

Mendez v. Westminster: Race, Nationality and Segregation in California Schools

CHARLES WOLLENBERG

Co-editor of the society publication,
Neither Separate Nor Equal: Race and Racism in California (1971);
instructor of history at Lancy College, Oakland.

California Historical Quarterly, v. 53
No 4 (Winter 1977): 37-332

SEPARATION OF SCHOOL CHILDREN ON GROUNDS OF RACE and nationality in California is almost as old as public education itself. But on March 2, 1945, five Mexican-American fathers, Gonzalo Mendez, Thomas Estrada, William Guzman, Frank Palomino, and Lorenzo Ramirez, challenged the practice of school segregation in the Ninth Federal District Court in Los Angeles. They claimed that their children and 5,000 other children of "Mexican and Latin descent" were victims of unconstitutional discrimination by being forced to attend separate "Mexican" schools in the Westminster, Garden Grove, Santa Ana, and El Modeno school districts of Orange County. Judge Paul J. McCormick ruled in favor of Mendez and his co-plaintiffs on February 18, 1946, and more than a year later, on April 14, 1947, McCormick's ruling was upheld by the Ninth Circuit Court of Appeals in San Francisco. On June 14 of the same year, Governor Earl Warren signed into law a repeal of the last remaining school segregation statutes in the California Education Code.

Thus did *de jure* school segregation, legally and administratively enforced separation of racial and national groups in the public education system, end in California. The *Mendez v. Westminster* case was not an isolated incident, but part of a continuing story of conflict over the role of minority groups in California public education. The case provides insight into the long history of school segregation in California and is an important chapter in the experience of Mexican and Mexican-American people in the United States. Judge McCormick's decision reflects significant social and intellectual movements of the 1930's and 1940's which produced a remarkable change in educational and judicial attitudes on matters of segregation and race. Finally, the *Mendez* case serves as a point of departure for understanding current controversies over busing and voluntary ethnic separation in the schools.

The origins of the *Mendez* decision go back at least ninety years. In 1855 the California legislature provided that the State School Fund be apportioned to counties on the basis of a census of *white* children, ages 4 to 18.¹ The implications

of the white-only census were clearly recognized by State School Superintendent Andrew J. Moulder. In 1859 Moulder told local educators that "had it been intended by the framers of the law that the children of inferior races be educated side by side with whites, it is manifest the census would have included children of all colors." Moulder warned that any attempt "to force African, Chinese and Diggers into one school . . . must result in the ruin of the schools. The great mass of our citizens will not associate in terms of equality with these inferior races; nor will they consent that their children should do so." However, Moulder did favor establishing separate public schools "for the benefit of the inferior races . . . providing the [white] citizens do not object."²

The legislature agreed, and in 1860 it specifically prohibited "colored children" from attending integrated schools but did allow districts to operate separate schools for blacks, Indians, and Asians. By 1866, the Civil War and Reconstruction controversies had raised questions about black civil rights, and local districts in California were required to establish separate schools if so requested by at least ten "colored" parents. Passage of the Fourteenth Amendment to the federal Constitution raised further legal and moral issues, and in the 1870's, judicial and legal action established that Indian and black children had the right to attend "white" schools in communities which did not provide separate facilities. But for many years, Chinese were not allowed to attend any schools at all. San Francisco School Superintendent James Denman claimed that the task of educating Chinese was "almost hopeless," because "the prejudices of caste and religious idolatry are so indelibly stamped upon their character." Not until 1885, in a case brought by Chinese parents, did the courts require that Chinese be allowed to attend California public schools. San Francisco, along with other communities, then established separate Chinese educational facilities.³ In 1906-1907 the city created a major diplomatic crisis when it attempted to force Japanese children to go to the "Chinese school." Only intervention by President Theodore Roosevelt and an agreement limiting further immigration of Japanese laborers persuaded San Francisco authorities to reverse their decision.⁴

Court action by black parents had established the right of black children to attend "mixed" schools as early as 1890, but in 1945 section 8003 of the Education Code still provided that districts "may establish separate schools for Indian children, excepting children who are wards of the United States Government and children of all other Indians who are descendants of the original American Indians of the United States, and for children of Chinese, Japanese or Mongolian parentage." Section 8004 required that "when separate schools were established . . . the Indian children or children of Chinese, Japanese or Mongolian parentage shall not be admitted to any other school."⁵

Ironically, the Code did not mention the group that was most commonly segregated by 1945: children of Mexican descent. The major migration of Mexicans to California began at the end of the nineteenth century, as southwestern railroads recruited Mexican labor for unskilled track work. The Mexican Revolution of 1910 created a large refugee population and increased the social mobility of Mexican peasants. In the United States, World War I created labor shortages, and restrictive legislation in the early 1920's reduced European immigration and banned further immigration from China and Japan. But the border with Mexico

was left relatively open, and hundreds of thousands of Mexicans took advantage of that fact. Mexicans not only continued their domination of track work on California railroads but by the middle twenties, comprised the bulk of the farm labor force in the Imperial and San Joaquin valleys and the "citrus belt" surrounding Los Angeles. By the end of that decade, they also were a significant part of Los Angeles' urban labor force. The United States Census recorded a tripling of California's Mexican and Mexican-American population during the twenties, from 121,000 to 368,000, but these figures probably under-state the actual growth. By 1930, people of Mexican descent were California's largest "minority group"—a status they have maintained to the present day.⁶

