Black, White and Brown:

Latino School Desegregation Efforts in the Pre- and Post- *Brown v. Board of Education* Era

By James A. Ferg-Cadima
Legislative Staff Attorney

May 2004

MALDEF

Mexican American Legal Defense and Educational Fund

Photograph on the cover is from the collection of Sylvia Méndez.
Many thanks for her generosity in sharing part of her family's personal collection.

Mexicans and Dogs Not Allowed
-common store sign in Texas[1]

Some Mexicans are very bright, but you can't compare their brightest with the average white children. They are an inferior race.
-Unnamed rural, southwestern
school superintendent[2]

To our minds, it is conclusive that . . . the equal protection clause of the Fourteenth Amendment contemplated and recognized only two classes as coming within that guarantee: the white race, comprising one class, and the Negro race, comprising the other class.
- Hernandez v. State[3]

Brown, Brown, Not White, We're Brown!
-Chicano activists' chant in 1970.[4]

No remedy for the dual system can be acceptable if it operates to deprive members of a third ethnic group of the benefits of equal educational opportunity. . . .To exclude Mexican-Americans from the benefits of tri-partite integration in the very act of effecting a unitary system would be to provide blacks with the benefit of integration while denying it to another (and larger) group on the basis of ethnic origin. This in itself is a denial of equal protection of the laws.
- U.S. v. Texas Educ. Agency[5]

Black, White and Brown:
Latino School Desegregation Efforts in the Pre- and Post-*Brown v. Board of Education* Era

James A. Ferg-Cadima[6]

TABLE OF CONTENTS

Introduction ……………………………………………………………………………5
I. The Segregated Southwest – Mexicans Needed but "Not Allowed" ……..6
 A. Segregated Neighborhoods ………………………………………………7
 B. Segregated Public Accommodations and Institutions ……………………7
 C. Latino School Segregation – the "Mexican Problem" ……………………7
  1. Classroom Conditions ……………………………………………8
  2. Shortened School Year …………………………………………...9
  3. Failure to Promote and Drop Out/Push Out Factor ………………9
  4. Limited Access to High School …………………………………..9
  5. Watered Down Curriculum and Instruction ……………………..10
  6. Disproportionate Suspension, Expulsion, and Harassment and Non-Enforced Attendance Rules ………………………………..10
 D. Events and Exceptions to Segregation that Quelled Challenges to "Separate but Equal" ……………………………………………………11
II. The Early Latino Desegregation Cases – On the Road to *Méndez* ……………...12
 A. Latinos as "White Persons" under the Law ……………………………..12
 B. Different Theories and Strategies in Mexican American and African American Legal Challenges to School Segregation ……………………..13
 C. The Early Latino Cases …………………………………………………14
III. Precursor to Brown – *Méndez v. Westminster* …………………………………..14
 A. California's Segregation Law …………………………………………...15
 B. Orange County's "Mexican Schools" and the Conditions ………………15
 C. The Méndez Family and Their Experience ……………………………...16
 D. The *Méndez* Case …………………………………………………….…18
  1. Filing the Lawsuit ………………………………………………18
  2. The Trial and Immediate Impact of the Court's Decision ………18
  3. The Appellate Decision and the Issue of "Separate but Equal" …21
IV. *Brown v. Board of Education* and *Hernandez v. Texas* – The Latino Community's (In)Ability to Use *Brown* in School Desegregation Effort ………23
 A. *Hernandez v. Texas* – Latinos' Equal Protection under the Law but through a Difficult and Elusive Standard ……………….……..23
 B. The Road to *Hernandez* – Intersected with and Diverted from *Brown* …24
 C. The Path from Sporadic Equal Protection under *Hernandez* toward the Full Equal Protection Promise of *Brown* …………………..……………25

D. Frustrating Mexican American Post-*Brown* Desegregation Efforts through "School Choice," "Texas-Style Integration," One-Way Busing, and Language/Disability Tracking ……………………………25
1. School Choice Plans ……………………………………………26
2. "Texas-Style Integration" ………………………………………26
3. One Way Busing …………………………………………………27
4. Tracking ……………………………………………………………27
E. Making *Brown* Fully Available to Brown People – Growing Call for Mexican Americans to be Recognized as a Minority Group ……………27
1. The Grassroots' Chicano Movement ……………………………28
2. Federal Desegregation Efforts …………………………………28
3. Establishment of a National Legal Organization to Advance Latino Civil Rights ……………………………………………………29
V. *Cisneros* and *Keyes* – Mexican Americans Recognition as an Identifiable Minority Group under the Equal Protection Clause ………..30
A. *Cisneros v. Corpus Christi Independent School District* ……………31
B. *Keyes v. School District No. One* ……………………………………33
Conclusion ……………………………………………………………………33
Appendix A Arizona Segregation – *Romo v. Laird* and *Gonzalez v. Sheely* ……………………………………………………35
Appendix B Texas Segregation: From *Independent School District v. Salvatierra* to *Hernandez v. Driscoll Consolidated Independent School District* ……………………………………………36
Appendix C California Case: *Alvarez v. Owen* (a.k.a. The Lemon Grove Incident)……………………………………………………39

INTRODUCTION

The Latino struggle for an equitable education, like that of African Americans, has been hard fought and it continues today. Both the Latino and African American community have faced segregation, desegregation and, sadly, resegregation. Yet, they each paved a different path to challenge school segregation that at times complemented each other, and at other times stood in contrast.

The parallel strategies were byproducts of the unique bigotry each faced accounting for subtle but significant differences in how legal strategies were crafted. Despite charting different paths, both communities played central roles in dismantling the legal architecture that supported America's separate and *un*equal schools.

Today, the fact remains that segregation is part of the Latino educational experience. Latinos have never experienced a period of declining segregation; Latino school isolation has ironically only increased since the 1954 *Brown v. Board of Education* decision.[7] However, the steady reality of segregation in Latino students' lives does not negate the significance or promise of the *Brown* decision for Latinos.

The 50th anniversary of the *Brown* decision presents an opportune moment to reassess the promise and legacy of *Brown* for all minority children. In order to expand the dialogue about and commemoration of *Brown*, this paper will document some of the lost history of Latino desegregation efforts pre- and post-*Brown* and their link (or lack thereof at times) to the *Brown* decision.

Part I of this paper illuminates the segregated way of life that Mexicans and Mexican Americans faced in the southwest from the late-nineteenth century through the mid-twentieth century. Part II contrasts the legal doctrines that construed Mexicans and Mexican Americans as "white persons" to the reality of second-class status that was prominent for Mexican origin people in the segregated southwest. Part III highlights the most prominent Latino desegregation case, *Méndez v. Westminster School District,* which pre-dated *Brown* and served as a testing ground for many of the arguments and actors involved in the historic *Brown* decision. Part IV discusses the *Hernandez v. Texas* decision, handed down two weeks before *Brown* in 1954*,* which sent Mexican Americans down a separate legal path than African Americans to desegregate schools. Finally, Part V explores the significance of the *Cisneros v. Corpus Christi* and *Keyes* v. *School District No. I, Denver* decisions as the legal precedents that allowed Latinos to return to and directly profit from the *Brown* decision, albeit two decades later and as courts began the dismantling of the remedies under *Brown*.

This paper seeks to contribute to this historic commemoration by broadening the discussion with notable Latino school segregation challenges. Moreover, a look at Latino desegregation efforts in light of *Brown* offers a window into how inter-ethnic collaboration could be strengthened during the next fifty years of the ongoing struggle for equitable schooling for all students of color.

I: THE SEGREGATED SOUTHWEST – MEXICANS NEEDED BUT "NOT ALLOWED"

At the end of the U.S.-Mexico War of 1848, borders shifted but people did not. When Mexico ceded the territory that today is California, New Mexico, Nevada, and parts of Colorado, Utah, and Arizona, and also approved the prior annexation of Texas, people of Mexican descent in the Southwest faced segregation in all aspects of life. Under the Treaty of Guadalupe Hidalgo, which ended the war, Mexican nationals remaining in the ceded territory became U.S. citizens one year later and thereby became the first Mexican Americans.

Additionally, a mixture of restrictive immigration policy, wartime and market forces drew hundreds of thousands of Mexican nationals northward at the end of the nineteenth and early-twentieth centuries. For example, restrictive federal immigration laws, such as the *Chinese Exclusion Act of 1882* and caps on the level of European and Asian immigration, and troop deployments during World War I created significant labor shortages in the southwest.[8] The need to continue constructing railroads and harvest agricultural crops in the southwest was met by employers heavily recruiting Mexican

nationals. Proximity and migration facilitated by immigration law made recruitment of Mexican nationals a common sense solution to fill domestic labor needs.

As Mexican workers and their families moved northward, they joined established Mexican American communities throughout the southwest. As the Mexican and Mexican American populations grew, the majority Anglo population in these southwestern towns and municipalities responded by implementing segregation as both a policy and practice.

A. Segregated Neighborhoods

Mexican and Mexican American workers were paid substandard wages and became the southwest's agricultural working class. They were left to live in the few places they could afford and were welcome – either *barrios* (ethnically-dense neighborhoods) or *colonias* (rural shanty towns).[9] Moreover, restrictive real estate covenants prevented sale of property to people of Mexican origin between 1920 and 1950.[10] Mexican and Mexican Americans also had few resources and protections under the law to combat blatant housing discrimination. Thus, Latino segregation, sometimes *de jure* (sanctioned by law), sometimes *de facto* (sanctioned by custom and practice), in most public facilities became increasingly more common from 1848 through the 1920's and beyond.[11]

B. Segregated Public Accommodations and Institutions

Southwestern segregation of Mexicans and Mexican Americans took several forms and varied to some degree across states and over years. For example, common segregated institutions in nineteenth and twentieth century Texas included drugstores, restaurants, movie theatres, hotels, barber shops, maternity wards, and bowling alleys.[12] Stores displayed signs reading "Mexicans and Dogs Not Allowed"[13] and "No Mexicans Served."[14] Courthouses segregated their restroom facilities, with one door unmarked and the other with dual signs reading "Colored Men" and "*Hombres Aqui*" ("Men Here").[15] Drinking fountains and cafeterias were segregated too.[16] Mexican Americans were also on occasion lynched and denied burial in white cemeteries.[17]

In California, Mexican and Puerto Rican families were denied access to public parks, playgrounds and swimming pools.[18] Some pools limited Latino use to "Mexican day," which was usually Monday when the water was filthiest; after "Mexican day," the pool would be drained and chemically treated before reopening to the white public on Tuesday.[19] As all aspects of southwestern life were separate and far from equal for people of Mexican descent, so were the schools.[20]

C. Latino School Segregation – the "Mexican Problem"

Children of Mexican origin suffered from a long tradition of segregation in public schools throughout the southwest, both before and after the Supreme Court's decision in

Brown. Southwestern school boards established strict segregation policies and protocols as soon as Mexican enrollments became noticeable.[21] By 1930, 85 percent of Mexican origin children in the southwest were attending either separate classrooms or entirely separate schools.[22]

Mexican and Mexican American children were required to register at "Mexican schools," regardless of residential proximity.[23] Some school districts cited "language handicaps" and applied placement tests that were "hasty, superficial and not reliable."[24] Others made segregated placement decisions based on "the Latinized or Mexican name of the child."[25] Unlike the African American experience, where segregation was permanent, school personnel frequently pledged that as soon as Mexican and Mexican American children learned English and became Americanized, they would be integrated with white children. The historical record shows, however, that this almost never occurred.[26]

Historians describe these policies and empty promises as a means of social control ensuring that Mexican origin students would become loyal and disciplined workers.[27] According to one historian:

> Farmers sat on school boards where they could put their educational philosophy into effect. As an instrument of exploitation, the schools often seemed to be hardly more than an extension of the cotton field or the fruit-packing shed.[28]

The practice of Latino school isolation was common and longstanding. For example, in 1968, well after the *Brown* decision, over 66 percent of Texas' students of Mexican descent attended predominately "Mexican schools." Of these, 40 percent were in schools 80-100 percent Mexican and Mexican American and nearly 21 percent attend schools 95-100 percent Mexican and Mexican American.[29]

Discrimination and inequality festered in this system of separate schools. The conditions of classrooms, the length of the school years, and the quality of education were substandard on all accounts to that of students attending "Anglo schools."

1. Classroom Conditions

Conditions in "Mexican schools" were substandard – inadequate resources, poor equipment, and unfit building construction were common.[30] A 1948 Mexican Chamber of Commerce of Harlingen, Texas report detailed the conditions of the Alamo School, originally named the "Mexican School." The school had broken windows, rooms without lights, three-inch cracks in the side of the building and loose ceilings "just about ready to fall."[31] According to the testimony of one frustrated mother of a student in Jackson County, Texas' Edna Independent School District, the "Latin American school" in the early 1940's, "consisted of decaying one-room wooden building that flooded repeatedly during the rains, with only a wood stove for heat and outside bathroom facilities, and with but one teacher for the four grades taught there."[32]

2. Shortened School Year

Discrimination in the length of the school year was documented by the Texas Education Survey Commission in 1923. In its review of twenty-five school districts in twelve counties, the commission found the Anglo school year was on average 1.6 months longer than African American school terms and 2.4 months longer than the Mexican American school calendar.[33] Administrators cited African American and Mexican American pursuit of migratory labor as the reason to shorten the school year for all minority children.[34]

3. Failure to Promote and the Drop Out/Push Out Factor

Latino children older than grade level were part of this segregated elementary school mix. In California, 70 percent of the Santa Ana County's students of Mexican descent in 1934 were classified as "retarded" in the sense that they were older than the typical students at their grade level.[35] This rate of "retardation" increased with the number of years in school, so that by the time Mexicans and Mexican Americans reached the eighth grade in parts of Orange County, many already were sixteen years old, the age at which compulsory full-time schooling ended in California.[36]

This practice was not isolated to California. Ed Idar, an organizer for MALDEF in the 1970's, recalls the practice as common throughout Texas.

