
IV. MENDEZ *v.* WESTMINSTER AND SCHOOL DESEGREGATION

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INTRODUCTION

In 2004, we will celebrate the fiftieth anniversary of the United States Supreme Court's historic ruling in *Brown v. Board of Education*,⁸ which ended segregation in public schools and severed the doctrine of "separate but equal" from its constitutional moorings. This important decision marked a turning point in the nation's struggle for equal rights for all people, regardless of color, in our society. This achievement resulted from the struggles engaged in by communities of color across the country to realize the ideals of justice and equality in their local school districts. The Mexican-American community in the small town of El Modena in Orange County, California was only one of those who sought to challenge institutional racism by pursuing desegregation through the courts.

Traditionally, the legal discussion of desegregation has focused on the battles fought by African Americans through litigation to dismantle Jim Crow segregation that permeated every level of southern society. Little attention has been paid to the efforts of Mexican-American parents who sought to achieve dignity and equality for their children by launching grassroots community efforts to overturn similar *de jure* segregation that existed in their largely farm-based communities. In fact, when the daughter of one of the named plaintiffs in *Mendez v. Westminster*⁹ asked her father why they had never been told about the case, he replied, "Because nobody asked." It is the function of this conference to create a consciousness of the past that assists the children growing up in our communities today to continue the movement toward a society that is free of discrimination for all.

⁸ 347 U.S. 483 (1954).

⁹ 161 F.2d 774 (9th Cir. 1947).

Mendez v. Westminster, a decision that determined discrimination based on national origin violated the Equal Protection Clause of the Fourteenth Amendment, is more than just a legal opinion; it presaged the dismantling of *de jure* segregation in public schools across the country. The court ruled on the plaintiffs' claims in the case seven years prior to *Brown v. Board of Education*. Interestingly, Justice Thurgood Marshall filed an amicus brief in support of the plaintiffs' position arguing that the facts of *Plessy v. Ferguson*¹⁰ involving desegregation in transportation did not apply to public schools. Although, the Ninth Circuit did not agree with this position, it marked a turning point in the movement to end segregation.

HISTORY OF SEGREGATION IN ORANGE COUNTY

Crucial to a thorough understanding of the issues that *Mendez v. Westminster* sought to address is an examination of the historical backdrop of pervasive segregation between Mexicans and Whites that existed in Orange County in all facets of everyday life during the time period. A commentator (Christopher Arriola) has dubbed the society of Southern California and its cheap Mexican labor the "citrus society."¹¹ This term signifies the dependence of the local farm economies on oranges as commodities and thus, on Mexicans who labored in the orchards. Given these economic necessities, Southern California politicians and agribusiness leaders lobbied Congress furiously to maintain the steady flow of cheap labor from Mexico into Orange County.¹² As a result, "the California Mexican population tripled between 1920 and 1930, from a conservative estimate of 121,000 to 368,000."¹³ In El Modena, by the mid-twenties, Mexicans comprised a majority of the population at 1,000 citizens.¹⁴

Whether intentional or not, virtually all aspects of everyday life in the town functioned in a vigorously segregated context. Movie theaters,

¹⁰ 63 U.S. 537 (1896).

¹¹ Christopher Arriola, *Knocking on the Schoolhouse Door: Mendez v. Westminster, Equal Protection, Public Education and Mexican Americans in the 1940's*, 8 LA RAZA L.J. 166, 167 (1995).

¹² *Id.* at 170.

