The Mexican American Struggle for Equal Educational Opportunity in *Mendez v. Westminster*: Helping to Pave the Way for *Brown v. Board of Education*

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Few people in the United States are aware of the central role that Mexican Americans have played in some of the most important legal struggles regarding school desegregation. The most significant such case is Mendez v. Westminster *(1946), a class-action lawsuit filed on behalf of more than 5,000 Mexican American students in Orange County, California. The* Mendez *case became the first successful constitutional challenge to segregation. In fact, in* Mendez *the U.S. District Court judge ruled that the Mexican American students' rights were being violated under the equal protection clause of the Fourteenth Amendment. The decision was affirmed by the Ninth Circuit Court of Appeals. Although the* Mendez *case was never appealed to the U.S. Supreme Court, a number of legal scholars at that time hailed it as a case that could have accomplished what* Brown *eventually did eight years later: a reversal of the High Court's 1896 ruling in* Plessy v. Ferguson, *which had sanctioned legal segregation for nearly 60 years. Even though* Mendez *did not bring about the reversal of* Plessy, *it did lay some of the important groundwork for the landmark case that would. In this article, I use the lens of critical race theory to examine how* Mendez *and* Brown *were strongly connected and how* Mendez *served as a harbinger for* Brown. *This linkage can be captured in at least two ways. First,* Mendez *was a federal, Fourteenth Amendment case grounded in a theoretical argument—known as integration theory—that stresses the harmful effects of segregation on Mexican American students. Secondly, in order to make this Fourteenth Amendment argument, the attorneys in* Mendez *used social science expert testimony. Such testimony, grounded in similar theoretical arguments, proved very useful in* Brown. *For these reasons it is important to remember the role of Mexican Americans and the* Mendez *case, in particular, in the broader struggle for equal educational opportunity in the United States and appreciate how they helped pave the way for* Brown v. Board of Education of Topeka.

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Clearly, the African American civil rights struggle was long-standing and long-suffering (see, e.g., Duram, 1981; Kluger, 1976; Sitkoff, 1993). The 1954 *Brown v. Board of Education of Topeka* decision that struck down the "separate but equal" doctrine established by the Supreme Court in its 1896 *Plessy v. Ferguson* ruling was a monumental turning point in that struggle—for African Americans and for society as a whole.

During 2004, there was a considerable number of scholarly activities commemorating the 50th anniversary of the landmark *Brown* decision, including this special issue. In this time of reflection on what *Brown* symbolizes, it is important to be inclusive in our endeavors. The intent of this article is to help fill a lacuna in the discourse surrounding *Brown*. Unbeknownst even to many scholars of race relations, including some legal specialists, Mexican Americans also have been long-standing players in key legal struggles involving school desegregation (see, for example, Álvarez, 1986; Arriola, 1995; González, 1990; Rangel & Alcala, 1972; Salinas, 1971; San Miguel, 1987; Valencia, Menchaca, & Donato, 2002; Wollenberg, 1974).

Contributing, in part, to this lack of awareness is Mexican Americans' exclusion from much of the scholarship on civil rights history. Law professor Juan Perea (1997) asserts that American racial thought is structured on the "Black/White binary paradigm of race," and thus omits Mexican Americans. As such, this dominant paradigm "distorts history and contributes to the marginalization of non-Black peoples of color" (p. 1213). This Black/White binary Perea (1997) writes about has evolved to become a central point of discussion and critique in civil rights discourse and in the field of critical race theory, which I draw upon in this article (see, for example, Delgado & Stefancic, 2001; Gee, 1999; Martínez, 1993; Phillips, 1999; Ramírez, 1995).

More specifically, in terms of the history of school desegregation, Perea (1997) notes that even major books on constitutional case law have truncated history in such a way that the Mexican American struggle for desegregation has been entirely excluded (see Stone, Seidman, Sunstein, & Tushnet, 1991). By contrast, in my own research on Mexican American desegregation lawsuits, I have identified 28 cases dating from 1925 to 1985 (Valencia, forthcoming).

I argue that the most significant legal case involving Mexican Americans and desegregation is *Mendez v. Westminster* (1946), a class action filed on behalf of 5,000 Mexican-origin students in Orange County, California. In this case, which was the first *federal* court case involving school segregation of Mexican Americans, the plaintiffs prevailed. As historian Gilbert González, 1990 states: "Clearly, the struggle to desegregate the United States has many points of origin, but one that we must not ignore is the *Mendez* case" (p. 73).

In this article, my objective is to build upon the literature that has sought to draw connections between the *Mendez* and *Brown* cases (see, e.g., Arriola, 1995; González, 1990; Perea, 1997; Phillips, 1949). I do so by analyzing and synthesizing several major primary sources (e.g., the *Mendez* trial transcripts; other *Mendez* legal documents; articles written in law review journals) that other scholars have, for the most part, just touched upon. Furthermore, in this edification of the *Mendez/Brown* linkage, I provide an important and helpful theoretical framework—critical race theory—which explains the sustained educational oppression faced by both Mexican Americans and African Americans via forced school segregation.

In addition, I present several of the legal legacies of *Mendez*. For instance, *Mendez*, like *Brown*, was a federal court case challenging segregation on the basis of the Fourteenth Amendment's equal protection clause. Furthermore, in making this equal protection argument, the lawyers for the Mexican American *Mendez* plaintiffs, like those for the African American *Brown* plaintiffs, presented social science research as evidence that segregation is harmful to students who are excluded from certain schools because of their race. The social scientists, who put forth what has been called an "integrationist educational theory," argued that segregated Mexican American children suffered stigmatization and unhealthy psychological development, similar to the argument made by Kenneth Clark in the *Brown* case.

And, finally, I argue that the attorneys for the *Mendez* plaintiffs underscored the shifting nature of civil and human rights of the 1940s. Indeed, it was this changing *zeitgeist* of the 1940s that spilled into the 1950s, along with plaintiffs' victories in *Mendez* and several desegregation cases in higher education brought by the National Association for the Advancement of Colored People (NAACP), that helped develop the legal and moral climate for *Brown* to reverse the "separate but equal" doctrine in education (see Klarman, 2004).

Revisiting *Mendez* and its significance for *Brown* is important because the binary, Black/White view of race relations in the United States not only deemphasizes the contributions of other racial and ethnic groups in the struggle for equality, but it also minimizes the potential for Latino-Black coalitions around issues of social justice and White supremacy. When African Americans and Latinos better understand the linkages across their often separate efforts for equal educational opportunities, they may seek new ways of working together for common goals.

According to the U.S. Department of Commerce, Bureau of the Census (2000a), Latino and African American students combined constitute 33.6% of the public K–12 school population. Regarding the general population, Latinos and African Americans comprised 24.7% of the total population in 2000 (U.S. Department of Commerce, Bureau of the Census, 2000b). It is projected that by 2050, Latinos and African Americans will constitute 37.5%

of the total U.S. population (U.S. Department of Commerce, Bureau of the Census, 2000b). A political coalition of parents, students, lawyers, and activists from these two communities, working together, can perhaps achieve the 21st century equivalent of *Brown*.

For this analysis, I have organized this article into five sections: the value and utility of critical race theory; the roots of Mexican American school segregation and the legal struggles for desegregation before *Mendez*; the timing, venue, and scope of the *Mendez* case—the first federal court case on Mexican American school desegregation; the appeal of *Mendez* to the federal Circuit Court in which the Mexican American plaintiffs prevail; and an assessment of the legacy of *Mendez* today.

THE VALUE AND UTILITY OF CRITICAL RACE THEORY

Critical race theory (CRT) has its roots in the 1970s when a cadre of legal scholars, lawyers, and activists across the nation realized that the momentum of civil rights litigation had stalled (Taylor, 1998; Delgado & Stefancic, 2001). CRT, a form of oppositional scholarship, "challenges the experiences of whites as the normative standard and grounds its conceptual framework in the distinctive experiences of people of color" (Taylor, 1998; p. 122).[1] Some of the issues addressed by CRT are campus speech codes, disproportionate sentencing of people of color in the criminal justice system, and affirmative action (Taylor, 1998).

Now a growing field of scholarship with a corpus of literature, CRT has gained widespread popularity in the field of education, especially among scholars of race and ethnicity. Issues studied in CRT and education are diverse and include, for example, the experiences of scholars of color in the academy, affirmative action, educational history, families of color, curriculum differentiation, and testing (see Ladson-Billings & Tate, 1995; López, 2003; López & Parker, 2003; Parker, Deyhle, & Villenas, 1999; Solórzano, 1998; Solórzano & Yosso, 2000, 2002; Villenas & Deyhle, 1999).

Solórzano (1998), a prominent CRT scholar, has asserted that five themes, or tenets, form the underlying perspectives, research methods, and pedagogy of CRT in education: First, there is the centrality and intersectionality of race and racism. In CRT, there is a premise that race and racism are entrenched and enduring in society and play a major role in capturing and explaining individual experiences of the law.