> [I]n a lot of school districts, when a Mexican child first went to school, he was put in what they called a pre-primer. Spent a whole year there. Second year, he was put in the primer. Third year he would go into the first grade. By this time he was two years older than the average first grader—they were already behind. That's why you had so many kids dropping out of school when they got to be teenagers. . . . [T]heir Anglo counterparts were already two, three grades ahead of them. And here they were, so a lot of them dropped out and didn't go to high school.[37]

4. Limited Access to High School

Legal scholars believe that explicit segregation of students of Mexican descent by local authorities was limited to elementary grades.[38] Yet, this was not due to benign motives as local policy often limited Mexican and Mexican American children to an elementary education. An extreme example was found in Sugar Land, Texas, near Houston, during the mid-1930's. Mexican origin children represented 56.6 percent of the elementary school population in the district but constituted only 1.9 percent of the eighth grade.[39]

Where local officials opened secondary schools for students of Mexican descent, so few students progressed beyond the primary level that it was impractical to establish separate high schools. Equally important was the fact that many rural districts could afford only one secondary school.[40] When significant numbers did enroll in secondary in the mid-1940's and thereafter, local officials expanded the concept of the "Mexican school" to include high school.[41]

5. Watered Down Curriculum and Instruction

Southwestern educators of the 1920's designed "Americanization programs" for students of Mexican descent.[42] The curricula diverted from the "3 R's" and focused on achieving assimilation through hygiene and language instruction. It also meant the children would have to reject their native language, culture, identity, and, in essence, connections to parents and grandparents.[43] Moreover, Americanization curricula dedicated enormous amount of attention to vocational education that attempted to train Mexican origin children in manual jobs.[44] Mexican boys received training in handiwork, while Mexican girls were steered into homemaking skills.[45]

One Phoenix, Arizona principal claimed in 1939:

> Much more classroom time should be spent teaching the [Mexican] children clean habits and positive attitudes toward others, public property, and their community in general … [The Mexican child] can be taught to repeat the Constitution forward and backward and still he will steal cars, break windows, wreck public recreational centers, etc., if he doesn't catch the idea for respect for human values and personality.[46]

Educators argued the Americanization instruction could only be taught in separate schools and classrooms, and was the prerequisite to substantive curricula.[47] With little support to strive for secondary school, many Latinos dropped out before arriving at a "substantive" instruction.[48]

Finally, teachers in "Mexican schools" were either beginners or had been "banished" from other schools as incompetent.[49] Turnover of faculty in "Mexican schools" was high, with the head teacher changing three times in one school year and new teachers arriving in classrooms every three weeks in some cases.[50]

6. Disproportionate Suspension, Expulsion, and Harassment and Non-Enforced Attendance Rules

Inspection and suspension of Mexican children for "lice" or "tick" infestation was a common practice. Stereotypes that Mexicans and Mexican Americans were "dirty," "greasers," and "disease spreaders" pervaded.[51] The mother of one eight-year-old expelled from school for "lice" found none on her daughter. She reported: "The next

day I took her to the school. The nurse examined [the daughter] and claimed that she found one [lice] which she placed in an envelope but she refused to allow me to see it. I left."[52]

MALDEF intake records demonstrate that children of Mexican descent also reported ridicule by teachers, examinations in front of classmates for lice, examinations only of Mexican students, and suspensions for multiple weeks for something as innocuous as dandruff.[53] Repeated pretextual suspensions amounted to the functional equivalent of expulsion and denial of a public school education. Many segregated schools contained showering facilities where children were obliged, after a morning inspection, to shower.[54]

Additionally some school officials made no effort to enforce school attendance law on Mexican origin children. Consider the words of a school official of Dimmit County, a rural area outside of San Antonio:

> We don't enforce the attendance law. The whites come all right except one [sic] whose parents don't appreciate education. We don't enforce the attendance on the whites because we would have to on the Mexicans.[55]

A Texas school superintendent stated that "the compulsory school attendance law is a dead letter – there is no effort to enforce it. Nobody cares."[56]

A policy of deliberate exclusion of migrant children from schooling through denial of admission was common too. Some schools went as far as hanging signs reading "No Migratory Children Wanted Here."[57] A 1943 study on migrant students in Hidalgo County, Texas reported a widespread "attitude that school attendance should not be allowed to interfere with the supply of cheap farm labor."[58] The cheapest form of labor, of course, was the unpaid labor of children.

D. Events and Exceptions to Segregation that Quelled Challenges to "Separate but Equal"

In some southwestern communities, parental outrage was quashed through "repatriation" campaigns managed by local county relief agencies that coerced and fraudulently forced thousands of Mexicans and Mexican Americans to return to Mexico.[59] In other districts, communities 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.[60] Even in segregated districts, it was common to allow a few Mexican children into "white" schools. Usually these were children of middle-class Mexican American parents. This limited integration served to divide and quell more affluent parental outrage, while working-class Mexicans and Mexican Americans were diverted by other immediate matters that were part and parcel of poverty.[61]

Not all efforts to quell Latino parental outrage were successful. A series of early desegregation efforts in three southwestern states demonstrates the courage and resourcefulness of Latino parents – despite no national civil rights legal group to back them and limited resources. Three early efforts stand out – starting in Arizona, perfected in California, and vigorously implemented in Texas – as they are the first known Latino desegregation cases and together they show the breadth of school segregation and the commonality of resistance to desegregation.

A. Latinos as "White Persons" under the Law

Even after slavery ended, the status of being white carried with it a set of privileges and benefits.[62] Given this arrangement, it is hardly surprising that some minorities sought official recognition as white (and thereby the rights and immunities that came with such status). They did so because "whiteness" ensured greater economic and social stability and prevented one from being the object of others' domination.[63]

Only a "white person, not an African, nor of African descent" could naturalize under late-nineteenth century law.[64] It was not until the Fourteenth Amendment that African Americans gained the rights of full citizenship. Thus, the issue of whether Mexican nationals were "white" under the law had to be tested. And in an 1897 case, *In re Rodriguez*,[65] a federal district court in Texas narrowly upheld the right of Mexicans to naturalize under the Treaty of Guadalupe Hidalgo.

U.S. District Judge Thomas Maxey struggled with placement of people of Mexican descent in the black and white thinking of the time. He noted during the trial, "as to color, [Rodriguez] may be classified with copper colored or red men. He has dark eyes, straight black hair, and high cheek bones."[66] Nevertheless, the federal court held Mexicans to be white for purposes of naturalization in an effort to reconcile immigration law and treaty obligations.

In theory, the rationale behind *In re Rodriguez* should have afforded these new Americans, or Mexican Americans, the privileges and protections of citizenship. Sadly, the legal victory was more symbolic than substantive. It did little to dismantle the segregated life in the southwest. While as a legal matter people of Mexican descent were at times deemed "white," they were not treated as white nor did they experience white privilege in their daily lives.

Moreover, while some Latino plaintiffs would go on to argue they were "white," many of those looking to exclude or segregate Latinos would also conveniently argue them to be "white" when it suited their purposes. For example, Thomas A. Saenz, current Vice President of Litigation for MALDEF, recently documented a growing trend in the 1930's, whereby state officials would classify Mexican Americans as "white" to bar them from juries and prevent challenges to their exclusion and from proving "racial"

discrimination.[67] The practice would be halted by the Supreme Court in *Hernandez v. Texas*[68] the same year they handed down the ruling in *Brown.*

Nevertheless, the holding of *In re Rodriguez,* and its progeny, that Mexicans were the "other white," was the most readily viable legal claim advocates could make in early Latino desegregation cases. The "other white" theory, however, would later help reluctant school districts subvert post-*Brown* desegregation decrees by "integrating" African American students into "Mexican schools," which officials claimed were "white" schools, thereby leaving the real white schools untouched under desegregation orders.

B. Different Theories and Strategies in Mexican American and African American Legal Challenges to School Segregation

With "separate but equal" still the law, under *Plessy v. Ferguson*,[69] early attorneys on behalf of Mexican and Mexican American plaintiffs sought to clarify that under Jim Crow law and practice Latinos were on the white side of the black/white divide.[70]

Mexican American school desegregation cases, for the most part, stressed the Fourteenth Amendment's Due Process Clause and statutory violations, emphasizing segregation in the *absence* of state law authorizing their segregation.[71] Whereas, African American cases were stressing the Fourteenth Amendment's Equal Protection Clause, arguing that segregation even in the presence of state law authorizing segregation was inherently unequal.[72] Latinos' "strongest" claim, at the time, was to request that current law, segregation and all, be applied in a way that recognized their "whiteness." Simply put, early Latino desegregation cases were framed under an "other white" legal theory. If successful, Latino claims would ensure Latinos could attend the same schools as whites, but would not address the segregation faced by African Americans.

Another significant difference was that Latino cases were not as ambitious as African American cases; they were not part of a coordinated assault on segregation.[73] While African American claims were coordinated under the leadership of Charles Hamilton Houston and his team at the National Association for the Advancement of Colored People (NAACP), Latino cases were not orchestrated by any one national Latino civil rights organization or legal team.[74] While the Garland Foundation funded the NAACP's evolving legal strategy, each Latino case was a one-shot effort disconnected from other Latino cases.[75] Where the NAACP opted to challenge denial of education by state colleges, in order to create sufficient legal precedent to eventually challenge K-12 education practices, Latino cases began and stayed focus on elementary school segregated assignment decisions. Additionally, the totality of African American desegregation cases aimed at one large-scale remedy – the overturning of *Plessy* and the introduction of integration. Latino cases, by comparison, were brought and paid for by local families and community groups that sought relief for their own community.

The first Latino desegregation case, *Romo v. Laird*,[76] precedes the founding of the first national Latino civil rights organization, the League of United Latin American Citizens

(LULAC), in 1929. LULAC, the American G.I. Forum and other national Latino advocacy organizations that were founded in the early twentieth century were not structured to be law reform organizations. Although neither LULAC nor American G.I. Forum established a litigation arm akin to the NAACP's Legal Defense Fund (NAACP LDF), both gave referral and financial support to lawsuits seeking to protect Mexican American rights.[77] This arrangement left the individual attorneys bringing these early Latino cases to choose what appeared to be the best strategy for their individual cases.

C. The Early Latino Cases

The early Latino efforts to combat school segregation evidence widespread Latino outrage over the second-class education they were receiving. The earliest cases – *Romo v. Laird*[78] in Arizona, *Independent Sch. Dist. v. Salvatierra*[79] in Texas, and *Alvarez v. Owen,*[80] more commonly known as the Lemon Grove case, in California – were brought in hope that justice would be delivered, and it was in two of three early cases, but only on a small scale. Thus, the struggles in Arizona, Texas and California would continue past this trio of early filings in subsequent cases and political actions in each state for decades. [Please refer to Appendixes A through C for a more detailed discussion of these early efforts.]

While the early Latino desegregation cases offered limited relief, they also presented courts with the opportunity to craft a roadmap for how school officials could continue "lawfully" segregating students of Mexican descent. Most commonly, courts cited segregation based on migrant status and limited English proficiency as permissible grounds. Yet, in most cases, these rationales that drove segregated placement decisions were only applied to Mexican origin students. For example, where Anglo children were migratory, they were not segregated. [See Appendix B for an example]. Other times there were no tests demonstrating that Mexican origin children were less proficient in English, thus accounting for Mexican American students whose native language was English being segregated as well. [See below for an example]. Sadly, school districts entrenched in segregation as a norm pushed back by growing reliance on such court-clarified loopholes.

One California case, *Méndez v. Westminster School District of Orange County,*[81] which was eventually decided by a federal appellate court, would lay the legal and political precedent to dismantle Mexican origin student segregation in Arizona's, California's and Texas' schools.

III *PRECURSOR TO* BROWN -- MÉNDEZ V. WESTMINSTER

For nearly two generations, from 1911 to 1947, Orange County school districts maintained a dual school system – one for Mexicans and one for white students – until a group of Latino parents in the Westminster, Orange, El Modena and Santa Ana districts of Orange County brought and sustained legal action.[82] A single case, *Méndez v.*

Westminster, filed on behalf of a handful of Latino plaintiffs and augmented by African American, Japanese American and Jewish community intervention, led to the full revocation of California's "separate but equal" public school systems in 1947.

For many in the Latino community, *Méndez* is our *Brown v. Board.* For others, *Méndez* is an unrecognized precedent that, in part, shaped the *Brown* strategy and touched the hearts and minds of many of the major players behind the landmark *Brown* decision.

A. California's Segregation Law

Post-World War II, California was the largest state in the nation to maintain separate schools for minority populations.[83] California Education Code sections 8003 and 8004 permitted individual school districts to segregate "Indian children" or children "of Chinese, Japanese, or Mongolian parentage," and forbade these classes of children from attending other schools once such separate schools were established.[84] California law originally provided for the educational segregation of African Americans, but following protest by civil rights advocates in California the law was amended in 1880 to remove African American children from the list.[85] Nevertheless, while not explicitly listed in the education code, Latinos and African Americans were segregated in many of California's schools.