¹³ *Id.*

¹⁴ *Id.*

swimming pools, organizations, businesses, housing, churches, and homeowner associations were all segregated.¹⁵ Many were segregated pursuant to official policies.¹⁶ As a result, the town developed a doughnut shaped segregated residential pattern — all Whites lived on the ring and all Mexicans lived in the center.¹⁷

In essence, the segregationist attitudes of the town's white residents became mirrored in all institutions of the small town. Nevertheless, in day-to-day life, Mexicans and Whites interacted frequently, albeit in the neutral zone of the commercial establishments of the downtown area where each community owned half the businesses.¹⁸ The schools reflected this neutral zone in a strip of land that separated the white from the Mexican school by 100 yards and functioned as a jointly shared playground where the children, divided by race, played at different times during the school day.¹⁹

SEGREGATION REFLECTED IN ORANGE COUNTY SCHOOLS

In other words, “The schools in El Modena were both a reflection of the citrus society and its silent segregation.”²⁰ Responding to the influx of Mexican children into the schools and what educational theorists were now referring to as the “Mexican problem,” the town built Roosevelt High School in 1923.²¹ The school district cited overcrowding as the ostensible reason for construction of the new school.²² However, later, when the school district changed Lincoln's calendar to match the agricultural cycle and placed all of the Mexican children in the older school, the true purpose of segregation became quite apparent.²³

¹⁵ *Id.* at 171–72.

¹⁶ *Id.* at 171.

¹⁷ *Id.* at 172.

¹⁸ *Id.* at 173.

¹⁹ *Id.*

²⁰ *Id.* at 172.

²¹ *Id.*

²² *Id.* at 173.

²³ *Id.*

Segregationist education ideologies were bolstered by theories that presumed Mexican cultural inferiority. White educators responded to this premise by adopting an assimilationist curriculum that tracked Mexican children into vocational, remedial, and domestic programs.²⁴ They also pointed to the results of culturally biased IQ testing and emphasized lack of English proficiency as indicators of the supposed intellectual inferiority of Mexican children.²⁵ Incidentally, these systems of tracking served the white landowners well as many Mexican children dropped out early and continued their parents' work in the fields.²⁶

The Roosevelt school's faculty, academic programs, and facilities were vastly superior to those of the Lincoln school.²⁷ Discipline of all students was administered from the Roosevelt school.²⁸ And most significantly, administrators did not determine who went to which school based on academic proficiency.²⁹ Instead, race determined placement.³⁰ In fact, it did not matter that, in 1945, the seventh-grade students in Lincoln scored higher on standardized tests than those in Roosevelt.³¹

Light-skinned Mexican children descended from Californios (the first Mexican families in California) and Japanese children were also allowed to attend the Roosevelt school.³² Their families primarily shared the status of wealthy growers with their white counterparts.³³ This may have meant that segregation not only thrived on racism but also found its genesis in the maintenance of a feudal system premised on the continual flow of labor from the Mexican community.³⁴ Put another way, one white rancher asked rhetorically, "Hey if we [integrate] who's going to pick our crops?" That question was implicitly answered by the dual existence of the Roosevelt and Lincoln schools.

²⁴ *Id.* at 173–74.

²⁵ *Id.* at 174.

²⁶ *Id.*

²⁷ *Id.* at 176.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 177.

³³ *Id.*

³⁴ *Id.*

This dual educational system resulted in high dropout rates for Mexican children.³⁵ In 1923, out of 635 enrolled students at Orange High School, only 8 were Mexican (1.25 percent).³⁶ By 1940, this rate had increased very little to (4.12 percent) or 165 Mexican students out of 4,000 total.³⁷ The school district ultimately solidified its segregationist structure in an official policy that mandated separate education systems for Whites and Spanish-speaking children of Mexican descent.³⁸ Curiously, no mention of the school board policy can be found in the minutes from 1943 to 1953.³⁹ And between 1945 and 1946, the years of the *Mendez v. Westminster* litigation, the minutes are missing altogether.⁴⁰

THE RESPONSE

Before and after World War II, several Latino political organizations formed to combat inequalities through social and labor activism.⁴¹ These included the League of United Latin American Citizens (LULAC), the GI Forum, and the Latin American Organization (LAO).⁴² The LAO formed specifically to combat school segregation.⁴³ Soon thereafter, several Mexican parents, including the Ramirez family in El Modena, requested transfers of their children to Anglo schools.⁴⁴ All requests were denied and the parents followed up by writing letters and complaining to administrators.⁴⁵ Leaders began to organize the community around these seminal actions taken by several brave families.⁴⁶

³⁵ *Id.* at 179.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 180.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 182.