The first Mexicans to cross the border at the turn of the century were migrant men who returned home after a few months' work. But even before World War I, a growing percentage of the immigrants were coming to stay and bringing wives and children with them or raising families once they arrived. By the 1920's, a new population of Mexican and Mexican-American children was having a profound effect on California school enrollments. 65,527 pupils, nearly 10 per cent of the state's total public-school population, were of Mexican descent in 1927. More than 88 per cent of these Mexican and Mexican-American students lived in counties south of the Tehachapis, over 50 per cent in Los Angeles County alone. In Orange County, 2,869 public school children, about 17 per cent of total county school enrollment, were of Mexican descent in 1927. Most dramatically affected was Imperial County; more than 36 per cent of the school children were Mexicans or Mexican Americans by 1927.⁷

These increasing enrollments of Mexican children rapidly led to segregated schools. According to Grace Stanley, a California educator writing in 1920, "One of the first demands made from a community in which there is a large Mexican population is for a separate school. The reasons advanced for this demand are generally from a selfish viewpoint of the English-speaking public and are based largely on the theory that the Mexican is a menace to the health and morals of the rest of the community."⁸ In the Imperial Valley, University of California economist Dr. Paul S. Taylor found some employers of Mexican labor opposed any education at all for their workers' children: "The schools teach Mexicans to look upon farm labor as menial," one grower claimed. "It [education] only makes them dissatisfied and teaches them to read the wrong kind of literature." However, Dr. Taylor found most Imperial Valley residents willing to support education for Mexican children, though in schools "segregated by a consciousness of racial difference."⁹

And so it went in town after Southern California town. The Ontario school superintendent recommended construction of a "Mexican school" in 1921; by 1928 enrollment in this school was so great that another "Mexican" facility had to be built.¹⁰ One elementary school in Riverside had become predominantly Mexican as early as 1910, and in 1924 another "Mexican school" was built when Anglo parents "wished there might be segregation of the Mexican element now attending Liberty [School]."¹¹ The San Joaquin Valley town of Mendota built a new school in 1920, but Mexicans were prohibited from attending. They either went to the old facility or were bused to a "Mexican school" in another town.¹² The city of Santa Ana was divided into fourteen elementary school zones in 1920,



While housing projects such as this unit built in Los Angeles in the early 1940's somewhat improved the living accommodations of low-income Mexican Americans, they also made possible de facto school segregation.

and population patterns along with strategically placed boundary lines resulted in three of the zones becoming predominantly Mexican. In response to parental protests, the school board allowed non-Mexican children living in the three zones to transfer to other, "white" schools.¹³ The Los Angeles school board also manipulated attendance zones to produce segregation. In 1933 a city school official admitted that "our educational theory does not make any racial distinction between Mexican and native white population. However, pressure from white residents of certain sections forced a modification of this principle to the extent that certain neighborhood schools have been placed to absorb the majority of the Mexican pupils of the district."¹⁴

The increasing segregation of Mexican school children was part of a more general pattern of social separation between Mexicans and Anglos in Southern California.¹⁵ Segregation, sometimes *de jure*, sometimes *de facto*, of most public facilities including swimming pools, theaters, and restaurants became common during the 1920's. As late as 1947, Carey McWilliams claimed that "segregation is the rule wherever Mexicans reside in sizable colonies." It lasted "from cradle to grave."¹⁶

But professional educators were not always responding to popular pressure when they established "Mexican" schools. The bulk of professional opinion during the 1920's was on the side of segregation for educational reasons. Grace Stanley believed that Mexican children were happier in segregated schools. She described a "mixed" facility in San Bernardino where the Mexican and Mexican-American children appeared to be "dull, stupid and phlegmatic": however, in the all-Mexican school, the children's faces "radiated joy, they had thrown off the repression that held them down when they were in school with the other children." Stanley believed that Mexican children needed a special curriculum to suit their special abilities. "They are primarily interested in action and emotion but grow listless under purely mental effort." In particular, they were not suited for courses emphasizing "book study and seat work."¹⁷

Many California educators of the 1920's were designing "Americanization" programs for Mexican students. These curricula aimed at achieving the assimilation of young Mexicans and Mexican Americans into "the American way of life." The students were taught English and forbidden the use of Spanish on school grounds. American values, sanitation practices, and work habits were stressed.¹⁸ And educators argued that the process could best be accomplished in separate schools and classrooms. Such separation would allow for special training

of Mexican students without hindering the educational progress of Anglo children. Ontario Superintendent Merton E. Hill, writing of his "Americanization" program in 1928, claimed that "there should be developed wherever numbers shall warrant a segregation of pupils. . . . Pupils should not be put into Mexican classes because they are Mexican, they should be put there because they can profit most by instruction offered in such classes."¹⁹

The segregation arguments were further strengthened, at least implicitly, by findings of educational psychologists. During the 1920's, social scientists put great faith in I.Q. tests. According to William Sheldon of the University of Texas, the tests "enable us to compare accurately the ability of one child with another." Sheldon applied the Cole-Vincent and Stanford Binet tests to groups of "Mexican" and "American" students in Texas. He found that on the average the former had only 85 per cent of the I.Q. of the latter. Mexicans scored lower than "Americans," "English," "Hebrews," and "Chinese," but higher than "Indians," "Slavish," "Italians" and "Negroes."²⁰ Thomas Garth of the University of Denver gave the National Intelligence Test to over 1,000 Mexican and Mexican-American students in Texas, New Mexico, and Colorado. Garth discovered that the median I.Q. of those tested was 78.1. The Mexican child with the highest score (142), however, claimed to be a "Spanish American"; thus, Garth theorized, the child probably had more "white" blood than the others.²¹

