, illustrates how institutions created or adapted by Anglos³ structured inequality within a society stratified by race and class divisions. As reflections of the larger society, public schools provide an excellent example of how a southern California community at a local level instituted practices and policies of segregation and racial discrimination which continue to the

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1. MICHAEL B. KATZ, RECONSTRUCTING AMERICAN EDUCATION 114 (1987).

2. The terms Chicano, Mexican American and Mexican have slightly different meanings, but can be used interchangeably. I use all the terms to refer to people of Mexican descent living in the United States, regardless of citizenship.

3. The term Anglo refers to all Americans of European descent and is commonly used by Mexican Americans to describe "white" people.

present day.

The status quo, however, did not go unchallenged. Disgruntled Chicano parents began attacking the Orange County school systems that had been segregated for generations. The law suit they filed against several school districts resulted from grass roots community efforts to desegregate local schools.⁴ The case, *Mendez v. Westminster*⁵, traveled from then rural Orange County, all the way to the Ninth Circuit in San Francisco, where the court held that Mexican Americans could not be discriminated against on the basis of national origin; that in fact, segregation was a violation of their Fourteenth Amendment right to equal protection.⁶

Despite the importance of *Mendez v. Westminster*, which ruled on equal protection in the schools seven years before *Brown v. Board of Education*, very little has been published on the legal or social context of this case. Nothing to date has been written specifically on the subject of El Modena and its residents. This case study of Mexican school segregation in Orange County, in particular, in El Modena, and legal analysis of the issues surrounding the *Mendez* case, is provided as a partial corrective to historical neglect of this important chapter of our collective history.

THE CITRUS SOCIETY

I have dubbed the society of Southern California and its cheap Mexican labor the "citrus society." The name derives from the complete dependence of most of Southern California, particularly Orange County, on the citrus industry, and more importantly, the way society was forced to follow the stratification of that dominant industry.

Segregation developed as a product of the stratified citrus society. Many people, Anglo and Mexican, refused to talk about the segregated society. Most were resigned to the system or were silenced by it, such that one may characterize the discrimination of the period as "silent segregation."

The citrus society established an unequal system based on existing segregative practices imported from other parts of the country. These practices were imposed in California by new Anglo American arrivals from the time of the U.S. conquest through the successive waves of Anglo American immigration.⁷ An analogy could be made to the "cotton society" that existed in the South during the later part of the 19th century, where African Americans were held in economic servitude in an Anglo controlled agrarian society. Though Mexican Americans originally

4. GILBERT GONZALEZ, CHICANO EDUCATION IN THE ERA OF SEGREGATION (1990).

5. *Mendez v. Westminster*, 64 F. Supp. 544 (S.D. Cal. 1946); *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947).

6. *Westminster*, 161 F.2d at 781.

7. ALBERT CAMARILLO, CHICANOS IN CALIFORNIA 23 (1984).

began with a great deal of power in California, as land owners and statesmen, as their power disintegrated their status and the status of their immigrant cousins diminished, to a point where Mexicans found themselves in economic servitude in an Anglo-controlled agrarian society.

The institutions created in this society propagated the prejudice and discrimination, and insured the desires of the Anglo population to preserve the status quo and to maintain an unequal system. The institutionalization of segregation began with the American conquest of California in 1848. Over the next 30 to 40 years Mexicans were stripped of their land and property and generally excluded from positions of power by Anglo Americans. Institutions were imposed on them as masses of Americans arrived in the decades following the California Gold Rush. Eventually, by the last decade of the nineteenth century, Mexicans occupied one of the lowest positions in the state, both economically and socially.⁸ Mexicans increasingly became employed in agricultural labor, a role they continued to play throughout the twentieth century.

In the citrus society Mexicans were relegated to an inferior status as day laborers with an assumed non-citizen status. They had little or no wealth and had to contend with racial discrimination as well. With little opportunity or knowledge of the system, Mexicans performed poorly in the county's schools and were usually classified as retarded or slow learners by educators.⁹ Mexicans were considered incapable of performing anything but the most menial jobs and were seen as content to do so. Oscar Valencia, a resident of El Modena, agreed that Mexicans had little opportunity outside of the fields and said that working in the groves and the packinghouses "was the job for the Mexican people."¹⁰ The citrus society effectively maintained Mexicans in this cycle through economic and social forces.

The institutions of the new society reflected a general prejudice held by Anglos against Mexicans. This prejudice was continually characterized in the ways Mexicans were depicted in the newspapers such as the *Orange Daily News*.¹¹ Articles from this local newspaper abound in prejudices and negative stereotypes that Anglos held against Mexicans.

Attitudes prevalent in the citrus society also reinforced silent segregation and the stratification of the society. Constable George Bartley of El Modena stated: "They didn't want to go to school, the kids didn't."¹² The institutions of the society propagated these prejudicial beliefs and insured the Mexican a lower class and inferior status than the Anglo, who controlled and benefited from the same institutions. As with other Mexicans, Oscar Valencia was adversely affected by the prevailing

8. See RODOLFO ACUÑA, A HISTORY OF CHICANOS (1988); CAMARILLO, *supra* note 7.

9. Simon L. Treff, The Education of Mexican Children in Orange County 45 (1934) (unpublished M.Ed. thesis, University of Southern California).

10. Interview with Oscar Valencia in Orange, California (Aug. 23, 1991) (hereinafter Valencia Interview).

11. *Man Shot in Hand*, ORANGE DAILY NEWS, July 14, 1913, at 1.

12. Interview with George Bartley, in Orange, California (July 2, 1970) (hereinafter Bartley Interview).

beliefs and institutions. He recalled that "they would try to discourage you to go to school [sic] . . . I started working when I was 12 years old. Of course, I attended school and when I quit school at 16 I went full force into picking oranges."¹³ The cycle of segregation ended were it began, in a society that offered few benefits and little hope for the Mexican American underclass.

Schools were perhaps the most pronounced and obvious institutions of silent segregation. Americans have traditionally prided themselves on their schools as an instrument of change and improvement, incorporating the ideals of the nation. However, schools are more a reflection of society than a vehicle for change.¹⁴ Schools are a mirror image of a society; they institutionalize the desires and aspirations of a society, but more importantly they show how these aspirations are fulfilled. The town of El Modena and the two schools which formed the elementary district provide an excellent case in point. The El Modena schools reflect both the citrus society from which they developed and the silent segregation which was the basis for the separation of Mexicans from whites in society.

THE EL MODENA SCHOOL DISTRICT

The land boom of the 1880s produced rapid growth in Southern California and the increase in population resulted in the establishment of small, local school districts to serve the new towns or subdivisions. While inefficient, the small districts insured local parental control and localized school attendance. The elementary school district usually served students from kindergarten to eighth grade and then joined together with several other districts to form a larger high school district to serve the graduates of the various elementary schools.¹⁵

El Modena exemplified these trends. The school district was established in 1883. The district grew rapidly, especially after 1910, primarily because of the expansion of agriculture. This growth prompted the school board to put up bonds for the building of a new and larger school. The Lincoln school opened in the fall of 1913.

The El Modena School Board carefully planned the education of El Modena school children but could not have anticipated the large number of Mexican children who increased in great numbers as parents arrived in the area to work in the thriving agricultural industry. Prior to World War I, most of the Mexicans were few in number and were largely descended from the old "Californio" elite, land-owning families such as the Peraltas, Yorbas and Sepulvedas.¹⁶ These Mexicans had been assimilated in the area due to their small numbers and supposed "Spanish" origins.

13. Valencia Interview, *supra* note 10.

14. See KATZ, *supra* note 1, at 1.

15. IRVING HENDRICK, CALIFORNIA EDUCATION, 25-26 (Hundley & Schutz eds., 1980).

16. Interview with Esther and Ralph Danker, in Anaheim, California (Aug. 29, 1991) (hereinafter Danker Interview).

Apparently, the very first groups of Mexican immigrants were also integrated. "One of my uncles," an early Mexican immigrant, according to an El Modena resident, "went to school, to a non-segregated school."¹⁷ As the small numbers of Mexicans in the area increased substantially over the next two decades the school district and Anglo community responded to what they termed the "Mexican Problem."

THE 1920S: IMMIGRATION AND THE "MEXICAN PROBLEM."

The Mexican population in Orange County grew substantially in the years before 1920. Between 1910 and 1920 it increased by 175 percent, or close to 4,000 residents, the eighth largest Mexican population concentration in the state, but the fourth largest number of Mexicans under the age of eighteen.¹⁸ This meant more students in the schools.

The number of Mexicans in the county and the state increased even more dramatically during the 1920s. The southwestern economy, though subject to market shifts, experienced a boom. Asian and European immigration to the United States was all but eliminated during the 1920s by a xenophobic Congress. The only group during this era to escape restriction were Mexicans. Western agribusinessmen and politicians fought hard to protect unfettered immigration from south of the border. It was important to them to protect the only source of cheap labor left to them. As other groups were restricted from entering the country, the demand for Mexican labor increased. This trend began during the labor shortages of World War I and continued to various degrees until the Great Depression. The economic incentive provided by the American Southwest and continued rebellions and troubles in Mexico fueled the migration to the North.¹⁹

Given the circumstances affecting immigration, the California Mexican population tripled between 1920 and 1930, from a conservative estimate of 121,000 to 368,000. By the mid-twenties El Modena had a population of 1,000 Mexicans, making up the majority of the town.²⁰ The El Modena School Board had run head on into the "Mexican Problem."

California had instituted a compulsory attendance law in 1874 which required that all children between the ages of 8 and 14 be in school.²¹ Moreover, attendance at school, measured by "average daily attendance" (ADA), became the standard for the apportionment and allocation of state

17. Interview with Bob Torres, in El Modena, California (Aug. 16, 1991) (hereinafter Torres Interview).

18. MARY L. HAAS, *THE BARRIOS OF SANTA ANA* 65 (1985).

19. ACUÑA, *supra* note 8, at 189.

20. Treff, *supra* note 9, at 14.

21. HENDRICK, *supra* note 15, at 17.

education funds.²² The more students who went to school the more money the district received. This included Mexican children. A problem developed from the contradiction of accepting Mexicans as a permanent, although inferior, part of the community. An important point must be noted: educators, including those in El Modena, believed it was vital to include Mexican children in the educational system, whether for money, assimilation, or control, but at the same time believed Mexicans must be separated from Anglo children. The separation in the schools, however, was not the only area in which prejudice became manifest, but rather was symptomatic of the society and its institutions. The schools were only a reflection of a larger problem.

It was more common than not during the 1920s for southern California towns to be segregated. Segregation in the citrus society encompassed many harsh and unjust realities, from segregated housing and public places, to inferior social status and political and economic exploitation. Mexicans and Anglos lived in truly separate worlds. According to historian Charles Wollenberg, "segregation was the rule wherever Mexicans reside in sizable colonies," and it was a reality, "from cradle to grave."²³

This type of segregation was institutional and was visible in all aspects of daily life. Two common examples of segregation were the movie theaters in the larger towns and the swimming pools in almost every community. The five theaters in downtown Santa Ana were segregated.²⁴ Oscar Valencia remembered that, "the bottom [the main floor of the theater] was for the Americans, the top [balcony] was for the Mexicans. They had all kinds of segregation."²⁵ The "plunge," as the swimming pool in nearby Orange was called, had a "Mexican Day" on Mondays. It was the only day Mexicans were allowed to swim. The pool was drained that night and was closed on Tuesday for cleaning and re-filling.²⁶

Many organizations, businesses, and homeowners associations had official policies to exclude Mexicans, but in many other instances it was more of a general social understanding among Anglos that Mexicans should be excluded.²⁷

This was the type of unequal society in which Mexicans lived. Anglos felt threatened and were pressured by the increasingly larger and larger Mexican population to affirm their superior social status over the Mexican community.²⁸ Wollenberg states that Americans felt that the "Mexican is a menace to the health and morals of the rest of the

22. *Id.* at 31.