Second, CRT in education challenges the orthodoxy, particularly regarding claims of the education system and its views towards meritocracy, objectivity, color and gender blindness, and equal opportunity. Third, in CRT there is a firm commitment to social justice and the elimination of racism. In education, CRT's struggle for social justice includes the broader

agenda of ending various forms of subordination, such as class, gender, and sexual orientation discrimination.

Fourth, CRT recognizes the centrality of experiential knowledge of people of color and that such knowledge is valid, appropriate, and essential to understanding, analyzing, and teaching about racism in education. And, finally, CRT in education challenges the ahistorical and unidisciplinary preoccupation of most analyses and argues that race and racism in education can best be fully understood by incorporating interdisciplinary perspectives.

In recent years, there have been some spin-off movements within CRT. These new subgroups include, for example, Asian critical race theory or AsianCrit (see Chang, 1993) and Latina/Latino critical race theory known as LatCrit (see García, 1995; Martínez, 1994; Revilla, 2001; Solórzano & Delgado Bernal, 2001; Solórzano & Yosso, 2001; Stefancic, 1998; Valdes, 1996). According to Solórzano and Delgado Bernal (2001), similar to CRT, "LatCrit is concerned with a progressive sense of a coalitional Latina/Latino pan-ethnicity and addresses issues often ignored by critical race theorists such as language, immigration, ethnicity, culture, identity, phenotype, and sexuality" (p. 311).

In my view, CRT provides a compelling theoretical framework in which to couch my historical analysis of the *Mendez* case and its role in helping to pave the way for the *Brown* decision. In the following sections, I incorporate the five tenets of CRT discussed by Solórzano (1998) into my analysis of *Mendez* and its value as a precursor of *Brown*. I argue that *Mendez*, as a case that pre-dated CRT literature, embodied the central themes of CRT, making it not only legally significant, but also theoretically and conceptually important to the history of civil rights struggles. Many of these tenets also guided the desegregation cases brought on behalf of African American students before and after *Mendez*, which speaks to the common ground between the Black and Latino legal communities at that time. Thus, it is important to acknowledge the pre-*Brown* and even pre-*Mendez* cases brought by the NAACP (e.g., cases from the 1930s, such as *Pearson v. Murray*, 1936; *Missouri ex rel. Gaines v. Canada et al.*, 1938) that also embodied many of these CRT tenets.

As I will demonstrate further in this article, the five tenets of CRT and education apply directly to *Mendez*. First, the *Mendez* case and the earlier Mexican American-initiated desegregation lawsuits were clearly based on the centrality and intersection of race and racism. Second, *Mendez* challenged the dominant ideology that segregation of Mexican American children was in their best pedagogical interests, thereby exposing this traditional claim as a cloak of White self-interest and privilege. Third, *Mendez* represented a tireless commitment to social justice beyond the boundaries of Orange County, California. In this way, the ruling in *Mendez*

helped to end the *de jure* segregation of Asian Americans and American Indians in California's public schools. As well, *Mendez* had some favorable impact on the desegregation of Mexican American children in other states, including Texas and Arizona. Fourth, *Mendez* wisely used the centrality of experiential knowledge of victimized Mexican American children and adults as seen in the trial testimony. And, finally, *Mendez* used interdisciplinary perspectives and considerable collaboration. Mexican American plaintiffs, White expert witnesses, an African American lead attorney (at the district court level), support from diverse organizations, including the NAACP, the American Jewish Congress, and the American Civil Liberties Union at the appellate level, all worked together to help *Mendez* prevail. In the following section, I provide more of this background through a historical analysis of the roots of Mexican American school segregation and the early legal struggle to desegregate Mexican American schools.

THE ROOTS OF MEXICAN AMERICAN SCHOOL SEGREGATION AND THE LEGAL STRUGGLES FOR DESEGREGATION PRIOR TO *MENDEZ*[2]

The forced separation of Mexican American children and youths from their White peers in public schools has its roots in the decades following the Treaty of Guadalupe Hidalgo, which brought an end to the Mexican American War of 1846–1848. Scholars of CRT help to explain how endemic White racism laid the foundation for the segregation of Mexican American children in schools. According to San Miguel and Valencia (1998), "The signing of the Treaty and the U.S. annexation, by conquest, of the current Southwest signaled the beginning of decades of persistent, pervasive prejudice and discrimination against people of Mexican origin who reside in the United States" (p. 353).

In the decades that followed, racial/ethnic isolation of schoolchildren became a normative practice in the Southwest, despite the fact that these states had no statutes by which they could legally segregate Mexican American from White students (San Miguel & Valencia, 1998).

THE ROOTS OF MEXICAN AMERICAN SCHOOL SEGREGATION

Across the southwest United States, local officials such as city council and school board members established separate schools for Mexican-origin children in the post-1848 period. Because these officials were more interested in providing White children with school facilities first, the Mexican schools were few in number. Political leaders' lack of commitment to public schooling for Mexican-origin students and racial prejudice among Whites

accounted for this practice (Atkins, 1978; Friedman, 1978; Hendrick, 1977; Weinberg, 1977).

After the 1870s, the number of schools for Mexican-origin children increased dramatically because of popular demand, legal mandates, and a greater acceptance of the ideal of common schooling by local and state political leaders (Atkins, 1978; Eby, 1925; Ferris, 1962). This growth in educational access occurred, however, in the context of increasing societal discrimination and a general subordination of Mexican Americans, which meant the schools for Mexican-origin children continued to be segregated and unequal. In New Mexico, for instance, officials began to establish segregated schools in 1872. By the 1880s, more than 50% of the territory's school-age population, most of whom were Mexican children, were enrolled in segregated schools (Chaves, 1892).

Despite the influx of Mexican immigrant students during the later part of the 19th century, California officials did not build any additional schools for Mexican children until the early 1900s. Those schools that existed continued to be segregated, and in some cases were inferior to the White schools (California Superintendent of Public Instruction, 1869).[3] In Texas, officials established segregated schools for Mexican working-class children in the rural areas during the 1880s and in the urban areas in the 1890s. The need to maintain a cheap labor source for the ranches probably accounted for the presence of Mexican schools in the rural areas earlier than the urban sectors (Friedman, 1978; Weinberg, 1977). In the early 1900s, segregated schools were established by large-scale growers as a means of preventing the Mexican students from attending White schools (Rangel & Alcala, 1972).

The segregation of Mexican American students in the Southwest continued to increase into the 1890s and spilled over to the 20th century. By the beginning of the 1930s, the educational template for Mexican American students—one of forced, widespread segregation, and inferior schooling—was formed. In one study of 13 California school districts in the early 1930s, Leis (1931) found that these districts had nearly 88,000 students enrolled—25% of whom were Mexican American—and that school officials segregated Mexican American students for the first several grades. And while official segregation ended after third grade, Leis (1931) writes that "[e]xcessive dropping out [on the part of Mexican American students] at these levels is a large factor in discontinuing segregation" (1931, p. 66).

Segregated schools in the Southwest were also an outgrowth of residential segregation, increasing Mexican immigration, and in particular, racial discrimination. In the areas where the newcomers were concentrated, such as the lower Rio Grande Valley, the school segregation of Mexican students radically increased by the late 1920s. By 1930, 90% of the schools in Texas were racially segregated (Rangel & Alcala, 1972).

In sum, there is considerable historical evidence that Mexican American students experienced widespread segregation in the Southwest. As I have noted elsewhere:

> School segregation of Chicanos throughout the Southwest became the crucible in which Chicano school failure originated and festered. Given the strong connections between segregation, inferior schooling, and poor academic outcomes for many Chicano students (e.g., substandard performance on achievement tests), it is not surprising that segregation has been a significant topic of study in the field of Mexican American education. (Valencia, 2002, pp. 6–7)

It is also not surprising that the Mexican American community mounted a legal campaign to desegregate its schools. We can see how a commitment to social justice, as explained by CRT, applies here.

THE LEGAL STRUGGLE FOR DESEGREGATION PRIOR TO *MENDEZ*

Contrary to popular perception, the Mexican American community in the Southwest did not idly stand by while its children were being segregated in inferior facilities. The legal struggle for school desegregation was initiated in a series of state court cases in Arizona in 1925 and Texas and California in the early 1930s (see Valencia, forthcoming). *Independent School District v. Salvatierra* (1930), a state court case brought by Mexican American parents in Del Rio, Texas, was significant for several reasons (San Miguel, 1987). First, the Constitution of the State of Texas, ratified in 1876, allowed for the segregation of White and "colored" children—colored meaning only "Negro." Thus, *Salvatierra* was a landmark case in determining the constitutionality of separating Mexican American children on racial grounds. Second, the findings of the court would serve as the basis for future legal challenges to the segregation of Mexican American students. Third, the lawyers for the plaintiffs in *Salvatierra* were members of the newly established League of United Latin American Citizens (LULAC), an advocacy organization that first flexed its legal muscles in this important case.