Segregation of Mexican and Mexican-American students, then, was a product of community pressure, sanctioned by professional educators and supported by the studies of educational psychologists. By the mid-twenties the practice was well-entrenched in California. In 1928 sixty-four schools in eight southern California counties had from 90 to 100 per cent Mexican and Mexican-American enrollment.²² Three years later a survey of school districts with substantial enrollments of students of Mexican descent found that more than 80 per cent practiced segregation. Where separate schools did not exist, separate "Americanization" classrooms often were maintained.²³ In Orange County, for example, over 4,000 students, a quarter of total school enrollment, were Mexicans or Mexican Americans in 1934. About 70 per cent of the Spanish-surnamed total attended the fifteen Orange County elementary schools which had 100 per cent Mexican enrollment. Forty per cent of all Mexican and Mexican-American students in the county lived in the four districts eventually affected by the *Mendez* case, and six of the fifteen all-Mexican schools were located in these districts (three in Santa Ana; one each in Westminster, El Modeno and Garden Grove).²⁴

However, segregation of Mexican and Mexican-American school children in California was never monolithic. Some districts chose not to separate children of Mexican descent, perhaps because few such children were in the schools, or the methods of separation were too expensive and cumbersome. Even in segregated districts, it was common to allow a few Mexican children to attend "white" schools. Usually they were children of middle-class Mexican-American parents or descendants of old "Californio" families. In San Bernardino the criteria for choosing exceptions to the rule of segregation were "apparent prosperity, cleanliness, the aggressiveness of parents and the quota of Mexicans already in the mixed school."²⁵ Similar criteria existed in many communities including the Orange County districts affected by the *Mendez* case.²⁶

Moreover, segregation was never rigidly applied at the secondary level. According to accepted theory, once a Mexican child learned English and became "Americanized" in the elementary school, he could be integrated into a mixed high school.²⁷ Equally important was the fact that most rural California districts could afford only one secondary school. In fact, however, Mexican and Mexican-American students rarely stayed in the elementary grades long enough to reach high school. In 1926 more than 3,000 children of Mexican descent were enrolled in Imperial County elementary schools, over one-third of the total enrollment, but only fifty-one such children, 4 per cent of total enrollment, were in the high schools.²⁸ In 1930 nearly 10 per cent of Ontario elementary school children were Mexicans or Mexican Americans, but two years later, the Chaffey High School District (including Ontario) graduated two students of Mexican descent out of a total graduating class of 293. Some of this disparity might be explained by the relative youth of the Mexican population, but nine years later, Chaffey managed to produce only six Mexican and Mexican-American graduates out of a total of 370.²⁹ In Orange County only 165 of the county's 4,000 "Mexican" students were enrolled in high school in 1934. Seventy per cent of the county's students of Mexican descent in 1934 were classified as "retarded" in the sense that they were older than the normal student at their grade level. This rate of "retardation" increased with the numbers of years in school, so that by the time Mexicans and Mexican Americans reached the eighth grade, many already were sixteen years old, the age at which compulsory schooling ended in California.³⁰

By the mid-1930's, 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. In such an intellectual climate, George I. Sanchez, the director of information and statistics for the New Mexico Department of Education, asserted that low I.Q. scores of Mexican-American students had to be understood in the context of the children's environment.³¹ I.Q. scores have meaning, Sanchez claimed, "only to the extent that the past history of the child has been assayed by the test in equal manner, with equal justice, and in equal terms with the past histories of the children used as the criteria of the test." Otherwise, the results were absurd. Thomas Garth, for example, found that nearly half his Mexican sample had scored so low that they were not capable of performing the simplest tasks, yet hundreds of thousands of Mexican laborers were being recruited to work in the fields, railroads, and mines of the southwest. Sanchez argued that Garth's results were explained *not* by the inherent intellectual inferiority of Mexicans, but by "the dual system of education presented in 'Mexican' and 'white' schools, the family system of contract labor, social and economic discrimination, educational negligence on the part of local and state authorities, [and] 'homogenous grouping' to mask professional inefficiency...."³²

Few educators in the 1930's were willing to go as far as Sanchez, but at least some began to have doubts about segregation of Spanish-speaking students. Annie Reynolds, a researcher for the United States Office of Education, believed that "formerly persons writing on the subject showed considerable agreement in assigning a relatively low place to Spanish-speaking pupils along intelligence, achievement and school progress lines. This is not true at the present [1931]."

Reynolds claimed that scholars were suspending judgment "until much more information is available based on a far greater equalization of economic, social and educational opportunity than at present obtains."³³ California educator Simon Treff asserted that Mexican students in mixed schools seemed to be less "retarded" than those in segregated facilities, while Herschel T. Manuel of the University of Texas claimed that reading and arithmetic problems of Mexican-American children were caused primarily by poverty and bi-lingualism. By 1937, still another researcher, William A. Farmer of California, was calling for an end to "emotion-alism" on the question of segregation of Mexican and Mexican-American students; what was needed was more research.³⁴

The doubts expressed about segregation in the thirties evolved into new convictions during the forties. By the end of World War II, spokesmen for California's educational establishment were vigorously condemning school segregation. The war had identified racism with Hitler and the Axis powers, while equality and justice were said to be the principles of the Allied cause. The first United Nations Conference in San Francisco in 1945 focused attention on idealistic hopes for peace between nations and peoples. Along with these hopes, however, came fears of new ethnic conflict in California. Wartime labor shortages produced large increases in black and Mexican-American populations, and these increases were accompanied by new social tensions. In 1943 white servicemen rioted against young Mexican-American *pachucos* in Los Angeles, and violence broke out between black and white shipyard workers in Richmond. Further violence was predicted when "re-located" Japanese Americans returned to the state after the war. Thus, public officials and public agencies called for inter-ethnic cooperation and understanding to prevent further conflict.³⁵