⁴² *Id.* at 182–83.

⁴³ *Id.* at 183.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

MENDEZ v. WESTMINSTER — PART 1

On March 2, 1945, several of the Mexican parents whose transfer requests had been denied sued several Orange County school districts alleging unlawful discrimination for the exclusion of their children from Anglo schools.⁴⁷ Both sides stipulated that the case did not involve race discrimination and that Mexicans were considered to be “of the white race.”⁴⁸ Instead, the parents sought relief under the Equal Protection Clause of the Fourteenth Amendment arguing that their rights, as a class, had been violated because their children had been forced to attend segregated schools because of their national origin.⁴⁹

At the outset, the schools admitted that Spanish-speaking students had to attend schools separate from non-Spanish speakers.⁵⁰ The parents contended that this policy provided a pretext to discriminate against Mexican children based on their national origin.⁵¹ In opposition, the schools challenged the jurisdiction of the court, arguing that this state law entirely controlled the issue in this case.⁵² However, the trial court rejected this argument, finding that actions of public school authorities in California are to be considered to be actions of the state within the meaning of the Fourteenth Amendment.⁵³ This meant that the policies of the Orange County schools were subject to the Equal Protection Clause.⁵⁴

The court then concluded that state law in conjunction with the Fourteenth Amendment’s Equal Protection Clause prohibited the segregation of Mexican children from others based on their national origin.⁵⁵ Key to this decision was the court’s determination that “[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.”⁵⁶

⁴⁷ *Id.* at 185.

⁴⁸ *Id.*

⁴⁹ *Mendez v. Westminster*, 64 F. Supp. 544, 545 (1946 S.D. Cal.).

⁵⁰ *Id.* at 546.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 547.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 549

The court continued by stating, “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.”⁵⁷ The court then noted how evidence of discrimination confirmed this conclusion.⁵⁸ Finally, the court rejected the idea that students had been placed based on their language proficiency because the tests were a pretext for national origin discrimination.⁵⁹

First, the tests used by the school districts were found to be “generally hasty, superficial and not reliable.” Second, “In some instances separate classification was determined largely by the Latinized or Mexican name of the child.”⁶⁰ Third, “Such methods of evaluating language knowledge are illusory and are not conducive to the inculcation and enjoyment of civil rights which are of primary importance in the public school system of education in the United States.”⁶¹ Key to this portion of the court’s decision was its conclusion that language tests that had been offered were a sham and that any segregation among students had to be based wholly on language proficiency measured by credible tests.⁶²

The court then held, “The natural operation and effect of the Board’s official action manifests a clear purpose to arbitrarily discriminate against the pupils of Mexican ancestry and to deny them the equal protection of the laws.” The court then entered an injunction against the school district ordering it to cease practicing discrimination against Mexican children in its placement decisions.⁶³

Without the support of the community and its effort to raise funds for litigation costs, this decision would have probably been impossible.⁶⁴ One of the plaintiff-parents (Gonzalo Mendez) took the whole year off from work to organize people and gather evidence.⁶⁵ And he even paid

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 550.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Arriola at 186.

⁶⁵ *Id.*

men to take the day off from work to go to court.⁶⁶ Clearly, many community members sacrificed much to further the ends of justice and equal protection of the laws.