The Texas District Court of Val Verde County ruled in *Salvatierra* that the school district illegally segregated Mexican American students on the basis of race because, according to Texas law, they were legally considered to be members of the White race—a strong point argued by plaintiffs' lawyers.[4] The court granted an injunction restraining the district from segregating Mexican American children, but the school board appealed. The Texas District Court's judgment, however, was overturned by the Texas Court of Civil Appeals on the basis that the school district did not intentionally segregate the Mexican American children by race.

Also, the Court of Civil Appeals ruled that because the Mexican American children had special language needs, the school district had the authority to segregate them on educational grounds. This latter ruling would serve as a major obstacle to desegregation efforts on behalf of Mexican American children for years to come. The Texas Court of Civil Appeals decision in *Salvatierra* was appealed by LULAC to the U.S. Supreme Court, but the case was dismissed for lack of jurisdiction (*Salvatierra v. Independent School District*, 284 U.S. 580 [1931]). It is not clear from the available legal records what transpired after the Texas Court of Civil Appeals' decision. One could speculate, however, that the Texas Supreme Court did not find error, leaving the Court of Civil Appeals' decision standing, and subject to the Supreme Court's decision.

Notwithstanding the disappointing outcome in *Salvatierra*, the Mexican American community's resolve in its struggle for desegregated schools held steadfastly. Using CRT as an explanatory base here, the segregation of Mexican American schoolchildren continued to be driven by racism, and Mexican Americans' challenge to the dominant ideology of separate but equal schools was fueled by a fierce commitment to social justice—as seen in the next case.

In *Alvarez v. Lemon Grove School District* (1931), the school board of the Lemon Grove School District near San Diego, California, sought to build a separate grammar school for the Mexican American children, claiming overcrowding at the existing school where both White and Mexican American students attended (Álvarez, 1986). Mexican American parents organized a protest, forming the *Comité de Vecinos de Lemon Grove* (Lemon Grove Neighborhood Committee) and instructed their children not to attend the so-called new school, which the children called *La Caballeriza* (the stable).

Judge Claude Chambers, Superior Court of California in San Diego, ruled in favor of the plaintiffs on the basis that separate facilities for Mexican American students were not conducive to their Americanization and retarded their English language development. Judge Chambers also found that the school board had no legal right to segregate Mexican American children, as California law had no such provisions. Interestingly enough, although there were no *de jure* provisions for segregating Mexican American or African American children under the California School Code of this era, the state did have the power to establish separate schools for "Indian," "Chinese," "Japanese," and "Mongolian" children (see Peters, 1948).

Although the *Alvarez* case was deemed the *nation's first successful desegregation court case* (Álvarez, 1986; González, 1990), " . . . it was isolated as a local event and had no precedent-setting ruling affecting either the State of California or other situations of school segregation in the Southwest" (Álvarez, p. 131). There are several noted reasons for this lack of legal precedent, even in the state of California: First, the plaintiffs' lawyer did not

argue any violation of Constitutional law. Second, Judge Chambers did not publish his Opinion. Third, defendants did not appeal the decision.

THE TIMING, VENUE, AND SCOPE OF THE MENDEZ CASE: THE FIRST FEDERAL COURT CASE ON MEXICAN AMERICAN SCHOOL DESEGREGATION

Notwithstanding the incipient legal struggles for desegregation in state courts in Arizona, Texas, and California in the 1920s and early 1930s, the segregation of Mexican American students in schools throughout the Southwest was entrenched by the early 1930s, but was also coming under increasing attack (San Miguel & Valencia, 1998; Valencia et al., 2002). Yet, as many scholars have noted, by the 1930s and 1940s, views of racial and ethnic segregation in the United States were changing because of many domestic and global events that forced White Americans to face the hypocrisy of their views. For instance, Wollenberg (1974) argued that:

> By the mid-1930s, segregation of Mexican students was coming under attack. The Depression spawned attempts at social and economic reform, and these in turn created a belief that poverty and social disadvantages were caused by environmental factors subject to human remedy. (p. 322)

This change in beliefs about the causes of Mexican Americans' economic and social disadvantages had its basis in the social science research that supported the emerging environmental, as opposed to the hereditarian, views regarding the causes of these disadvantages (Valencia, 1997). During the 1920s, the prevailing view had been that Mexican American children—as well as African Americans and American Indians—were intellectually inferior to their White peers because of heredity (see Valencia, 1997; Valencia & Suzuki, 2001). Within the framework of CRT, we can see how this dominant ideology of deficit thinking helped to legitimize the segregation of Mexican Americans and the resultant stratification of learning opportunities via curriculum differentiation for these students (Valencia, 1997).

Mexican American scholar George I. Sánchez (1932) assaulted and attempted to discredit mental testing and the conclusions drawn by White researchers about the performance of Mexican American students on measures of intelligence (also see Valencia, 1997). Sánchez (1934) asserted that the lower intellectual performance of Mexican American students could not be explained by inferior heredity, but rather by the "*dual system of education presented in 'Mexican' and 'white' schools* [italics added], the family sys-

tem of contract labor, social and economic discrimination, education negligence on the part of local and state authorities, [and] 'homogenous grouping' to mask professional inefficiency" (p. 770).

Indeed, as many scholars have noted (see Foley, 1997; Klarman, 2004; Kluger, 1976), by the early 1940s, the changing political and social climate had shifted the focus away from the genetic explanations of Mexican American and African American inequality and disadvantagement to more social and environmental causes. At this point, the likelihood of Mexican Americans succeeding in a renewed legal struggle for school desegregation appeared auspicious. According to Wollenberg (1974), "The doubts expressed about segregation in the thirties evolved into new convictions during the forties" (p. 323). He noted that during WW II "racism was identified with Hitler and the Axis powers, while equality and justice were said to be the principles of the Allied cause" (p. 323). Another factor that helped to reignite both the Mexican American and African American desegregation campaigns was the return of servicemen of color from WW II. The bravery and accomplishments of these men during the war were often unparalleled (Delgado & Stefancic, 2001). Indeed, scholars have documented that Mexican Americans, for example, were disproportionately represented among the casualties in WWII and they were the most decorated ethnic group of the war (Morín, 1963; Ramos, 1998). Still, these servicemen—like their African American counterparts—returned home to experience the same discrimination and second-class citizenship that existed when they left to fight a war in the name of democracy (Klarman, 2004). Although these "valiant guardsmen of the American dream were forgotten . . . these veterans stood prepared to struggle as never before for their rightful place as citizens of the United States of America" (Ramos, 1998, p. xvii). One such battleground became education, especially the desegregation of schools.

THE FIRST PHASE OF *MENDEZ*

Gonzalo and Felicitas Méndez were long-standing residents of Westminster, California in Orange County. Soledad Vidaurri, aunt of the three Méndez children—Sylvia, Gerónimo, and Gonzalo, Jr.—took them to the nearest school—Westminster Elementary School—to enroll on the first day of the 1944–1945 school year (González, 1990). At that time, the school officially only admitted White students, and the Méndez children were denied admission on the grounds that they were deficient in English. This was surprising to Soledad, as her own children, Alice and Edward, attended Westminster Elementary. She later discovered they were admitted because "of their light complexions and their last name, Vidaurri, which was French" (González, 1990, p. 150). This discrimination by phenotype and surname would be a key issue in the *Mendez* case.

Immediately after her two nephews and niece were denied admission to Westminster Elementary, Soledad withdrew her own children from the school. Through communication between members of the Mexican American community and the school board, several attempts were made to end school segregation. The board, however, was recalcitrant.

On March 2, 1945, five Mexican American fathers—Gonzalo Méndez, William Guzmán, Frank Palomino, Thomas Estrada, and Lorenzo Ramírez—filed suit on behalf of their 15 collective children and 5,000 other minor children of "Mexican and Latin descent." Defendants in *Mendez v. Westminster* were four school districts: Westminster, Garden Grove, and El Modeno (located in relatively small rural towns in the citrus belt of southern California), and Santa Ana, a district in Santa Ana (city of more than 40,000 residents and the county seat of Orange County) (Phillips, 1949).

Unlike the Texas and California state court cases described above, *Mendez* was filed in federal court—the U.S. District Court (Southern District of California, Central Division). Thus, it was the first school desegregation case in which plaintiffs argued that separate was *not* equal in K–12 public schools because such segregation violated their rights under the equal protection clause of the Fourteenth Amendment of the U.S. Constitution. This argument is what makes *Mendez* so distinct.

It is important to acknowledge that in the 1930s the NAACP had already adopted this federal court strategy for a series of higher education desegregation cases they were filing. This was part of the NAACP's legal strategy in order to win several of these higher education cases before testing the Fourteenth Amendment argument in K–12 cases (see Kluger, 1976). In sum, we need to be aware of the broader history into which *Mendez* fits. On the one hand, *Mendez* was not the first federal desegregation case, but it did push the agenda for using the Fourteenth Amendment argument in K–12 education. As such, the *Mendez* lawyer may have both been inspired by the NAACP legal strategy, and may have contributed to it. In other words, *Mendez* is an example of one way in which the Mexican American and African American struggles were intertwined and reinforcing. This connection has not been fully acknowledged.