As if to illustrate both the hopes and fears of the post-war era, the California Elementary Schools' Principals Association entitled their 1945 yearbook *Education for Cultural Unity*. Helen Heffernan, chief of elementary education in the State Department of Education, and Coreen Seeds, principal of the University Elementary School at the University of California, Los Angeles, in their contribution to the yearbook, claimed that segregation had "almost completely misfired." "It represents a practice which schools must eliminate."³⁶ Dr. Martha Seeling, Butte County coordinator of curriculum, called on educators to do "the spadework toward lessening the hatred and prejudice in America by ceasing to segregate normal children in our schools." Hawaii and Russia already had eliminated racial prejudice, Seeling claimed; California could do not less. "The United Nations insist that they will bring liberation and equality to the beaten and downtrodden. What will happen to America?"³⁷

Non-educators also attacked school segregation. During the twenties and thirties, leading books on Mexican Americans accepted or defended school segregation. But the writers of the post-war period severely condemned the practice. Ruth Tuck claimed that school segregation "untrains little citizens for democratic living," while Beatrice Griffith believed it intensified the "insecurity and sense of inferiority that comes in early childhood." According to John Burma, Spanish-speaking children in mixed classrooms "progress in the [English] language much faster" than those in segregated classes.³⁸

But the integrationist educators and writers of the forties still shared a common

goal with their segregationist predecessors of the twenties and thirties; both groups looked upon assimilation of Mexicans and Mexican Americans into the "American way of life" as the ultimate goal. UCLA historian Flaud C. Wooton condemned segregation, but also criticized the "cultural pluralism" of the East Los Angeles *barrio* or San Francisco's Chinatown as "a source of competition, prejudice and even conflict."³⁹ While "Americanization" programs of the 1920's assumed that assimilation could best be achieved through separate classes in English, hygiene, and other fields, "inter-cultural" programs of the 1940's assumed the same ends could better be accomplished through integration. In 1946 the First Regional Conference for Education of Spanish-Speaking People in the Southwest proclaimed that Mexican children learn English best when in constant contact with English-speaking peers.⁴⁰ What better way to assimilate the American language and culture than to play and study with American children? Reporting on the successful integration effort in Mendota in 1947, Dallas Johnson noted: "English was the rule of the day; the new athletic director enforced the rule on the playground." As Helen Heffernan and Coreen Seeds put it, "Assimilation is a long-term process, but it will be even slower if hindrances such as segregation for educational purposes persist."⁴¹

The new message sometimes had difficulty filtering down through the educational ranks. Ruth Tuck quoted one teacher as saying "I'd hate to count the number of master's theses that have been written in its [segregation's] defense, but behind all the qualifications and footnotes, you could be sure of one thing. The teachers who felt that way were concerned with their own status. They wanted to teach in the silkstocking districts themselves, not in Spanish town...."⁴² Beatrice Griffith told of a graduate student in education who sat through a seminar on the problems of Mexican Americans. "I've had a very entertaining experience," the prospective teacher said, "but as far as I am concerned they are still dirty, stupid and dumb."⁴³ But in spite of such discouraging tales, both Tuck and Griffith believed that educators' attitudes were changing for the better.

World War II also created new opposition to school segregation among Mexican and Mexican-American parents. As early as 1927, Paul S. Taylor noted such opposition in the Imperial Valley, but claimed it came solely from assimilated, middle-class parents.⁴⁴ University of Southern California psychologist Emory Bogardus reported the same phenomenon and believed that most Mexican Americans realized the "advantages" of separate schools. Nevertheless, parental action did lead State Attorney General U.S. Webb to rule in 1929 that segregation of Mexican children was not supported by California law. In 1931, a local court allowed seventy-five Mexican children in Lemon Grove to attend a "white" school. However, Webb's opinion was only advisory, and the Lemon Grove case had little statewide impact.⁴⁵ Middle-class Mexican-American resentment probably was quieted by the practice of allowing a few assimilated children to attend "white" schools, while lower class Mexicans and Mexican Americans were diverted by more serious problems. The Depression caused severe economic hardships, particularly when the farm labor market was flooded with "Okies" and "Arkies." Thousands of Mexicans returned to their native land, some of them the victims of forced "repatriations" managed by county relief agencies. Workers of Mexican descent carried out scores of major agricultural strikes during the

thirties, including a particularly bitter conflict at Garden Grove in 1936. But there were few short-term victories and no long-term successes.⁴⁶

Not until the war years did Mexican and Mexican-American parents begin to enjoy relative prosperity and a degree of economic security. The distinguished war record of Mexican Americans created both a feeling of ethnic pride and a consciousness of inequitable treatment at home. A new generation of Mexican-American young people was coming of age and demanding equal rights and economic opportunities. New post-war Mexican-American organizations such as the G.I. Forum and the Community Service Organization and older groups such as the League of United Latin American Citizens (LULAC) engaged in political activity and fought discrimination in the *barrios*.⁴⁷ In such an atmosphere, segregation of Mexican and Mexican-American school children came under increasing parental attack. "World War II stimulated Mexican Americans to demand change," California educator Thomas Carter has observed. They became "more aware of their rights and duties as American citizens [and] they demanded an end to separate schools. . . ."⁴⁸

By 1945 protests against school segregation by Mexican-American parents had forced the Ontario school board to consider integrating the previously all-Mexican Grove School. Boards in Mendota, Riverside and San Bernardino faced similar protests.⁴⁹ In Westminster, Gonzalo Mendez and several other Mexican-American parents persuaded the board to propose a bond issue for the construction of a new, integrated school. But when voters turned down the bond, the board refused to take further action. William Guzman was one of several parents protesting segregation practices in Santa Ana. The parents asked that all children of Mexican descent who wished to transfer out of the "Mexican" schools be allowed to do so. The board not only refused this request, but it also cut back the small number of token transfers that it previously had granted.⁵⁰

Mendez and Guzman were among the five plaintiffs in the *Mendez v. Westminster* case. They and their co-plaintiffs decided to take legal action only after receiving no remedy from their respective school boards. Although they brought the case as individuals with no organizational identification, apparently LULAC activists assisted in obtaining the services of David Marcus, a Los Angeles attorney who often had represented the Mexican consulates in Los Angeles and San Diego.⁵¹ The defendant districts were represented by Orange County counsel, Joel Ogle.