23. CHARLES WOLLENBERG, *ALL DELIBERATE SPEED* 113 (1976).

24. HAAS, *supra* note 18, at 94.

25. Valencia Interview, *supra* note 10.

26. Interview with Marge and JD Gobbel, in Orange, California (Aug. 29, 1991) (hereinafter Gobbel Interview).

27. CAMARILLO, *supra* note 7, at 38; WOLLENBERG, *supra* note 23, at 113.

28. HAAS, *supra* note 18, at 146-47.

community."²⁹ Such prejudices lead to the establishment of a separate "barrio" consisting of the downtown area of old El Modena. The town became two separate worlds in one place. Mexicans were sold "miserable little houses" on cheap lots in the center of town "for a good profit," according to a long time resident.³⁰ Anglos left the downtown area as more and more Mexicans arrived until the town was virtually all Mexican. Most Anglos in the community lived in small family-owned or rented citrus or walnut ranches in the plots adjacent to the town.³¹ El Modena had developed a doughnut shaped segregation. The Mexican community resided in the middle, clustered into the town, and the Anglos surrounded them living dispersed on the various nearby farms.

The separation went beyond the type and location of the houses. Mexicans and Anglos lead separate lives. They went to different churches, Anglos attending the Friends Church on the main street of Chapman, while Mexicans attended makeshift Catholic services in their homes until the first Catholic church was established. Mexicans had a different cultural life. The Mexican/Chicano community in El Modena brought in "teatro" groups from Mexico, had their own dances, ran their own restaurants and small stores, and organized mutual aid societies which sponsored both Mexican and American patriotic organizations.³²

Segregation was also a result of Anglo control of the economic institutions. In the citrus society of El Modena control was exerted by the agricultural industry, which Anglos controlled from the soil to the packinghouse. No opportunities were open to Mexicans other than the traditional "Mexican jobs" of "picking" and "packing." Mexicans had become the "preferred" agricultural labor force in the state and constituted over 80 percent of such workers in southern California.³³ The cycle of silent segregation became complete during the heyday of the citrus industry and its local societies.

THE OPENING OF ROOSEVELT: THE FIRST SEGREGATED SCHOOLS

The schools in El Modena were a direct reflection of both the citrus society and its silent segregation. The surge of Mexicans to fill the labor needs of the area, Anglo parents' desires to separate their children from the Mexicans, the rancher's desires for "cheap labor," and societal prejudice all combined in El Modena in 1923 to create separate schools for Anglos and Mexicans. On April 4, 1923 the Roosevelt school opened

29. WOLLENBERG, *supra* note 23, at 111 (quoting Grace Stanley, *Special School for Mexicans*, THE SURVEY, Sept. 15, 1920, at 714).

30. Bartley Interview, *supra* note 12.

31. A map from the 1920s in the Orange Public Library shows the ownership of the plots around El Modena. The plots are numerous, mostly small and exclusively owned or rented by Anglos.

32. All of these examples are taken from documents at the University of California, Irvine Special Collections. They include playbills, posters, advertisements and pamphlets.

33. CAMARILLO, *supra* note 7, at 35.

in El Modena adjacent to the older Lincoln school. The district could not wait until fall to open the new school, but instead rushed construction and opened early to ease "overcrowding."³⁴ Mexicans had clearly been pushed into the older and inferior facility to keep them separate from the Anglo children in the new school. The school's schedule was even arranged to accommodate the needs of agriculture. The next fall, the local newspaper pointed out that, "sessions for pupils who desire to pick walnuts this season is already in session."³⁵ Segregation had officially been incorporated into the schools. The unequal society created unequal and separate schools.

The schools in El Modena were segregated with no pretense of equality. The schools were, therefore, the clearest examples of the institutions and ideologies of the citrus society and silent segregation. Mexicans were categorically excluded from all decisions of government and school administration. Their children went to a school they had absolutely no control over.

The schools were situated in what might be called the "downtown" section of El Modena, on Chapman Avenue. Though the Anglo and Mexican communities existed in two separate social worlds, the common ground was on Chapman Avenue, where the commercial establishments as well as the schools were located. Almost all of the town's businesses were located on Chapman and in the 1930s about half were owned by whites and the other half by Mexicans.

Though more opportunity for intergroup interaction could be found on Chapman Avenue than in the fields, the schools of El Modena separated the children of the two races in unequal facilities. Situated barely 100 yards from one another, the separate schools were a vivid reminder of the insidious inequality of the citrus society.

EDUCATIONAL THEORY: A JUSTIFICATION OF SEGREGATION

Ideology and theory allowed for the maintenance of separate and unequal schools. Educational theory and scholarship of the time was heavily influenced by the prejudices and inequality of the society. Scholars addressed "The Mexican Problem," a problem, as they saw it, tied to Mexican cultural inferiority to "American" culture. This theory was readily accepted by local policy makers.³⁶ Educational theorists sought to justify racial and cultural prejudice through what they considered to be scholarly research. The result of this work invariably was assimilationist, thus the term applied to it: "Americanization."

These theories gradually moved beyond ideas of inherent inferiority toward an explanation of Mexican cultural inferiority. According to

34. *El Modena Has New School Ready for Use*, ORANGE DAILY NEWS, April 4, 1923, at 1.

35. *Outlying Schools Opening Tuesday. Ready for Work*, ORANGE DAILY NEWS, Sept. 8, 1923, at 1.

36. CAMARILLO, *supra* note 7, at 43-44; GONZALEZ, *supra* note 4, at 22.

historian Gilbert Gonzalez, "Progressives aimed at inculcating a common culture that would bind together the various classes," and "on the level of the educational process, they sought effective training for the individual as a producer."³⁷ The promises of education and equality that underscored Americanization stood in contradiction to separate schools for the Mexican children, and Americanization only served to reinforce societal prejudice.

In order to justify their theories, scholars turned to ways of measuring intellectual differences to support the existing system. A common method to justify segregation was to emphasize the Mexican students' lack of knowledge of English, which, when combined with culturally biased I.Q. testing, supposedly demonstrated that Mexicans were not as smart as Anglo children, and therefore merited separate classrooms or separate schools.³⁸ Simon Treff, an educator, performed research in Orange County during the 1930s and cited poverty, family background, and lack of exposure to the English language as reasons for the underachievement of Mexican students.³⁹ Treff examined data submitted from the local districts, and found that the facilities and teachers in the Mexican and Anglo schools were equal.⁴⁰ The conclusion drawn from his study is that Mexican students were culturally, racially and/or educationally inferior.⁴¹

Though the most obvious result of racial ideology of the period was segregation in the schools, even within "Mexican" schools students were tracked into "retarded" classes or vocational education classes; students also were not expected to go beyond the eighth grade or to fail even earlier.⁴² This tracking was tied in no small way to the need for Mexican labor. Treff concluded in his study "that the Mexican presents some problems yet at the same time is a necessary and integral part of the community of the county."⁴³

Working in conjunction with segregated schools was the adult "Americanization" programs that sought to eliminate Mexican culture in the United States. Such policies and practices were common in the southern California citrus society and El Modena was no exception. El Modena, like many other towns, adopted their Americanization programs and segregative practices wholesale.⁴⁴ The town could justify segregation of Mexicans based on existing educational wisdom and prevailing policy.

37. GONZALEZ, *supra* note 4, at 17.

38. WOLLENBERG, *supra* note 23, at 115; GONZALEZ, *supra* note 4, 62.

39. Treff, *supra* note 9, at 79.

40. *Id.*

41. *Id.*

42. CAMARILLO, *supra* note 7, at 42; WOLLENBERG, *supra* note 23, at 112; GONZALEZ, *supra* note 4, at 79.

43. Treff, *supra* note 9, at 21.

44. GONZALEZ, *supra* note 4, at 146-148.

SEGREGATION IN THE SCHOOLS: LINCOLN AND ROOSEVELT

On February 18, 1946 in his decision in the *Mendez v. Westminster* case, presiding federal judge Paul J. McCormick described the Lincoln and Roosevelt schools of El Modena:

One of the flagrant examples of the discriminatory results of segregation in two of the schools involved in this case is shown by the record. In the district under consideration there are two schools, the Lincoln and the Roosevelt, located approximately 120 yards apart on the same school grounds, hours of opening and closing, as well as recess periods, are not uniform. No credible language test is given to the children of Mexican ancestry upon entering the first grade in Lincoln School. This school has an enrollment of 249 so-called Spanish-speaking pupils, and no so-called English-speaking; while the Roosevelt, (the other) school, has 83 so-called English-speaking pupils and 25 so-called Spanish-speaking pupils.⁴⁵

The schools that seemed so commonplace to the people of El Modena seized the attention of the judge and received special consideration in his decision. How exactly did the schools of El Modena function during the era of *de jure* segregation to merit such attention? The overt discrimination involved in segregating schools and the blatant racism of the administrators provided the impetus for parents to organize and fight the system in court. It is, therefore, important to understand exactly how the schools worked on a day-to-day basis.

Dan Gomez, a former student in the segregated school, reflected on the separation of children in the neighboring schools:

That no man's land in between both schools, that playground, pretty big piece of land. The little kids, you'd sit over at Lincoln School, look across at Roosevelt, it would look like it was way off. It's exaggerated when you're little. So you knew that there were kids over there and that you're not going to mix with these kids. You kind of made the best of it.⁴⁶

The two schools were situated on the corner of Alameda and Chapman near the town center in El Modena. A field separated the two schools by about one hundred yards and served as the playground for both schools. Farms surrounded the schools on all sides, except on the west where the Mexican neighborhoods began across Alameda.

45. *Mendez v. Westminster*, 64 F.Supp 544, 549 (S.D. Cal 1946).

46. Interview with Dan Gomez in El Modena, California (July 26, 1991) [hereinafter Gomez Interview].

Esther Danker, who attended the schools in the 1930s, described the Roosevelt school: "It was kind of . . . stucco and yellowish colored [mission style] . . . it had a lot of big steps in the front, big wide area, and then it had a circle side walk clear around with palm trees . . . on each side was a sidewalk with grass. And then the building itself, after you get up the steps then there was a big opening with pillars and stuff."⁴⁷

Lincoln, on the other hand, was a dark brick building with little foliage. Lincoln had six rooms, no offices and substantial vocational education training shops in the basement.⁴⁸ With all these facilities, and the fact the Lincoln had at one time been an "American" school, educator Simon Treff could not help but rank Lincoln as one of the best "Mexican" schools in the county, better than even some "American" schools.⁴⁹ What Treff did not take into account, however, was that the school was just 100 yards from a far superior school, a school the vast majority of Mexican children were not permitted to attend and rarely entered unless it was to go to the principal's office for punishment (Lincoln had no administrative offices of its own). According to one former Lincoln student, the Roosevelt school was associated with reprimands, fear and feelings of inferiority.⁵⁰

While Mexican and Anglo students were separated physically in buildings, they were also accorded separate treatment by the rules and customs of the schools. School superintendent Harold Hammersten testified in the district court that students were separated on the basis of race and were given no tests to determine proficiency.⁵¹ In fact, in 1945 the seventh grade class at Lincoln School tested higher on standardized county exams than the seventh graders at Roosevelt School.⁵²

Many light complexioned Mexicans were allowed to attend Roosevelt because they were considered "American." Though Dan Gomez and Vince Rodriguez remember Mexicans in the Roosevelt School as "fair complected," they recalled Mexican children there never associated with the Mexicans at Lincoln.⁵³ Thus, descendants of the "Californios" were separated from the children of immigrants and contributed to the gap between the newcomer and the older families who occupied a special status in society. This special status, given to some and not others, served as a method to divide the Mexican community.