It is also important to note that at the time of the *Mendez* case, the NAACP lawyers, including Charles Houston, Thurgood Marshall, and Robert Carter, were pursuing a different, but somewhat parallel strategy to eventually overturn the 1896 *Plessy v. Ferguson* legal precedent. Based on a report issued by the NAACP in 1931, called the Margold Report, and the vision of Charles Houston, these lawyers were in the midst of a two-decade legal assault on segregation in schools that began with cases focused on the *inequality* of racially segregated schools and not segregation itself until the 1950s. In fact, during the 1930s and into the early 1950s, the key NAACP integration cases involved Black students trying to gain access to graduate

schools at prestigious state universities in Southern states where there were no separate law schools or other graduate schools created for students of color (see Klarman, 2004; Kluger, 1976).

In this way, the *Mendez* case fits into the center of the NAACP's meticulous road to *Brown* by directly questioning, in federal court, the validity of segregation itself within the K–12 public educational system just before the NAACP lawyers brought a series of cases that would eventually do the same thing and culminate in the *Brown* decision. Yet, because the *Mendez* case was not appealed to the U.S. Supreme Court, and because the final appellate court ruling tied the issue of segregation to California state law, this case could not set the same sort of legal precedent that *Brown* eventually did. Still, there remain many important similarities between the *Mendez* and *Brown* cases that suggest the experience of the first case informed—directly or indirectly—the strategies of the second.

First of all, the attorney for the *Mendez* plaintiffs was David C. Marcus, an African American civil rights lawyer from Los Angeles (Arriola, 1995). Marcus brought to this case his prior experience in desegregation litigation in federal court, as he had represented Mexican American and Puerto Rican plaintiffs in a successful class action, known as *Lopez v. Seccombe* (1944), challenging segregation in a park and swimming facilities in San Bernardino. In this case, the plaintiffs argued that their rights to full use of the public park and its facilities were being violated under the Fifth and Fourteenth Amendments, especially the equal protection clause. *Lopez* was a significant case because it was the first time the equal protection clause had been used to uphold Mexican Americans' rights (Arriola, 1995).

Thus, the *Mendez* lawsuit was important because it forced federal courts to consider the issue of "equal protection" as it applied to the segregation of Mexican American students in public schools. The plaintiffs' complaint alleged that the defendant school districts had practiced class discrimination against elementary school-age "persons of Mexican or Latin descent or extraction" in the conduct and operation of public schools. This discrimination, the plaintiffs argued, resulted in the denial of the equal protection of the laws to the petitioning school children. Yet, because Mexican American children were considered "White," alleged discrimination was not based on race, but on *national origin* (*Mendez v. Westminster*, 64 F. Supp. 544, 545–546 [S.D. Cal. 1946]).

Another factor that makes this case so interesting is that the defendant school districts intentionally segregated children of Mexican and Latin descent via "rules, regulations, custom, and usages" despite the fact that Mexican American children were *not* mentioned in the segregative mandate of the California state law, which, as I noted above, stipulated that districts could create separate schools for students of Indian, Japanese, Chinese, or "Mongolian" parentage (cited in *Mendez v. Westminster*, 64 F. Supp. at 548).

Joel Ogle, the lawyer for the defendant districts, argued strenuously that the federal courts had no jurisdiction in *Mendez* because education was a matter governed by state law. Moreover, Ogle and his clients' main defense was that the districts were not segregating Mexican American children on the basis of race or nationality, but for the purpose of "providing special instruction to students not fluent in English and not familiar with American values and customs" (Wollenberg, 1974, p. 362). Finally, Ogle pointed out that in the 1896 ruling in *Plessy v. Ferguson* the Supreme Court had allowed states to segregate races, providing that the separate facilities were equal (Wollenberg, 1974).

Meanwhile, Marcus, the attorney for the plaintiffs, employed a varied strategy in his effort to disprove the state and federal legal bases of segregation. He did this by focusing intently on the harms of segregation on Mexican American children and thereby foreshadowing the central argument made by the NAACP lawyers in the *Brown* case. For instance, Marcus called as witnesses members of the Mexican American community who had attended the segregated schools and who spoke of the extreme aspects of segregation and its impact on them. He also had Mexican American children testify as to how attending segregated schools made them feel (Arriola, 1995). Marcus underscored this vital testimony with powerful evidence regarding Mexican American students' efforts to transfer to predominantly White schools, and how those requests were routinely denied by the school district. And last but not least, Marcus broke new ground with his use of social science research to further his claim regarding the harmful effects of segregation. In fact, this article is most likely the first to highlight the role of the social scientists as expert witnesses in this case by reporting on their testimony.[5]

Marcus called upon two experts to testify in the *Mendez* trial—Dr. Ralph L. Beals, professor and chairman of the Department of Anthropology and Sociology at UC Berkeley, and Ms. Marie H. Hughes, a former principal and curricular director in New Mexico who was, at that time, working for Los Angeles County Public Schools and completing her Ph.D. at Stanford University.

The testimony of these two experts furthered the central argument Marcus was trying to drive home with his other witnesses, namely that segregation retards the development of Mexican American children. There were two central themes that ran through the experts' arguments that supported such an assertion:

1. Segregation engenders feelings of inferiority among Mexican-descent students and fosters antagonisms in these children and hostility "to the whole culture of the surrounding majority group" (Reporter's Transcript Proceeding, p. 676, *Mendez v. Westminster*, 64 F. Supp. 544 [S.D. Cal. 1946]).

> 2. The second central theme was that the segregation of the Mexican-descent students was at cross-purposes with efforts to Americanize them because it retards "the assimilation of the child to American customs and ways" (Reporter's Transcript Proceeding, p. 670, *Mendez v. Westminster*, 64 F. Supp. 544 [S.D. Cal. 1946]). Furthermore, both experts argued that segregation of Spanish-speaking, Mexican-decent students lessened their English language learning.

Hughes' testimony was particularly valuable given her considerable experience working with, observing, and researching students of Mexican origin. Thus, she was able to provide the court with deep psychological and linguistic insights. For example, with respect to her argument about segregation engendering feelings of inferiority in Mexican-descent students, Hughes' testimony paralleled the arguments that were to be made shortly thereafter by Kenneth Clark in the *Brown* case. She testified that "segregation, by its very nature, is a reminder constantly of inferiority, of not being wanted, of not being a part of the community. Such an experience cannot possibly build the best personality or the sort of person who is at most home in the world, and able to contribute and live well" (Reporter's Transcript Proceeding, p. 691, *Mendez v. Westminster* , 64 F. Supp. 544 [S.D. Cal. 1946]).

Regarding the educational value of having Spanish-speaking, Mexican-origin children attend the same schools and classes as their White peers, Hughes argued:

> The best ways to teach English is to give many opportunities to speak English, to hear it spoken correctly, and have reasons for speaking it, and to enlarge the experiences which demand English. That is, with any language you tend to learn the words of a given experience, and if your experiences are limited, your vocabulary will be limited. (Reporter's Transcript Proceedings, pp. 695–696, *Mendez v. Westminster*, 64 F. Supp. 544 [S.D. Cal. 1946])

In sum, plaintiffs' counsel Marcus skillfully employed a highly valuable strategy—the use of social science expert testimony—to bolster plaintiffs' integrationist argument. This argument had persuasive impact on presiding Judge Paul J. McCormick's ruling.

A VERDICT IN FAVOR OF THE PLAINTIFFS

On February 18, 1946—nearly a year after the case was filed—Judge McCormick ruled in *Mendez v. Westminster* that discrimination against the Mexican-origin students existed and that their rights under the Fourteenth

Amendment were being denied. He stated: "We think the pattern of public education promulgated in the Constitution of California and effectuated by provisions of the Education Code of the State prohibits segregation of the pupils of Mexican ancestry in the elementary schools from the rest of the school children" (*Mendez v. Westminster*, 64 F. Supp. at 547, 548).

In fact, this decision was so monumental and far-reaching that it would lead to the end of *de jure* segregation of California's schools 16 months later. Furthermore, there are several aspects of this decision that had implications for *Brown*. First of all, Judge McCormick dismissed the defendant school districts' challenge to the federal jurisdiction of the case and explained why the issue at stake in this case was central to federal constitutional guarantees as spelled out in the Fourteenth Amendment:

> . . . the school boards and administrative authorities have by their segregation policies and practices transgressed applicable law and Constitutional safeguards and limitations and thus have invaded the personal right which every public school pupil has to the equal protection provision of the Fourteenth Amendment to obtain the means of education. (*Mendez v. Westminster*, 64 F. Supp. at 547, 548)

Second, although the defendants' attorney had argued that the Supreme Court's 1896 ruling in the *Plessy* case provided justification for the "separate but equal" education of Mexican American students in California, Judge McCormick avoided direct reference to the constitutional issue of *Plessy* at this juncture. Rather, he based his decision on the California statute that disallowed the segregation of students of Mexican ancestry and the Fourteenth Amendment's equal protection clause. Yet, Judge McCormick took an indirect swipe at *Plessy* in such a manner that, this part of his decision is, in my view, the singularly most important aspect emanating from *Mendez*. Judge McCormick wrote:

> 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 [sic] and courses of instruction to children of Mexican ancestry that are available to the other public school children [sic] 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* [italics added] (*Mendez v. Westminster*, 64 F. Supp. at 549).