Both attorneys agreed that all four districts in question maintained elementary schools with 100 per cent Mexican and Mexican-American enrollment. Garden Grove had one "Mexican" school and two "white" schools, and Westminster and El Modeno had one of each (in El Modeno the two schools were located only 120 yards apart). Santa Ana, by far the largest district affected by the case, assigned elementary school children by neighborhood, but Anglo children living in Mexican attendance areas were allowed to transfer to "white" schools. Thus, three of Santa Ana's fourteen elementary schools were 100 per cent Mexican. All four districts allowed token transfers of a few Mexicans and Mexican Americans to "white" schools.⁵²

Marcus claimed that this situation constituted a violation of the Fifth and Fourteenth Amendment rights of his clients' children and of five thousand other children of "Mexican and Latin descent." He called on the court to declare

segregation of school children of Mexican descent in California a violation of the United States Constitution and asked that the districts in question be enjoined from further segregation practices and be required to pay the plaintiffs' court costs. Joel Ogle replied that federal courts had no jurisdiction in the case, since education was a matter governed by state law. Moreover, Ogle claimed that the districts were not segregating children on the arbitrary basis of race or nationality, but for the reasonable purpose of providing special instruction to students not fluent in English and not familiar with American values and customs. Finally, he pointed out that in the case of *Plessy v. Ferguson* (1896) the Supreme Court had allowed states to segregate races, providing that the separate facilities for each race were equal.⁵³

Judge McCormick delivered his decision on February 18, 1946, nearly a year after arguments originally had been presented. He first dealt with the constitutional issues of jurisdiction and precedent. The key fact in both instances was that California's Education Code did not specifically provide for segregation of children of Mexican origin, only for Indian and Asian children. Since California law did not allow for separate "Mexican" schools, the requirement that children attend such schools could be considered arbitrary action taken without "due process of law." This, McCormick said, raised a Fourteenth Amendment issue and clearly established federal jurisdiction. Also, the *Plessy v. Ferguson* precedent with its "separate but equal" doctrine did not apply due to the fact that California laws did not provide for the establishment of "Mexican" schools. McCormick ruled that *Plessy* had dealt only with segregation imposed by state law, and such was not the case in the Orange County dispute.⁵⁴

The central question, then, was whether the children were being forced to go to schools for the arbitrary reason of race or nationality, or for valid educational purposes. Here the judge entered the realm of educational and social theory, and, as might be expected, he adopted the ideas of the educators of the 1940's. McCormick admitted that "the only tenable ground upon which segregation practices in the defendant districts can be defended lies in the English language difficulties of the children. . . ."⁵⁵ But he doubted that such difficulties warranted separation until as late as the eighth grade; surely, children could become proficient in English before this. The judge also claimed that "evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use by segregation. . . ." As to allegations that Mexican children were intellectually inferior to other children, McCormick pointed out that in El Modeno, seventh graders in the "Mexican" school outscored their contemporaries in the "white" school in standardized achievement tests. The judge thus concluded that the children were not being separated on valid educational grounds, but because of "the Latinized or Mexican name of the child."⁵⁶

McCormick also sided with the post-war theorists who advocated assimilation through integration. "Co-mingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals." Segregation, according to the judge, "fosters antagonisms in the children and suggests inferiority among them where none exists."⁵⁷ Not only on legal and constitutional grounds, then, but also on the grounds of educational and social theory, McCormick ruled in

favor of the plaintiffs and ordered the end of school segregation in the defendant districts.

La Opinión, a large Spanish-language daily newspaper published in Los Angeles, hailed McCormick's brief as a "brilliant judicial exposition." David Marcus called it "one of the greatest judicial decisions in favor of democratic practices granted since the emancipation of the slaves. . . ." However, such exuberance was premature. The *Orange Daily News* reported that Joel Ogle was planning an appeal. After meeting with representatives of the four school boards, Ogle was ready to carry the case to the Supreme Court if necessary.⁵⁹

On December 10, 1946, Ogle brought his appeal before the Ninth Federal District Court of Appeals in San Francisco. By now, the *Mendez* case was attracting nation-wide attention. The American Civil Liberties Union and National Lawyers Guild had filed *amicus curiae* briefs on the side of the plaintiffs during the original court proceedings. Now these organizations were joined by the National Association for the Advancement of Colored People, the American Jewish Congress, and the Japanese American Citizens League, all filing briefs in support of McCormick's ruling. Even Robert Kenny, Attorney General of the State of California, intervened on behalf of Mendez and his companions.⁶⁰ New York *Times* correspondent Lawrence Davies reported that the proceedings were being "closely watched as a guinea pig case," for the ACLU and NAACP briefs asked the court to strike down the "separate but equal" doctrine itself.⁶¹

If reporters were looking for dramatic pronouncements, they were not disappointed by the arguments presented to the Court of Appeals. Ogle again denied that federal courts had jurisdiction in the case. And even if they did, he claimed, "segregation by itself is not a denial of equal protection of the laws." Marcus replied that "if we accept the premise laid down by the other side that a school board can do anything it desires and not be in violation of the Federal Constitution, a board can start segregation with children of Mexican descent, go on with Germans and other national origins and end by dividing with respect to religion, and we'll have the same situation we had in Germany." When Marcus explained that the Orange County districts segregated almost all children with Spanish sur-

In response to dislocation and discrimination, Mexican-American youths formed strong organizations—often along school lines—for protection and social life.



names, Judge William Denham asked what would happen to a person named O'Shaughnessy who was "five-sixths Spanish." Marcus assured the judge that young Mr. O'Shaughnessy would be segregated too, for the districts separated on the basis of appearance as well as family name.⁶²