ORANGE COUNTY'S RESPONSE

A few days after the parents had succeeded in obtaining an order mandating desegregation of Orange County schools, the school districts reported in the local newspaper that they would be appealing the case to the Ninth Circuit Court of Appeals in San Francisco.⁶⁷ Furthermore, the school board refused to change its policies for placement the following year.⁶⁸ Parents organized an organization known as "The Unity League of El Modena" and went before the board to contest its decision not to change its policies.⁶⁹ In response, the school superintendent quipped, "tests were not given because they were not necessary to tell that the children could not speak English."⁷⁰ A school board member added, "If the parents had English as the language spoken in the home the children would have no trouble when they go to school and would do much better."⁷¹ Essentially, the school board and the superintendent blamed the Mexican parents for their segregationist policies and then proceeded to defy the court's order. On September 13, 1946, the school district confirmed their decision not to change their policies and to continue the agricultural cycle calendar for the Lincoln school.⁷²

The parents then responded by going to court to have the school district held in contempt for violating the court order.⁷³ "The court forced the school board to implement the plan to divide the school by grades," thus ending discrimination.⁷⁴ However, the school district obstinately continued its battle in the Ninth Circuit Court of Appeals.

⁶⁶ *Id.*

⁶⁷ *Id.* at 187.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

MENDEZ v. WESTMINSTER — PART 2

On appeal, the school districts reargued their contention that the federal courts had no jurisdiction over this state law matter.⁷⁵ They then added that even if the federal courts did have jurisdiction, there is no violation of the Equal Protection Clause if facilities provided to students are equal and that school districts could segregate as they pleased, in that instance.⁷⁶

One of the most interesting aspects of the case on appeal were the amicus briefs filed in support of the parents' efforts to outlaw desegregation.⁷⁷ For example, David C. Marcus argued for the parents and cited the U.S.'s involvement in World War II and its advocacy for democracy for all as a basis for upholding the lower court's ruling against segregation.⁷⁸ He also argued that the school district's policies discriminated against Mexicans on the basis of national origin and violated California law.⁷⁹

THE AMICUS BRIEFS

Almost every major civil rights organization active during the era wrote an amicus brief in support of the Orange County parents.⁸⁰ Future Justice Thurgood Marshall, on behalf of the NAACP, made three points in support of the parents' position: (1) racial classifications are invalid under "Fundamental Law," (2) Due Process and Equal Protection cannot be achieved under a system of segregation, (3) *Plessy v. Ferguson* does not disallow a ruling that school segregation is invalid since it only deals with public transportation.⁸¹ He also emphasized the post-World War II themes of freedom the U.S. cited as its justification for war, pointing out the hypocrisy of segregating white students from Mexican students while simultaneously claiming moral superiority over racist empires around the world.⁸²

⁷⁵ *Id.* at 193.

⁷⁶ *Id.*

⁷⁷ *Id.* at 193.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 194.

⁸¹ *Id.*

⁸² *Id.*

The ACLU focused on this theme and stated in its brief: “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.”⁸³ The California attorney general wrote a short brief pointing out that no state statute allowed the segregation of Latino students.⁸⁴ It also noted other statutes that mandated the segregation of Asian and American Indian students from white students.⁸⁵ After the decision in this case was affirmed, the California Legislature eliminated these provisions.⁸⁶

Finally, the American Jewish Congress argued that: (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 “Americanization” policies of the federal Immigration and Naturalization Service and therefore preempted.⁸⁷

The Ninth Circuit refused to overrule *Plessy v. Ferguson*, sidestepping the question of whether the doctrine of “separate but equal” violated the Equal Protection Clause of the Fourteenth Amendment of the Constitution.⁸⁸ Instead, the court emphasized the absence of California law allowing the segregation of Mexican school children as a basis for finding an equal protection violation.⁸⁹ Moreover, the court also refused to rule on whether the school district had discriminated against the children on the basis of their race.⁹⁰ The civil rights groups awaited the appeal of the case to the U.S. Supreme Court by the school district.⁹¹ This never materialized and the school districts acquiesced to the court’s desegregation order.⁹²

As one commentator has opined: “*Mendez* was part of a process which stripped away the formal structure of legalized segregation and exposed