An interesting twist to the racial dualism in the schools was a situation during the 1920s and 1930s concerning Ben and Kazaie Murakami, Japanese-American students who attended the Roosevelt School. Esther

47. Danker Interview, *supra* note 16.

48. Torres Interview.

49. Treff, *supra* note 9, at 64.

50. Gomez Interview, *supra* note 46, pg. 7.

51. Transcript of Proceedings at 302, *Mendez v. Westminster*, 64 F.Supp 544 (S.D. Cal 1946).

52. WOLLENBERG, *supra* note 23, at 128.

53. Interview with Vince Rodriguez, in Orange, California (July 23, 1991) (hereinafter Rodriguez Interview); Gomez Interview, *supra* note 46.

Danker remembered Asian students in her classes later in the 1930s.⁵⁴ How the decision was made as to which school they would attend is unclear. One explanation could be that so few Asians lived in the area and they did not pose a threat in the opinion of local educators, at least not until the outbreak of World War II and the internment of the Japanese Americans. More likely, however, it had to do with the superior economic and social status of the Japanese in the County. Japanese no longer worked as laborers, but were tenant farmers. They were not land owners, but did count their economic viability with the growers. Also, part of the premise for segregation of Mexicans from whites was the belief that Mexicans did not do well in school, distinguishing Mexicans from Asians, who were stereotyped as high achievers in school. If the Japanese had not had some economic clout they would probably not have had the privilege of attending the Anglo school. They are more comparable to the few light skinned wealthy "Californios" than the mass of Mexican workers the schools intended to exclude.

The placement of upper class Mexican children and Japanese children in the Roosevelt school demonstrates that racism may not have been the only reason for school segregation in El Modena. Most likely, there were many premises for the existence of segregation. The need to control a large population of agricultural labor may have been one premise, as well as simple racism.

One of the justifications for Mexican segregation was the expectation that Mexican students did not perform well in school. Former Lincoln students repeatedly said that they were either discouraged or never encouraged to continue their education beyond grade school. Mexicans were expected to work in the fields. Bob Torres, who dropped out after ninth grade, remembered receiving no help from school staff: "Nobody was pushing us to go to high school. Nobody was telling us, 'Hey, you should go to high school.'"⁵⁵

Perhaps the most degrading part of Lincoln, according to former students, were the flea and lice inspections, a practice common throughout Mexican schools in the county. Dan Gomez described what was done to the children at Lincoln:

Oh they'd sit you down and somebody would go through your head, and they were forever sending notes home, telling your parents to spray this or spray that, a lot of kids would come back to school with no hair, because at home they would shave them to try to get rid of that.⁵⁶

These searches certainly instilled lasting feelings of inferiority. A racist presumption inspired these inspections: Mexicans were dirty and could not care for themselves or their children. Gomez was so convinced that he came to accept the searches as necessary:

54. Danker Interview, *supra* note 16.

55. Torres Interview, *supra* note 17.

56. Gomez Interview, *supra* note 46.

But looking back at that now, I don't know if that was because they were just prejudiced or if the biggest problem was in the Mexican community with that kind of thing [lice and fleas]. Poor kids and poor conditions at home and that. A lot of it can be exaggerated in your own mind, yet it was something that maybe they really had to face, they had that problem at Lincoln and maybe they didn't have that problem at Roosevelt. They would have had it if we were mixed probably, but that didn't happen.⁵⁷

Providing separate school environments, little encouragement, and degrading treatment of Mexican students, the schools served to perpetuate existing societal prejudices and stereotypes that helped preserve the status quo of inequality and segregation for the Mexican community in El Modena.

Racial inequality manifested itself in other aspects of the school and was particularly evident in the quality and distribution of teachers and equipment. Teachers within the county who were generally less experienced and less qualified were placed in the Mexican schools.⁵⁸ The teachers treated the Mexican children more harshly than the Anglo children; at least this was the perception among the Mexican children. Dan Gomez recalled, "There was some feeling that some of the teachers were a little harder on the Mexican kids, discipline-wise, they'd really come down on us."⁵⁹ Working in the Mexican school provided little status for teachers and a move to an "American" school was an advancement.⁶⁰ This is not to suggest that in the "Mexican" school teachers did not like their job, but they had to contend with an "inferior" standing which could engender animosity toward the students.

In terms of equipment distribution, Roosevelt received the new and Lincoln received the old equipment Roosevelt handed down. "Yeah, they got new stuff [in Roosevelt], we got old stuff," remembered Bob Torres, "But most all our equipment and books with the exception of paper and pencils, everything was used . . . I didn't feel bad about it 'cause it was in a good condition, and, you know, we weren't taught to feel bad about it," he concluded, "All we wanted to do was get educated."⁶¹ Dan Gomez described the desks in Lincoln as "beat up," the books as "dog-eared" and as "hand me downs." The books in Roosevelt were new and seemed "clearer or brighter or just weren't messed up."⁶² The poor materials and equipment went along with an average classroom size that was at least ten

57. *Id.*

58. Treff, *supra* note 9, at 74-75.

59. Gomez Interview, *supra* note 46.

60. WOLLENBERG, *supra* note 23, at 123.

61. Torres Interview, *supra* note 17.

62. Gomez Interview, *supra* note 46.

students more per class in Lincoln than in Roosevelt.⁶³

As another example of differential input that produced different results among the children, the two schools had very different curricula. Roosevelt offered a course of study suited to advancing to high school and was geared to academics. Courses such as biology and geometry were taught at Roosevelt in preparation for further study.

"Americanization" programs at Lincoln, however, were being taught as a way to prepare Mexicans as manual laborers.⁶⁴ Thus, vocational education and "culture" classes, were the main thrust of courses for the Mexican children of Lincoln.

Instruction at Lincoln was designed to be slower and to fit the lower expectations that teachers and administrators had of Mexicans. Mexicans were given vocational education along with remedial grammar and were not encouraged to continue their studies beyond the eighth grade: "They had homemaking, which [was] cooking and sewing for the girls, [and] they had art class . . .," Annie Quintana recalled.⁶⁵

Few Mexicans graduated from grammar school compared to the number that enrolled and even fewer graduated from high school. Many saw no point in continuing or were forced to drop out due to economic reasons. Bob Torres recalled, "I dropped out in order that my Dad would be able to provide for her [his sister's] schooling [in beauty school]."⁶⁶ Statistics compiled from the Orange High School Yearbooks, the school El Modena graduates attended, revealed low total enrollment as well as low graduation rates for Mexicans. For example, in 1923, among the 635 students enrolled, only eight Mexicans were listed, of which only one was a senior, Rowena Yorba, a member of the old Orange County Yorba family. Things improved by 1940 when the number of Mexicans jumped to 57, almost 9% of the class. Even so, only 8 Mexicans reached senior year.⁶⁷ The numbers conform to county statistics in 1940 when only 165 Mexican students were enrolled in high school out of a total of 4000 pupils of all ethnicities (almost exclusively white) in the county.⁶⁸ School policy and the exigencies of Mexican family poverty combined to keep Mexicans confined to separate grammar schools which did not serve as vehicles to further schooling.

Official policies of the El Modena School Board established these separate "Mexican" and "American" schools in El Modena. This policy became official in the 1940s when segregation began to be questioned.

That for the purpose and for the benefit of said pupils,

63. Statistics from Orange Unified School District documents on class size and number of teachers in each school.

64. Interview with Annie Quintana, in El Modena, California (July 26, 1991) (hereinafter Quintana Interview).

65. Quintana Interview.

66. Torres Interview, *supra* note 17.

67. These statistics were compiled from Orange High School Yearbooks 1923, 1927, 1935, 1938, 1940, 1945, 1950, 1954, 1960 and are based on Spanish surnames listed in the yearbooks.

68. WOLLENBERG, *supra* note 23, at 118.

and to give them instruction in the aforesaid subject separate and apart from the English-speaking pupils, the Board of Trustees of said District have determined that it is for the best interests of said pupils of Mexican descent and for the best interests of the English-speaking pupils that said groups be educated separately.

That to carry out said policy, the Board of Trustees established a rule requiring that persons of Mexican descent who were unfamiliar with the English language be required to attend one of the schools set apart by said Board for said purpose.

--Official Policy of the El Modena
School Board ⁶⁹

No mention of this policy can be found in the school board minutes from 1943 to 1953, and in 1945-1946, the years involving the court case, the minutes are missing.⁷⁰ Segregation in the schools began as an extension of custom and societal attitudes that shaped the schools, and by the 1940s was codified in the structure of the schools.

Under this policy, transfer possibilities to Roosevelt School were not mentioned to Mexican families and were, in fact, discouraged; requests were denied.⁷¹ The attitude of the administration was essentially to educate the Anglo students and to make sure the Mexicans got through with little trouble. Dan Gomez remembered the fear he had about Mr. Hammarsten, the superintendent of the schools. "Mr. Hammarsten, he was respected by everyone, but I think he was feared more than anything else," he recalled, "I don't think the teachers or the administration were that enthused about finding [Mexican] people who dropped out."⁷²

The school board reflected the economic and social values of the town and consisted of the most powerful group, the ranchers. They used their power to shape the schools and the norms of the citrus society to their own benefit, whatever the cost to the Mexican children, according to Bob Torres:

The Anglos, especially the ranchers, were more interested in having people pick their crops. That was their main interest to have people pick their crops...mind you the school board members were ranchers...And one stated, he says, "Hey if we do this [integration] who's going to pick our crops?"⁷³

69. Transcript of Proceedings at 276, *Mendez v. Westminster*, 64 F.Supp. 544 (S.D. Cal. 1946); This policy was read to the court by the plaintiffs' attorney.

70. El Modena School Board Meeting Minutes.

71. See generally Transcript of Proceedings at 312-326, *Mendes v. Westminster*, 64 F. Supp. 544 (S. D. Cal. 1946).

72. Gomez Interview, *supra* note 46.

73. Torres Interview, *supra* note 17.

Perhaps the best example of the attitudes of the school board members is the creation of a separate starting date for Mexican children so they could harvest walnuts in September. Annie Quintana recalled that Mexican children missed the first two weeks of school every year to harvest walnuts with their families: "We got a permit from the school, she stated, "we couldn't just go out and say we're going to go pick walnuts."⁷⁴ The schools institutionalized the harvest by requiring permits for the children and creating separate schedules. The time lost was never "made up," as Quintana remembered it.⁷⁵ At no time did the calendars of the schools deviate after September and commencement was on the same day in June.⁷⁶ The school board created a system to meet the labor needs of local ranchers and were not concerned that the practice helped to further separate the Mexican and Anglo students. The children who picked were easily recognizable to everyone in town. They wore their status on their hands. Annie Quintana recalled:

I used to go [pick walnuts]. I know because my hands used to get black from walnuts. They would get stained black. You belonged to the black hand club then. But, I'm telling you that was the way we'd help out our parents.⁷⁷

COMMUNITY ACTION

No, nobody ever really mentioned it [segregation]. Otherwise you probably would have got mad or something, burned the school or something. We never did. I never knew about it until I went into the service.⁷⁸

The Chicano desegregation movement in El Modena was influenced by forces both outside and within the community. International events during the 1930s and 1940s combined with help from other Mexican organizations and the Mexican townspeople's opposition to segregated schools led a group of parents to fight for the integration of the schools. This action led to a brief period of Chicano political empowerment; the success was fleeting, however, for the gains were soon dismantled by Anglos who substituted *de facto* for *de jure* segregation. The consequences were segregation of the children into separate schools through prejudicial administrative actions.