On April 14, 1947, the seven justices of the Court of Appeals unanimously upheld McCormick's decision. Judge Albert Lee Stevens' opinion stuck to narrow constitutional and legal issues. Again, the key fact was that California law did not specifically provide for segregation of Mexican school children; thus, McCormick was correct in the matter of jurisdiction and in finding that the segregation practices violated the Fourteenth Amendment. But Stevens adamantly refused to rule on the broader issues of "separate but equal": "We are not tempted by the siren who calls to us that the sometimes slow and tedious ways of democratic legislation is no longer respected in a progressive society."⁶³

Stevens also chose not to venture very far into the realm of educational and social theory. But this caution was more than offset by the vigorous language of Judge Denham's concurring opinion. Denham believed that segregation in the Orange County districts created "inequality on its face." If the Orange County precedent had been allowed, "Hitler's anti-semitism . . . would have a long start in the country which gave its youth to aid in its destruction." Orange County educational officials should be liable for criminal indictment, Denham claimed, for they had "brazenly proclaimed their discriminatory violation of the state educational laws."⁶⁴

La Opinión believed that the appellate decision was a blow to "those who believe in the anti-semitic theories of Adolph Hitler." The newspaper reported that the case had established that people of Latin descent "must be treated as the same race [as *norteamericanos*.]"⁶⁵ The *Santa Ana Register*, probably the most conservative newspaper in California, also approved of the appellate decision. The *Register* had long campaigned against compulsory public education and saw the *Mendez v. Westminster* case as one more piece of ammunition. According to the *Register*, Santa Ana school board members "disobey the moral laws they profess to teach and have to be stopped by policemen of the state." This was the result of the nature of the people who serve on school boards, they claimed: "Self-seekers who want power; who want to appear to be leaders; who are willing to violate their own oaths of office in order to let their will prevail." The *Register* believed that school segregation was "the natural result of compulsory education" and just one more reason why that latter practice should be abolished.⁶⁶

There is no evidence of unfavorable press reaction to the *Mendez* decision on grounds that segregation should be continued. However, representatives of the ACLU and NAACP criticized the fact that the Court of Appeals did not strike down the "separate but equal" doctrine.⁶⁷ *Open Forum*, published by the Southern California branch of the ACLU, attacked Judge Stevens' opinion as "devoid of social imagination."⁶⁸ But, in fact, the *Mendez* decision did establish precedent for important cases in other states. In 1948 and 1950, federal district courts ruled that *de jure* segregation of Mexican-American school children was unconstitutional in Texas and Arizona respectively.⁶⁹ If *Mendez v. Westminster* could not be cited as direct precedent for the *Brown v. Board of Education* decision of 1954, in which the Supreme Court did finally reverse the "separate but equal" doctrine,

much of the social and educational theory expressed by Judge McCormick anticipated Earl Warren's historic opinion in the *Brown* case.

The *Mendez* case also had repercussions in Sacramento. It focused attention on the issue of school segregation and on the California statutes still allowing such practices. In January, 1947, Assemblymen Anderson, Hawkins, Rosenthal and Bennet introduced legislation to repeal sections 8003 and 8004 of the Education Code, the remaining school segregation laws on the books. Opponents of the measure claimed that California had "a racial situation different from that of any other state," due to its large Asian population. However, the Anderson bill passed both the assembly and senate by large margins, and on June 14, 1947, Governor Earl Warren signed the repeal into law.⁷⁰

About one year later, Mary Peters surveyed 100 southern and central California non-urban school districts to determine the effects of the *Mendez* decision. Seventy-eight per cent of the responding districts claimed that they formerly had maintained separate "Mexican" schools; however, only eighteen per cent admitted still having such schools.⁷¹ In Orange County, school officials had decided further appeal of the *Mendez* case was pointless. Orange County's education commissioner ordered that there be "some Anglo and Mexican children in every class." In September, 1947, integrated schools opened in Westminster, Garden Grove, El Modeno, and Santa Ana, apparently with little trouble.⁷²

School board members in Riverside were sufficiently impressed by McCormick's original 1946 decision to accede to demands of Mexican-American parents and integrate schools in the "Bell Town" section of the city. In 1948 Riverside closed an "all-white" school near another Mexican neighborhood, thus producing integration of another previously "Mexican" school.⁷³ The Ontario school board decided to integrate Grove School in 1946. During the summer of that year, Anglo parents obtained 1400 signatures on a petition asking the board to "rescind its action in rearranging school district boundaries." But the board held firm, and in September, Grove opened with 177 Mexican and 155 non-Mexican students. According to the new principal, once the Anglo parents realized the board's decision was final "they made up their minds to help in every way."⁷⁴ In Mendota, Superintendent Virgil Howard made a virtue of necessity. Vandalism required that a fence be built around Mendota's schools, and Howard pointed out that the district could save \$5,000, if only one, integrated school were fenced instead of two segregated facilities. The board agreed. As one board member put it, "democracy turns out to be cheaper. . . . The Mexican boys who've been breaking school windows on Saturday night were just getting even. . . . If the schools hadn't been separated in the first place, we probably wouldn't have needed a fence."⁷⁵

It was in small communities such as Mendota that the *Mendez* decision had its most dramatic effect. The case applied only to *de jure* segregation, not to the "de facto segregation" that created separate schools in large urban districts such as Los Angeles. After 1947 California's Mexican and Mexican-American population grew rapidly and became increasingly urbanized. By 1960 more than 80 per cent of the state's 1.4 million "Spanish-surnamed" people lived in urban areas. Thus the number of "Spanish-surnamed" children attending *de facto* segregated schools steadily increased. A California State Department of Education survey in 1966

found that 57 per cent of such children attended "minority schools" (schools with a minority group enrollment percentage 15 points above the community average). The figure for black children was 85 per cent.⁷⁶ In 1972 UCLA historian and civil liberties activist John Caughey estimated that two-thirds of the students of Mexican descent in Los Angeles attended substantially segregated schools.⁷⁷ State-wide, more Mexican and Mexican-American children probably attended segregated schools in 1973 than did in 1947, *Mendez v. Westminster* notwithstanding.