⁸³ *Id.* at 196.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 198.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 199.

the underlying conditions of racism and reaction that divide the American people and plague their consciences.”⁹³ One direct effect of the decision in *Mendez* was the abrogation of all California segregation laws that targeted Asians and American Indians.⁹⁴ The decision also motivated the Mexican community in Texas to pursue litigation and achieve an injunction in federal court barring discrimination on equal protection grounds.⁹⁵ Also, *de jure* segregation in California was significantly weakened, given that prospectively, segregation would be permissible only if specific state legislation authorized it.⁹⁶ In other words, local school boards could not create their own segregationist policies without approval from their state governments.⁹⁷ This was especially significant in California, given that on the heels of the *Mendez* decision, the state legislature eliminated all laws mandating school segregation.

However, probably the most significant effect of the *Mendez* decision was its value as an initial step in eliminating *de jure* segregation in California.⁹⁸

POST-MENDEZ AND THE MODERN PERIOD

Subsequent to the Ninth Circuit’s decision, the El Modena School Board voted to drop the appeal and integrated Roosevelt and Lincoln.⁹⁹ Historically, this was the first time in the town’s history that Anglo and Mexican students attended the same school in large numbers.¹⁰⁰ *De jure* desegregation in El Modena had been ended.¹⁰¹

In subsequent years, the Mexican community gained seats on the school board.¹⁰² However, these gains were largely in vain as the number of

⁹³ Arriola at 199 (quoting Wollenberg at 35).

⁹⁴ *Id.* at 199.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* at 200.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.* at 201.

Anglos vastly outnumbered those of Mexican descent on the board.¹⁰³ In a show of continuing Anglo economic and political dominance, the school board transferred the largely white portion of El Modena School District to the all-white Tustin school district.¹⁰⁴ With the completion of this transfer went valuable tax revenue and a substantial loss of enrollment.¹⁰⁵ Later, when Mexican members of the school board tried to stem the transfer mania, the District Board of Supervisors stepped in on behalf of white parents and overruled the school board, forcing the transfers.¹⁰⁶ As white flight and *de facto* segregation replaced *de jure* segregation, the district's resources declined and school facilities deteriorated.¹⁰⁷

Other forms of *de facto* segregation took similar forms. New schools were built that took advantage of natural boundaries like ravines to divide white from Mexican communities.¹⁰⁸ Attendance zones were adjusted to divide white from Mexican communities, while providing the former with superior resources and facilities.¹⁰⁹ The curriculum saw a return to tracking Mexican students into bilingual and remedial education.¹¹⁰ All of these measures served to reestablish the boundaries between the white and Mexican communities that existed during the former period of *de jure* segregation. Moreover, the silence of the opposition to the resurgence of this new form of discrimination was just as pervasive as it was when the *Mendez*'s first began their struggle to see equality in their day for their children.

CONCLUSION

In closing, the story of desegregation in Orange County was one of hope, victory, and defeat. Once the Mexican community had defeated the proponents of *de jure* segregation, the white community altered their strategies to pursue systematic exclusion of Mexican students that functioned in a more devious manner than ever. This *de facto* resegregation became almost

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 202.

¹⁰⁸ *Id.* at 204.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 205.

impossible to combat because those who supported it weren't openly drawing distinctions between races to decide how to organize the curriculum, place students, or allocate resources. Instead, they were redrawing attendance boundaries, reorganizing school districts, reallocating revenue, planning housing subdivisions, and engaging in voluntary transfers. Ostensibly, none of these strategies had anything do with race. Or did they?

Voluntarism, individual choice, economic efficiency and free will, in this context, have all become euphemisms for strategies that have functioned to resegregate our schools in the present day. Thus, the question is: "What should this generation do about it?" Only time and the courage of our communities will tell. Let us hope that we can match the bravery of our predecessors here in Orange County who fought to give their children a future free of the insidiousness of racial division.

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