Attempts to codify the custom of "Mexican school" segregation failed.[86] Thus, the school segregation codes were creatively interpreted and questionably implemented to ensure Mexican and Mexican American student school isolation. For example, in 1930, California Attorney General Webb categorized Mexicans as Indians. He claimed that "the greater portion of the population of Mexico are Indians," and thus "are subject to laws applicable generally to Indians," which was one of the communities explicitly segregated under the state education code.[87]

B. Orange County's "Mexican Schools" and the Conditions

By the end of the 1920's, Mexicans were by far the most segregated school children in California public schools.[88] This pattern of ethnic isolation began as early as the 1910's and grew through the 1940's. In 1913, the Santa Ana school district, in Orange County, began setting aside special rooms and a substantially different curriculum for "Spanish" children at one school.[89] In 1927, 17 percent of total Orange County school enrollment was of Mexican descent and, by 1934, about 70 percent of the Spanish-surnamed students were attending 15 county elementary schools, which had 100 percent Mexican enrollment.[90] By the 1940's, 80 percent of Orange County's Mexican and Mexican American elementary school population was clustered at 14 "Mexican schools."[91] Industrial preparation became the sole curricular track for Mexican origin children.[92] For example, Mexican boys engaged in bootmaking and blacksmithing, while Mexican girls studied sewing and homemaking.[93]

Segregation resulted from a mandatory attendance policy where officials generally drew school districts so that Mexican children would attend only "Mexican schools." In Santa Ana, when white children happened to live in a Mexican zone, school authorities routinely accepted requests for transfers and provided busing.[94] When Mexican children lived outside Mexican zones, school authorities would arrange for one-way busing to a "Mexican school" without parental request.[95] Moreover, Santa Ana's "Mexican schools" operated on half-days during walnut-picking season to accommodate local agribusiness demands for child labor and yet received full per-pupil funding from the state.[96]

The Santa Ana school board commissioned a survey of education facilities, which was completed by two professors from the University of Southern California. The 1928 report recommended tearing down at least two of the "Mexican schools" and rebuilding them because they represented, from a physical standpoint, the worst schools.[97] Of the 12 Santa Ana elementary schools, three "Mexican schools" – Delhi, Grand Avenue, and Artesia – scored between 191 and 330 out of a possible 1,000 points.[98] The report concluded:

> The Delhi school is a wooden structure which is a fire hazard and poorly constructed [and] provides less than one-third required amount of light . . . .
>
> The Grand Avenue School . . . is a two story frame structure entirely unsuited to school use . . . it had been condemned for years.
>
> The most unsatisfactory school that is now being used . . . is the Artesia school . . . It is a frame building with no interior finish. It has a low single roof with no air space, which makes the temperature in many of the rooms almost unbearable. Since no artificial light is provided in the building it is impossible to do satisfactory reading without serious eye strain on many days of the year.[99]

The report's recommendation to rebuild went ignored when white parents presented a petition of 200 signatures against the recommendation.[100]

C. The Méndez Family and Their Experience

During the height of WWII animus against Japanese Americans, Gonzalo Méndez returned to his hometown of Westminster, California to lease the sixty-acre farm of a family forcibly relocated to an internment camp.[101] A sympathetic banker arranged the lease to the Méndez family as a means to save the Japanese American family's farm. Selling his café, Gonzalo Méndez, his wife Felicitas and their children moved to Westminster in 1943 and earned a prosperous living tending to the farm.[102] Gonzalo, a native of Mexico reared in Westminster, and Felicitas, a native of Puerto Rico, were children of agricultural workers and had lived in several different places.[103] The

opportunity to move back to Westminster and send his children to the same elementary school he attended was something Gonzalo Méndez did not want to pass up.

On the first day of the 1944 school year, Gonzalo Méndez asked his sister, Soledad "Sally" Vidaurri, to enroll his children and nephews and nieces in the local Westminster Elementary School.[104] When they arrived at the school, the Vidaurri children, lighter in skin color and with a French-sounding surname, were allowed to enroll, while the Méndez children were sent to the "Mexican school" on account of purported language deficiencies.[105] Ironically, the Vidaurri and Méndez children were both equally proficient in English.

Sylvia Méndez, one of the Méndez children, recalls the "Mexican school" as a "terrible little shack" with no recess equipment, infested with flies because of its proximity to a cow pasture and surrounded by a wire fence "with a little bit of electricity" running through it.[106] Another Orange County student, Daniel Gomez, recalls the Mexican school in El Modena was located across a field from the white school, which received new materials while the Mexican school would get hand-me-downs and discarded materials.[107] Mexican origin students were assigned to the Mexican school, heavy on an Americanization curriculum, despite their being fluent English speakers. No language tests were ever used to make pupil assignments; stereotypes and bias drove school placement determinations.

Outraged, Sally Vidaurri and Gonzalo Méndez refused to enroll their children in the segregated facilities and organized a local group of Westminster parents to petition the board to desegregate the schools.[108] On September 8, 1944, the Westminster group organized by Méndez sent a petition to the board requesting "doing away with segregation" as their children were "all American born and it does not appear fair nor just that our children should be segregated as a class."[109] The Westminster school board responded by offering an exception to the Méndez children allowing for their "special admission."[110] Instead, Mr. Méndez organized a boycott of the segregated schools by the local parents and decided to pursue legal action.

In nearby Santa Ana, returning WWII veterans formed a civil rights group, the Latin American Organization (LAO), dedicated to combating school segregation.[111] In the fall of 1943, Mrs. Leonides Sanchez and other LAO parents appeared before the Santa Ana school board several times to challenge the denial of transfer requests to send Latino students to Anglo schools and support the integration of schools by increasing the size of the transfer program within the district.[112] This school board, too, was unreceptive to the Latino parents' proposals and ordered the attendance officer to deny any Mexican origin family request for a transfer.[113] William Guzman, another LAO member, accompanied by his lawyer, requested that his son Billy Guzman be allowed to attend the Anglo school.[114] He threatened legal action. The Santa Ana school board asked for a ninety day advisement period and then never responded.[115]

The Méndez family of Westminster and their friends the Guzmans of Santa Ana combined forces.

D. The **Méndez** *Case:*

The story of the *Méndez* lawsuit has gone largely untold. A handful of scholarly sources, mostly inaccessible to the general public, document this struggle against school segregation in Orange County. This history is so buried that even Sandra Méndez Duran, one of the Méndez daughters, only learned of the *Méndez* case for the first time when she went off to college.[116]

1. Filing the Lawsuit

During a fortuitous conversation with a produce truck driver passing through town, Mr. Méndez was referred to David Marcus, a Los Angeles attorney who had built a reputation for challenging Mexican American segregation in parks and pools.[117] Earning a comfortable living as a tenant farmer, the Méndez family put up their own savings to retain Marcus.[118] The Méndez family and Marcus agreed on a legal strategy and to dedicate several years to the effort.[119] Mr. and Mrs. Méndez worked out an arrangement whereby she ran the farm, while Mr. Méndez and Marcus traveled throughout southern California to gather plaintiffs and document the inequality of Mexican schools.[120]

Mrs. Méndez ran the farm so well it became more prosperous than before.[121] The profit of the farm went to pay for the attorney's fees, litigation costs, and more. In addition to managing the farm, Mrs. Méndez organized local parents into an education support group known as the *Asociación de Padres de Niños Mexico-Americanos* (Association of Parents of Mexican American Children).[122] The main focus of the support group was to send Mexican families to the courthouse during the trial to display strength in numbers. Since most families were farm workers with little funds to cover the cost of travel or lost wages, the Méndez family agreed to cover their transportation and reimburse their loss of pay.[123]

On March 2, 1945, Gonzalo Méndez, William Guzman, Frank Palomino, Thomas Estrada, and Lorenzo Ramirez, filed a class action suit against the Westminster, Santa Ana, El Modena, and Garden Grove school districts "to enjoin the application of alleged discriminatory rules, regulations, customs, and usages."[124] They filed the complaint "on behalf of their minor children, and . . . on behalf of 'some 5000' persons similarly effected, all of Mexican and Latin descent . . . ."[125] The parents argued their children were being denied due process and equal protection of the laws, under the Fourteenth Amendment, in the absence of state laws that required or allowed the local school districts of Orange County to operate segregated "Mexican schools."

2. The Trial and Immediate Impact of the Court's Decision

Initially, the school district attempted to justify the segregation on the grounds that the Mexican American children were not members of the "white race."[126] However, after

one school official testified that segregation was necessary because of Mexican American children's inferiority to the white children, the defense stipulated that there was no question of race in the case.[127] Both parties stipulated that Mexican Americans were part of the white race and that the case, therefore, raised "no question of race discrimination."[128] Thus, the defense turned to language ability, which the school district used as a proxy for race, and justified the segregation solely as a rational response to the Mexican American children's alleged inability to speak English. Marcus and the Latino plaintiffs agreed to the stipulation because they were aware of the potential detriment Mexican Americans would face if classified as Indians, a group that was segregated by existing law.[129]

At trial, Marcus called a number of education and social science experts who testified that segregation of Mexican American children by the defendant schools was counter to educational theories and harmful to its victims.[130] Marcus also introduced evidence to refute the school districts' claims that segregation was necessitated by alleged English-language deficiencies of the supposedly Spanish-speaking "Mexican" children. The defense cited *Plessy* to support "separate but equal" schools as constitutional and offered evidence that the physical facilities, teachers, and curricula in the "Mexican schools" were equal, if not superior, to those made available to the white children.[131]

The ACLU and the National Lawyers Guild filed a friend-of-the-court brief at the trial level arguing that any arbitrary discrimination, not just racial discrimination, violated the Fourteenth Amendment.[132] The NAACP, Japanese American Citizens League (JACL), American Jewish Committee (AJC) and others tracked the case. New York Times correspondent Lawrence Davies reported that the proceedings were being "closely watched as a guinea pig case" to challenge segregation in primary and secondary schools by the ACLU and NAACP.[133] Robert Carter, part of the NAACP's legal team, felt that the *Méndez* decision was a "dry run for the future."[134]

On February 18, 1946, Federal District Judge Paul J. McCormick ruled in favor of Méndez and the other plaintiffs finding the defendant school districts violated the Mexican American children's rights under the Fourteenth Amendment and California's constitution and education code.[135] Most striking is the annunciation of several themes that would become central to the *Brown* decision years later. Judge McCormick anticipated by eight years the language Chief Justice Earl Warren would use in the *Brown* decision, that segregation is inherently unequal under federal law. Judge McCormick declared:

> 'The equal protection of the laws' … is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican ancestry that are available to the other public school children regardless of 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.[136]

Judge McCormick also anticipated the stigmatization harm a unanimous Supreme Court would recognize in *Brown* years later. Judge McCormick reasoned:

> 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 the entire student body instills and develops a common cultural attitude among the school district children which is imperative for the perpetuation of American institutions and ideals. 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.[137]

The decision represents a watershed moment in public school desegregation litigation. Unlike many of the cases prior to *Brown*, this judicial outcome did not focus on the "equality" of the school facilities. Rather, the ruling rested on the theory that segregation itself made children's education inferior. As the *Brown* court would announce, "[s]eparate educational facilities are inherently unequal."[138]

Méndez gained widespread attention in legal circles. An article in the *Columbia Law Review* stated:

> The court in the [*Méndez*] case breaks sharply with this approach and finds the Fourteenth Amendment requires 'social equality' rather than 'equal facilities.'[139]

Another commentator in the *Yale Law Journal* noted that the *Méndez* decision

> has questioned the basic assumption of the Plessy Doctrine . . . Modern sociological and psychological studies lend much support to the District court's views. A dual system even if 'equal facilities' were provided does imply social inferiority.[140]

Predictably, the school districts appealed.

Nevertheless, the *Méndez* ruling energized the Mexican American community. LAO held protests in front of the Santa Ana school board.[141] LAO, which would become a chapter of LULAC before the appellate decision, began holding community socials and dances to raise funds to prepare for the appeal.[142]

The impact of *Méndez* was felt all the way to Sacramento. Between the trial and the appeal, in January 1947, legislation to repeal Sections 8003 and 8004 of the California Education Code was introduced and in June 1947, then-Governor Earl Warren signed the repeal into law.[143] Between the bill's introduction and signing into law came the Ninth Circuit's *Méndez* appellate decision.

3. The Appellate Decision and the Issue of "Separate but Equal"

The case was appealed by the defense on the basis that the school districts' segregation practices were not done under the color of state law, therefore the districts argued, precluding the Fourteenth Amendment's application.[144] Marcus capitalized on Judge McCormick's finding that segregation was harmful, while maintaining the "other white" argument. Marcus continued to assert that segregation of Mexican American children was unlawful because Mexican Americans were not listed as one of the named groups for whom separate schools could be created under the explicit California education code.[145] Yet, the attack on *Plessy* was mounted in friend-of-the-court briefs.

The ACLU and National Lawyer's Guild, returned to file another friend-of-the-court brief at the appellate level; they were joined by the AJC, the NAACP and the JACL, which each filed their own.[146]

NAACP attorney Robert L Carter drafted the NAACP brief submitted to the Ninth Circuit Court of Appeals.[147] The case was a "useful dry run" that allowed NAACP to test some of the arguments it would later use in *Brown* without running the risk of reversal.[148] The NAACP brief stated that all distinctions based solely on "race and color" violated the Fourteenth Amendment.[149] The NAACP asked the Court to reject *Plessy* altogether by calling it "a departure from the main current of constitutional law."[150]

Carter was aware that there were "cases presently pending in Oklahoma, Texas, Louisiana and South Carolina which involve state educational segregation statutes which may require a Supreme Court ruling in the near future on the constitutional issue of the *Méndez* case."[151] Thus, the NAACP was acutely aware that the outcome of the *Méndez* case could impact the public school segregation cases on their docket.

