come to them through the English language, in which are to be found American history, literature, art, science, statesmanship, and in the use of which they are to enter into industrial and commercial relations with the business of the States and take a share in their civil administration. This great boon you carry to them in the little reader in your hands . . . Familiarize yourself with the principles of the American Constitution, and be sure that your official conduct is guided by them. Do not indulge in fault-finding.

Remember that "the joys of victory are the joys of man," and so try to assure the success of teachers and pupils that they may share in these joys. Be sure that your example is worthy to be followed in all things. "Peace hath her victories no less renowned than war." May you add a conspicuous illustration to the truth of this saying by fidelity and success in the discharge of your important duties.

Sincerely yours,
John Eaton,
Director, etc.

CHAPTER FIVE

Segregation and New Arrivals, 1898–1960

I recently saw that in Donna, Texas, the Mexican children who went to school there were bathed with gasoline, especially their heads. The teachers of the school did that and they not only bathed those who went more or less dirty but also those who were clean. One of my countrymen who was indignant because of this action tried to get the Mexican parents to get together and make a protest before the school board but the other Mexicans told him, "What is it for us to protest when they won't pay any attention to us?"

—Alonso M. Galván, 1931[1]

INTRODUCTION

After 1900, while students in newly colonized Puerto Rico were being Americanized on their island or sent to the United States for advanced training, children of Mexican descent in the Southwest United States experienced increasing segregation. Between 1898 and 1960, economic, political, and social turmoil in Latinos' home countries, along with the demand for labor in the United States, contributed to increasing immigration to the United States, particularly in the urban areas of the Northeast, midwestern cities such as Chicago, and the Southwest. Specifically, factors such as the 1910 Mexican Revolution, the displacement of thousands of Puerto Rican agricultural workers from their farms as a result of the U.S. government and industry's influence in narrowing the island to a one-crop economy, and the demand for railroad and seasonal agricultural workers contributed to a continuing flow of Mexicans and Puerto Ricans to the United States.[2] The Great Depression of the 1930s curbed immigration, particularly when the U.S. government began a campaign to repatriate Mexicans in order to permit more jobs for Americans. Historians have estimated that between one-third and one-half of the Mexican population in the United States left during the depression, many involuntarily.[3]

The mid-twentieth century, however, was also a time of recognition among scholars and government workers of the hopes and needs of Mexican Americans and Puerto Ricans. During the 1930s, 1940s, and 1950s Latino and

American academics and writers began to educate the public about Latino concerns. George I. Sánchez's, *Forgotten People* (1940) and Carey McWilliams's lucid *North from Mexico: The Spanish-Speaking People of the United States* (1950) had a broad impact in bringing the Hispanic story to the nation's attention.[4] The first generation of Latino scholars trained in the United States, such as George I. Sánchez and Carlos E. Castañeda at the University of Texas, Austin, also shaped the study and publication of Latino issues.

Latinos were well capable of organizing themselves on behalf of social organizations. In the mid-twentieth century, Latinos used this ability to organize politically. From Harlem to the smaller towns in Texas and California, Latinos formed associations to protect their rights as residents and citizens.[5] Many of these organizations provided a training ground for the leaders who emerged during the 1960s and 1970s Civil Rights era. In short, the years from the 1920s through the 1950s witnessed not only the creation of second- and sometimes third-generation Mexicans moving into the middle class, but also the infusion of newly arrived immigrants, fleeing from political and social turmoil.[6]

SEGREGATION IN THE SOUTHWEST

Historians have found that prior to 1900, Mexican Americans were often integrated in the public schools and Mexican Americans were hired as public school teachers (see document 5.1). After 1900, newly implemented linguistic and cultural policies increasingly segregated Mexican American children from Anglos and deprived the former of equal educational opportunities. According to historian Gilbert Gonzalez, several factors contributed to this increased segregation: Anglo fear of the rapid influx of Mexican Americans into Southwestern communities (particularly after the 1910 Mexican Revolution), residential segregation, racism, and a political economy unwilling to provide more than a rudimentary level of schooling for the agricultural workforce.[7]

Unlike the rigid, de jure segregation of African Americans from whites in Southern public classrooms, statutes for Southwestern school districts rarely included segregation clauses. Rather, Anglo school administrators utilized vague and often unwritten justifications to place Mexican children into separate classrooms or entirely separate schools from their Anglo peers. Administrators justified segregation based on the perception that the children possessed deficient English language skills, scored low on intelligence tests, and/or practiced poor personal hygiene.[8] Although many school districts claimed that Mexican children were only segregated in the early grades, they were rarely transferred to the upper grades in Anglo schools.