Regarding the above quoted portion of the ruling, legal scholar Perea (1997) argues that the federal judge rejected the entire underpinning of *Plessy v. Ferguson* and foreshadowed the reasoning of the Supreme Court in

Brown v. Board of Education. "Where *Plessy* had reified segregation by disclaiming the Court's power to act to remedy social inequality, the *Mendez* opinion conveys a powerfully different understanding of equality that ultimately prevails in *Brown*" (p. 1244).

The former NAACP lawyer and Federal District Court Judge Constance Baker Motley also commented on the District Court ruling in *Mendez*: "The district court's unequivocally strong language was radically new at the time the decision was issued" (Motley, 1991, p. 26).

Third, as Arriola (1995) notes, Judge McCormick did respond to the so-called "new integrationist educational theory" proffered by psychological and social science experts who testified in *Mendez* regarding the harms of segregation. The judge wrote: "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" (*Mendez v. Westminster*, 64 F. Supp. at 549).

In reference to this part of Judge McCormick's opinion, Perea (1997) remarked: "The *Mendez* court also anticipated *Brown*, and rejected *Plessy*, in its understanding of the role of public education and the stigmatizing meaning and purpose of segregation" (p. 1244).

Fourth, as noted above, the defendant districts justified the segregation of Mexican-origin students by asserting that such separation was based on language needs and *not* race. The plaintiffs, on the other hand, alleged that the language segregation policy was a pretense for blanket discrimination against the students of Mexican ancestry, and thus the requirement was illegal.

Judge McCormick was clearly persuaded by the plaintiffs' argument and highly critical of the districts' language assessment used in assigning Mexican American students to segregated schools. He noted that:

> No credible language test is given to the children of Mexican ancestry upon entering the first grade in Lincoln School . . . . The tests applied to the beginners are shown to have been generally hasty, superficial and not reliable. In some instances separate classification was determined largely by the Latinized or Mexican name of the child. 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. (*Mendez v. Westminster*, 64 F. Supp. at 549, 550)

Judge McCormick went one step further on the issues of language segregation, citing the integrationist educational theory. He wrote:

> The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of

> segregation, and that *commingling of the entire student body instills and develops a common cultural attitude among the school children* [italics added] which is imperative for the perpetuation of American institutions and ideals. (*Mendez v. Westminster*, 64 F. Supp. at 549)

The judge ordered that the allegations of the complaint had been established sufficiently to justify an injunction that would restrain the school districts from further discriminatory practices against students of Mexican decent. The defendant school boards and their lawyer vowed to appeal Judge McCormick's ruling to the Ninth Circuit Court of Appeals and, if necessary, to the U.S. Supreme Court (Wollenberg, 1974).

Reactions to this initial *Mendez* decision reverberated across the country. David Marcus, the plaintiffs' attorney, was quoted in the March 22, 1946, issue of *La Opinión*, a Spanish-language newspaper in Los Angeles, as calling the *Mendez* ruling: "*una de las más grandes decisiones judiciales en favor de las prácticas democráticas otorgadas desde la emancipación de los esclavos* ["one of the greatest judicial decisions in favor of democratic practices since the emancipation of the slaves"] (*La Opinión*, 1946; English translation cited in Wollenberg, 1974).

Judge McCormick's decision was also noted in prominent law journals, including the *Columbia Law Review* (1947); *Harvard Law Review* (1946–1947); *Illinois Law Review* (1947); *Minnesota Law Review* (1946); and *Yale Law Journal* (1947). For example, a commentator in the *Columbia Law Review* (1947) acknowledged that *Mendez* was the first case to successfully assault segregation based on the equal protection clause of the Fourteenth Amendment. The article noted that while the courts had ruled in prior cases that if the physical facilities provided to each group were essentially equal, students' humiliation as a result of being segregated to an inferior social status did not constitute discrimination. The *Mendez* decision, the article argued, "breaks sharply with this approach and finds that the 14th Amendment requires 'social equality' rather than just equal facilities" (pp. 326–327).

What was referred to as "social equality" in *Mendez* is strongly related to what were later called "intangible" factors in *Brown*. These same arguments were being made in the late 1940s in the higher education segregation cases brought by the NAACP as *Mendez* was winding its way through the courts (see Kluger, 1976). As such, *Mendez* portended the legal and integrationist theories put forth by the lawyers in *Brown*.

THE APPEAL OF *MENDEZ*: APPELLEE SCHOOLCHILDREN PREVAIL

By the end of 1946, the defendant school districts had appealed the District Court ruling in *Mendez* to the Ninth Circuit Court of Appeals in San Fran-

cisco. By this time, the case had garnered national attention. Given that the separate but equal doctrine was at stake, Davies (1946) wrote in the *New York Times*, the appeal was "closely watched as a guinea-pig case" (p. 6e). In *Westminster v. Mendez* (1947), the appellant school districts (defendants in *Mendez*) filed a brief reasserting their arguments that the federal courts had no jurisdiction and that "separate but equal" is legal. Their brief stated:

> 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. (Appellant's Opening Brief, p. 7, *Westminster v. Mendez*, 161 F.2d 774 [9th Cir. 1947], cited in Arriola, 1995, p. 192)

Meanwhile, five important and influential organizations submitted four amicus curiae, or "friend of the court," briefs in support of the appellee Mexican American schoolchildren in *Westminster v. Mendez* (plaintiffs in *Mendez*). Such amicus briefs are usually filed by a person or organization who is not a party to a lawsuit but "who petitions the court or is requested by the court to file a brief in the action" because he or she has a strong interest in the subject matter (Black, 1999, p. 83).

In the *Westminster v. Mendez* case, the groups that filed these amicus briefs supporting the students were the NAACP, the American Jewish Congress, the Attorney General of the State of California, and the American Civil Liberties Union together with the National Lawyers Guild. Yet, as Arriola (1995) points out, each of these briefs 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" (p. 166).

The NAACP brief was written by Thurgood Marshall, Robert L. Carter, and Loren Miller. Marshall and Carter later served as counsel for African American plaintiffs in *Brown v. Board of Education* (1954). The NAACP's amicus brief argued that the Ninth Circuit should invalidate segregation in public schools as a violation of the Constitution (National Association for the Advancement of Colored People, 1947). The NAACP lawyers based their argument on three major points:

First, in *Plessy*, the Supreme Court accepted the "equal but separate" doctrine, but limited its consideration to carrier accommodations (i.e., transportation of people). The brief noted that although in "subsequent cases it has been *assumed* [italics added] that decisions have applied this theory to validate segregation in public schools" (National Association for the Advancement of Colored People, 1947, p. 30). The Supreme Court, the NAACP brief continued, has never stated such a validation because it had never addressed the constitutionality of public school segregation.

Second, the NAACP showed, using empirical data, that in the 17 states and the District of Columbia that had school segregation as universal policy, separate schools were not equal in terms of several critical measures, including per pupil expenditures, and pupil/teacher ratios.

Finally, the NAACP argued that that equal protection of the laws cannot be realized in legally segregated schools because such segregation leads to inequality and fosters feelings of inferiority among minority groups. On this point, the NAACP brief echoed the views of the *Mendez* case expert witnesses and foreshadowed the social science evidence that would be brought to bear in the *Brown* case. Kluger (1976), in his seminal book, *Simple Justice*, stated that the NAACP's amicus brief in the *Mendez* appeal "was a useful dry run" because it "tested the temper of the courts without putting the NAACP itself in the field" and drew added attention to the case, especially in several leading law reviews (pp. 399–400).

In the amicus brief submitted by the American Jewish Congress (AJC), the authors sought to avoid duplication of the NAACP brief. Thus, while the AJC strongly rebuked the *Plessy* decision, this brief focused overwhelmingly on ethnic relations and summoned up images of the recently defeated Nazi regime in Europe. Thus, the AJC argued that the inferior status imposed upon a minority group by the socially dominant group "is a humiliating and discriminatory denial of equality to the group considered 'inferior'," and thus is a violation of the Constitution and U.S. treaties (American Jewish Congress, 1947, pp. 3–4).

