SCHOOL DESEGREGATION IN CALIFORNIA

BEFORE BROWN V. BOARD OF EDUCATION

By John S. Caragozian

This story is set in the 1940s in California's Orange County, then rural and agriculture-dependent. Owing to the era's relatively liberal immigration laws regarding Mexico (and other Western Hemisphere countries), many of the agricultural workers were of Mexican ancestry.

Gonzalo Mendez was one of those workers. He was born in Mexico in 1913, received some elementary school education, and immigrated to the U.S. He married Felicitas Mendez, who was of Puerto Rican ancestry. Daughter Sylvia was born in 1936, and other children followed. For a time, Mendez left agriculture, and he and his wife opened a café in Santa Ana. Then, in 1943, the Mendezes moved to another Orange County town, Westminster, where they had leased an asparagus farm from a Japanese-American family imprisoned in Arizona under Executive Order 9066. The Mendezes were the only Mexican-American family in the neighborhood. See Philippa Strom, "Mendez v. Westminster: School Desegregation and Mexican-American Rights" (2010), at 35-38.

Gonzalo and Felicitas Mendez expected that their children would attend the nearby K-8 Westminster School. (California's Education Code allowed separate schools for Native-American and Asian-American children, but not for Mexican-Americans or other minorities.) However — under the Westminster School District's long-standing practice — the Mendezes' children, along with all other children of Mexican ancestry were sent to the distant Hoover School. The result of this practice was rigid segregation: 98% of the Westminster School's students were "English-speaking" (that is, non-Hispanic), and 100% of the Hoover School's students were of Mexican ancestry. *Mendez v. Westminister [sic] School District*, 64 F.Supp. 544, 550 (S. D. [now C.D.] Cal. 1946).

Mendez contacted a Los Angeles lawyer, David Marcus, who had successfully enjoined San Bernardino's practice of barring Mexican-Americans from a public swimming pool. *Lopez v. Secombe*, 71 F.Supp. 769 (S. D. [now C.D.] Cal. 1944). Mendez and Marcus found other Mexican-American families whose children also had been sent to segregated schools in other

Orange County districts. The Mendezes and other parents then met with the county superintendent of schools. He offered to allow the Mendez children to attend the English-speaking school, but the Mendezes declined, because the offer was not extended to others. *See generally* Philippa Strom, *supra* at 38-53.

Mendez raised money to finance litigation. In 1945, he and other Mexican-American parents, on behalf of their minor children, filed a federal class action, alleging equal protection violations against four Orange County school districts. The case was assigned to Judge Paul McCormick, a Republican appointed in 1924 by President Calvin Coolidge.

At trial, the school districts' primary substantive defense was that separate schools did not arise from ethnic prejudice, but, instead, were justified by students' differing English-language abilities. After further briefing, including by amici American Civil Liberties Union and National Lawyers Guild, Judge McCormick filed his decision in 1946.

He began by noting that, per all parties' agreement, the case involved no "race discrimination." At that time, persons of Mexican and other Latin ancestry were generally classified as White. Even if Mexican-Americans had constituted a different race, the U.S. Supreme Court in *Plessy v. Ferguson*, 163 U.S. 537 (1896), had long countenanced racial segregation under "separate but equal." With Orange County's Mexican-American and English-speaking schools' physical facilities, curricula, and teachers appearing equal, plaintiffs could not have prevailed with a racial discrimination claim. *See* 64 F.Supp. at 546.

Instead, Judge McCormick opined that, under equal protection, "[a] paramount requisite in the American system of public education is social equality. It must be open to all children ... regardless of lineage." The "only tenable ground" for segregating the plaintiff students was "English language deficiencies of some of the children of Mexican ancestry," but these deficiencies do not justify "the general and continuous segregation in separate schools," especially where "[n]o credible language test is given...." *Id.* at 548-49.

Judge McCormick accordingly found equal protection violations and enjoined all four defendant school districts from "further discriminatory practices." *Id.* at 551.

It is worth pausing the story to reflect on this decision. In 1946, Jim Crow still reigned in much of America. Not only schools, but also housing, hospitals, transportation, recreation, churches, and other public and private services — even including water fountains — were rigidly segregated in many states. U.S. armed forces, despite the World War II experience (including the Holocaust), also remained segregated. California itself barred interracial marriages, barred Asian immigrants from owning farmland, enforced racially restrictive covenants in housing, and (as noted above) allowed separate schools for some races. In this world, Judge McCormick's social equality paean was farsighted.

The defendant school districts appealed to the 9th Circuit. With the case garnering national attention, additional prominent amici appeared in support of the plaintiff parents: the American Jewish Congress, the Japanese-American Citizens League, the State of California, and, most notably, the NAACP in the persons of Thurgood Marshall and Robert Carter (both of whom would argue in the U.S. Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 (1954)).

The 9th Circuit, with all seven of its judges participating, unanimously affirmed the District Court, but used different, narrower reasoning. The Ninth Circuit stated that separate-but-equal precedent applied to a "legislative act," but not to the school districts' "administrative or executive decree." *Westminster School District v. Mendez*, 161 F.2d 774, 779-80 (1947). The Court acknowledged that amicus briefs had urged review "on the whole question of segregation" in light of "recent world stirring events," but the Court refused to be so "tempted by the siren." *Id.* at 780.

9th Circuit Judge William Denman's solo concurrence used California's diversity to go beyond the majority's reasoning: "All the nations of the world have contributed to [California's] people. Were the vicious principle sought to be established in Orange ... Count[y] followed elsewhere, in scores of school districts the adolescent minds of American children would become infected. To the wine producing valleys and hills of northern counties emigrated thousands of Italians whose now third generation descendants well could have their law-breaking school officials segregate the descendants of the north European nationals.

"Likewise in the raisin districts of the San Joaquin Valley to which came the thousands of Armenians who have contributed to national prominence such figures as Saroyan .... So in the coastal town homes of fishermen, largely from the Mediterranean nations, the historic antipathies of Italian, Greek and Dalmatian nationals could be injected and perpetuated in their citizen school children.

"Or, to go to the descendants of an ancient Mesopotamian nation, whose facial characteristics still survived in the inspiring beauty of Brandeis and Cardozo — the descendants of the nationals of Palestine, among whose people later began our so-called Christian civilization, as well could be segregated and Hitler's anti-semitism have a long start in the country which gave its youth to aid in its destruction." *Id.* at 783.

The school districts did not further appeal, and *Mendez*'s ripples began to spread. The California legislature and Governor Earl Warren promptly undid separate schools for Native-American and Asian-American students. The case was also a milestone in Hispanic community organizing and civil rights efforts.

Nationally, the *Yale Law Journal*, *Columbia Law Review*, and other prestigious authorities featured *Mendez*, including Judge Denman's eloquent concurrence, to question racial segregation altogether.

Seven years later, the U.S. Supreme Court in *Brown* outlawed public school segregation throughout the nation. While *Brown* never cited to *Mendez*, one wonders whether *Brown*'s central players — lawyers Marshall and Carter and Chief Justice (formerly Governor) Warren — had been enlightened by seeing what *Mendez*'s courageous families, committed lawyers and independent judges could accomplish.

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A version of this article first appeared in the February 26, 2021 issue of the Los Angeles Daily Journal. Reprinted with permission.