The efforts by parents in El Modena may not have succeeded in

74. Quintana Interview, *supra* note 64.

75. *Id.*

76. El Modena School Board Meeting Minutes (May 15, 1945).

77. Quintana Interview, *supra* note 64.

78. Valencia Interview, *supra* note 10.

providing equality, but they demonstrated the ability of Chicanos to organize and protect their communities against unfair treatment. The small town of El Modena, California initiated a local action that had an impact on the entire nation.

A HISTORY OF RESISTANCE: OUTSIDE OF EL MODENA

Chicano communities in California and throughout the Southwest were active in fighting segregation in its many forms. In 1929 parental pressure forced California Attorney General U.S. Webb to give an advisory rule that the segregation of Mexican children was not supported by California law. Two years later the Mexican parents of Lemon Grove, in San Diego County, won a superior court case to integrate their schools; however, because of the locality of the decision, it had little impact outside of Lemon Grove.⁷⁹ Groups such as LULAC (League of United Latin American Citizens) in Texas, an organization composed of middle class males, actively fought for Mexican American rights in education through lobbying and legal means. LULAC chapters spread during the 1920s and 1930s and eventually found their way to California in the 1940s.⁸⁰ Struggles in El Modena were no different. Residents of El Modena were active in county-wide citrus labor strikes in 1936 and many went to jail for their efforts. Community leaders such as Primo Rodriguez and Jesus Martinez, who later were active in the schools, were both involved in the strikes.⁸¹ The defeat of the strikes, however, did not completely stifle the community and in the following years they took action against the inequalities and injustices around them. Chicanos in El Modena continued to be active during the pre-war depression years, but fought for survival instead of equality. The coming of the war and the economic prosperity that accompanied it brought change to the community.

Mexican American communities during and immediately after World War II became more aware of the inequalities at home because of international events. Many, in fact, went overseas themselves in service to their country. A resurgence of community organizations like LULAC and the creation of new groups like the G.I. Forum led Mexican Americans in the new post-war struggle. Mexicans, according to historians, became "more aware of their rights and duties as American citizens [and] they demanded an end to separate schools."⁸²

79. WOLLENBERG, *supra* note 23, at 123-24.

80. *See generally* GUADALUPE SAN MIGUEL, LET ALL OF THEM TAKE HEED (1987).

81. Valencia Interview, *supra* note 10; Torres Interview, *supra* note 17.

82. WOLLENBERG, *supra* note 23, at 124-25; CAMARILLO, *supra* note 7, at 68.

MENDEZ V. WESTMINSTER : OUTSIDE SPARKS

As California educator Thomas Carter put it, "World War II stimulated Mexican-Americans to demand change."⁸³ The soldiers wanted to protect their families and defend their rights as veterans and citizens in the post-war era. In Orange County, as in many other parts of the country, Mexican Americans began again to organize into groups to fight for equality for their communities. For example, in 1943 the Latin American Organization (or LAO) formed in Santa Ana as a civil rights group designed to combat school segregation. They faced stiff opposition. Their first move was to have William Guzman, accompanied by his lawyer, request that his children be allowed to attend an Anglo school. The school board of Santa Ana asked for a ninety day advisement period and then never responded. Subsequently, a bond to build a new Mexican school in Westminster failed. This meant that Gonzalo Mendez and Felicitas Mendez, one of the few Mexican family tenant farmers in the county, had to send their children to the old, run down school separated from the Anglo children. Gonzalo Mendez wrote letters and complained vehemently. The board offered to placate him by allowing only his children to attend the "American" school, but Mendez refused. He planned a protracted fight. At the same time the Palomino family was protesting such practices in Garden Grove as was the Ramirez family in El Modena. They soon combined forces and challenged the entire county educational system.⁸⁴

By 1945, parents were beginning to take action as well in surrounding counties. The school boards of Ontario, Mendota, Riverside and San Bernardino all faced tremendous pressure from Mexican parents to integrate the schools. Many school boards considered taking action, but none actually ruled formally on the parents' demands.⁸⁵ Even this consideration, however, was a significant step.

In El Modena, a man named Lorenzo Ramirez pushed the cause of desegregation. Dan Gomez recalled:

Larry [Lorenzo] was very good at speaking English and also at formulating concepts and ideas and just getting things going. You needed someone like that, outspoken. Someone who wasn't afraid to start making a few waves and afraid that the establishment would come back and pound him. He wasn't afraid of that kind of stuff."⁸⁶

Ramirez had attended both the Lincoln and Roosevelt schools in El Modena as a child before moving to Whittier. His children went to a non-

83. WOLLENBERG, *supra* note 23, at 125.

84. GONZALEZ, *supra* note 4, at 147-155.

85. WOLLENBERG, *supra* note 23, at 125.

86. Gomez Interview, *supra* note 46.

segregated school in Whittier and upon his return to El Modena he discovered they would have to go to the "Mexican" school; he immediately spoke to Superintendent Hammarsten. Ramirez was forced to send his children to Lincoln. This conflict set the stage for community action.

Dan Gomez captured much of the sentiment of the movement early on in the process of change:

It was just like anything else, I think the community had gotten so used to being that way that it was hard to get people enthused about changing anything. You had to bring up the awareness in people. And I think that's what took some time. It really took time. Eventually it happened though, and then more people got on the bandwagon. But to start with, it was a slow start. And a lot of the guys who were instigators of the movement, had to really work hard to get the community going.⁸⁷

As Gonzalo Mendez and the LAO began to organize in Westminster and Santa Ana, community leaders in El Modena were pushed into action by their connections to these groups, by Hammarsten's refusal of Ramirez's requests, by their own new awareness of the inequality of the system, and by a sincere concern for the children of the community.

Anglos, on the other hand, took a while to notice the organizers as a real threat. Bob Torres claimed that Anglos were a little scared of men like Primo Rodriguez and the other leaders because they challenged the *status quo*.⁸⁸ The activities of the organizers must have strained relations among the communities because some Mexicans feared reprisals; Anglos, largely outnumbered in the town, also feared what they would term an "uprising." There is no mention of the case in the school board minutes until late 1946, and no mention of *any* Mexican until that time as well.⁸⁹ Historian Mary Haas stated that the practice of excluding conversations with Mexicans from the minutes was common in the county.⁹⁰ As previously mentioned, an entire year of minutes is missing from school board records during this period.⁹¹ While no one in the Anglo community may have been afraid at first, as time wore on and it appeared the Chicanos had a valid case, the ranchers became concerned for their very livelihood which was based on controlled, cheap Mexican labor.⁹²

87. Gomez interview, *supra* note 46.

88. Torres interview, *supra* note 17.

89. El Modena School Board Meeting Minutes (July 1946).

90. HAAS, *supra* note 18, at 156.

91. Torres interview, *supra* note 17.

92. It is important to note that not all Anglos supported segregation and some actively supported the desegregation movement, like the town barber and pool hall owner named Abbot. Unfortunately the number was very small and more or less insignificant. Valencia interview, *supra* note 10.

MENDEZ V. WESTMINSTER

Gonzalo Mendez, William Guzman, Frank Palomino, Thomas Estrada and Lorenzo Ramirez filed suit against the Westminster, Garden Grove, Santa Ana and El Modena School Districts on March 2, 1945, for excluding Mexican children from Anglo schools "solely for the reason that said children or child are of Mexican or Latin descent."⁹³

The attorneys for both sides presented their arguments in rather boilerplate fashion, but the facts of the case made the arguments interesting, since there was no precedent regarding Mexicans and equal protection.⁹⁴ Both parties stipulated that the case did not involve race discrimination, and that Anglos as well as Mexicans would be considered of the "white" race.⁹⁵ They also agreed that the districts all maintained schools that consisted entirely of Mexican students.⁹⁶ The main point of contention was the purpose for the segregation.

The petitioners argued that the school districts intentionally segregated Mexican school children by design and purpose.⁹⁷ They sought relief under the 14th Amendment. They argued that the school districts denied them equal protection of the laws, as a class, by forcing them to attend segregated schools. At the hearing, petitioner's attorney, David C. Marcus, presented evidence of the segregation policies through the testimony of local community members who had attended the schools, to show the extreme nature of the segregation. Others testified as to specific instances of transfer denials for Mexican children and inferior facilities provided for them. Some of those who testified at the hearing were children, who told accounts of the segregation and how it made them feel.⁹⁸ Perhaps more importantly, Marcus brought in social scientists to testify about the strong negative affects of segregation on both the educational and social development of the group labeled as "inferior."⁹⁹

The respondent school districts argued that while segregation occurred, it was only on the basis of language and not racial discrimination. In other words, the segregation was pedagogical and not discriminatory.¹⁰⁰ At the hearing, they presented the school administrators and school board members named in the petition.

Federal District Judge Paul McCormick ruled that segregation on the basis of race or ancestry was a violation of California State law, which did not allow Mexican school segregation. It was, therefore, a violation of

93. Petitioners' Complaint at 4, *Mendez v. Westminster*, 64 F. Supp. 544 (S.D. Cal. 1946).

94. *But see* *Lopez v. Seccombe*, 71 F. Supp. 769 (S.D. Cal. 1944).

95. *Mendez v. Westminster*, 64 F. Supp. 544, 546 (S.D. Cal. 1946).

96. *Id.*

97. *Id.* at 545.

98. Reporter's Transcript Proceeding, *Mendez v. Westminster*, 64 F. Supp. 544 (S.D. Cal. 1946).

99. *Id.*

100. *Mendez v. Westminster*, 64 F. Supp. at 544, 546 (S.D. Cal. 1946).

the student's right to the equal protection of California law under the 14th Amendment to the U.S. Constitution:

"The equal protection of the laws" pertaining to the public school system in California is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican ancestry that are available to the other public school children regardless of their ancestry. A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage.¹⁰¹

Judge McCormick responded to the new integrationist educational theory proposed by petitioner's social science and psychological experts in court: "It is also established by the record that the methods of segregation prevalent in the defendant school districts foster antagonisms in the children and suggest inferiority among them where none exists."¹⁰² The theories were still based on assimilationist ideas, but were a step forward because they at least called for equal and integrated facilities. For example, the court used harsh educational terms rather easily: "The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation."¹⁰³ McCormick pointed out that the only valid reason for segregation of pupils was for special language instruction, but that valid language testing would be required before any segregation could occur.¹⁰⁴ Finally, Judge McCormick ordered injunctive relief for all students of Mexican descent in the County, by ordering the districts to desegregate.

During the hearings, Mexican parents in Orange County continued their efforts. Meetings were held on a regular basis. Money was raised around the towns to help pay attorney fees and groups of men and women visited Los Angeles everyday to show support for the case. Mothers worked hard to get more people involved to support the case.¹⁰⁵ Gonzalo Mendez, from Westminster, took the whole year off from work, while his wife ran their farm, in order to organize people and gather evidence; he even paid some of the men to take the day off from work to go to court.¹⁰⁶ The organization was truly a community effort that involved a large number of persons from El Modena and the other three cities in the case.

101. *Id.* at 549.

102. *Id.*

103. *Id.*

104. *Id.* None of the districts had ever even bothered to test any of the children. The obvious possibilities of overt fraud and manipulation are of course present, but the significant point is that the court had set up an official hurdle, language testing, to be overcome before any type of segregation could continue. So, while language could still be used as an excuse to segregate some of the children, it could not segregate all Mexican students.

105. Gomez Interview, *supra* note 46; Valencia Interview, *supra* note 10.

106. GONZALEZ, *supra* note 4, at 152.

However, the Orange Daily News reported only a few days later that the defeated school districts would appeal the case to the Ninth Circuit Court of Appeals in San Francisco and to the Supreme Court, if necessary.¹⁰⁷

The townspeople of El Modena, with the aid of the LAO, were the first to take action when no change was made by the schools the following school year after the decision. At the beginning of the 1946 school year, Alexander Lievanos attempted to enroll his son in the Roosevelt school, but was denied admission. So with the help of the LAO he filed a petition to hold Trustees Henry Campbell, Joe Irwin and Jerome Neiger, along with Superintendent Harold Hammarsten, in contempt of the judge's orders. On the same day as the petition was filed, September 27, 1946, Judge McCormick ordered the defendants to appear before the court by October 14, 1946 or face contempt charges.