The AJC also argued that any classifications according to color, race, national origin, ancestry, or creed that are based on "discriminatory social or legal notions of 'inferiority' or 'superiority'" are unreasonable and inadmissible (American Jewish Congress, 1947, p. 4). The AJC brief concluded with very powerful language, especially in light of what Jews had all-too-recently suffered in Europe (also see Arriola, 1995). The AJC brief concluded as follows:

> All discrimination is bad and humiliation of any human being because of his creed or language is unworthy of a free country. But none is so vicious as the humiliation of innocent, trusting children, American children full of faith in life. Their humiliation strikes at the very roots of the American Commonwealth. Their humiliation threatens the more perfect union which the Constitution seeks to achieve. It is the awareness of that danger and the desire to counteract it that has prompted the submission of this brief. (American Jewish Congress, 1947, p. 35)

The *amicus* brief jointly submitted by the American Civil Liberties Union and the National Lawyers Guild (1947) overwhelmingly focused its argu-

ment on the jurisdictional issue, supporting the original plaintiffs' claim that this case belonged in federal court. Meanwhile, the Attorney General's brief (Attorney General of the State of California, 1947) was short and narrowly focused, arguing that the segregation of Mexican and Latin ancestry children is contrary to State policy, improper, and thus violated the children's rights as guaranteed by the laws of the Fourteenth Amendment.

On April 14, 1947, in a unanimous 7–0 decision, the Ninth Circuit Court of Appeals upheld the District Court judge's decision and thereby paved the way for a remedy that would call for an end to segregation in the defendant school districts. While the appellate ruling was a clear victory for the Mexican American students in Orange County, California—and it ended up having a broader impact across the state and the region—it did not overturn the blatantly racist *Plessy* doctrine. Therefore, although the opportunity to rule on the separate but equal doctrine was clearly given to the Ninth Circuit by the District Court and supported by the amicus briefs, the former Court adamantly refused to rule on this highly significant issue (see Arriola, 1995; González, 1990; Perea, 1997; Wollenberg, 1974). According to Arriola (1995), the Ninth Circuit took the route of judicial conservatism by ignoring many of the legal arguments presented by the NAACP in its brief.

Rather than taking on *Plessy*, the Ninth Circuit ruling addressed two of the questions that were under consideration: First, were the alleged acts done "under color of state law"? Color of law is defined as: "The appearance or semblance, without the substance, of a legal right" and "implies a misuse of power made possible because the wrongdoer is clothed with the authority of the state" (Black, 1999, p. 260). Second, do these acts deprive petitioners of any constitutional right? (*Westminster v. Mendez*, 161 F.2d at 774, 778 [9th Cir. 1947]). In terms of the question regarding the color of law, the Ninth Circuit ruled that in segregating pupils of Mexican ancestry, "the respondents 'did not hew to the line of their authority'; they overstepped it." And thus, the Court ruled: "We hold that the respondents acting to segregate the school children [sic] as alleged in the petition were performing under color of California State Law" (*Westminster v. Mendez*, 161 F.2d at 779).

As for the issue of constitutional violation, the Ninth Circuit noted that via the defendant districts' action of forcing the segregation of schoolchildren of Mexican ancestry against their will, and contrary to the California law, the appellants violated the pupils' rights as provided under the Fourteenth Amendment to the U.S. Constitution. This violation occurred by "depriving them of liberty and property without due process of law and by denying the equal protection of the laws" (*Westminster v. Mendez*, 161 F.2d at 781).

Despite this good news for the Mexican American schoolchildren on whose behalf this case was originally filed, the Ninth Circuit chose to bypass

the central legal and social issues of the day. In their decision, these federal Appellate Court judges were acutely aware of how close they were to taking on the constitutionality of *Plessy* and the laws of 17 Jim Crow states. They were also apparently aware of how rapidly the world and American society were changing in this post-WW II era. Thus, they wrote: "There is argument in two of the amicus curiae briefs that we should strike out independently on the whole question of segregation, on the ground that recent world stirring events have set men to the reexamination of concepts considered fixed" (*Westminster v. Mendez*, 161 F.2d at 780).

Yet, the Ninth Circuit jurists continue to make the point that, while judges must keep abreast of the times, they must be on their guard lest they "rationalize outright legislation under the too free use of the power to interpret" (*Westminster v. Mendez,* 161 F.2d at 780). Furthermore, they note that in the *Mendez* case, because there was no authority justifying any segregation by way of an administrative or executive decree, the segregation is "without legislative support and comes into fatal collision with the legislation of the state" (*Westminster v. Mendez*, 161 F.2d at 780).

The refusal of the Ninth Circuit to address *Plessy* was particularly disappointing to the NAACP (Arriola, 1995). Yet, hope remained alive for an opportunity to challenge *Plessy* before the U.S. Supreme Court, as the civil rights groups that supported *Mendez* at the Ninth Circuit level anticipated an appeal by the appellant school districts. The appeal never materialized for at least two reasons: First, the affirmation by the Ninth Circuit was resounding and unanimous. Secondly, more than 2 months before the Ninth Circuit handed down its decision in *Westminster v. Mendez*, the California Legislature began considering a bill to end *de jure* segregation in the state (discussed in the next section). There would be, however, a propitious time not too far down the line when the separate but equal doctrine would be challenged. On December 9, 1952—5 years and 8 months after the Ninth Circuit handed down its opinion in *Mendez*—the U.S. Supreme Court heard the first oral arguments in *Brown v. Board of Education of Topeka*.

ASSESSING THE LEGACY OF *MENDEZ*

Here, I briefly discuss the broader impact of the *Mendez* case—on California, the Southwest, and *Brown*. In doing so, CRT in education once again becomes a valuable explanatory model to understand and analyze these impacts. Particularly salient are the CRT tenets that deal with (a) the exposure of racism at the state, regional, and national levels, (b) Mexican Americans' and African Americans' challenge to the dominant ideology of color blindness and equal educational opportunity, (c) the commitment to social justice by people of color as seen in the litigation struggles, and (d) the

utility of people of color and Whites working together in improving education for all children.

IMPACT ON CALIFORNIA

On January 27, 1947—about 10 weeks *before* the Ninth Circuit affirmed the District Court's ruling on *Mendez*—California Assemblymen Anderson, Hawkins, Rosenthal, and Bennett introduced Assembly Bill (AB) 1375 (California Legislature, 1947; cited in Peters, 1948). The intent of this bill was to repeal the sections of the Education Code that allowed school boards to establish separate schools for certain Indian pupils and pupils of Chinese, Japanese, and "Mongolian" ancestry (*Mendez v. Westminster*, 64 F. Supp. at 548). The bill to repeal segregation easily passed the Assembly and Senate, and on June 14, 1947—two months after the Ninth Circuit affirmed Judge McCormick's ruling in *Mendez*—Governor Earl Warren signed the bill into law (Wollenberg, 1974). This is the same Earl Warren who, 6 years later, was appointed by President Dwight D. Eisenhower to become the 14th chief justice of the Supreme Court in 1953, the same man who authored the landmark Supreme Court opinion in *Brown*.

Arriola (1995) has argued that "The [*Mendez*] case brought public pressure on the State government of California to repeal all segregation laws on the books regarding Asians and Native Americans" (p. 199). Although it is not known whether the repeal of the segregation statutes of the California Education Code was directly influenced by the amicus brief written by the Attorney General and Deputy Attorney General of California for the appellees of *Westminster v. Mendez*, one could surmise that the filing of the brief was, in part, brought forth by the public pressure discussed by Arriola (1995).

Yet, ironically enough, as I have noted elsewhere, although the *Mendez* case helped to end *de jure* segregation in California, Mexican American students remained highly segregated and, in fact, became more segregated over the decades following the ruling (see Hendrick, 1977; Valencia, 2002).

IMPACT ON THE SOUTHWEST[6]

In 1948, the centennial of the Treaty of Guadalupe Hidalgo, *Delgado v. Bastrop Independent School District* was litigated in the U.S. District Court for the Western District of Texas, and was backed by a cadre of powerful Mexican American individuals and organizations, including the League of United Latin American Citizens, and the American G.I. Forum, a newly founded Mexican American veterans-advocacy group. Minerva Delgado and 20 other plaintiffs sued several school districts in Central Texas, using *Mendez* as precedent. The plaintiffs' complaint noted: "There is no provision in the

Constitution of the State of Texas or in any Statute of said State authorizing or permitting the separation, into segregated schools and classes . . . of school children of Mexican descent" (cited in Sánchez, 1951, p. 69).

The plaintiffs in that case believed that *Delgado* would do for Texas what *Mendez* had done for California—bring an end to school segregation. The District Court judge ruled that segregation of the Mexican American students was discriminatory and illegal, and violated the students' constitutional rights as guaranteed by the Fourteenth Amendment (cited in Sánchez 1951, pp. 72–73). A major setback for the *Delgado* plaintiffs, however, was that the District Court ruling allowed the school district to segregate first-grade Mexican American students who had English-language deficiencies in separate classrooms, but not in separate schools (Sánchez, 1951, pp. 72–73).

Thus, although the *Delgado* plaintiffs initially viewed this ruling as one that would bring an end to segregation in Texas, these hopes were never realized (San Miguel, 1987). In what Allsup (1979) described as a clash of White obstinacy and Mexican American determination, school districts throughout Texas failed to comply with the *Delgado* decision. This was made easy, in part, by the State Board of Education, which created a complex bureaucratic system of grievances and redress. Furthermore, local school districts designed evasive schemes to assure noncompliance with the *Delgado* ruling (San Miguel, 1987). In light of the massive subterfuge by Texas officials to circumvent *Delgado*, Mexican Americans became disheartened in their quest for desegregated schools.