Méndez was the first time JACL intervened in a civil rights lawsuit involving another group.[152] While the NAACP attacked *Plessy,* the JACL mounted an attack on the California Education Code and for good reason. Plaintiffs of Chinese descent had won a California Supreme Court victory decades earlier that ordered Asian students, in the absence of state law to the contrary, to be integrated into California schools.[153] But that victory was short lived. By 1921, the California legislature responded multiple times to amend the school segregation codes to ban children "of Chinese, Japanese, or Mongolian parentage" from attending white schools.[154]

While Marcus' "other white" argument left the California Education Code intact, JACL argued that California school segregation laws should be voided. Fresh from the world-changing events in Nazi Germany, JACL made connections between California's racial and ethnic policies and Nazism.[155]

On April 14, 1947, the justices of the Ninth Circuit Court of Appeals unanimously upheld the district court decision and injunction.[156] The Ninth Circuit, however, retreated from Judge McCormick's ringing denunciation of segregation. Ninth Circuit Court of Appeals Judge Albert Lee Stevens' opinion was more modest and stuck to narrow constitutional

and legal issues. Judge Stevens adamantly refused to rule on the broader issue of the legality of "separate but equal" based on race or ancestry:

> There is argument in two of the [friend-of-the-court] briefs that we should strike out independently on the whole question of segregation, on the grounds that recent world stirring events have set men to the reexamination of concepts considered fixed. Of course, judges as well as all others must keep abreast of the times but judges must ever be on guard lest they rationalize outright legislation under the too free use of the power to interpret. We are not tempted by the siren who calls to us that sometimes slow and tedious ways of democratic legislation is no longer respected in a progressive society. . . . [W]e are of the opinion that the segregation cases do not rule the instant case and that is reason enough for not responding to the argument that we should consider them . . .[157]

Yet, the court did, however, deny the school district's request to apply the precedent of *Plessy*, not yet overruled, which allowed "separate but equal" public facilities.[158]

The Ninth Circuit upheld the district court opinion on the grounds that the plaintiffs were denied due process as no California law allowed the school boards to segregate Mexican school children.[159] In Orange County, school officials voted against appealing, thus denying the national civil rights groups a chance to argue for a reversal of *Plessy* through amicus briefs before the Supreme Court.[160] Had the school boards voted to appeal and the segregation codes stayed intact, *Méndez* may very well have been the vehicle for the Supreme Court to address the meaning and extent of equal protection under the law.[161]

On opening day of the 1947-48 school year, the Santa Ana school board reversed its ban on Mexican American transfers and former Anglo schools became mixed.[162] One year later, a survey was done to measure the effects of the *Méndez* decision and only 18 percent of schools admitted to operating "Mexican schools."[163]

The *Méndez* decision did establish precedent for important cases in other states. LULAC and the American G.I. Forum would support cases in Arizona and Texas. In 1948 and 1951, federal district courts ruled *de jure* segregation of Mexican American school children was unconstitutional in Texas and Arizona respectively.[164] [See Appendix A on Arizona and Appendix B on Texas].

Thanks to the *Méndez* case creating the space for the legislative repeal, *de jure* segregation in California ended, however, *de facto* segregation increased. Pseudo-scientific IQ tests would be used to track Mexican origin children out of integrated classes into ethnically isolated classes for slow learners, vocational education and mentally disabled students for decades to come.[165] Large numbers of school districts used "free choice" whereby only Mexican origin parents would be given the option to send their child long distances to Anglo schools and white parents would not have to face the dilemma of having their children reassigned to a former-"Mexican school."[166]

The school districts in Orange County became unified within a new Orange High School District in 1953, which reflected a growing trend nationwide.[167] The main motivation appeared to be economic and fear of Mexican American political power.[168] Mexican Americans once again found themselves completely powerless in the new Orange Unified School District.[169]

IV **Brown v. Board of Education** ***and*** **Hernandez v. Texas** – ***The Latino Community's (In)Ability to Use*** **Brown** ***in School Desegregation Efforts***

The 1954 term of the Supreme Court ushered in two landmark cases for communities of color – *Brown v. Board of Education* and *Hernandez v. Texas. Hernandez*, a case decided two weeks before *Brown,* tested whether the Fourteenth Amendment covered only two classes – black and white – or whether wherever a distinct class could be demonstrated equal protection under the law flowed. *Brown*, of course, tested whether segregation per se was a denial of equal protection under the Fourteenth Amendment.

A. **Hernandez v. Texas** – ***Latinos' Equal Protection under the Law but through a Difficult and Elusive Standard***

Thomas A. Saenz, current Vice President of MALDEF's litigation team, has observed that "today we recognize that ethnic discrimination is largely indistinguishable from racial discrimination," but in the 1950's, localities believed "they could hide what was, in intent and effect, racial discrimination, behind a facade of . . . ethnic discrimination," and assume that the courts would find it acceptable.[170] The Supreme Court's first opportunity to establish anti-Mexican discrimination as unlawful racial discrimination came in *Hernandez v. Texas*.[171] The same justices that decided *Brown,* concluded in *Hernandez,* that Mexican Americans constitute a cognizable minority class for equal protection purposes in areas where they are subject to *local discrimination.*[172] Thus, the *Hernandez* Court fashioned a relatively difficult test for Latino victims of discrimination to prevail.

Despite extending the reach of equal protection by a unanimous vote, the two cases differ dramatically. A leading legal scholar has observed:

> In *Brown*, the Court grappled with the harm done through segregation, but it considered the applicability of the Equal Protection Clause to African Americans a foregone conclusion. In *Hernandez*, the reverse was true. The *Hernandez* Court took for granted that the Equal Protection Clause would prohibit the state conduct in question, but wrestled with whether the Fourteenth Amendment protected Mexican Americans.[173]

Ordinarily, under equal protection law, the government may treat two groups of people differently as long as there is some rational reason for the distinction. Over the years, however, the U.S. Supreme Court reviewed governmental actions and decisions more intensively when there is something about either the particular classification or the

particular individual interest at stake that demands a tougher standard. Certain classifications are said to be "suspect" that give rise to heightened scrutiny. Thus, court recognition as an identifiable class is the prerequisite for demanding a court review different treatment under a tougher standard then mere rationality. Thus, *Hernandez* presented the first opportunity for the country's highest court to declare Mexican Americans a suspect class worthy of special court protection, but, sadly, the unanimous court in *Hernandez* did not go as far as it could have.

B. The Road to **Hernandez** *– Intersected with and Diverted from* **Brown**

In the mid-1930's, Texas criminal courts routinely excluded African Americans and Mexican Americans from juries and, when challenged, required the objector to produce direct evidence of racial discrimination.[174] In 1935, however, the Supreme Court in *Norris v. Alabama*[175] held that evidence of longtime exclusion of African Americans from jury service was sufficient proof of unconstitutional discrimination to bring a challenge.[176] In 1944, the Texas Court of Criminal Appeals refused to extend the evidence burden of *Norris* to Mexican Americans: "[i]n the absence of a holding by the Supreme Court of the United States that nationality and race bear the same relation … we shall continue to hold" *Norris* inapplicable to Mexican Americans.[177] The case was appealed to the nation's highest court.

The Supreme Court rejected Texas' argument that an all-white jury was not discriminatory to a Mexican American defendant because, the state argued, that Mexican Americans were white. The *Hernandez* court held that "[t]he Fourteenth Amendment is not directed solely against discrimination due to a 'two-class theory' – that is, based upon differences between 'white' and 'Negro.'"[178] According to MALDEF's Saenz, "the decision in *Hernandez* [remained] unsatisfying because it failed to reject wholly the artificial designation of Mexican Americans as 'white' and to recognize them as a distinct, national class" always entitled to equal protection under federal law.[179] Instead, the Court's ruling required Mexican American challengers, like petitioners in *Hernandez*, to "prove that persons of Mexican descent constitute a separate class … distinct from 'whites'" in a particular local community.[180]

Latino school desegregation strategy did not change after *Brown* because of the peculiarities *Hernandez* created.[181] Under *Hernandez*, a "community attitudes" test stood as the threshold inquiry to a determination of whether Latinos were a group protected by the Equal Protection Clause of the Fourteenth Amendment.[182] Defining Mexican Americans in terms of the existence of local discrimination hindered Mexican Americans in asserting their rights. A legal scholar noted that "[t]he *Hernandez* approach operated to impose an artificially onerous burden on Latino plaintiffs in that not every plaintiff could afford the expense of obtaining expert testimony to prove the required local prejudice . . . ."[183] Another scholar observed that "*Hernandez* committed Mexican Americans to defending their whiteness in future litigation, led them to discount the utility of *Brown*, and kept them too long on what proved to be an unfruitful constitutional path."[184]

C. The Path from Sporadic Equal Protection under **Hernandez** *toward the Full Equal Protection Promise of* **Brown**

Brown should have changed the strategy of Latino civil rights attorneys, making their efforts directed solely at showing segregation and seeking an end to the practice under an equal protection argument, but *Hernandez'* local community test stood in the way.[185] The result was that advocates for Latinos fell back on the old legal argument they best knew prior to *Brown* – the "other white" due process argument. As late as 1970, attorneys argued the old, proven "other white" theory.[186]

It was not until 1970, in *Cisneros v. Corpus Christi Independent School District,* and 1973, in *Keyes v. School District No. One,* (discussed more fully in the next section) that Mexican Americans were held to be "an identifiable ethnic minority group" for the purpose of school desegregation. Thus, Mexican Americans were finally afforded, in theory, the same protection and ease of access to the *Brown* decision and its promise as African Americans.[187]

In the 16-plus year span between *Brown* and *Cisneros/Keyes,* school desegregation policy and remedies evolved rapidly and precedent was set in which Latino groups did not play a role.[188] In addition to a growing trend of post-*Brown* school desegregation court orders, the passage of Title VI of the *Civil Rights Act of 1964* empowered the then-Department of Health, Education and Welfare (HEW) (today the U.S. Department of Education) to investigate school districts receiving federal funds for failure to eliminate race and national origin discrimination. Moreover, organized community pressure brought about greater number of schools entering and implementing desegregation plans in the 1960's and 1970's. Thus, the advances made between *Brown* and *Cisneros/Keyes* were often made without Latino students in mind.

However, the time leading up to *Cisneros/Keyes* was not an easy one for any minority community. Politicians, large-scale school resistance, and the deliberated pace of desegregation frustrated the promise of *Brown.* So, too, would Mexican Americans experience their own widespread resistance to desegregating "Mexican schools."

*D. Frustrating Mexican American Post-***Brown** *Desegregation Efforts through "School Choice," "Texas-Style Integration," One-Way Busing, and Language/Disability Tracking*

The years after *Brown* were tarnished for African Americans with the slow pace of "all deliberate speed,"[189] other procedural delays, and outright resistance. So, too, did the Latino desegregation victories meet with organized resistance.

Southwestern school districts used various evasive schemes to maintain segregated facilities for Mexican origin children despite growing court rulings finding such practices unsupported by federal and state law. "School choice" plans, misleading integration

plans, whites-only permissive transfer policies, one-way public transportation plans, to name a few, were utilized by school officials to perpetuate and prolong the segregation of Latino students.[190]

1. School Choice Plans

"Choice" plans, at times referred to as "school choice" plans and "freedom-of-choice" plans, were not deployed to benefit everyone. Legal historians have noted:

> 'Choice' plans rarely encouraged Anglo children to attend predominately Mexican American schools. On the contrary, they encouraged Anglo children to flee predominately Chicano 'neighborhood schools.'[191]

In the late 1940's and early 1950's, an American G.I Forum survey of school districts around Corpus Christi found school districts maintained the segregated status quo by allowing only white children the option of choosing the school district they wished to attend.[192] The practice lasted for decades. In 1970, a federal civil rights compliance report concluded that in the Bishop, Texas district, students at a predominately white elementary school were sent "choice forms" in the spring preceding the applicable school year, while students at the Mexican elementary school were never given the opportunity to exercise a choice.[193]

2. "Texas-Style Integration"

To delay court-ordered desegregation of all-white schools, and also to obscure its slow pace, school district officials in Texas and elsewhere frequently assigned African Americans and Mexican Americans to the same schools. Federal judges and HEW officials accepted this logic.[194] Under "Texas-style integration," white communities were able to remain in their neighborhood schools while "integrating" African Americans and Mexican Americans.[195]

In 1977, José Cárdenas, then-director of the Intercultural Development Research Association, observed:

> Initially, *Brown v. Board of Education* tended to be prejudicial toward Mexican American children. School districts, faced with the necessity of integrating Black and white children, and the courts having determined that Mexican Americans were white, tended to resolve the problem of desegregation by combining Mexican Americans and Blacks while Anglos continued relatively segregated.[196]

3. One-Way Busing

At times, to comply with desegregation orders, minority schools were closed and converted to non-teaching facilities and those minority children would be bused to predominately white schools. One-way busing plans failed consistently to provide adequate transportation for minority participants in extracurricular activities, parental involvement activities and for responding to emergency situations.[197]

Some courts struck down such plans because they placed an unfair burden on Latinos and other minorities.[198] However, where school districts implemented non-court ordered, voluntary desegregation plans with one-way minority busing, courts seemed more reluctant to strike down the practice.[199] This reluctance was based on the court's view that voluntary efforts should be encouraged.

4. Tracking

Language and disability screening, without meaningful tests, were used to isolate Latino children. Separate classrooms, operated without regard for linguistic abilities of students, were often introduced in response to the abolition of "Mexican schools." For example, during the 1970 school year, the fourth grade remedial class in a Bishop, Texas elementary was composed solely of African Americans and Mexican Americans, while the fifth grade remedial class was entirely Latino.[200] This was the case even though there were Anglos in both grades with lower test scores.[201]

Limited English proficient Latinos were classified as "educationally mentally retarded" partially on the basis of intelligence tests given in English.[202] In practice, Mexican American children were frequently relegated to special education classrooms simply because many teachers conflated low linguistic ability with lessened intellectual ability. For example, Mexican origin children in the early-1970's were at least twice as likely to be placed in special education as their white peers.[203]

E. Making **Brown** *Fully Available to Brown People – Growing Call for Mexican Americans to be Recognized as a Minority Group*

Prior to *Brown*, several generations of Mexican American lawyers had won school segregation cases and thus established their own useful precedents, apart from the African American efforts, in both federal and state courts that prevailed on due process theories. Mexican American lawyers relied on the "other white" due process arguments. One legal historian stated:

> In the years that followed *Brown*, Mexican American lawyers – in numerous complaints, briefs, and courtroom arguments – continued to rely on [a] separate canon [than African Americans]. [Legal advocates for Mexican Americans] disregarded *Brown*'s usefulness to achieving their

> goals and distanced their clients' particular claims from the constitutional implications of the *Brown* decision. Because the Mexican American lawyers maintained this separate path, the revolution in civil rights litigation that commenced with *Brown* by-passed Mexican Americans until the late 1960's.[204]

Yet, three social/political forces of the 1970's helped shift Mexican American attorneys away from the "other white" posture to minority status.