The El Modena Chicanos had formed "The Unity League of El Modena," which later became the Latin American League of El Modena. Mr. Lievanos, a small shop owner in town, was elected chairman and had come with other parents before the board to inquire as to why integration had not begun and why no testing had been conducted. The board said it considered a plan to divide the schools by grade level, the lower grades in one school and the upper in another, but there was "a question of budget."¹⁰⁸ The superintendent was belligerent and said that tests were not given because they were not necessary to tell that the children could not speak English.¹⁰⁹ School board member Neiger blamed the Mexican parents for the segregation: "If the parents had English as the language spoken in the home the children would have no trouble when they got to school and would do much better."¹¹⁰

The school board was so confident that on September 13, 1946 they announced they would not change their policies and would continue with a later start time for Mexicans to work the walnut harvest.¹¹¹ However, the court was not at all favorable to the School Board trustees' plan. The court forced the school board to implement the plan to divide the schools by grades.

The Mexican American community at El Modena had become the center of the struggle to insure equality and had risen to the occasion. They directly challenged the school board for the first time as a whole community through the Unity League. They also continued their support of the County movement and sent its representatives to San Francisco to give a show of strength at the appellate court.

107. *County Schools To Appeal Decision In Segregation Case*, ORANGE DAILY NEWS, Feb. 21, 1946, at 1.

108. El Modena School District Board Meeting Minutes, Oct. 9, 1946.

109. *Id.*

110. *Id.*

111. *El Modena Schools Open With Enrollment of 339 Students*, ORANGE DAILY NEWS, Sept. 16, 1946, at 1.

APPROACH TO THE APPEAL

The appellant school districts were not daunted by the rulings of the district court and made similar arguments as those presented at the district court, but with the hope of a different outcome.

The appellee school children's arguments on appeal were joined by several amicus briefs that attempted to provide the court with a broad based legal and policy argument against segregation. Each brief for the appellee was planned as a piece of a puzzle, which would eventually give the court a clear picture of the wrongs of segregation, both in precedent and policy.

The amicus briefs also provide the most interesting arguments in the case. In the district court, only the American Civil Liberties Union (ACLU) and the National Lawyer's Guild filed amicus briefs with the trial court, but on appeal five civil rights groups and the Attorney General of California wrote on as amicus curiae.¹¹² The case was being watched by the National Association for the Advancement of Colored People (NAACP) and the ACLU as a "guinea pig case" to strike down separate but equal.¹¹³ Aside from the obvious attempts to overturn *Plessy v. Ferguson* directly, they made overtures to human rights issues which were brought to prominence through the atrocities of World War II. The use of public policy considerations was given new force in the post war era because of the United States' supposed role as the advocate of democracy during and after the war.¹¹⁴

Some points are important for the discussion of the case. First, the Mexican school children were considered "Caucasian" for the purposes of the case¹¹⁵ and therefore the trial court found a violation of the school children's rights not because of racial discrimination grounds, but because of national origin.¹¹⁶ Second, the appellate court found unequal enforcement of California's educational laws by the school districts as a violation of the children's equal protection rights, implying that if California law had explicitly allowed Mexican American segregation, segregation may have been permitted.¹¹⁷

112. WOLLENBERG, *supra* note 23, at 129.

113. *Id.*

114. GONZALEZ, *supra* note 4, at 159-161.

115. *Mendez v. Westminster*, 64 F. Supp. 544, 549 (S.D. Cal. 1946). In fact, it was not until 1973 that Latinos were declared a distinct racial group by the supreme court, despite overt racial discrimination and several court cases like *Mendez* regarding overt racial discrimination. See *Keyes v. School District No. 1*, 413 U.S. 189 (1973) (Chicanos classified as a distinct racial minority).

116. *Mendez v. Westminster*, 64 F. Supp. 544 (S.D. Cal. 1946).

117. *Id.*

EQUAL PROTECTION ON TRIAL: A HISTORY

The Fourteenth Amendment's origins lie in the desire of the Reconstruction Congress to provide newly freed Southern slaves protection from the white majority.¹¹⁸ The first cases interpreting the amendment did little for the rights of the ex-slaves or any other citizens.¹¹⁹ In any case, the Supreme Court was not likely to apply the amendment's protections to any other group besides ex-slaves.¹²⁰ The Court was inclined to protect only the narrow interests intended by the framers of the amendment, rather than look to the broad possibilities that the language of the equal protection clause could encompass.

The Court's narrow interpretation of the amendment ensured that it would not protect the newly freed slaves either.¹²¹ A series of cases demonstrated the breakdown of the amendment's protections for African Americans.¹²² The process went on until the Court arrived where it had been headed all along, finally openly permitting segregation of the freed slaves and their descendants in its infamous opinion in *Plessy v. Ferguson*.¹²³ The Court held that "every exercise of the police power must be reasonable, and extend only to such laws as are enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class . . ." ¹²⁴ In other words, the state had the power to create segregated schools in order to avoid racial conflict. This doctrine later became known as "separate but equal." Even though that term was not heavily emphasized in *Plessy* (it was actually "equal but separate"), it became the judicial standard regarding racial segregation. The court reached its ruling by rejecting the plaintiff's "assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority."¹²⁵

The Court decided many cases upholding the tenets of *Plessy* over the next two decades, allowing the racial segregation system known as "Jim Crow" to flourish in the South and elsewhere.¹²⁶ By the 1920s legally sanctioned segregation had become a fact of life for Southern African

118. GEOFFREY R. STONE ET AL., CONSTITUTIONAL LAW 473 (2nd ed. 1991).

119. See *The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873); STONE, *supra* note , at 484.

120. STONE, *supra* note 118, at 484.

121. *Id.* at 485.

122. *The Civil Rights Cases*, 109 U.S. 3 (1883) (invalidated civil rights laws and required state action to find a violation of a party's Fourteenth Amendment rights).

123. 163 U.S. 537 (1896).

124. *Id.* at 150.

125. *Id.* at 551.

126. STONE, *supra* note 118, at 491-92.

Americans.¹²⁷ During this period in Texas and California it was, as discussed above, common practice to segregate Mexican Americans in society to extremes approaching Jim Crow segregation.¹²⁸ Asian Americans throughout the nation were segregated into "Chinatowns" and were often not permitted to send their children to any public schools at all.¹²⁹

The significant nature of Southern segregation led a wealthy Harvard undergraduate to leave a large amount of his inheritance to a fund to promote liberal and radical causes. The newly created "Garland Fund", named after its benefactor, provided a \$100,000 grant to the NAACP to pursue a legal campaign to bring about the demise of Jim Crow in the South.¹³⁰

The NAACP began its attack on segregation in *Missouri Ex. Rel. Gaines v. Canada*.¹³¹ The NAACP successfully argued that the state of Missouri was not providing separate but equal facilities for an African American law student who was sent out of state because no "Black" law school existed. The court ruled that the state had to either allow the student entry into the existing school or create a law school for Blacks.¹³² The victory was short-lived, as in the following years frustration set in as enforcement of the ruling became difficult. Missouri avoided the ruling by hastily establishing a separate law school for African-Americans.¹³³ The NAACP was unable to achieve its desired goals of integration as it moved into the late 1940s. *Plessy* and segregation were still the law.

Several cases had whittled away at *Plessy* by the 1940s and scholars saw the future of equal protection coming to fruition.¹³⁴ Organizations like the NAACP were bringing test cases before the Supreme Court to assess the possibility of change.¹³⁵ Public schools were only one area of concern, but they were perhaps the most prevalent and most obvious institutions of segregation, not only for African Americans, but for Asian Americans and Mexican Americans. They also provided the most successful precedents, possibly because schools were an example of how segregation could injure, through psychological neglect and abuse, the innocents of society, the children.

127. See STONE, *supra* note 118, at 492.

128. See generally, CAMARILLO, *supra* note 7.

129. See *Gong Lum*, 275 U.S. 78, 86. (Chinese Students legally classified as colored for purposes of school desegregation in Mississippi). See generally WOLLENBERG, *supra* note 23.

130. STONE, *supra* note 118, at 493 (quoting R. KLUGAR, *SIMPLE JUSTICE* 132-133 (1976)).

131. 305 U.S. 337 (1938).

132. *Id.* at 349-52.

133. STONE, *supra* note 118, at 495.

134. See JOSEPH TUSSMAN & JACOBUS TEN BROEK, *The Equal Protection of the Laws*, 38 CAL. L. REV. 341 (1949). This article is one of the most influential contemporary articles on equal protection. The article goes into in depth analysis of the possible futures for equal protection and has a great deal of foresight in the field.

135. See STONE, *supra* note 118, at 493-497.

EQUAL PROTECTION IN THE 1940S: A STATE OF FLUX

The equal protection clause of the Fourteenth Amendment appears thus to be entering the most fruitful and significant period of its career. Virtually strangled in infancy by post-civil-war judicial reactionism, long frustrated by judicial neglect, the theory of equal protection may yet take its rightful place in the unfinished Constitutional struggle for democracy.¹³⁶

Contemporaries of the *Mendez* Court saw equal protection in a state of flux with the potential to head in a number of different directions. There existed a diverse body of case law that could allow the court to make a tremendous impact on American jurisprudence, that is if the courts were bold enough to look away from prejudiced precedent and address the new social theories of the day, calling for integration as the only just way to administer schools or society.

Scholars saw Equal Protection as the new post-war panacea for the protection of group liberties:

Due process is, after all, a weapon blunted and scarred in the defense of property. The present Court, conscious of its destiny as the special guardian of human and civil rights may well wish to develop some alternative to due process as a sanctuary for these rights. The "equal protection" clause has much to recommend it for this purpose.¹³⁷

Tussman and tenBroek make it clear that not only civil rights, but human rights are at stake in the Court's decisions. They point out the importance of the recent War with Germany and the way courts were inclined to refer to the atrocities of the Nazis in their opinions during the 1940s.¹³⁸

This mood of excitement and social change during the period did not necessarily indicate any one certain path that the Court should take. On the contrary, the question was wide open. Tussman and tenBroek provide several possibilities in their article on equal protection, but the theory that stands out is the idea that "a classification based on a 'forbidden' trait invalidates a law".¹³⁹ They suggest that laws could be struck down for their hostile or antagonistic intent toward a certain group.¹⁴⁰ They largely

136. TUSSMAN & TEN BROEK, *supra* note 134, at 381.

137. *Id.* at 364.

138. *Id.* at 377.

139. *Id.* at 355.

140. *Id.* at 358.

rely on Supreme Court cases involving Asian-Americans that hold that discrimination based on ancestral, alienage, racial group, or even skin color prejudice are invalid.¹⁴¹ They suggest the use of "rigid scrutiny"¹⁴² for these forbidden or "suspect" classifications, which they list as "color, race, ancestry, etc."¹⁴³ Essentially, they argue that the formulation of race and national origin or other group defining characteristics, while significant, is only secondary to the intent of the state to discriminate arbitrarily against the group.

These discussions apply to the *Mendez* case because the parties stipulated that race was not an issue and instead the main area of contention was national origin or ancestry discrimination. Thus, under the judicial scenarios present in the 1940s, the emerging distinctions between race and national origin discrimination were not clear and the definition of suspect classes was only an idea.¹⁴⁴ "Group" discrimination was the hazy standard that drove the courts in the 1940s; racial classifications would not be defined for many years. Equal Protection was in a state of metamorphosis during the 1940s and could have gone in any direction. The question was, which cases would lead the courts and which arguments would be persuasive.