Three years following *Delgado*, in 1951, *Gonzales v. Sheely*, an Arizona desegregation case, was filed in U.S. District Court in which "[t]he principle established in *Westminster School District of Orange County v. Mendez* . . . appears to be controlling" (*Gonzales v. Sheely*, 96 F. Supp. 1004, [D. Ariz. 1951]).

In *Gonzales*, plaintiffs were Porfirio Gonzales and Faustino Curiel, their four collective children, and 300 children of Mexican or Latin ancestry. Defendants were the Board of Trustees and the principal of the Tolleson Elementary School District Number 17, County of Maricopa. The complaint brought forth followed the same reasoning of *Mendez*: Segregation of the Mexican-descent students was executed "under color of state law." Because Arizona's Education Code did not mandate the segregation of Mexican-descent pupils, the equal protection rights—as guaranteed by the Fourteenth Amendment—of the Mexican American students were being violated (*Gonzales v. Sheely*, 96 F. Supp. at 1005, 1007 [D. Ariz. 1951]).

The U.S. District Court judge ruled in favor of the *Gonzales* plaintiffs, concluding that segregating Mexican-descent children in separate schools constitutes a violation of the equal protection laws. Several times in his opinion, Judge Dave W. Ling drew—word for word—from the ruling of Judge McCormick in *Mendez*. For example, he wrote, "A paramount req-

uisite in the American system of public education is social equality. It must be open to all children by unified school associations, regardless of lineage" (cf. *Mendez v. Westminster*, 64 F. Supp. at 549). Furthermore, in *Gonzales*, as in *Mendez*, the tests to assess language knowledge were deemed by the judge to be "generally hasty, superficial and not reliable" (cf. *Mendez v. Westminster*, 64 F. Supp. at 550).

Judge Ling in the *Gonzales* case also incorporated the value of the integrationist educational theory. He wrote that the segregative methods of the defendant school district "foster antagonisms in the children and suggest inferiority among them where none exists" (cf. *Mendez v. Westminster*, 64 F. Supp. at 549). He added the "commingling of the entire student body instills and develops a common cultural attitude among the school children [sic] which is imperative for the perpetuation of American institutions and ideals" (cf. *Mendez v. Westminster*, 64 F. Supp. at 549). Ruling that defendants violated Arizona law as well as the U.S. Constitution, the federal judge ordered a preliminary injunction in which defendants were enjoined from segregating students of Mexican or Latin descent. Yet, in his ruling Judge Ling wrote—reminiscent of the *Delgado* ruling—that "English language deficiencies of some of the children of Mexican ancestry as such children enter elementary public school . . . may justify [curriculum] differentiation by public school authorities" (*Gonzales v. Sheely*, 96 F. Supp. at 1008).

Overall, *Mendez* had some favorable impact on the desegregation struggle in schools in the Southwest. In all three instances—*Mendez*, *Delgado*, and *Gonzales*—plaintiffs prevailed in federal courts. Yet, little progress was made in school desegregation. Positive court decisions failed to translate to ethnic mixing in schools. CRT is useful in uncovering the insidious ways in which racism—via segregation and failure to comply with court decisions—operates in schools and the larger society. CRT also informs us that the orthodoxy and dominant ideology of racial separation prevails to advance the self-interest, power, and privilege of White groups. In *Delgado*, for instance, the legal separation of Mexican American children on educational (i.e., language) grounds was a smoke screen for racial separation.

IMPACT ON *BROWN*

It is clear that *Mendez* influenced school desegregation jurisprudence in California and the Southwest, but how did *Mendez* help in shaping desegregation efforts at the national level, that is, in regards to *Brown*? I believe that this can best be addressed by framing the discussion within two contexts: (a) the shifting nature of civil and human rights in the 1940s; (b) integrationist educational theory.

Arriola (1995) commented that the equal protection clause of the Fourteenth Amendment was in a state of flux in the 1940s. Tussman and tenB-

rock (1949) summed up in their highly influential article that the equal protection clause had been strangled during the clause's seminal period by "post-civil-war judicial reactionism [and was] long frustrated by judicial neglect" (p. 381). The authors went on to say that the equal protection clause "appears to be entering the most fruitful and significant period of its career" and that the theory framing equal protection "may yet take its rightful place in the unfinished Constitutional struggle for democracy" (p. 381).

The emerging optimism in the 1940s that civil rights would be advanced in the nation was contextualized, by some legal scholars, within the larger realm of human rights (see Klarman, 2004). Tussman and tenBrock (1949) commented that the equal protection clause was amended to the Constitution "as a culmination of the greatest humanitarian movement in our history. It is rooted deep in our religious and ethical traditions. Is any other clause in the Constitution so eminently suited to be the ultimate haven of human rights?" (p. 384).

Thus, regarding *Mendez*, it is not surprising that human rights violations of the most heinous magnitude—the Nazi atrocities of WW II—became part of the record via the American Jewish Congress' amicus brief discussed above. Arriola (1995) has succinctly brought together the intersection of civil/human rights and *Mendez*:

> 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 . . . . 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. (pp. 191–192)

A less benevolent and more strategic view of the shifting optimism toward civil and human rights during this period is discussed by Dudziak (1995), a critical race theorist, who argues that it was in the United States' self-interest, politically and economically, to end racial apartheid in this country. Dudziak (1995) writes that after WW II, racial discrimination in the United States received increasing attention from other countries and that newspapers throughout the world wrote about discrimination against non-White visiting foreign dignitaries and American Blacks. It was a time when "the U.S. hoped to reshape the postwar world in its own image, the international attention given to racial segregation was troublesome and embarrassing.

The focus of American foreign policy at this point was to promote democracy and to 'contain' communism" (Dudziak, 1995, p. 110).

More specifically, regarding school segregation, this CRT perspective asserts that the United States could not tolerate a hypocritical image by fighting communism abroad and simultaneously supporting segregation stateside. Bell (1980) has coined this thesis, "interest convergence," and applied it to *Brown*. This notion refers to when "the majority group tolerates advances for racial justice only when it suits its interests to do so" (Delgado & Stefancic, 2001, p. 149). It should be noted, however, that while the interest convergence notion originated in the CRT literature, the idea has now entered the writings of mainstream scholars (e.g., Klarman, 2004).

Within this broader context of changing political times, legal interpretations written by scholars subsequent to the favorable ruling in *Mendez* by the District Court and the affirmation by the Ninth Circuit were ripe with discussions that this case could have been the impetus for the Supreme Court to tackle, head-on, the reasonableness of the separate but equal doctrine. A commentator in the *Columbia Law Review* (1947) noted:

> The unwillingness of courts to challenge the reasonableness of a state classification [of segregation based on race] is now yielding where civil liberties are at stake. Since educational segregation on racial lines serves no desirable ends, a reappraisal of the validity of the practice is in order. A classification which might have been reasonable in the light of post-Civil War conditions may no longer be reasonable today. (p. 327)

A commentator in the *Yale Law Journal* (1947), in writing about the Ninth Circuit's ruling in the *Mendez* case, stated this case "has questioned the basic assumption of the Plessy case and may portend a complete reversal of the [separate but equal] doctrine" (p. 1060). Furthermore, in the *Illinois Law Review* (1947), a commentator observed that given (a) the rising frequency of segregation cases challenging the validity of the separate but equal doctrine, (b) the economic fallacy of the separate but equal facilities notion, and (c) the faulty position that segregation is not harmful, the Supreme Court "could be forced to grant certiorari and face this issue [of separate but equal] squarely" (p. 549). A commentator in the *Illinois Law Review* concluded: "In any event, the *Mendez* case and its companion cases raise this precise problem which the Supreme Court must consider and determine in any re-examination of the 'equal but separate doctrine'" (p. 549).

In sum, *Mendez* was litigated during a time when views towards civil rights were in a state of flux, and such civil rights were being inextricably linked to human rights. The *Mendez* victory—which extended "the scope of the equal protection clause further than any previous decision from the

federal courts involving educational discrimination" (*Minnesota Law Review* 1946, p. 646)—helped set a climate of optimism for a concerted Supreme Court challenge to *Plessy*. The Honorable Constance Baker Motley, a member of the NAACP legal staff who helped prepare the briefs for the *Brown* case, wrote that on the cusp of *Brown* it was not clear what the impact of the prior NAACP cases involving Black students' access to predominantly White graduate schools (*McLaurin v. Oklahoma State Regents*, 1950; *Sweatt v. Painter*, 1950) would have on cases directly dealing with elementary and secondary schools. She further noted: "[W]e all sensed from those [higher education] decisions and from a Ninth Circuit decision [*Mendez*] repudiating the segregation of Mexican children in California *that integrated education was an idea whose time had come*" [italics added] (Motley, 1991, p. 26).