Economic reliance upon migrant agricultural workers in the Southwest also resulted in nonenforcement of compulsory school attendance laws for Mexican-origin children. One study of selected Southwestern counties in the 1930s revealed that attendance among enrolled white children ranged from 71 to 96 percent, while school attendance for enrolled Mexican children only ranged from 39 to 89 percent.[9] Furthermore, among Mexican Americans who were in school, 85 percent attended segregated schools in the 1930s; expenditures and supplies overwhelmingly favored the white schools.[10] Among other devices used to maintain an inequitable system, Mexican American children were given used textbooks from the white schools, and Mexican American athletic teams were not allowed to compete in Anglo sports leagues. (See document 5.2.)

Historians such as Guadalupe San Miguel, Jr., have documented how the Mexican American community in Texas reacted with agency, not passive acceptance, to the increasingly inequitable educational opportunities of the twentieth century. Through the creation of grassroots organizations such as the League of United Latin American Citizens (LULAC) in 1929 and a shifting coalition of community, state, and regional organizations, Mexican Americans responded proactively to protect the future of their children in a rapidly changing U.S. economy and society.[11] (See document 5.3.)

For example, Mexican Americans in the Southwest initiated school desegregation cases decades earlier than the landmark case of *Brown v. Board of Education* (1954). In 1930, with the help of LULAC, parents in the Del Rio Independent School District of Texas sued, citing that they had been denied use of facilities used by "other white races."[12] The plaintiff, Jesús Salvatierra, lost because the court found that Mexican children were separated as a result of "special language needs." The next year, parents in California were more successful. In *Alvarez v. Lemon Grove* (1931) Mexican parents argued successfully that the school board had no right to segregate children based on Hispanic surname or Mexican "look."[13]

Two more court cases in the 1940s provided broader jurisdiction. In *Méndez et al. v. Westminster School District of Orange County* (1947), Mexican California parents argued that their children were unconstitutionally segregated. (See documents 5.4 and 5.5.) Since the 1860s, California school law provided for separate schools for "Negro, Mongolian and Indian children." Thus, the plaintiffs in *Méndez* had to demonstrate that Mexicans were not Indians. They won their case on several grounds, and the judge stated that "evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use by segregation." The National Association for the Advancement of Colored People (NAACP) also joined this suit, testing sociological arguments against segregation for the first time.[14]

LULAC and the post–World War II advocacy group, the American G.I. Forum, provided the resources to launch the next desegregation case in Texas: *Delgado v. Bastrop Independent School District* (1948). Once again, Mexicans argued that they were Caucasian, not black, and thus were illegally being segregated. Furthermore, in *Delgado*, attorney for the plaintiffs, Gus García, argued that the schools were depriving children of Mexican descent of equal facilities, services, and education. (See documents 5.6, 5.7, and 5.8.) Judge Ben H. Rice agreed and ordered the end of segregation by September 1949. The court did allow, however for separate classes—only in the first

grade and on the same school grounds. African Americans in Texas were left in segregated schools.[15]

Not all advocacy programs in the mid-twentieth century focused on school desegregation. San Miguel documented the creation of an innovative program called the Campaign of Little Schools of 400 in Texas, a preschool program designed to prepare Latino children for the English-speaking public schools. This LULAC-sponsored activity was a forerunner to the U.S. government's Head Start program.[16]