The NAACP and others hoped *Mendez* would be one of those cases, if not *the* case in the efforts to overturn segregation as embodied in the existing corpus of segregation precedent.

THE ARGUMENTS OF THE PARTIES BEFORE THE NINTH CIRCUIT

The arguments presented by the parties to the *Mendez* case were not very persuasive and relied heavily on boilerplate jargon common to the 1940s. Neither party's appellate brief was particularly innovative, but they did state each party's arguments and make clear where each party wanted the court to go. The appellant school districts wanted to allow segregation to continue as a pedagogy of the state.

It is Appellant's contention that education is purely a matter of state concern and that when the State has furnished all pupils within its jurisdiction equal facilities and equal instruction, it has not denied to any the equal protection of the law imposed by the Constitution of the United States.¹⁴⁵

141. *Id.* at 356-358.

142. *Id.* at 356 (referring to *Korematsu v. United States*, 323 U.S. 214 (1944)).

143. *Id.* at 360.

144. *See generally, Id., see also* W. HENRY COOKE, *The Segregation of Mexican-American School Children in Southern California*, 67 *SCHOOL AND SOCIETY* 417 (1948).

145. Appellant's Opening Brief at 7, *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (NO. 11310).

Orange County counsel, Joel Ogle, argued that the federal courts had no jurisdiction and that this was a state law matter.¹⁴⁶ He reasoned that the school boards inherently had power to decide where each student would attend school. Even though the districts had stipulated that both the Anglo and Mexican students were both "Caucasian," Ogle threw in for good measure "separate but equal" arguments.¹⁴⁷ He used several classic Supreme Court cases to make his point: As long as there were equal facilities the school board could segregate students how it pleased.¹⁴⁸

The conventional wisdom of the time considered a school board victory forthcoming, but changing beliefs brought on by the War¹⁴⁹ and some very well written and persuasive amicus briefs played a large part in preventing it. David C. Marcus, an African-American civil rights lawyer from Los Angeles, argued on behalf of the appelles:

Of what avail is our theory of democracy if the principles of equal rights, of equal protection and equal obligations are not practiced? Of what avail is our good-neighbor policy if the good neighbor does not permit of honest neighborliness? Of what use are the four freedoms if freedom is not allowed? Of what avail are the thousands upon thousands of lives of Mexican-Americans who sacrificed their all for their country in this "War of Freedom" if freedom of education is denied them? Of what avail is our "education" if the system that propounds it denies the equality of all?¹⁵⁰

Marcus argued that segregation was a violation of California law, which provided no legal basis in its Education Code for segregating Mexicans, and therefore was a violation of the students' Fourteenth Amendment Equal Protection rights.¹⁵¹ He argued further that Mexican Americans were discriminated against not on the basis of race, but because of national origin, and equated any kind of discrimination as a violation of the 14th Amendment.¹⁵² His arguments adequately countered the appellant's brief and provided the needed precedents and factual basis for the court to make its ruling. However, the amicus curiae briefs provide the cutting edge arguments that make the case so interesting to legal history.

146. *Id.*

147. *Id.* at 11-12.

148. *Id.*

149. See WOLLENBERG, *supra* note 23, at 120.

150. Appellee's Reply Brief at 37, *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (No. 11310).

151. *Id.*

152. *Id.* at 33-34.

AMICUS CURIAE BRIEFS

The amicus briefs complement one another. There are four amicus briefs, all designed to accomplish a specific task. The NAACP wrote a brief, the American Jewish Congress (AJC) another, the ACLU, the National Lawyer's Guild and the Japanese American Citizens League combined to write a third, and the California Attorney General sponsored a fourth brief.

Overall the amicus briefs are much better written than the either the appellate briefs or the opinion of the court itself. They are much more scholarly and embody the corpus of knowledge from the leading civil rights groups of the time. The briefs, as a whole, essentially argued that separate was not equal and that the court should overrule *Plessy* and its progeny based on legal precedent, as well as on legitimate social science data and a larger perspective on human rights. Since the courts were not accustomed to these arguments, the knowledge and arguments of the civil rights groups probably had a profound impact on the case. While the court was not swayed completely it was clearly influenced by the persuasive arguments presented in the amicus briefs.¹⁵³

Another interesting aspect concerning the briefs has more to do with public policy than the substance of the arguments presented. Most of the major civil rights organizations that were active during that era were represented. These organizations deemed this a test case for *Plessy* and attacked it headlong. Many sent their most renowned advocates, such as Thurgood Marshall and Carey McWilliams. The civil rights organizations made arguments that were designed to play on the Court's knowledge of recent human rights atrocities on both sides during World War II, as well as to focus attention on the hypocrisy of the United States being the leader of the free world and yet denying equality to the children of the very same soldiers who had fought in the war to win freedom.¹⁵⁴

The NAACP's brief argues three main points: 1) racial classifications are invalid under "Fundamental Law," 2) Due Process and Equal Protection cannot be achieved under a system of Segregation, 3) *Plessy* does not disallow a ruling that school segregation is invalid since *Plessy* only deals with public transportation.¹⁵⁵

Marshall attempts to tailor his case to Mexicans even though most of data regarding school segregation pertained to African-Americans.¹⁵⁶ The brief is persuasive and makes strong arguments regarding the negative impacts of segregation. However, the most interesting argument Marshall makes is the legal arguments to evade *Plessy*. He opens a window of opportunity for the court that it declines to take.

153. *Westminster v. Mendez*, 161 F.2d 774, 780 (9th Cir. 1947).

154. See generally GONZALEZ, *supra* note 4; WOLLENBERG, *supra* note 23.

155. Motion and Brief for the National Association for the Advancement of Colored People as *Amicus Curiae*, *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (No. 11310).

156. *Id.*

Marshall attempts to make the point that any exertion of discriminatory power is prohibited by the Constitution: "Since all available experience, all existing data prove conclusively that where the power is granted it is uniformly used for the purpose of discrimination, it is important that such power not be granted freely."¹⁵⁷ He goes on to ask if the Court is willing to give that power to each individual school board and spread the malignancy further than the states that already allow segregation by law.

Yet if in California the principle of segregation is permitted to remain, those [high educational] standards will most certainly fall, at least insofar as they relate to those of Mexican and Latin American descent or to any other segregated minority. This will follow just as certainly as it is now the fact that the worst educational discrimination exists in those states in which segregation is already a matter of policy or law.¹⁵⁸

He asks the court not to look merely at the Constitution, but also to the new international responsibilities of the nation. "Both our national constitution and the terms of our international commitments demand that this Court invalidate the acts of defendants in setting aside in their respective jurisdictions separate schools for children of Mexican or Latin origin."¹⁵⁹ Finally he tells the court that it is not bound by *Plessy* and can act in any way it pleases.¹⁶⁰ It seems that Marshall knows that his arguments will not persuade the court, but rather that he is merely trying to make a statement. He is attempting to inculcate the judiciary with the new post-War thinking that would eventually lead to *Brown*. He makes bold statements and arguments for the time that are given some weight by the Court, but do not persuade it.¹⁶¹

The lead brief, headed by the ACLU, is designed to address the appellant's contentions about jurisdiction and state law. It argues that the court had jurisdiction because Appellee's Constitutional rights of Equal Protection had been violated by the illegal actions of the school board acting under color of state law and that national origin discrimination is equally as suspect as race discrimination.¹⁶²

The arguments in the brief occupied a good portion of the court's discussion in its opinion, revealing their importance.¹⁶³ The brief does

157. *Id.* at 11.

158. *Id.* at 12.

159. *Id.* at 9.

160. *Id.* at 25.

161. *Westminster v. Mendez*, 161 F.2d 774, 780 (9th Cir. 1947).

162. Brief for the American Civil Liberties Union, and the National Lawyers Guild, Los Angeles Chapter, as *Amici Curiae*, *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (No. 11310) (hereinafter Brief for the American Civil Liberties Union and the National Lawyers Guild).

163. *Westminster v. Mendez*, 161 F.2d 774, 775-775 (9th Cir. 1947).

briefly step into the arena of social issues to make a point about national origin discrimination.

Appellants even now do not attempt to justify segregation on the sole basis of Mexican ancestry as to put the issue so baldly would defeat its own purpose. If appellants can justify discrimination on the basis of ancestry only, then who can tell what minority group will be next on the road to persecution. If we learned nothing from the horrors of Nazism, it is that no minority group, and in fact, no person is safe, once the State, through its instrumentalities, can arbitrarily discriminate against any person or group.¹⁶⁴

The arguments are an interesting attempt to avoid the stipulation in *Mendez* that Mexicans and Anglos are of the same race and to apply equal protection laws based on nationality, not exclusively on race.

The Attorney General attempts to tell the court that California does not allow the segregation of Mexican American school children and in fact that all existing or prior segregation practices are in violation of the Constitution.¹⁶⁵ This short brief adds only one major point: California has no legislation supporting the segregation of Mexican-American school children. Other than that it has some interesting statutory citations that point out that the state only allowed segregation of most Asian groups and Native Americans and not Latinos.¹⁶⁶ Finally, the brief was indicative of a political trend opposing segregation. Subsequent to the decision being affirmed, the California legislature repealed the remaining segregation laws.¹⁶⁷

The AJC's brief may not be as substantive as the NAACP's, but it stands out as the most "cutting edge." The brief makes three points: 1) When a "dominant" group segregates an "inferior" group it can never be equal, 2) any racial distinction is immediately suspect by the courts and 3) segregation by the state of immigrants or children of immigrants is contrary to the Federal Immigration "Americanization" policies of the INS and therefore preempted.¹⁶⁸

The AJC's arguments are innovative in a number of ways. First the brief appeals to the popular fears of the recent atrocities against Jews in Nazi Germany.¹⁶⁹ The brief provides an ominous warning to the Court, that is evident in the current events of the late 1940s. "When a more or

164. Brief for the American Civil Liberties Union and the National Lawyers Guild, *supra* note 162, at 16-17.

165. Motion and Brief of The Attorney General of The State of California as *Amicus Curiae* at 4, *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (No. 11,310).

166. *Id.* at 7-8.

167. WOLLENBERG, *supra* note 23, at 132.

168. Brief for The American Jewish Congress as *Amicus Curiae*. *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (No. 11,310).

169. *Id.* at 6.

less inarticulate social feeling of racial superiority is clothed with the dignity of official law, that feeling acquires a concreteness and assertiveness which it did not possess before."¹⁷⁰ These type of arguments dominate the brief and probably had the most influence on the Court, because of their appeal to the basic sense of Western justice so prized in the United States--if the law is supreme, how can it be allowed to be unjust? The events of the era gave the AJC an opportunity to appeal to the conscience of the Court and perhaps influence it in a way that no strictly rational arguments could have.

The AJC brief then moves to the new argument that all race or group classifications are suspect and deserve strict scrutiny under equal protection.¹⁷¹ It cites the recent Supreme Court ruling in *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943), declaring that race is a suspect classification when used in any law.¹⁷² This was not a new theory, but it was coming into acceptance more and more in scholarly circles.¹⁷³

Finally the brief makes reference to treaties between the U.S. and Mexico stipulating that Mexicans in this country be treated equally. The brief attempts to use preemption to validate this point.¹⁷⁴ The argument, however, overreached the bounds of the court and, given that they only occupied three pages of the brief, were only intended as an extra argument to the main issues of the evils of legally sanctioned dominance.