1. The Grassroots' Chicano Movement

In the early 1970's, "professionals, *campesinos,* students, barrio youth, women, and many other-middle- and working-class groups" joined the growing Chicano movement.[205] Although each of these groups had distinct ideals about how to dislodge white privilege and improve Mexican American life, the majority believed that the political method of moderation was ineffective and no longer viable.[206] Thousands of Mexican origin students and community members participated in a variety of legal and political actions – boycotting public schools, holding rallies, picketing schools, negotiating with school officials, and establishing "*huelga*" (strike) schools, and re-engaging in litigation efforts that had died in the 1950's.[207]

The actions of Chicano activists in Houston, in the early-1970's, underscored the need for a shift in Mexican American desegregation efforts and strategy. Activists responded boldly in response to the Houston school district's effort to circumvent a desegregation court order by classifying Mexican American children as "white" to integrate African Americans and Mexican Americans while leaving white schools untouched for desegregation purposes.[208] The Mexican American community in Houston responded by demanding that they be recognized as a minority group. Their slogan during their school boycott was they were "Brown, not white!" The Houston strike lasted until 1972, when courts and the school finally recognized Mexican Americans as a distinct minority group for equal protection purposes.[209]

2. Federal Desegregation Efforts

Many of the established leaders within the Mexican American community resisted the Chicano movement's innovations in community identity. Yet a variety of legal tools that proved helpful in refashioning ethnic identity became available to the mainstream leaders during the 1960's and felt in the 1970's.

The 1964 *Civil Rights Act*, for example, which authorized federal officials to withhold funds from states that allowed racial discrimination, also extended similar protections to "national origin" minorities.[210] The statute authorized the HEW to issue goals and guidelines for school desegregation; to which a 1965 ruling by the Fifth Circuit Court of Appeals declared that federal district judges should give "great weight."[211] Thus,

national origin minority claims became a viable alternative to "other white" claims in the southwest.

Yet, HEW did little to breathe life into prohibitions against national origin discrimination. For example, as it investigated allegations of racial discrimination, HEW initially collected and published statistics only in black and white terms.[212] Additionally, when school districts under review by HEW proposed "Texas-style integration," where African Americans students would be transferred to Mexican schools because Mexican Americans students were argued to be "white," as a viable compliance effort, federal judges and HEW examiners accepted this logic. Thus, the national origin protections of the 1964 Act became an empty promise in federal officials' hands.

HEW examiners began to accumulate evidence of discrimination against Mexican Americans only after Hector Garcia, former-head of the American G.I. Forum, in his new role as a member of the U.S. Civil Rights Commission, criticized HEW for failing to answer Mexican Americans' complaints.[213] In 1967, HEW shifted to publishing data on black, white, and "other" groups.[214] The last category included "any racial or national origin group for which separate schools have in the past been maintained or which are recognized as significant 'minority groups' in the community."[215] HEW cited "Mexican American," "Puerto Rican," "Latin," "Cuban," in part, as examples "other" groups.[216] Later, HEW published separate statistics on "Spanish Surnamed Americans" and issued a series of "Mexican-American studies."[217]

3. Establishment of a National Legal Organization to Advance Latino Civil Rights

During a conversation between San Antonio attorney Pete Tijerina and LULAC members to discuss the viability of bringing a jury discrimination suit, an unspoken need of the community was brought to the forefront. After several conversations, it became apparent the need for a more sustained legal effort on behalf of the Mexican American community on all legal fronts – police brutality, employment discrimination, and school segregation.[218]

Tijerina contacted Jack Greenberg from the NAACP LDF to ask for advice on establishing a Mexican American legal defense modeled after the NAACP's legal legacy. In 1968, after securing foundation backing, Tijerina opened MALDEF's doors in San Antonio.

MALDEF rapidly responded to the growing anger in the Mexican American community over the conditions of education. In Texas, MALDEF's initial efforts in education litigation focused on defending Mexican American individuals punished by school officials for engaging in civil rights or political activities.[219] MALDEF also supported the Mexican American community's efforts to challenge inequitable financing of the public school system and its denial for opportunity of children who lived in financially disadvantaged school districts. For instance, in 1968 MALDEF supported the plaintiffs

in the *Rodriguez v. San Antonio Independent School District*[220] case. On March 12, 1973, the Supreme Court in that case declared education equity financing to be an issue for the political process at the state level.[221]

MALDEF's primary concern, however, in education litigation was eliminating segregated public schools for Mexican American children and promoting equal educational opportunity within them.[222] One historian noted that:

> MALDEF first got involved in desegregation activities as a result of . . . [HEW's] indifference to Mexican American concerns as it dismantled segregated school facilities in black-white communities throughout seventeen southern states, including Texas. . . . Title VI of the *Civil Rights Act of 1964* mandated HEW to enforce the act's provisions against discrimination on basis of race, color, or national origin by any agency receiving federal funds. . . . As a result of the federal government's enforcement, more schools were desegregated in the first four years after the *Civil Rights Act* than in the fourteen years from the *Brown* decision to the passage of the act. . . . [HEW] negotiated over eight hundred voluntary desegregation plans . . . .[223]

HEW officials tended to view Mexican Americans as white for desegregation purposes accepting voluntary plans that allowed African Americans and Mexican Americans to be integrated while white students were left unaffected. Additionally, HEW was unwilling to seek elimination of "Mexican schools" in communities where there were few if any African American students.[224] As a result of HEW's laxity in seeking compliance, MALDEF began filing lawsuits against local school districts that had been investigated by HEW but against whom no action had been taken.[225]

During the latter years of the 1960's, the rebellious nature of Mexican American high school students and federal government's indifference to discrimination of this minority group in the schools shaped MALDEF's objectives and strategies. Factors external to MALDEF continued to shape its litigation strategies in the 1970's. Of primary importance in the evolution of its desegregation strategy was the *Cisneros* decision.[226] As a friend-of-the-court intervener, MALDEF's legal expertise and funds ultimately supported the *Cisneros* suit that would finally confront and overcome the "other white" legacy.

V **Cisneros** ***and*** **Keyes** – ***Mexican Americans Recognition as an Identifiable Minority Group under the Equal Protection Clause***

Two federal cases completed the shift from "other white" to minority status for Mexican Americans – *Cisneros v. Corpus Christi Independent School District*[227] and *Keyes v. School District No. One.*[228] Each case provided the legal grounding for Latino attorneys to argue under and seek full implementation of *Brown* on behalf of Latino students.

A. Cisneros v. Corpus Christi Independent school District

Corpus Christi steelworker and union member Jose Cisneros' children attended majority Mexican American schools and they complained about the dilapidated and dirty conditions of their schools.[229] Cisneros had no luck in persuading school administrators to repair the segregated facilities for over two years. As he investigated the inequities, Cisneros discovered that the curriculum and resources available to his children were substandard to the courses and programs offered to students in the majority white schools.[230] A 1967 HEW study of Corpus Christi schools found 83 percent of Corpus Christi's Mexican American and African American children attending schools that were identifiable as majority-minority schools.[231]

When the Corpus Christi school board refused to institute HEW's suggested improvements, Cisneros sought backing from the U.S. Steel Workers Union for a legal challenge.[232] It apparently was the first, and perhaps the only, public school desegregation lawsuit to be financed by a labor union.[233] Cisneros and more than two dozen fellow unionists, African Americans as well as Mexican Americans, retained counsel – James DeAnda, an attorney who had brought many older "other white" cases.

A legal historian observed:

> DeAnda focused his [Corpus Christi] complaint on a [then-]novel contention that the *Brown* rationale should apply to, and condemn, segregation of Mexican Americans. He marshaled evidence from history, sociology, and demography to demonstrate that despite being classified "white," Mexican Americans in Texas suffered widespread discrimination at the hands of Anglo Texans.[234]

In essence, DeAnda abandoned the "other white" due process legal strategy used by LULAC and the American G.I. Forum during the 1940's and 1950's for the NAACP LDF's equal protection argument used in African American desegregation cases. DeAnda also submitted to the court that when the Corpus Christi school board drew attendance zones to match residential segregation patterns, they "had transmuted *de facto* segregation into *de jure* segregation," which the Supreme Court condemned.[235] DeAnda argued that the court had the authority and the duty to apply the equal protection rationale of the *Brown* decision to Mexican Americans. The trial court agreed.

The *Cisneros* trial court reasoned that while *Brown* and its progeny had been specifically concerned with the segregation of blacks and whites, "it is clear . . . that these cases are not limited to race and color alone."[236] The *Cisneros* court rejected any interpretation of the *Brown* decision, or of the Fourteenth Amendment's equal protection clause, that claimed that "any other group which is similarly or perhaps equally, disadvantaged politically and economically, and which has been substantially segregated in public schools," should receive less effective constitutional protection than African

Americans.[237] *Cisneros* held that Mexican Americans, because they were an identifiable minority group, were "entitled to all the protection announced in *Brown*."[238]

The *Cisneros* court reasoned:

> Mexican-Americans, or Americans with Spanish surnames, or whatever they are called, or whatever they would like to be called, Latin-Americans, or several other new names of identification--and parenthetically the court will take notice that this naming . . . phenomena is similar to that experienced in the Negro groups: black, Negro, colored, and now black again, with an occasional insulting epithet that is used less and less by white people in the South, fortunately. Occasionally you hear the word "Mexican" still spoken in a derogatory way in the Southwest--it is clear to this court that these people for whom we have used the word Mexican-Americans to describe their class, group, or segment of our population, are an identifiable ethnic minority in the United States, and especially so in the Southwest, in Texas and in Corpus Christi.[239]

In addition, the judge said that he had taken judicial notice of "congressional enactments, governmental studies and commissions," and court opinions that seemed either explicitly or implicitly to accept that Mexican Americans endured discrimination.[240]

The court ruled:

> [P]lacing Negroes and Mexican-Americans in the same school does not achieve a unitary status as contemplated by law. A unitary school district can be achieved here only by substantial integration of Negroes and Mexican Americans with the remaining student population of the district.[241]

Recognizing the important constitutional stride forward made, DeAnda asked MALDEF to intervene when the *Cisneros* decision was appealed.[242] MALDEF responded by filing a friend-of-the-court brief with the Fifth Circuit Court of Appeals.[243]

MALDEF and other Latino civil rights groups were elated when the trial court decision in *Cisneros* was upheld by the Fifth Circuit as this opened the door to equal protection strategies and introduced a new group into the national desegregation process.[244] This finding was significant as federal courts could, but did not have to, consider Mexican Americans students in determining desegregation remedies. Thus, gaining universal judicial acceptance of Mexican Americans as an identifiable minority group became MALDEF's primary concern.

B. Keyes v. School District No. One

The *Keyes* case, originally filed by African Americans in Denver,[245] was a first for the Supreme Court for a couple of reasons. First, it was a first for the Court in that it would have to decide, for once and for all, how to treat Mexican American children in the desegregation process. The issue of Mexican American segregation was not introduced until the remedy phase at the trial court level when the Congress of Hispanic Educators, of which MALDEF was a member, intervened.[246] MALDEF also filed a friend-of-the-court brief when the *Keyes* decision was appealed to the Supreme Court.[247] The intervention of Latino plaintiffs and MALDEF's friend-of-the-court filing forced the Supreme Court to settle whether "though of different origins, Negroes and Hispanos . . . suffer identical discrimination in treatment when compared with the treatment afforded Anglo students."[248]

Second, the *Keyes* case was the first case of segregation in which the Supreme Court considered whether segregation that had not been statutorily mandated was illegal too. In reaching its conclusion, the Supreme Court drew a distinction between *de jure* and *de facto* segregation and set an extremely high, if not impossible, standard for future challenges based on *de facto* segregation.[249]

Once the Supreme Court made a final determination on the legal status of Mexican Americans, MALDEF began to concentrate its resources on reaching its second primary goal of ensuring equal educational opportunities within desegregated schools.[250] To a large extent MALDEF began to promote bilingual and bicultural education in desegregated settings as the solution to the unique needs of English language learner, Latino children.[251]

Conclusion

As the *Brown* decision is commemorated, one can infer several lessons for the next fifty years as minority communities try to reach *Brown*'s promise of an equal educational opportunity. First, school exclusion and isolation tactics have shifted throughout the years. As one practice is declared illegal, bad-faith school actors can and have shifted to rely on purported alternative rationales to secure the same result – one where the schools and spaces minority children sit in to learn everyday remain separate and unequal. The status quo has never benefited any minority population.

How racial and ethnic isolation is challenged and halted have become challenges unto themselves. Since the 1970's courts have retreated from *Brown* and removed meaningful remedies to reach its promise. However, *Brown* stands as an aspiration for all minority communities – it is possible, at times, to stand up against unfairness and prevail. Thus, the work that lies ahead for the Latino community, like all minority communities, is to find a new path to the promise of *Brown.*

The history of Latino desegregation after the *Brown* decision was predominated with an effort to establish the legal basis for Latinos to argue *Brown*. Yet, just as Latinos reached the promise of *Brown* the courts began their dismantling of remedies to arrive at *Brown.* Thus, another important lesson of the desegregation era is the ongoing need for inter-ethnic coalition. As Latinos are declared the largest minority group in the United States, we must be vigilant that future school policies and solutions do not divert any minority group away from the ultimate goal – seeking the new path to the full enforcement of *Brown*'s promise of an equitable education for every child.