But this is not to say that the *Mendez* decision was an insignificant event. It ended nearly a century of *de jure* school segregation in California and incorporated into law the integrationist and egalitarian morality that had developed during the 1930's and 1940's. However, neither *Mendez v. Westminster*, nor *Brown v. Board of Education*, nor even the idealistic educators of the 1940's had determined whether *de facto* segregation was, like *de jure* segregation, a violation of human and legal rights. And neither the courts nor the schools of the immediate post-war period had considered the possibility that some members of ethnic minorities might not accept the assimilationist assumptions on which the *Mendez* decision was made: that some victims of prejudice might call for separatism in education and society.

Gonzalo Mendez and his companions had raised legal and moral questions that the judges and educators of the 1940's were prepared to answer. Today's more difficult questions of *de facto* segregation and separatism have largely stumped the courts and schools, let alone the general public.⁷⁸ But without *Mendez v. Westminster*, the agonizing questions of the 1970's could not even have been asked. *Mendez* was part of a process which stripped away the formal structure of legalized segregation and exposed the underlying conditions of racism and reaction that divide the American people and plague their consciences.

THE PHOTOS are reproduced from *Survey Graphic*, August, 1943, pp. 316, 314.

NOTES

1. The 1855 law amended an 1851 statute which provided for a census of all children, ages 7-18. The State School Fund was created from revenue from the sale of certain public lands and from the proceeds of a small statewide property tax and 15 per cent of the state poll tax. William Warren Ferrier, *Ninety Years of Education in California 1846-1936* (Berkeley, 1937), 98; Roy W. Cloud, *Education in California: Leaders, Organizations and Accomplishments of the First Hundred Years* (Stanford, 1952), 38, 44.
2. Ferrier, *Ninety Years*, 98.
3. *Ibid.*, 92, 103; Cloud, *Education*, 45, 71; Robert Heizer and Alan F. Almqvist, *The Other Californians: Prejudice and Discrimination Under Spain, Mexico and the United States to 1920* (Berkeley, 1971), 62-63, 175-176.
4. Cloud, *Education*, 136; David Brudnoy, "Race and the San Francisco School Board Incident: Contemporary Evaluations," Roger Olmsted and Charles Wollenberg eds., *Neither Separate Nor Equal: Race and Racism in California* (San Francisco, 1971), 75-92.
5. State of California, *Education Code* (Sacramento, 1945), 194.
6. Governor C. C. Young's Mexican Fact Finding Committee, *Mexicans in California* (San Francisco, 1930), 47; Carey McWilliams, *Southern California Country* (New York, 1946), 316.
7. C. C. Young's Committee, *Mexicans*, 53; Paul S. Taylor, *Mexican Labor in the United States*, I (Berkeley, 1930), 265-284, 18.

8. Grace Stanley, "Special School for Mexicans," *The Survey*, September 15, 1920, p. 714.
9. Taylor, *Mexican Labor*, 78-79, 83-84.
10. Mary Peters, "The Segregation of Mexican American Children in the Elementary Schools of California: Its Legal and Administrative Aspects" (M.A. Thesis, UCLA, 1948), 37-39.
11. Irving G. Hendrick, *The Development of a School Integration Plan in Riverside California: a History and Perspective* (Riverside, 1968), 41-42.
12. Dallas Johnson, "They Fenced Intolerance In," *Survey Graphic*, July 1947, pp. 398-399.
13. Peters, "Segregation," 74-75; *Mendez et. al. v. Westminster School District of Orange County et. al.*, *Federal Supplement*, v. 64 (1946), 551.
14. Annie Reynolds, *The Education of Spanish Speaking Children in Five Southwestern States*, United States Department of the Interior, Office of Education Bulletin 1933:11 (Washington, 1933), p. 10.
15. Taylor, *Mexican Labor*, 38, 55-58, 76-77, 83-84.
16. Carey McWilliams, "Spectrum of Segregation," *Survey Graphic*, January, 1947, p. 24; *Southern California Country*, 219; W. Henry Cooke, "The Segregation of Mexican American School Children in Southern California," *School and Society*, June 5, 1948, pp. 417-421.
17. Stanley, "Special School," 715.
18. Roy E. Dickerson, "Some Suggestive Problems in the Americanization of Mexicans," *Pedagogical Seminary*, Sept., 1919, pp. 288-296.
19. Peters, "Segregation," 40.
20. William H. Sheldon, "The Intelligence of Mexican Children," *School and Society*, Feb. 2, 1924, pp. 139-141.
21. Thomas Garth, "The Intelligence of Mexican School Children," *School and Society*, June 28, 1928, pp. 792-793.
22. Peters, "Segregation," 35.
23. William A. Farmer, "The Influence of Segregation of Mexican and American School Children Upon the Development of Social Attitudes," (M.A. Thesis, USC, 1937), 7.
24. Simon Ludwig Treff, "The Education of Mexican Children in Orange County" (M.A. Thesis, USC, 1934), 22-24.
25. Ruth Tuck, *Not With the Fist: Mexican-Americans in a Southwest City* (New York, 1948), 186.
26. Taylor, *Mexican Labor*, 84-86; *Mendez v. Westminster*, 549.
27. State of California, Department of Education, *A Guide for Teachers of Beginning Non-English Speaking Children*, Bulletin no. 8 (San Francisco, 1932), vi.
28. Taylor, *Mexican Labor*, 76-77.
29. Peters, "Segregation," 45.
30. Treff, "Education," 44-45.
31. George I. Sanchez, "Group Differences and Spanish-Speaking Children: a Critical Review," *Journal of Applied Psychology*, Oct., 1932, p. 556.
32. Sanchez, "Bilingualism and Mental Measures, a Word of Caution," *Journal of Applied Psychology*, Dec., 1934, pp. 767-769.
33. Reynolds, *Education*, 46-47.
34. Treff, "Education," 55; Herschel T. Manuel, "A Comparison of Spanish-Speaking and English-Speaking Children in Reading and Arithmetic," *Journal of Applied Psychology*, April, 1935, pp. 201-202; Farmer, "Influence," 104.
35. Monroe E. Deutsch, "California's Part in Racial Relations," *Education for Cultural Unity; Seventeenth Yearbook, California Elementary Schools Principals Association* (Los Angeles, 1945), 11.
36. Helen Heffernan and Coreen A. Seeds, "Inter-cultural Education in the Elementary School," *Education for Cultural Unity*, 84.
37. Martha Seeling, "Segregation in the Public Schools," *Education for Cultural Unity*, 69, 71.
38. Tuck, *Not With a Fist*, 184; Beatrice Griffith, *American Me* (Boston, 1948), 153; John Burma, *Spanish-Speaking Groups in the United States* (Durham, 1954), 76.
39. Flaud C. Wooton, "Cultural Pluralism, a Challenge to Permanent Peace," *Education for Cultural Unity*, 18.
40. Thomas P. Carter, *Mexican Americans in School, a History of Educational Neglect* (New York, 1970), 12.
41. Johnson, "Fenced Intolerance," 399; Heffernan and Seeds, "Inter-Cultural Education," 84.