In addition to this climate of optimism, the second way in which *Mendez* had an impact on *Brown* was the integrationist educational theory expressed by Judge McCormick's ruling. As I discussed earlier in this article, David C. Marcus—attorney for the *Mendez* plaintiffs—wisely used social scientists to testify that segregation led to negative effects on the educational and social development of the Mexican children. And, as I also previously noted, Judge McCormick found that the segregation methods of the defendant districts "foster antagonisms in the [Mexican] children and suggest inferiority among them where none exists" (*Mendez v. Westminster*, 64 F. Supp. at 549). This reasoning led Judge McCormick to his historic opinion that equal protection of the laws is not provided by merely furnishing Mexican-descent children—in separate schools—equal textbooks, facilities, and instruction. "A paramount requisite in the American system of public education is *social equality*" [italics added] and "unified school association" (*Mendez v. Westminster*, 64 F. Supp. at 549).

Commenting on Judge McCormick's argument about "social equality," a commentator in the *Yale Law Journal* (1947) wrote:

> Modern sociological and psychological studies lend much support to the District Court's views. A dual school system even if "equal facilities" were ever in fact provided, does imply social inferiority. There is no question under such circumstances as to which school has the greater social prestige. Every authority on psychology and sociology is agreed that the students subjected to discrimination and segregation are profoundly affected by this experience. (pp. 1060–1061)

Arriola (1995), a preeminent authority on *Mendez*, concludes: "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*" (p. 207).

Although it is not clear just how much of a direct effect the *Mendez* case and the social science research evidence employed by the plaintiffs had on the NAACP lawyers' decision to use similar evidence in the *Brown* case, it is clear that by the early 1950s, Thurgood Marshall and Robert L. Carter saw this evidence and the integrationist theory it promoted as crucial to their cause to end state-sanctioned segregation. According to Whitman (1993), "Thurgood Marshall and his chief assistants felt that psychological and sociological testimony would materially aid their cause" (p. 48). More specifically, Kluger (1976) stated: "[T]he NAACP's case would rest on the theory that school segregation itself contributed heavily to the psychic damage of black children" (p. 316).

This integrationist strategy, which proved so useful in *Mendez*, would also serve as the linchpin in *Brown*. On May 17, 1954, Chief Justice Earl Warren delivered the historic opinion of the Court. In the opinion, there were 24 words, in particular, he penned that would become immortalized in our collective mind and would lead to the transformation of race relations as never seen before in the nation: "*We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal*" [italics added] (*Brown v. Board of Education of Topeka*, 347 U.S. 483, 495 [1954]). And, as we know, the Warren Court ruled that because segregated schools cannot be made equal, plaintiffs were being "deprived of the equal protection of the laws as guaranteed by the Fourteenth Amendment" (*Brown v. Board of Education of Topeka*, 347 U.S. at 495).

CONCLUSION: THE LEGAL AND HISTORICAL BOND OF *MENDEZ* AND *BROWN*

In the final analysis, *Mendez* and *Brown* are unmistakably connected. Namely, the *Mendez* rulings at the federal District Court and Ninth Circuit levels contributed to the "climate of optimism" that permeated this era. And secondly, the *Mendez* case showed the power of social science research in strengthening counsel Marcus' claim about the detrimental effect of segregation. This strategy helped to bolster plaintiffs' integrationist argument. Such testimony proved very useful in *Brown*.

Notwithstanding the thesis that *Mendez* was an important precursor to *Brown*, why has *Mendez* seemingly slipped from the national consciousness? There are several germane reasons that help to explain this state of affairs. First, the litigation struggle against school segregation by African Americans has been considerably longer than the litigation campaign undertaken by Mexican Americans. As noted by Bell (1995), the genesis of African American desegregation litigation can be traced back to the mid-19th century (*Roberts v. City of Boston*, 1849), followed by numerous cases. Mexican

Americans, however, did not begin their long and arduous legal struggle against school segregation until about 75 years later (*Romo v. Laird*, 1925).

Second, Mexican Americans were legally considered White in the United States. As I discussed previously, Mexican Americans took advantage of the "other White" designation for about 45 years in order to serve their interests in the early desegregation cases. Given these shifting social constructions of race experienced by Mexican Americans, coupled with the popular perception that Black-White racial tensions were more intense and oppressive compared to Mexican American-White relationships, it is likely that *Mendez* has developed less import and visibility than *Brown*.

And finally, and most obvious, it was, after all, *Brown*, and not *Mendez*, that overruled *Plessy*. Indeed, *Brown* was a monumental triumph in the history of civil rights jurisprudence. Had *Mendez* been appealed to the U.S. Supreme Court by the appellants following the Ninth Circuit upholding of the District Court—and had *Mendez* prevailed in the High Court—then *Mendez* would be acknowledged as the landmark case that brought an end to the separate but equal doctrine in American schools.

I have sought in this article to bring attention to this most significant school desegregation case, *Mendez*. I have done so by refuting the Black/White binary paradigm of race and couching my analyses within the conceptual framework of CRT in education. I trust that these efforts have succeeded in broadening the scholarly discourse on civil rights history. In our commemoration of the 50th anniversary of the monumental Supreme Court decision that overturned *Plessy*, let us all remember *Mendez v. Westminster* and appreciate how it helped to make this anniversary possible.

On a final note, the preceding analysis helps us to understand the value of multiple groups working together in the U.S. to push forward with civil rights issues in the 21st century, a century projected to have a remarkable and unprecedented growth among people of color. One of the greatest strengths of CRT lay in the observation that diverse groups who join together to fight segregation and other forms of oppression often see that fighting to protect one group's basic rights is inextricably linked to everyone's rights.

Notes

1 For overviews of CRT, see Araujo (1997); Crenshaw, Gotanda, Peller, and Thomas (1995); Delgado (1995); Delgado and Stefancic (1993, 2001); Litowitz (1997); Taylor (1998); Valdes, Culp, and Harris (2002).

2 The text in this section is excerpted, with minor modifications from Valencia et al. (2002, pp. 70–72 and 87–88).

3 For a brief history (1848 to 1890s) of the origin and establishment of Catholic, Protestant, and public schools in the Southwest regarding the schooling of Mexican-origin students, see San Miguel and Valencia (1998, pp. 355–363).

4 Rangel and Alcala (1972) have commented that the "other White" strategy argued in *Salvatierra* rested on the prevailing doctrine of the *Plessy v. Ferguson* (1896) case. As Weinberg (1977) has noted: "In the absence of a state law requiring segregation of Mexican-Americans, they claimed equal treatment with all other 'whites.' The crucial point was to leave little leeway to be treated as blacks under both state law and U.S. Supreme Court ruling" (p. 166). The "other White" strategy would be used in Mexican American desegregation cases for more than four decades, but was finally abandoned in *Cisneros* (1970). At that time, Mexican American students—given that they were legally considered White—were paired with Blacks in desegregation plans so districts could attain unitary status. This ploy, which did not desegregate schools, was challenged in *Cisneros*. Attorneys argued that Mexican Americans were an ethnically identifiable minority group, thus were entitled to the same equal protection that Blacks gained in *Brown* (Valencia et al., 2002).

5 The Reporter's Transcript Proceeding for *Mendez v. Westminster*, 64 F. Supp. 544 (S.D. Cal. 1946) is available at *Mendez v. Westminster*: Research Materials, 1879–1955 (Collection number: M0938), Department of Special Collections and University Archives, Stanford University Libraries, Stanford California. I wish to thank Christopher Arriola (who donated these *Mendez* papers to Stanford) for informing me about the collection. I also wish to thank Polly Armstrong, public service specialist, Department of Special Collections, who provided me with the *Mendez* trial transcripts, *amicus* briefs filed at the Ninth Circuit Court of Appeals, and other germane materials. Guide to the *Mendez* papers can be viewed at: http://www-sul.stanford.edu/depts/spc.

6 The following discussion on the *Delgado* case is excerpted, with some modifications, from Valencia et al. (2002, p. 89).

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"The Mexican American Struggle for Equal Educational Opportunity in Mendez v. Westminster: Helping to Pave the Way for Brown v. Hernandez v. Texas. was a landmark case, "the first and only Mexican-American civil-rights case heard and decided by the United States Supreme Court during the post-World War II period." Delgado v Bastrop ISD.Â was a U.S. Supreme Court case that successfully challenged the "separate but equal" doctrine of racial segregation established by the 1896 case Plessy v. Ferguson. The case was influential in the landmark case of Brown v. Board of Education four years later. Wisconsin v Yoder. is the case in which the United States Supreme Court found that Amish children could not be placed under compulsory education past 8th grade. The Mexican American Struggle for Equal Educational Opportunity in Mendez v. Westminster: Helping to Pave the Way for Brown v. Board of Education. Article. Mar 2005. Teach coll rec. Richard R. Valencia. Few people in the United States are aware of the central role that Mexican Americans have played in some of the most important legal struggles regarding school desegregation.Â This article analyzes Mendez v. Westminster School District, a 1946 federal court case that ruled that separate but equal schools for Mexican American children in Orange County, California, was unconstitutional and that influenced the famous 1954 case of Brown v. Board of Education. View. Show abstract.