Historians of the Mexican American experience, similar to historians of African American history, have emphasized agency as well as the positive aspects of segregated schools. For instance, Mexicans in Houston during the segregation era did not necessarily view the creation of a "Mexican" school in their community as a form of oppression. The establishment of the Lorenzo de Zavala School in 1920, named after a Mexican patriot, was "heartily supported" by the Mexican population and witnessed high enrollments. Likewise, in El Paso, the Mexican Aoy Preparatory School boasted the best attendance of any of the city's public schools in the early 1900s. (See document 5.9.) San Miguel also documents the presence of successful Mexican American youth in Houston's secondary schools and colleges, thus raising questions about "the popular and historical interpretation of the Mexican experience in education" in which "all Mexican origin children were nonachievers."[17]

In New Mexico and Colorado, during the years of segregation, Hispanos emphasized their distinct heritage as something to be celebrated. Political power within this group helped secure and finance educational facilities. As a result, Hispano public school officials determined who taught and administered, dictated the nature of social and academic environments, and determined which students should prepare for college.[18]

One example of Hispano political clout in New Mexico was the establishment of a bilingual teacher training school. In 1909, the state legislature founded the Spanish- American Normal School at El Rito. The legislature charged the institution to educate "Spanish-speaking natives of New Mexico for the vocation of teachers in the public schools of the counties and districts where the Spanish language is prevalent."[19] The school enrolled over one hundred future teachers by 1918. In the 1930s the Normal School was still open. Eventually it was absorbed into the New Mexico higher education system.[20]

The 1920s through 1950s witnessed an increasing number of Mexicans entering college following two decades of minimal participation.[21] Philanthropy, increasing numbers of middle-class Latinos, and the G.I. Bill were major contributors to this shift. These Latino college students were pioneers. Often the only Latinos in their classes, they provided leadership and talent to the formation of the Chicano/Puerto Rican civil rights movement of the 1960s and 1970s.

The college-enrolled pioneers of the 1920s-1950s were clearly exceptional. Unlike the late-nineteenth-century participation of Latinos from

older, elite Hispano families (as described in chapter two), students from middle- and working-class Latino families were finally entering higher education. Still, the barriers to high school graduation were formidable. Lack of enforcement of school attendance laws, language difficulties, classroom harassment, and racism resulted in scarce numbers of Mexican American children reaching eighth grade.[22] The pipeline to higher education was thus choked off early in most Latino children's lives. Despite these obstacles, which impeded most Mexican Americans from collegiate participation prior to the 1960s, at least four factors contributed to the success of the few who broke through the barriers.

First, community and charitable organizations became involved. During the Great Depression of the 1930s, the Protestant Young Men's Christian Association (YMCA) in Los Angeles committed $30,000 to work with Mexican American youth. The YMCA hired role model and social worker Tom García to head this project. García created boys' clubs, organized the first Mexican Youth Conference, and provided training and leadership to adolescent boys.[23] Significantly, YMCA officials provided contacts with higher education leaders. Scholarships, admissions information, and important networks were made available to Latino male youth. As an offshoot of the YMCA club, Mexican American students at UCLA created the first Latino student organization, called the Mexican-American Movement (MAM). Under the direction of student Felix Gutierrez from 1938–1944, the first Latino college student newspaper, *The Mexican Voice*, was in print at UCLA. After 1944 the title was changed to *The Forward* and the tone of the paper changed as it focused on war-time activities of members of MAM.[24]

A second factor opening access to higher education for nonelite Latino families involved what historian Muñoz described as the "active support of individual teachers, clergy, or social workers that were sympathetic and in a position to identify youth with exceptional intelligence."[25] For example, Frances Esquivel secured a U.C. Berkeley alumni scholarship through the efforts of her high school history teacher, Miss Helen Grant, a U.C. Berkeley alumna.[26] Similarly, the writer and scholar Ernesto Galarza entered Occidental College in 1923 and then became the first Mexican American to enter Stanford through the active assistance of interested teachers.[27]

Third, the passage of the Servicemen's Readjustment Act of 1944, or G.I. Bill, also assisted in expanding higher education access in the mid-twentieth century. Muñoz argued that "among the thousands of returning Mexican American veterans who took advantage of this opportunity to pursue a higher education were Americo Paredes, Octavio Romano V., and Ralph Guzman. They were destined to become . . . significant contributors to Mexican American intellectual life."[28] The American G.I. Forum, created in 1948, was composed of Latino World War II veterans who actively worked to ensure that the G.I. Bill and other benefits were extended to veterans.[29]