The school districts submitted a reply to the amicus briefs that was mostly a restatement of the school districts case. They rely on the argument that there is no federal jurisdiction since the cases have be decided by California law along with the contention that school board action does not constitute state action.¹⁷⁵

The Ninth Circuit Court of Appeals seems to have considered the *amicus curiae* briefs, but only really used the jurisdiction arguments of the ACLU brief¹⁷⁶ and some of the state law arguments of the Attorney General.¹⁷⁷ The court explicitly refused to follow the NAACP and distinguish *Plessy*.¹⁷⁸ In the final analysis the briefs represent a significant contribution to the history of Equal Protection not only for Chicanos, but for all racial minorities in the United States. The briefs provide a snapshot in time of where Equal Protection was headed in the

170. *Id.* at 12.

171. *Id.* at 28.

172. *Id.*

173. See TUSSMAN & TEN BROEK, *supra* note 134.

174. Brief for The American Jewish Congress as *Amicus Curiae* at 32, *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (No. 11310).

175. Appellant's Reply Brief to American Civil Liberties Union, and the National Lawyer's Guild, Los Angeles Chapter, and The Attorney General of the State of California, as *Amici Curiae*, *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947) (No. 11310).

176. *Westminster v. Mendez*, 161 F.2d 774 (9th Cir. 1947).

177. *Id.* at 779.

178. *Id.* at 780.

late 1940s and illustrate the positive effects of intergroup cooperation in civil rights litigation.

THE 9TH CIRCUIT APPEALS ASSESSMENT: THE DECISION IN MENDEZ

The San Francisco Ninth Circuit Court of Appeals specifically refused to rule for the children on the grounds that separate schools were inherently a violation of their rights to equal protection of the law. Thus, the Court refused to address *Plessy*. Instead the Court took the route of judicial conservatism and ignored many of the legal arguments presented by the NAACP brief:

We are not tempted by the siren who calls to us that the sometimes slow and tedious ways of democratic legislation is [sic] no longer respected in a progressive society. For reasons presently to be stated, we are of the opinion that the segregation cases do not rule the instant case and that is reason enough for not responding to the argument that we should consider them in the light of the amicus curiae briefs.¹⁷⁹

The Ninth Circuit upheld the District Court opinion on the grounds that the plaintiffs' Fourteenth Amendment rights had been violated by segregation, because no California law allowed the school boards to segregate Mexican school children. The segregation constituted unequal enforcement of the law. The segregation was not based on race discrimination, but rather was based on class discrimination against Mexican-American children. In fact, the court refused to confront the race issue and quickly sidestepped it. The Court never ruled on whether Mexicans are a group, an ethnicity, or a race, merely stating that Mexican American school children had been discriminated against and their Fourteenth Amendment rights had been violated.¹⁸⁰

The Ninth Circuit, at this time, was not willing to take a chance and rule that separate was always unequal, even though the opportunity was presented to them by the District Court. They were, however, repulsed by the actions of the school boards, and sufficiently frightened by the amicus briefs of the AJC regarding the slippery slope of social classifications, to take the necessary actions to end segregation in the schools. The Court's ruling was insufficient to overturn a significant corpus of segregation precedent, let alone *Plessy*.

Regardless of the Ninth Circuit's final outcome, the civil rights groups backing *Mendez* were waiting for the appeal of the case to the Supreme Court, and an opportunity to argue *Plessy* before the High Court. The school boards never appealed and *Mendez* was only able to set a local

179. *Id.*

180. *Id.*

precedent and not a national standard.

MENDEZ' LEGACY: DIMINISHING PLESSY

Mendez was part of a process which stripped away the formal structure of legalized segregation and exposed the underlying conditions of racism and reaction that divide the American people and plague their consciences.¹⁸¹

While *Mendez* did not set a national precedent, and even disappointed several of the amicus curiae authors, it did have several positive implications. The case brought public pressure on the State government of California to repeal all segregation laws on the books regarding Asians and Native Americans.¹⁸²

Mendez also encouraged Chicanos in Texas to act.¹⁸³ Texas civil rights leaders received favorable opinions from the Texas Attorney General against Chicano school segregation and in *Delgado v. Bastrop Independent School District*, they made arguments similar to *Mendez* and won an injunction from the federal court on equal protection grounds.¹⁸⁴ LULAC and other Chicano organizations, including the G.I. Forum, considered renewing their litigation efforts based on the outcome of the case.¹⁸⁵

Another legacy of the *Mendez* case was that while it did not lead to *Plessy* being explicitly overturned, *de jure* segregation in California was significantly weakened. First, under the ruling of the Ninth Circuit Appeals Court, segregation was only permissible under explicit legislation mandating the separation of the specific group or groups mentioned in the law.¹⁸⁶ Therefore, local administrative bodies did not have the power to segregate without approval of state law. The creation of precedents limiting the application of segregation could be applied to any group similarly situated in other states, as they were in Texas in the situation above.

Second, *Mendez* showed the post-war vulnerability of the judiciary to succumb to social pressures brought on by new international criticisms. The decision's references to Nazism spreading to California makes clear that international events influenced the Court's decision.¹⁸⁷ Outside

181. WOLLENBERG, *supra* note 23, at 135.

182. See WOLLENBERG, *supra* note 23, at 132.

183. RICARDO ROMO, *George I. Sanchez and the Civil Rights Movement: 1940-1960*, 1 *La Raza Law Journal* 342, 348-349 (Fall 1986).

184. *Id.*

185. See GONZALEZ, *supra* note 4, at 155.

186. *Westminster v. Mendez*, 161 F. 2d. 774, 780-781 (9th Cir. 1947).

187. *Id.* at 783.

political pressures would not allow the judiciary to remain complacent, but would push it to be the new protector of human rights that would later culminate in *Brown*. The court was also influenced by social science data that would lead to the ultimate recognition that the presumption of social inferiority was reinforced by segregation.

Finally, and perhaps most importantly, *Mendez* signaled the end of widespread *de jure* Chicano segregation throughout the Southwest. Although some school districts desegregated voluntarily after the decision, many maintained their segregative system despite the change in law. A new battle over *de facto* segregation, which is still being waged today, began with the *Mendez* decision.

POSTSCRIPT: ORANGE COUNTY IN THE AFTERMATH

The El Modena School Board voted to order County Counsel Ogle to drop the appeal and to comply with Judge McCormick's decision, on June 12, 1947.¹⁸⁸ The legal battle had ended and the political one began.

The schools of Orange County opened in the fall of 1947 with little fanfare or trouble, but a significant change had been made. For the first time Mexican children in large numbers were attending school side by side with Anglos. El Modena had integrated its schools, housing the lower grades in one school house and the upper grades in another.¹⁸⁹ Dan Gomez, a student in El Modena in 1947, recalled never being tested for anything and being sent to Roosevelt:

They sent some of the Mexican kids into Roosevelt slowly. And as new kids came into the system they started putting them into Lincoln . . . I think they would've had a real fight in their hands as far as sending kids from Roosevelt to Lincoln.¹⁹⁰

So, while integration did not move very rapidly or go as far as it was supposed to, it did occur. Many of the Anglo parents became distressed by the thought of having integrated schools and transferred their children to surrounding predominantly white districts.¹⁹¹

The Mexican community in El Modena had fought and won a major victory over the Anglo controlled schools in their town. Now, the question was, could they maintain what they had won or would political power shift back to the Anglo ranchers and thus result in *de facto* segregation in place of the previous policies?

188. El Modena School Board Meeting Minutes (June 12, 1947).

189. *Segregation of Students Held Illegal*, ORANGE DAILY NEWS, April 14, 1947, at 5.

190. Gomez Interview, *supra* note 46.

191. *Id.*

SECOND GENERATION DISCRIMINATION: SEGREGATION ADAPTS

The *Mendez* case ushered in a new era of *de facto* segregation in which Chicanos found it difficult to target their enemies or even to identify when negative actions were being taken against them. Perhaps most importantly, they had little recourse to protect themselves politically or to fight discrimination in the guise of "economic necessity" or "government policy." For a brief period after the final decision on the *Mendez* case, Chicanos did take political action and achieved a certain amount of power in El Modena.

The momentum of the school desegregation movement carried into the school board elections. In subsequent years two Chicanos, Jesus Martinez and Primo Rodriguez, were elected onto the school board. They were soon overwhelmed, however, by Anglos and their powerful institutions. Segregation adapted to integration and continued to separate Mexicans and Anglos and to ensure unequal education in an unequal society.

During the fall of 1947 a large group of Anglo parents petitioned the County Board of Education to transfer not just their children, but part of the district in which they lived to the adjacent all-white Tustin School District. The property represented almost \$600,000 in assessed property value, a substantial tax base loss to the El Modena district, which naturally protested the action. The protests were to no avail, and by December the Anglo children, who had already been attending schools in the Tustin District, were now officially declared a part of that district by the County Board of Education.¹⁹²

El Modena was the only district in the county to drop in enrollment. The others all increased substantially. The loss in tax revenue from transfers and loss of enrollment could seriously hurt the district's ability to provide good facilities and quality education. White flight from El Modena was a reality as many Anglo parents left the district rather than have their children attend school with Mexicans.

While some improvements were made for Chicanos in the district between 1948 and 1951, after 1951 it became increasingly difficult to effect significant change. Transfers continued throughout the period after 1951, although enrollment stabilized and actually increased somewhat that year.¹⁹³ However, things soon got worse. Illegal transfers into the Tustin district became a problem again. Parents who requested transfers for their children were routinely denied by school board member Primo Rodriguez.¹⁹⁴ However, in September 1951, parents became angry and filed a petition with the County Board of Supervisors to force the district to allow transfers. Within three months, many more Anglo children were given permission by the supervisors to go to the surrounding districts.¹⁹⁵ Along with the children went school revenue.

192. El Modena School Board Meeting Minutes (Dec. 12, 1947).

193. El Modena School Board Meeting Minutes (Jan. 26, 1951).

194. El Modena School Board Meeting Minutes (Sept. 12, 1951).

Transfers continued en mass, forced from above by the County Board of Supervisors.

The district was strapped for funds. They were unable to provide an adequate education or upkeep of facilities. As the district became more Mexican and less Anglo its resources continually declined. Institutions like the County School Board did little to counter the trend and in fact aided it by approving Anglo transfers from the district.

THE UNIFICATION OF 1953: THE DEATH OF CHICANO POLITICAL POWER

The unification of the elementary school districts within the Orange High School District into one distinct entity in 1953 reflected a long standing trend. More than one reason explained why the districts unified. It is difficult to label this action as discriminatory against Chicanos. Typical of "second generation discrimination," it is nearly impossible to target one certain aspect or institution as prejudicial for there were many reasons and policies involved in the decision. It would appear in this case, however, that the main motivation for unification was economic. As enrollment increased in the area schools, it became more economical to pool resources and unify. However, there were other reasons for the unification, such as state policies pushing districts to unify and the fear of Mexican political power fueled by racism and prejudice.

State policy supported the unification of districts. At this time the State of California sought to make its school system more efficient and accountable.¹⁹⁶ The El Modena School Board jumped headlong into the new policy one year after desegregation and the loss of a large part of their district to Tustin. El Modena was losing enrollment and value as a district while other districts were gaining enrollment and maintaining resources. El Modena sent representatives to the "County Redistricting Committee" in April and May of 1948; the committee consisted entirely of Anglo males who represented various school districts. The El Modena representative was Trustee Grant Baggott, who enthusiastically supported unification. The committee recommended unification and a county-wide vote was taken in September that confirmed the recommendation.¹⁹⁷

While all appeared fair in theory, it was not in practice. First, the committee that created the new district was composed entirely of Anglos. Second, and most importantly, El Modena was not allowed to decide its own fate. Lastly, racism and discrimination were in operation. Two majorities were required to carry the unification vote, one within the City of Orange and one within the outlying districts of Olive, El Modena, Villa Park and Silverado. All of the districts were predominantly Anglo, except

195. El Modena School Board Meeting Minutes (Jan. 9, 1952).

196. HENDRICK, *supra* note 15, at 68; *Redistricting of Local Schools Up for Decision*, ORANGE DAILY NEWS, May 25, 1948, at 1.