Appendix A: *Arizona Segregation* – Romo v. Laird[252] *and* Gonzalez v. Sheely[253]*:*

In the early 1920's, the board of trustees for Tempe's Elementary School District No. 3 had entered into a formal arrangement with the local teacher's college, the Tempe State Teacher's College (now Arizona State University), to use the Eighth Street School, restricted to only Mexican origin children, as a student teacher training facility.[254] Aldopho "Babe" Romo Sr., a Mexican American rancher in an eastern suburb of Phoenix, sued the superintendent and board of trustees for refusing to admit his four children – Antonio, age fifteen; Henry, age fourteen; Alice, age eleven; and Charles, age seven – to the Tenth Street School, where fully licensed teachers taught the curriculum.[255] The board of trustees had designated the Tenth Street School for "children of the white race" and the Eighth Street School for children of "Spanish-American" or "Mexican-American" descent.[256]

The placement of children of Mexican descent posed an educational dilemma for the school district as these families were often U.S. citizens and the Attorney General of Arizona had released an advisory opinion that Arizona's education code did not allow for the segregation of Mexican students.[257] Yet, the school district considered Latinos so culturally "different" as to require separate placements. In order to reconcile these differences, the *Romo* court upheld *Plessy* doctrine allowing the school district, under Arizona's education code, to segregate groups of students for pedagogical reasons, such as speaking Spanish, as long as the children's educational opportunities were "equal."[258]

In what was to be the exception to the rule in Latino school desegregation cases, the *Romo* legal team framed their claim in similar terms to many African American school desegregation cases. The *Romo* team sought to bankrupt the school through enforcement of strict equality under the "separate but equal" doctrine. The judge in *Romo* held "that defendants [had] failed in their duty to the plaintiff in not providing teachers of as high a standard of ability and qualifications to teach the children of plaintiff in the said Eighth Street School"[259] and ordered that the four Romo children be permanently admitted to the school with fully licensed teachers, despite the *Romo* team requesting relief for all Latino students in the district. There is no record of an appeal. Instead, the board of trustees responded to these "[u]nforseen [sic] circumstances" by employing certified teachers in the "Mexican school," which allowed them to continue to segregate all the other Mexican children at the Eighth Street School until the 1950's.[260]

Years later, Arizona's Mexican American community would strike a greater victory. In *Gonzalez v. Sheely*, Mexican Americans sued the board of trustees of the Tolleson Elementary School District of Maricopa County in federal court. The *Gonzalez* court found that defendants had segregated Mexican American school children and held that this segregation violated the plaintiffs' due process and equal protection rights under the Fourteenth Amendment.[261] Citing the Ninth Circuit *Westminster School District v. Méndez* ruling as controlling, the court ordered the elementary school open to all students "regardless of lineage."[262] In reaching its conclusion, the *Gonzalez* court anticipated the reasoning in *Brown* by recognizing that segregation placed a stamp of inferiority on Mexican Americans, which rejected the conclusion reached in *Plessy.*[263]

Appendix B: ***Texas Segregation: From* Independent School District v. Salvatierra**[264] ***to* Hernandez v. Driscoll Consolidated Independent School District**[265]*:*

In February 1930, the citizens of Del Rio, Texas adopted by ballot a bond "for the purpose of constructing and equipping public free schools buildings" including a five room addition to the two-room elementary "Mexican school."[266] In *Independent School District v. Salvatierra*, LULAC found counsel which sought to enjoin the expansion of segregation of Mexican Americans students in the district. The trial court issued an injunction prohibiting further segregation, but the Texas appellate court reversed.

Although the Texas Court of Civil Appeals agreed in theory that "school authorities have no power to arbitrarily segregate Mexican children, assign them to separate schools, and exclude them from schools maintained for *children of other white races*, merely or solely because they are Mexicans,"[267] it did not hold Del Rio officials guilty of such actions. The appellate court distinguished between "other white race" segregation from segregation based on linguistic difficulties and migrant farming patterns.[268] The case record is irreconcilable with the court's reasoning. Specifically, the *Salvatierra* appellate court let segregation stand despite clear evidence that the district practiced arbitrary and malicious segregation. For example, white "American" migrant children who started school late were not placed in the "Mexican school."[269] A prominent legal scholar stated, "[t]hus, the [Del Rio] school board's assertion that it segregated children in the 'Mexican school' because they started school late was a mere pretext."[270] Moreover, the superintendent testified that the curriculum in the "Mexican school" was dedicated to English instruction, art appreciation, and "a good deal of handicraft work" as he believed those were the only areas Mexican students needed or could excel in.[271]

LULAC members were greatly disheartened by this decision. Lacking financial resources, an adequate professional staff, and an atmosphere conducive to legal challenge, LULAC lessened its stress on legal challenges to segregation and instead emphasized other measures – local political action, legislative strategies, and college scholarship fund drives.[272] "We would get acquainted with superintendents, principals and teachers" stated one of the original founders of LULAC, "and we tried to persuade them to do away with segregation and with discriminatory education practices. We gained more by getting acquainted with administrators and elected officials than by demonstrations."[273]

The situation in Texas would improve over a decade later. On April 8, 1947, in response to *Méndez*, the Attorney General of Texas, Price Daniel, issued a legal opinion forbidding the separate placement of Mexican children in the state's public schools. Segregation based on national origin or racial ancestry was prohibited, Daniel reported, but if "based solely on language deficiencies or other individual needs or aptitudes, separate classes or schools may be maintained for pupils who, after examinations equally applied, come with such classifications."[274]

Gus Garcia, a Texas attorney and LULAC member, sought clarification of the Attorney General's allowance of segregation on language deficiencies. The Attorney General replied, "We meant that the law prohibits discrimination against or segregation of Latin Americans on account of race or descent, and that the law permits no subterfuge to accomplish such discrimination."[275] But the legal opinion was ineffective since no mechanism to secure compliance was established. Consequently, additional legal efforts to establish the unconstitutionality of segregation practices in Texas were pursued by LULAC and the American G.I. Forum.[276]

Between January and May of 1948, LULAC and the American G.I. Forum worked to raise funds on behalf of the *Delgado v. Destrop Independent School District* case. In *Delgado*, with Garcia serving as counsel, the parents of school-aged Mexican American children charged that school officials in four communities in central Texas were segregating Mexicans contrary to the law.[277] The federal Western District Court of Texas ruled that placing students in different buildings was arbitrary, discriminatory, and illegal. Exceptions, however, were granted in cases where children did not know English and the policy under review limited segregation to early grade levels. Such loopholes enabled rogue school districts to circumvent the ruling.

In response to the *Delgado* decision, the State Superintendent of Public Instruction and the Texas State Board of Education, issued regulations regarding the illegality of discriminatory school practices such as segregation of Mexican origin students. One year after this desegregation policy was issued, a Mexican American student group at the University of Texas sought to enforce the ruling by seeking the disaccreditation of the Del Rio school district.[278] On February 12, 1949, the Superintendent of Public Instruction canceled Del Rio's accreditation.[279] Behind the scenes politics over the summer led to replacement of the decision makers and overturning of disaccreditation decision, leaving the *Delgado* decision and the implementation policies unapplied.[280]

In the early 1950's, LULAC and the American G.I. Forum continued to pressure Texas officials to enforce the *Delgado* desegregation mandate. In response and to impede desegregation progress, the State Board of Education established an elaborate redress mechanism deferential to local self government and control.[281] Thus, Mexican American advocates had to go district by district to seek compliance with *Delgado*. After years of little progress, Mexican American attorneys filed approximately 15 more desegregation cases across the state throughout the rest of the decade.[282] Some cases were dismissed on questionable grounds, but the ones that did reach a court resulted in findings upholding the Mexican American community's claims of discrimination.[283]

In *Hernandez v. Driscoll Consolidated Independent School District,*[284] a federal court held that the practice of separate grouping of students of Mexican extraction was arbitrary and unreasonable because it was not based on an individual's capacity to speak the English language. Again, school districts throughout the 1950's relied on other techniques to avoid desegregation of Mexican origin children, including subterfuges such as "freedom of choice" plans and purported "language handicaps."[285]

LULAC and the American G.I Forum came to perceive litigation as futile, since "there were so many subterfuges available to bar effective relief."[286] No further school desegregation was filed on behalf of the Latino community in Texas until the late 1960's when the Latino community would have its first legal defense fund – MALDEF, the Mexican American Legal Defense and Educational Fund.[287]

Appendix C: *California Case:* **Alvarez v. Owen**[288] ***(a.k.a. The Lemon Grove Incident)***

On July 23, 1930, the Lemon Grove school board discussed what to do with the more than 75 students of "Mexican parentage" attending a local grammar school. Without giving notice to the parents of the Mexican origin students, the all-white board decided to abandon integrated classrooms and build a separate school solely for Mexicans.[289]

In January 1931, the principal of the Lemon Grove Grammar School, Jerome T. Greene stood at the door of the 5 room school and directed incoming Mexican origin students to go to a new facility, a wooden, 2 room structure that came to be called *la caballeriza* (the barn).[290] Instead, the students returned home and the Mexican parents organized a boycott of the separate school. Enrique Ferreira, the Mexican consul, put the parents in touch with two lawyers. The attorneys filed a request for a court order to prevent the school board from forcing segregated schooling on the children.[291] The parents chose student, Roberto Alvarez, to be the lead plaintiff in the suit.

The claim, in the Superior Court of San Diego County, alleged that the district was unlawfully segregating Latino students.[292] While the claim was pending, the California legislature took up a bill to permit the segregation of Latinos. The bill was defeated, due in part, perhaps, to the Lemon Grove case.[293]

In the litigation, the superior court required the school district to justify its decision to segregate, and the district responded with need for an Americanization school "where such children can be given instruction more suitable to their capabilities" and "where such children can be brought up to normal."[294] The court ruled in favor of the Latino plaintiffs and made clear that "the laws of the State of California do not authorize or permit the establishment or maintenance of separate schools for the instruction of pupils of Mexican parentage, nationality, and/or descent."[295] The court, however, considered the state law permitting the segregation of African and Indian students and concluded that because Latinos were not African or Indian, their segregation was not defensible under state law.[296] The case was not appealed, and it was never mentioned in the minutes of a Lemon Grove school board meeting.[297]

Méndez, over a decade later, would be the case to create the political environment that would finally undermine the segregated school code of California benefiting all students of color. [See Part III above for information on *Méndez*].

ENDNOTES

[1] *Cisneros v. Corpus Christi Indep. Sch. Dist.*, 324 F. Supp. 599, 612 n. 38 (S.D. Tex. 1970) (citing the testimony of Dr. Thomas Carter, Professor of Education and Sociology, University of Texas at El Paso: "in a number of places in the southwest, in the past, certain facilities . . . were not open to Mexican-Americans. There are such signs as 'Mexicans and Niggers Stay Out.' And also, 'Mexicans and Dogs not Allowed in Restaurants, Barber Shops,' so forth.").

[2] Guadalupe San Miguel, Jr., *Let Them All Take Heed: Mexican Americans and the Campaign for Educational Equality in Texas, 1910-1981*, 32 (1987) (quoting a rural, southwestern school superintendent).

[3] 251 S.W.2d 531, 535 (Tex. Crim. App. 1952).

[4] Guadalupe San Miguel, Jr., *Brown, Not White: School Integration and the Chicano Movement in Houston* 89 (2001) (discussing slogans and chants used in an August 1970 protest of the Houston Independent School District's efforts to circumvent a court desegregation order by "integrating" African Americans with Mexican Americans on the claim Mexican Americans were white).

[5] 467 F.2d 848, 869-70 (5th Cir. 1972).

[6] James A. Ferg-Cadima is a legislative staff attorney with MALDEF (the Mexican American Legal Defense and Educational Fund). My thanks go to Vibiana Andrade, Thomas A. Saenz, Marisa Demeo, and Hector Villagra for commenting on earlier drafts, to Nina Perales, Sandra Robbie, and Sylvia M**J**ndez for sharing rare and difficult to locate sources and images, and to Daniel Luna, Jessica Salsbury, Alejandro T. Reyes, and Gina D'Andrea for their outstanding research assistance.

[7] *See generally* Gary Orfield and Susan Eaton, *Dismantling Desegregation: the Quiet Reversal of* Brown v. Board of Education 1 (1996). *See also* Erika Frankenberg and Chungmei Lee, Harvard Civil Rights Project, *Race in American Public Schools: Rapidly Resegregating School Districts* 1 (2002) (finding that "[f]or Latinos, the story has been one of steadily rising segregation since the 1960's and no significant desegregation efforts outside of a handful of large districts.").

[8] *See* Charles Wollenberg, *All Deliberate Speed: Segregation and Exclusion in California Schools, 1855-1975,* 109 (1976).

[9] *See* Gilbert G. Gonzalez, *Chicano Education in the Era of Segregation* 19-20 (1990).

[10] *See* Vicki Ruiz, *We Always Tell Our Children They Are Americans:* Méndez v. Westminster *and the California Road to* Brown v. Board of Education *in* 200 *College Board Review* 22 (2003) (noting rise in restrictive covenants between the 1920's and 1950's).

[11] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at113.

[12] *See* Jorge C. Rangel and Carlos M. Alcala, *Project Report: De Jure Segregation of Chicanos in Texas Schools,* 7 Harv. C.R.-C.L. L. Rev. 307, 308 (1972) (mentioning, in part, segregated drugstores, restaurants, movie theaters, hotels, beauty shops, bowling allies, cemeteries, and swimming pools); *Cisneros*, 324 F. Supp. at 612 n. 38 (S.D. Tex. 1970) (citing the testimony of Dr. Hector Garcia whereby he testified that the "Corpus Christi, Memorial Hospital has separate wards, surgical and maternal" for Mexicans and whites).

[13] 324 F. Supp. at 612 n. 38 (S.D. Tex. 1970) (citing the testimony of Dr. Thomas Carter, Professor of Education and Sociology, University of Texas at El Paso).

[14] *See, e.g., Hernandez v. Texas,* 347 U.S. 475, 479 (1954).

[15] *See, e.g., Hernandez,* 347 U.S. at 480.

[16] *See* San Miguel, Jr. *Brown, Not White, supra* note 4, at 20 (citing the segregation at Rusk Elementary in the El Segundo *barrio* of Houston).