For example, Donato demonstrated how Hispano veterans in Colorado demanded local access to higher education and were responsible for creating the San Luis Institute, a public two-year college. One San Luis veteran

recalled, "I remember that almost all of us who discharged from the military went to college." According to Donato "the sense of camaraderie among San Luis students who went on to Adams State" aided their access and retention at a four-year institution.[30]

Fourth, the Latino community contributed to the increased college participation during the 1920s through 1950s. Previously mentioned for its work in desegregation cases, LULAC and numerous other Latino-based organizations provided college scholarships. The 1920s-1950s also witnessed the entrance of Latino faculty into higher education, further providing role models and encouragement for higher learning. Anecdotal evidence suggests that prior to the 1940s, Hispanic-surnamed faculty at white colleges and universities were generally from Spain and clustered in the romance language and literature departments.[31] Key role models and intellectuals who trained the leaders of the Chicano generation include George I. Sánchez, first at the University of New Mexico in the 1930s and then from 1940 until his death at the University of Texas at Austin. Historian Carlos Castañeda was also a significant figure at the University of Texas at Austin. He devoted his life's work to documenting and correcting Latino history as a professor in the Department of History.[32]

MAINLAND PUERTO RICAN EDUCATION IN THE POST-DEPRESSION ERA

While school conditions for Southwestern Mexicans remained fairly static during the 1930s, 1940s, and 1950s, this was a time when Puerto Ricans began arriving to other areas of the United States, transforming the Hispanic population into a national, and not just a Southwestern, phenomena. Small numbers of Puerto Ricans had lived in the United States in the nineteenth and early twentieth centuries. The period of greatest immigration, however, began after World War II. In 1940, almost 70,000 Puerto Ricans lived on the mainland. By 1950 that number had increased to 300,000 and in 1960 was 887,661. New York City and surrounding areas absorbed most of this immigration.[33] Most historians agree that the following factors spurred migration to the mainland: the Jones Act of 1917, which granted U.S. citizenship to Puerto Ricans; the Johnson Acts of 1921 and 1924, which curtailed European immigration; labor shortages in the United States during World Wars I and II; and relatively inexpensive transportation costs to the United States.[34]

During the years prior to World War II, Puerto Ricans in the United States established strong networks, created communities, and formed mutual aid associations. Concerns regarding the public schools were explored through avenues such as the Puerto Rican association Madres Y Padres Pro Niños Hispanos (Mothers and Fathers in Support of Hispanic Children) during the 1930s and early 1940s. This organization, for example, questioned the school officials' use of intelligence testing, which channeled Puerto Rican children into classrooms for "backward" children rather than recognizing the inherent language bias in such testing.[35]

The 1940s and 1950s witnessed a sharp jump in the number of Puerto Rican children in the New York City schools. In 1949, there were 29,000 Puerto Rican children in the schools; four years later they numbered about 54,000. By 1968 almost 300,000 Puertorriqueños attended New York City schools. Ten years earlier, in response to rapid increases, the city had commissioned an intensive, multi-year investigation, *The Puerto Rican Study, 1953–1957.* In this study researchers recommended extensive bilingual preparation of teachers and support staff, but teachers and administrators were overwhelmed in the late 1950s and 1960s by new student arrivals—it was estimated that less than one-quarter of students could speak English.[36] (See document 5.10.)

Puerto Rican women hired as substitute auxiliary teachers (SATs) in New York City during the 1940s and 1950s were able to assist new pupils. There were too few in number compared to the demand, and these teachers found themselves struggling to "provide alternative modes of instruction for the increasing numbers of Spanish-speaking youngsters arriving to this city."[37] Furthermore, Sánchez Korrol persuasively demonstrates how the SATs lent "recognition" and "legitimacy" to the introduction of alternative methods of teaching English as a second language. Her analysis of the struggles of the post–World War II era documents both the problems of the times and the involvement of Puerto Ricans in the search for solutions.