42. Tuck, *Not with the Fist*, 189.
43. Griffith, *American Me*, 156.
44. Taylor, *Mexican Labor*, 86.
45. Emory S. Bogardus, *The Mexican in the United States* (Los Angeles, 1934), 70-71; Reynolds, *Education*, 13.
46. McWilliams, *Southern California Country*, 220-221; Charles Wollenberg, "Race and Class in Rural California: The El Monte Berry Strike of 1933," *California Historical Quarterly*, Summer, 1972, pp. 155-164.
47. McWilliams, *North from Mexico: the Spanish-Speaking People of the United States* (New York, 1948), 272-280; Matt S. Meier and Feliciano Rivera, *The Chicanos: a History of Mexican Americans* (New York, 1972), 236-247.
48. Carter, *Mexican Americans*, 69.
49. Peters, "Segregation," 90; Robert Weaver, "Northern Ways," *Survey Graphic*, January, 1947, pp. 46-47.
50. *Mendez v. Westminster*, 550-551; *Santa Ana Register*, March 3, 1945.
51. Cooke, "Segregation of Mexican Children," 419; McWilliams, *North from Mexico*, 283.
52. *Mendez v. Westminster*, 546, 550-551.
53. *Santa Ana Register*, March 3, 1945; *La Opinión* (Los Angeles), March 3, 1945; *Fullerton Daily News Tribune*, March 3, 1945.
54. *Mendez v. Westminster*, 546-549.
55. *Ibid.*, 549.
56. *Ibid.*
57. *Ibid.*
58. *La Opinión*, March 22, 1946, February 21, 1946.
59. *Orange Daily News*, February 21, 1946.
60. *Westminster School District of Orange County et. al. v. Mendez et. al.*, *Federal Reporter 2nd Series*, v. 161, 774.
61. *New York Times*, December 22, 1946.
62. *Ibid.*, December 10, 1946.
63. *Westminster v. Mendez*, 779-781.
64. *Ibid.*, 783-784.
65. *La Opinión*, April 16, 1947.
66. *Santa Ana Register*, April 16, 1947.
67. Lester H. Phillips, "Segregation in Education: a California Case Study," *Phylon* (4th Quarter, 1949), 412.
68. *Open Forum* (Los Angeles), May 3, 1947.
69. George I. Sanchez, *Concerning Segregation of Spanish-Speaking Children in the Public Schools* (Inter-American Education Occasional Papers, IX, Austin, 1951), 13-15, 67.
70. *Sacramento Bee*, April 11, 1947; June 4, 1947; Peters, "Segregation," 78-79; Cooke, "Segregation of Mexican Children," 421.
71. Peters, "Segregation," 117-119.
72. *Ibid.*, 116; Phillips, "Segregation in Education," 410.
73. *New York Times*, December 22, 1946; McWilliams, *North From Mexico*, 283; Hendrick, *Development of a School Integration Plan*, 42.
74. Peters, "Segregation," 90-93.
75. Johnson, "Fenced Intolerance In," 398-399.
76. California State Department of Education, *Racial and Ethnic Survey of California Public Schools, Part One: Distribution of Pupils Fall 1966* (Sacramento, 1967), 11.
77. John Caughey, *To Kill a Child's Spirit: the Tragedy of School Segregation in Los Angeles* (Itasca, Ill., 1973), 11. Caughey denies the distinction between *de jure* and *de facto* segregation, saying that both are sanctioned by the state.
78. For a perceptive study of current conflicts over school desegregation in California: Lillian Rubin, *Busing and Backlash: White Against White in an Urban Community* (Berkeley, 1972). Also see John Caughey, *To Kill a Child's Spirit*; John and La Ree Caughey, *School Segregation On our Doorstep* (Los Angeles, 1966); Hendrick, *Development of a School Integration Plan*; Neil Sullivan and Evelyn S. Stewart, *Now is the Time: Integration in the Berkeley Schools* (Bloomington, 1969).