[17] *See* Rangel and Alcala, *Project Report, supra* note 12, at 308 (mentioning cemeteries); Juan Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought,* 85 Calif. L. Rev. 1213, 1250 (1997) (mentioning lynching of people of Mexican origin).

[18] *See, e.g., Lopez v. Seccombe*, 71 F. Supp. 769 (S.D. Cal. 1944) (finding constitutional violation when persons of Mexican or Latin descent had "been excluded, barred and precluded" for several years from using a public park, playground, swimming pool, bathhouse and other facilities solely because of their Mexican and Puerto Rican ancestry).

[19] *See* Margaret E. Montoya*, A Brief History of Chicana/o School Segregation: One Rationale For Affirmative Action,* 12 La Raza Law Journal 159, 163 (2001).

[20] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at 113.

[21] *See* Rubén Donato, *The Other Struggle for Equal Rights: Mexican Americans during the Civil Rights Era* 13 (1997).
[22] *See* Donato, *The Other Struggle for Equal Rights, supra* note 21, at 13 (citing the work of Gilbert Gonzalez).
[23] *See* Rangel and Alcala, *Project Report, supra* note 12, at 313.
[24] *Méndez v. Westminster Sch. Dist*., 64 F. Supp. 544, 550 (S.D. Cal. 1946).
[25] *Méndez,* 64 F. Supp. at 550.
[26] *See* Donato, *The Other Struggle for Equal Rights, supra* note 21, at 14.
[27] *See, e.g., id.* at 12.
[28] *Id.* at 16-17 (1997) (citing Meyer Weinberg *A Chance to Learn* 147 (1977)).
[29] *See* Rangel and Alcala, *Project Report, supra* note 12, at 319-20 (citing U.S. Comm'n on Civil Rights, *Mexican-American Education Study, Report 1: Ethnic Isolation of Mexican Americans in the Public Schools in the Southwest* 7 n.1 (1971)).
[30] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 22.
[31] *See* Rangel and Alcala, *Project Report, supra* note 12, at 362.
[32] Ian F. Haney Lopez, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit,* 85 Cal. L. Rev. 1143, 1199 (1997) (citing the *Hernandez v. Texas* trial transcript record at 84-87).
[33] *See* Rangel and Alcala, *Project Report, supra* note 12, at 362.
[34] *See* Rangel and Alcala, *Project Report, supra* note 12, at 363.
[35] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at118.
[36] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at118.
[37] *See* History Matters, *Fighting Discrimination in Mexican American Education available at* http://historymatters.gmu.edu/d/6584 (last visited February 3, 2004).
[38] *See* Rangel and Alcala, *Project Report, supra* note 12, at 320.
[39] *See* Donato, *The Other Struggle for Equal Rights, supra* note 21, at 16.
[40] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at117.
[41] *See* Rangel and Alcala, *Project Report, supra* note 12, at 320.
[42] *See* Donato, *The Other Struggle for Equal Rights, supra* note 21, at 17.
[43] *See id.* at 17.
[44] *See id.* at 19.
[45] *See id.* at 21-22 (1997).
[46] Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 37.
[47] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at113-14.
[48] *See* Donato, *The Other Struggle for Equal Rights, supra* note 21, at 16.
[49] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 22.
[50] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 22 (citing a Pauline R. Kibbe study of one west Texas school in 1943).
[51] *See* Donato, *The Other Struggle for Equal Rights, supra* note 21, at 15.
[52] Rangel and Alcala, *Project Report, supra* note 12, at 355 (citing an intake statement taken by Alberto Huerta, MALDEF administrative assistant in San Antonio, Texas).
[53] Rangel and Alcala, *Project Report, supra* note 12, at 356 (citing intake statement from Segun, Texas parents taken by Alberto Huerta, MALDEF administrative assistant in San Antonio, Texas).
[54] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 44.
[55] *See* San Miguel, Jr., *Let Them All Take Heed, supra* note 2, at 49.
[56] Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 102.
[57] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 105 (citing Carey McWilliams, *Ill Fares the Land: Migrants and Migratory Labor in California* 256 (1942)).
[58] Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 100 (1990) (citing Amber A. Warburton, Helen Wood, and Marian M. Craine, *The Work and Welfare of Children of Agricultural Laborers in Hidalgo County, Texas* 1 (1943)).
[59] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at124.
[60] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at116-17.
[61] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at116-17.
[62] *See* George A. Martinez, *The Legal Construction of Race: Mexican-Americans and Whiteness,* 2 Harv.-Latino L. Rev. 321, 322 (1997).

[63] *See* Martinez, *The Legal Construction of Race, supra* note 62, at 322.
[64] Steven H. Wilson, *Brown Over "Other White": Mexican Americans' Legal Argument and Litigation in School Desegregation Lawsuits* 21 Law & Hist. Rev. 145, 152 (2003) (summarizing the argument of the government resisting the ability of Mexicans to naturalize). *See also In re Rodriguez,* 81 F. 337, 355 (W.D. Tex. 1897) (summarizing the legislative history and construction of naturalization laws for "free white persons" and "persons of African descent"); Charles J. McClain, *Tortuous Path, Elusive Goal: The Asian Quest for American Citizenship*, 2 Asian L.J. 33 (1995) (tracing the historical quest for citizenship by members of various Asian ethnic groups).
[65] 81 F. 337 (W.D. Tex. 1897).
[66] Wilson, *Brown Over "Other White", supra* note 64, at 152 (pulling quotes from trial transcript).
[67] *See* Thomas A. Saenz, Mendez *and the Legacy of* Brown*: A Latino Civil Rights Lawyer's Assessment and Prescription* (forthcoming 2004) (draft publication at 9, on file with author).
[68] 347 U.S. 475 (1954).
[69] 163 U.S. 537 (1896).
[70] *See* Rangel and Alcala, *Project Report, supra* note 12, at 342.
[71] *See id.* at 342.
[72] *See id.*
[73] *See* Saenz, Mendez *and the Legacy of* Brown, *supra* note 67, at 3.
[74] *See id.* at 3.
[75] *See* Richard Kluger, *Simple Justice: The History of* Brown v. Board of Education *and Black America's Struggle for Equality* 132-38 (1975) (chronicling the NAACP strategies influenced by the Garland Fund and the work of Nathan Margold); Mark V. Tushet, *The NAACP's Legal Strategy against Segregated Education, 1925-1950* 1-33 (1987) (chronicling the NAACP strategies influenced by the Garland Fund and the work of Nathan Margold).
[76] No. 21617 (Maricopa Co. Super. Ct. 1925).
[77] *See* Wilson, *Brown Over "Other White", supra* note 64, at 154-55.
[78] No. 21617, slip op. at 1 (Maricopa County Super. Ct. 1925).
[79] 33 S.W.2d 790 (Tex. Civ. App. 1930), *appeal dismissed for w.o.j. & cert. denied*, 284 U.S. 580 (1931).
[80] No. 66625, slip op. at 1 (San Diego County Super. Ct. March 30, 1931).
[81] 64 F. Supp 544 (S.D. Cal. 1946), *aff'd in part sub nom Westminster Sch. Dist. v. Méndez,* 161 F.2d 774 (9th Cir. 1947).
[82] *See* Donato, *The Other Struggle for Equal Rights, supra* note 21, at 139.
[83] Toni Robinson and Greg Robinson, Méndez v. Westminster: *Asian-Latino Coalition Triumphant?,* 10 Asian L.J. 101 (2003).
[84] *See Méndez,* 64 F. Supp. 544, 548 n.5 (S.D. Cal. 1946).
[85] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at 23-27.
[86] *See* Donato, *The Other Struggle for Equal Rights, supra* note 21, at 15 (mentioning the 1935 attempt by the California legislature to pass a law to officially segregate Mexican school children on the basis that they were "Indian").
[87] *See id.* at 15.
[88] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at118.
[89] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 138.
[90] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at116.
[91] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 137.
[92] *See id.* at 138.
[93] *See id.*
[94] *See id.* at 146.
[95] *See id.*
[96] *See id.*
[97] *See id.*
[98] *See id.*
[99] *Id* at 143.
[100] *See id.* at 145.
[101] *See* Méndez v. Westminster: *Para Todos los Ninos, supra* note 110 (interview with Sylvia Méndez); Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 149.

[102] *See* Méndez v. Westminster: *Para Todos los Ninos, supra* note 110 (interview with Sylvia Méndez).
[103] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 149-50.
[104] *See* Méndez v. Westminster: *Para Todos los Ninos, supra* note 110 (interview with Sylvia Méndez); Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 150.
[105] *See* Méndez v. Westminster: *Para Todos los Ninos, supra* note 110 (interview with Sylvia Méndez).
[106] *See id.* (interview with Sylvia Méndez).
[107] *See* Christopher Arriola, *Knocking on the Schoolhouse Door: Mendez v. Westminster, Equal Protection and Mexican Americans in the 1940's*, 8 La Raza Journal 166, 179 (1995) (interview with former student Dan Gomez).
[108] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 150.
[109] *Id*. at 151.
[110] *See* Juan F. Perea, *Buscando America: Why Integration and Equal Protection Fail to Protect Latinos,* 117 Harv. L. Rev. 1420 (2004); Méndez v. Westminster: *Para Todos los Ninos, supra* note 110 (interview with Sylvia Méndez); Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 151.
[111] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 147.
[112] *See* Kristi L. Bowman, Note, *The New Face of School Desegregation* 50 Duke L.J. at 1773 (2001); Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 148.
[113] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 148.
[114] *See id*. at 149.
[115] *See* Arriola, *Knocking on the Schoolhouse Door, supra* note 107, at 183.
[116] *See* Méndez v. Westminster: *Para Todos los Ninos, supra* note 110 (interview with Sandra Méndez v. Duran).
[117] *See* Méndez v. Westminster: *Para Todos los Ninos, supra* note 110 (interview with Sylvia Méndez). *But see* Robinson and Robinson, Méndez v. Westminster, *supra* note 33, at 111 (describing the Santa Ana chapter of LULAC as making the referral). However, a referral from the local LULAC is doubtful, as the founding of this chapter was well after the trial decision in *Méndez.*
[118] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 151.
[119] *See id*. at 151.
[120] *See id*.
[121] *See id*.
[122] *See id*. at 152 (1990).
[123] *See id.*.
[124] *Méndez* , 64 F. Supp. at 545.
[125] 64 F. Supp. at 545.
[126] *See* Robinson and Robinson, Méndez v. Westminster, *supra* note 33, at 112-13 (citing the Brief for the American Jewish Congress as Amicus Curiae at 17; Brief for the ACLU and National Lawyers Guild at 16).
[127] *See* Robinson and Robinson, Méndez v. Westminster, *supra* note 33, at 113.
[128] 64 F. Supp. at 546; Méndez, 161 F.2d at 780.
[129] *See* Robinson and Robinson, Méndez v. Westminster, *supra* note 33, at 113.
[130] *See* Arriola, *Knocking on the Schoolhouse Door, supra* note 107, at 185-86.
[131] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 153.
[132] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at129.
[133] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at129.
[134] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 28.
[135] *See Méndez*, 64 F. Supp. at 547-48, 549.
[136] 64 F. Supp. at 549.
[137] 64 F. Supp. at 549.
[138] *Brown v. Board of Educ.,* 347 U.S. 483, 495 (1954).
[139] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 154 (quoting a master thesis from 1948 that pulls language form the *Columbia Law Review).*
[140] *See id.* at 154 (quoting a master thesis from 1948 that pulls language from the *Yale Law Journal*).
[141] *See id.* (quoting school board minutes that described the parents as "belligerent and antagonistic . . . concerning he matter of the Mexican-American children").
[142] *See id.* at 155 (noting LAO became a LULAC chapter shortly before the appellate court ruled).

[143] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at132.
[144] *Westminster v. Méndez,* 161 F.2d 774, 776 (9th Cir. 1947).
[145] *Méndez,* 161 F.2d at 780.
[146] *See* Brief for the American Civil Liberties Union, and the National Lawyers Guild, Los Angeles Chapter, as Amici Curiae (No. 11310); Brief for the American Jewish Congress as Amicus Curiae (No. 11310); Brief of the NAACP as Amicus Curiae (No. 11310); Brief of the JACL as Amicus Curiae (No. 11310).
[147] *See* Wilson, *Brown Over "Other White", supra* note 64, at 157.
[148]*See id.* at 157.
[149] *See* Brief of the NAACP as Amicus Curiae at 5 (No. 11310).
[150] Brief of the NAACP as Amicus Curiae at 25 (No. 11310).
[151] *See* Eduardo Luna, *How the Black/White Paradigm Renders Mexicans/Mexican Americans and Discrimination Against Them Invisible*, 14 La Raza L.J. 225 (2003) (citing Note*, Segregation in the Public Schools - A Violation of "Equal Protection of the Laws",* 56 Yale L.J. 1059, 1060, fn.12 (1947) (communication to Yale Law Journal from Robert L. Carter)).
[152] *See* Robinson and Robinson, Méndez v. Westminster, *supra* note 33, at 116.
[153] *See Tape v. Hurley,* 66 Cal. 473 (1885).
[154] *See* Joyce Kuo, Comment, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 Asian L.J. 181, 198 (1998) (summarizing the history of legislative exclusion of students of Chinese descent in California); Wollenberg, *All Deliberate Speed, supra* note 8*,* at 72 (summarizing the history of legislative exclusion of students of Japanese descent in California).
[155] *See* Robinson and Robinson, Méndez v. Westminster, *supra* note 33, at 118.
[156] 161 F.2d 774, 781 (corrected version followed in August 1947).
[157] *Id.* at 780.
[158] *Id.*
[159] *Id.* at 781.
[160] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 155 (1990).
[161] *See* Saenz, Mendez *and the Legacy of* Brown, *supra* note 67, at 2.
[162] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 155 (1990).
[163] *See* Wollenberg, *All Deliberate Speed, supra* note 8*,* at132.
[164] *See id.* at131; *Delgado v. Bastrop Ind. School Dist.,* Civil No. 388 (W.D. Tex. June 15, 948); *Gonzales v. Sheely*, 96 F. Supp. 1004 (D. Ariz. 1951).
[165] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 156 (1990); Wollenberg, *All Deliberate Speed, supra* note 8*,* at134 (noting that statewide segregation in California was greater in 1973 than in 1947, notwithstanding the court decisions outlawing segregation).
[166] *See* Gonzalez, *Chicano Education in the Era of Segregation, supra* note 9, at 156.
[167] *See* Arriola, *Knocking on the Schoolhouse Door, supra* note 107, at 202.
[168] *See id.* at 202-03.
[169]*See id.* at 203.
[170] Saenz, Mendez *and the Legacy of* Brown, *supra* note 67, at 8.
[171] *See id.* at 8.
[172] 347 U.S. at 479.
[173] *See* Haney Lopez, *Race, Ethnicity, Erasure, supra* note 32, at 1158.
[174] *See* Saenz, Mendez *and the Legacy of* Brown, *supra* note 67, at 9.
[175] 294 U.S. 587 (1935).
[176] *See* Saenz, Mendez *and the Legacy of* Brown, *supra* note 67, at 9.
[177] *See Hernandez v. State,* 251 S.W.2d 531, (Tex. Crim. App. 1944) (internal quotations omitted).
[178] 347 U.S. at 478.
[179] *See* Saenz, Mendez *and the Legacy of* Brown, *supra* note 67, at 11 n.30.
[180] 347 U.S. at 478-79.
[181] *See* Rangel and Alcala, *Project Report, supra* note 12, at 342.
[182] *See* Haney Lopez, *Race, Ethnicity, Erasure, supra* note 32, at 1157.
[183]George A. Martinez, *Legal Construction of Race: Mexican-Americans and Whiteness,* 2 Harv. Latino L. Rev. 321, 332 (1997).