197. El Modena School Board Meeting Minutes (Sept. 14, 1948).

for El Modena, and the three combined vastly outnumbered El Modena in total votes. If all three districts voted for unification, El Modena would be included regardless of its vote. El Modena's voice did not matter and unification was carried without the Chicano community being able to act. In one fell swoop Chicano power in El Modena declined precipitously.

When unification arrived in the fall of 1953 the Chicano community found itself completely disenfranchised from the rest of the new Orange Unified School District. A school board composed entirely of Anglos administered the schools in El Modena for the first time in six years¹⁹⁸ and Chicanos had no power to change the situation. Unification spelled the end of meaningful Chicano political action in El Modena for quite some time.

The example of Mexican American political power in El Modena demonstrated how political empowerment could make a small difference, even though in the long run institutional forces reverted to a system of discrimination and inequality. Some good came out of the struggle. A strong sense of pride in being Mexican in El Modena allowed people to fight the system and make a real impact from the courts to the ballot boxes. Second, Mexicans showed the Anglo community that they could organize and were not docile or subservient. They organized the Latin American League which was a force to be reckoned with in the community for many years and showed the Anglos ranchers that Mexicans would participate in government whether the farmers wanted them to or not.

The decline of power was symptomatic of the contradictions in the citrus society. While the courts said that Mexicans were entitled to equality in education, hundreds of thousands of poor Mexican laborers were being shipped across the border every year to work in Anglo-owned fields. At the same time the government engaged in deportation programs such as Operation Wetback.¹⁹⁹ Mexicans were wanted for cheap labor but not as members of the society.

Jess Martinez and Primo Rodriguez, school board members of the former El Modena School District, defied these beliefs and demonstrated to Anglos that Mexicans could hold responsible government positions and have authority over Anglo children. They also provided role models for Mexican children. Whether or not they were responsible, the number of Mexican graduates in El Modena increased substantially. In June, 1953, the last graduating class of the El Modena School District consisted of 12 Anglos and nearly three times as many Mexicans (33). Many of them were handed their diplomas by a Mexican as well. Many improvements had been made, but the basic inequalities still existed. As unification had eliminated Chicano political representation on the school board, segregation revealed itself again in the policies of the school district.

198. Orange Unified School Board Meeting Minutes (June 18, 1953).

199. CAMARILLO, *supra* note 7, at 83.

ATTENDANCE BOUNDARY SEGREGATION

Unification of the district allowed for new attendance area boundaries to be drawn by the Orange Unified School Board in a way to please the ranch-owning Anglo constituency who did not want their children in school with Mexicans. Aside from the ranchers, increasing numbers of homes and housing tracts were being built in the area; In order to entice buyers, the district had to have nice new schools. New schools were also necessary to replace decaying older schools and to meet the demands of increased enrollment.²⁰⁰

The construction of new schools in El Modena in 1962 demonstrated the districts policies regarding attendance boundaries. Up until this time the Orange Unified School District had only managed to build one school in the El Modena area, La Veta. The attendance areas in El Modena were divided into La Veta, El Modena (the old Lincoln and Roosevelt Schools) and Villa Park. Up until this time white children had been bused to either La Veta or Villa Park if their parents did not want them to attend the mostly Mexican El Modena schools. The busing was enacted "in order that the ratio of Mexican children to the Anglo children be held to a minimum."²⁰¹

Enrollment had jumped and the previous year the El Modena schools had been ruled unsafe by both the fire marshal and the county, although the school district continued to use them until they finished construction on two new schools, Jordan in a predominantly white neighborhood south of Chapman, and Esplanade, near the old El Modena schools on the north side of Chapman. New home buyers feared sending their kids to an "unsafe" school instead of the promised new school, Jordan.

Two noteworthy developments followed: the construction of Jordan and the destruction of Lincoln and Roosevelt. Dan Gomez remembered the building of Jordan, which is near his house, but on the other side of a ravine: "I think a lot of it was when they built Jordan, they knew that within just a couple of years, they were going to put in this whole track [of houses] here . . . Oh yeah, that's flood control area [the ravine]. That in itself served as a separation."²⁰² Natural boundaries were used to keep communities and attendance areas apart. The other interesting development was the selling of the El Modena schools. They were sold a little below market value and demolished as soon as possible. These remnants of segregation were too expensive to repair and were torn down to become a shopping mall and a power plant.

The gerrymandering of attendance lines continued and is still visible today. For example, Prospect School was built less than two blocks away from Esplanade in 1966, but in a new, predominantly Anglo housing development. Vince Rodriguez claimed they were built "with the understanding that the majority of the community around Esplanade was

200. Letter from Harold Kibby, Superintendent, Orange Unified School District, to Edward Shaw, Orange County Grand Jury (Oct. 2, 1962) (on file with the Orange Unified School District).

201. *Id.* This is actually stated in the letter.

202. Gomez Interview, *supra* note 46.

Hispanic and they would attend that school and Prospect school, most of the community was Anglo . . . same thing with Jordan [1963]...and Panorama [1967], that was [sic] predominantly Anglo."²⁰³

The most recent example of the use of attendance boundary segregation occurred in 1989. The School Board changed the attendance boundaries around a new, expensive housing development. The land formerly consisted of small homes surrounded by strawberry fields and had been part of the Esplanade (Mexican) attendance area. But after the new houses were completed and sold, the largely Anglo area was transferred to the new Linda Vista School area after having been in Esplanade for only a few years. There was very little pretext, as Esplanade was far closer and more accessible, while Linda Vista was farther away and up hill. Mexicans and Anglos continued to be segregated.

School attendance boundary segregation was very common throughout California. Chicanos continued to urbanize and thus moved into the larger, more segregated school districts, where such practices were made easier than in smaller districts with fewer schools. Because of this trend, Mexican Americans in the 1970s became even more segregated than in the period of *de jure* segregation.²⁰⁴ This type of *de facto* segregation is reflective of silent segregation and second generation discrimination; very few people talk about it and it tends to perpetuate itself. Once boundaries are established they do not change often unless they are designed to maintain segregation. School attendance segregation is a legacy of the discriminatory and prejudicial institutions of the citrus society.

OTHER FORMS OF SECOND GENERATION DISCRIMINATION

Segregation takes the form of what political scientists Kenneth Meier and Joseph Stewart call "second generation discrimination."²⁰⁵ In their study on Hispanic education they examined how school districts take action to limit minority access to education. "Second generation discrimination is the use of academic grouping and discipline in a discriminatory manner so that Hispanic students are separated from Anglos."²⁰⁶ Segregation, no longer able to function within the law, took on this more inconspicuous, but equally effective discriminatory character.

Some examples of second generation discrimination that apply to El Modena are lack of encouragement to continue study in high school and tracking or group placements, ranging from bilingual education to the placement of Chicano students in EMR (educable mentally retarded)

203. Rodriguez Interview, *supra* note 53.

204. WOLLENBERG, *supra* note 23, at 134.

205. KENNETH J. MEIER & JOSEPH STEWART, JR., *THE POLITICS OF HISPANIC EDUCATION* 1 (1991).

206. *Id.*

classes.

Chicanos experienced lower rates of high school attendance and graduation than Anglos and administrators continued the practice of providing little incentive or support for Mexican students to continue their studies. Vince Rodriguez remembered Orange High in the 1950s: "Our drop out rate was real bad . . . We'd start out with 200 of us and we'd finish with 35. It was bad, but . . . It was for many different reasons, economic reasons, they'd go to work . . . They really didn't go after you aggressively to try to keep you in school."²⁰⁷ Graduation and attendance rates did increase gradually, however. For example, in 1950 Mexicans constituted 9.2% of the student body at Orange High School, where children from El Modena went after grade school; they made up 7.7% of the graduates that same year. Things improved by 1960 when Mexicans represented 13.5 percent of the students and almost 10% of the graduates.²⁰⁸ The lower grades were still bottom heavy with Mexicans, having far more than the upper grades. Many of these students dropped out, only a few of the students achieving high school graduation. The high school was inhospitable to Mexican students, but progress was being made.

Bilingual education and tracking into slow learner groups and EMR became a common way to separate out Mexican children. "The divorce of bilingualism and biculturalism was important because it allowed educational officials to retain claims to expertise and to control the school systems," Meier and Stewart stated, adding that "acceptance of bicultural education would suggest that school systems were failing children, not vice-versa."²⁰⁹ Annie Quintana experienced such segregation in her family: "Well, maybe it's just like they did with the bilingual program. If you had a Spanish surname regardless of what color or race you were from, if you had a Latin name or Spanish name you were put there . . . like my niece who didn't even speak Spanish."²¹⁰ Segregation was alive and well. It could be found in many forms and even disguised as programs that were designed to benefit Chicanos, like bilingual education.

MODERN CHANGES: MINOR IMPROVEMENTS, MAJOR IMPEDIMENTS

While some changes were made, overall, unequal education continued. Segregation persisted after the *Mendez* case, but was transformed and adapted to new situations. While the laws had changed, the society and the schools they had created had not. Mexicans in Orange County currently make up approximately 25% of the population and represent the second largest single concentration in the state. It is becoming harder

207. Rodriguez Interview, *supra* note 53.

208. Orange High School Yearbooks 1950, 1954 and 1960.

209. MEIER & STEWART, *supra* note 205, at 75.

210. Quintana Interview, *supra* note 64.

and harder to ignore the needs of the Chicano community, though it still occurs. Nothing has been done to address the financial and racial inequality that are perpetuated by the institutions created by the citrus society.²¹¹

Like other Chicano communities, El Modena has fought battles to decide whether or not to incorporate into the larger city. The community has faced the discriminatory practices of power companies that place plants in their neighborhoods; they continue to be segregated in the schools of their own community and are still the favorite target of an insensitive and prejudicial press. The institutions of the citrus society have endured and continue to mete out inequality and second class status to the Mexican Americans of El Modena.

CONCLUSION

I [do not] find the wisdom, foresight, and sense of justice exhibited by the framers particularly profound. To the contrary, the government they devised was defective from the start, requiring several amendments, a civil war, and momentous social transformation to attain the system of constitutional government, and its respect for the individual freedoms and human rights we hold as fundamental today.²¹²

Segregation in the *Mendez* schools presented a horrifying example to Americans of everyday atrocities that occurred in the United States--ones supposedly limited to Germany or Japan. Segregated schools separated only by a small field were too gross a violation for the court to overlook, but not enough for it to challenge the core of American segregation jurisprudence, *Plessy v. Ferguson*.

Mendez demonstrated both a cohesive national civil rights agenda from national organizations of all races and creeds and a new strategy to utilize the new ideals of democracy and equality garnered from the atrocities of World War II. Amicus curiae briefs and test cases, such as *Mendez*, would eventually prove the NAACP's and other organizations' efforts fruitful. In *Brown* and other cases, the courts would finally accept social science and policy as persuasive legal arguments, due in large part to the voluminous experimentation undertaken in the lower courts, similar to the appeal in *Mendez*.

Mendez may not have been the case to overturn *Plessy*. But, in hindsight, it did become the Mexican American's *Brown*, ending legal segregation for Mexican Americans throughout the Southwest. The battle for equality continues. As the *Mendez* story indicates, a victory in court does not insure a beneficial outcome.

211. CAMARILLO, *supra* note 7, at 106; HENDRICK, *supra* note 15, at 73-74.

212. Justice Thurgood Marshall, Remarks at the Annual Seminar of the San Francisco Patent and Trademark Law Association (May 6, 1987), quoted in STONE, *supra* note 118, at 473.