[184] Wilson, *Brown Over "Other White", supra* note 64, at 164.
[185] *See Rangel and Alcala, Project Report, supra* note 12, at 342-43.
[186] *See id.* at 342.
[187] *See* Montoya*, A Brief History of Chicana/o School Segregation, supra* note 19, at 169-70.
[188] *See* National Inst. of Educ., *Desegregation and Education Concerns of the Hispanic Community Conference Report, June 26-28, 1977,* 11 (1977) (transcribing observation of Dr. Josué González, Department of Education, Southern Methodist University).
[189] *Brown II,* 349 U.S. 294, 301 (1955).
[190] *See* Rangel and Alcala, *Project Report, supra* note 12, at 326; Guadalupe San Miguel, Jr. *The Struggle Against Separate and Unequal Schools: Middle Class Mexican Americans and the Desegregation Campaign in Texas, 1929-1957,* 23 History of Educ. Quarterly at 352 (1983).
[191] *See* Rangel and Alcala, *Project Report, supra* note 12, at 328-329.
[192] *See* San Miguel, Jr. *The Struggle Against Separate and Unequal Schools, supra* note 190, at 352 (1983).
[193] *See* U.S. Dept. of Health, Educ. and Welfare, *On-Site Review of Bishop ISD* 1, 25 (1970).
[194] *See* Wilson, *Brown Over "Other White", supra* note 64, at 177.
[195] *See* National Inst. of Educ., *Desegregation and Education Concerns of the Hispanic Community Conference Report, supra* note 187, at 34 (1977) (transcribing comments of Peter Roos, attorney with MALDEF's San Francisco office, during the June 1977 Desegregation and Education Concerns of the Hispanic Community Conference in Washington, DC).
[196] *See* National Inst. of Educ., *Desegregation and Education Concerns of the Hispanic Community Conference Report, supra* note 187, at 60 (1977) (transcribing observations of Dr. José Cárdenas, Director, Intercultural Development Research Association).
[197] *See id.* at 62 (1977) (transcribing observations of Dr. José Cárdenas, Director, Intercultural Development Research Association).
[198] *See, e.g., Arizu v. Waco Independent School District*, 485 F.2d 499, 504 (5th Cir. 1974); *Felder v. Harnett Co. Board of Education*, 409 F.2d 1070 (4th Cir. 1969); *Brice v. Landis*, 314 F. Supp. 974 (N.D. Cal. 1969).
[199] *See, e.g., Moss v. Stamford Board of Education*, 356 F. Supp. 675 (D. Conn. 1973).
[200] *See* Rangel and Alcala, *Project Report, supra* note 12, at 332.
[201] *See id.* at 332.
[202] *See* Rangel and Alcala, *Project Report, supra* note 12, at 332.
[203] *See* Donato, *The Other Struggle for Equal Rights, supra* note 21, at 127.
[204] *See* Wilson, *Brown Over "Other White", supra* note 64, at 146.
[205] See San Miguel, Jr., *Brown, Not White, supra* note 4, at 56.
[206] *See id.* at 56-57.
[207] *See generally* San Miguel, Jr.*, Brown, Not White, supra* note 4.
[208] *See generally id.*
[209] *See* San Miguel, Jr., *Brown, Not White, supra* note 4, at preface.
[210] 42 U.S.C. sec. 2000(a).
[211] *See Singleton v. Jackson Mun. Separate Sch. Dist.*, 348 F.2d 729, 731 (5th Cir. 1965).
[212] *See* Wilson, *Brown Over "Other White", supra* note 64, at 178.
[213] *See id.* at 178.
[214] *See id.*
[215] *See id.*
[216] *See id.*
[217] *See id.*
[218] *See* San Miguel, Jr., *Let Them All Take Heed, supra* note 2, at 170.
[219] *See id.* at 173.
[220] 411 U.S. 1 (1973).
[221] *Id.* at 30-31.
[222] *See* San Miguel, Jr., *Let Them All Take Heed, supra* note 2, at 174-75 (1987) (documenting that MALDEF filed 71 desegregation cases compared to 22 employment, voting and other cases combined between 1970 and 1980).
[223] *Id.* at 175.
[224] *See id.*

[225]*See, e.g., Zamora v. New Braunfels Indp. Sch. Dist.,* 362 F. Supp. 552 (W.D. Tex. 1973).
[226] *See* San Miguel, Jr., *Let Them All Take Heed, supra* note 2, at 177.
[227] 467 F.2d 142 (5th 1972).
[228] 413 U.S. 189 (1973).
[229] *See* Wilson, *Brown Over "Other White", supra* note 64, at 182.
[230] *See id.* at 182.
[231] *See id.*
[232] *See id.*
[233] *See id.*
[234] *Id.* at 183.
[235] *See id.* at 185.
[236] 324 F. Supp. at 605.
[237] 324 F. Supp. at 606.
[238] 324 F. Supp. at 606.
[239] 324 F. Supp. at 607-08.
[240] 324 F. Supp. at 608.
[241] 324 F Supp at 616.
[242] *See* Annette Oliveira, *MALDEF: Diez AZos* 31 (1978) (noting "[a] 1973 Denver decision said that, to prove *de jure* segregation, 'intent to discriminate' on the part of the school system had to be shown. . . . Means of proving discrimination continued to narrow, and a 1976 U.S. Supreme Court decision requiring a showing of 'intent to discriminate' . . . established the constrictive trend.'). *See also* San Miguel, Jr., *Let Them All Take Heed, supra* note 2, at 180.
[243] *See* San Miguel, Jr., *Let Them All Take Heed, supra* note 2, at 180 (1987).
[244] *See Cisneros v. Corpus Christi Indp. Sch. Dist.,* 467 F.2d 142, 145 (5th Cir. 1972).
[245] *See* San Miguel, Jr., *Let Them All Take Heed, supra* note 2, at 180.
[246] *See id.* at 183.
[247] *See* MALDEF, *Docket: Litigation Department* 27 (1977).
[248] 413 U.S. 189, 198.
[249] *See* George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980* 27 U.C. Davis L. Rev. 555, 596 (1994) (noting lower courts continued to be split on the legality of *de facto* discrimination through the ambiguity left in *Keyes*).
[250] *See* San Miguel, Jr., *Let Them All Take Heed, supra* note 2, at 181.
[251] *See id.* at 181.
[252] No. 21617 (Maricopa County Super. Ct. 1925).
[253] 96 F. Supp. 1004 (D. Ariz. 1951).
[254] *See Romo v. Laird*, No. 21617, slip op. at 1 (Maricopa County Super. Ct. 1925) (amended findings of fact and order granting permanent writ of mandamus).
[255]*See Romo v. Laird,* No. 21617, slip op. at 2 (Maricopa County Super. Ct. 1925) (amended judgment) (naming the Romo children); Laura K. Muñoz, *Separate But Equal? A Case Study of* Romo v. Laird *and Mexican American Education available at* http://www.oah.org/pubs/magazine/deseg/munoz.html (last visited March 21, 2004)(offering Mr. Romo's full name and other facts).
[256] *See Romo v. Laird,* No. 21617, slip op. at 1 (Maricopa County Super. Ct. 1925) (amended findings of fact and order granting permanent writ of mandamus).
[257] *See* Organization of American Historians, *Document E: "Segregation of School Children. Mexican Children Not Embraced in Segregation Law" Biennial Report of the Attorney General of Arizona, 1915-1916 available at* http://www.oah.org/pubs/magazine/deseg/documente.html (last visited March 21, 2004).
[258] *See Romo v. Laird*, No. 21617, slip op. at 5-6 (Maricopa County Super. Ct. 1925) (amended findings of fact and order granting permanent writ of mandamus).
[259] *Romo v. Laird*, No. 21617, slip op. at 5 (Maricopa County Super. Ct. 1925) (amended findings of fact and order granting permanent writ of mandamus).
[260] *See* Organization of American Historians, *Document C: Meeting Minutes of the Board of Trustees, Tempe School District No. 3 9 October 1925, Tempe, Arizona available at* http://www.oah.org/pubs/magazine/deseg/documentc.html (last visited March 21, 2004).
[261] *Gonzalez v. Sheely,* 96 F. Supp. 1004, 1008 (D. Ariz. 1951).
[262] *Gonzalez,* 96 F. Supp. at 1005, 1009.

[263] *See* George A. Martinez, *African-Americans, Latinos, and the Construction of Race: Toward an Epistemic Coalition*, 19 Chicano-Latino L. Rev. 213, 217 (1998).
[264] 33 S.W.2d 790 (Tex. Civ. App. 1930), *appeal dismissed for w.o.j. & cert. denied*, 284 U.S. 580 (1931).
[265] 2 Race Re. L. Rep. 329 (S.D. Tex. 1957).
[266] *Independent School District v. Salvatierra,* 33 SW 2d 790, 791 (Tex. Civ. App. 1930).
[267] *Salvatierra,* 33 SW 2d at 795 (emphasis added).
[268] *See* Martinez, *The Legal Construction of Race, supra* note 62, 327-38.
[269] *See* George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980* 27 U.C. Davis L. Rev. 555, 576 (1994).
[270] George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980* 27 U.C. Davis L. Rev. 555, 576 (1994).
[271] *Salvatierra,* 33 SW 2d at 792.
[272] *See* San Miguel, Jr., *Let Them All Take Heed, supra* note 2, at 81-82.
[273] San Miguel, Jr. *The Struggle Against Separate and Unequal Schools, supra* note 190, at 348-49 (personal interview with Louis A. Wilmot May 3, 1977).
[274] 128 Op. Att'y Gen. 3 (1947).
[275] *See* San Miguel, Jr. *The Struggle Against Separate and Unequal Schools, supra* note 190, at 350.
[276] *See id.* at 350-51.
[277] *See* Handbook of Texas Online, *Delgado v. Bastrop ISD, available at* http://www.tsha.utexas.edu/handbook/online/articles/print/DD/jrd1.html (last visited March 19, 2004).
[278] *See* San Miguel, Jr. *The Struggle Against Separate and Unequal Schools, supra* note 190, at 351.
[279] *See id.* at 351.
[280] *See id.* at 350-51.
[281] *See id.* at 353.
[282] *See id.* at 353.
[283] *See, e.g., Cortez v. Carrizo Springs Indep. Sch. Dist.,* No. 832 (W.D. Tex., filed April 20, 1955) (dismissed on plaintiff's motion after school district agreed to comply with desegregation mandate); *Villarreal v. Mathis Indep. Sch. Dist.,* No. 1385 (S.D. Tex., filed May 2, 1957) (case dismissed when expert witness fearing reprisal failed to testify).
[284] 2 Race Re. L. Rep. 329 (S.D. Tex. 1957)
[285] *See* San Miguel, Jr. *The Struggle Against Separate and Unequal Schools, supra* note 190, at 355.
[286] *See id.* at 355.
[287] *See* San Miguel, Jr., *Let All of Them Take Heed, supra* note 2, at 134.
[288] No. 66625, slip op. at 1 (San Diego County Super. Ct March 30, 1931) (finding of facts and conclusions of law).
[289] *See* Montoya*, A Brief History of Chicana/o School Segregation, supra* note 19, at165 (2001) (citing history website).
[290] *See id.* at 165 (citing history website).
[291] *See id.* (citing history website).
[292] *See Alvarez v. Owen,* No. 66625 (San Diego County Super. Ct. filed Apr. 17, 1931).
[293] *See* Kristi L. Bowman, Note, *The New Face of School Desegregation, supra* note 112, at 1771 (2001).
[294] *See Alvarez v. Owen,* No. 66625 (San Diego County Super. Ct. 1931) (answer to petition for writ of mandate).
[295] *Alvarez v. Owen,* slip. op. at 5 (San Diego County Super. Ct. March 30, 1931) (findings of facts and conclusions of law).
[296] *See* Kristi L. Bowman, Note, *The New Face of School Desegregation, supra* note 112, at 1771 (citing history website).
[297]*See id.* at 1771.