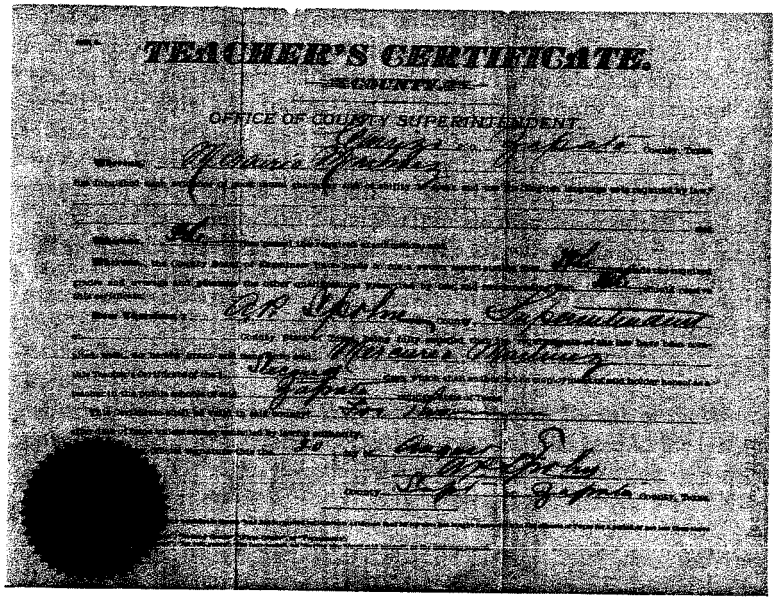
The experience of Puerto Rican children arriving into the New York City schools before 1965 has been captured in memoirs, such as that of Esmeralda Santiago. She came as a child on the cusp of adolescence to the unknown urban world of English language and the hidden rules of the public school realm. (See document 5.11.) In this environment, Spanish-speaking children were viewed as defective, in need of remedial instruction, and of lesser intelligence than white counterparts. Other Latino children came to the rural U.S. as migrant agricultural workers. Most of their experiences consisted of poor working conditions and low pay.[38] In some instances, innovative programs were developed to broaden, rather than narrow, their life chances. The Civil Rights movement of the 1960s and 1970s would wipe away some of the most egregious practices of school segregation based upon language skills and color, but it would not entirely erase deep-seated prejudices.

DOCUMENT 5.1

Teacher's Certificate, Zapata County, Texas, 1898

Mercurio Martinez was born in San Ygnacio, Zapata County, Texas, on October 27, 1876. He attended the local public schools and went to Austin, Texas to study at St. Edward's College from 1895 to 1898. After graduation from St. Edwards he began his teaching career in Zapata County and was employed in that county from 1898 to 1920 in various teaching and administrative capacities. Mr. Martinez's biography is illustrative of the experiences of many of the early and unknown Latino teachers employed in the public schools of the American Southwest in the early twentieth century.

From Mercurio Martinez Collection, Cushing Memorial Library and Archives, Texas A and M University, College Station, Texas.


TEACHER'S CERTIFICATE.

—COUNTY.—

OFFICE OF COUNTY SUPERINTENDENT.

DOCUMENT 5.2

Mexican American Schooling in the Southwest circa 1930s

During the 1930s and 1940s several influential studies pertaining to the educational conditions of Mexican American children were published. The photographs and captions below are from Professor Herschel T. Manuel's The Education of Mexican and Spanish-Speaking Children in Texas *(Austin: University of Texas, 1930). Conditions for Mexican American children were often substandard and enforcement of school attendance lax. Reports such as Annie Reynold's* The Education of Spanish-Speaking Children in Five Southwestern States *(1933); Wilson Little's* Spanish-Speaking Children in Texas *(1944) and two works by George I. Sánchez,* The Education of Bilinguals in a State School System *(1934) and* Concerning the Segregation of Spanish-Speaking Children in the Public Schools *(1951) highlighted the educational needs of Latino children in the Southwest.*

From H. T. Manuel, *The Education of Mexican and Spanish-Speaking Children in Texas* (Austin: The University of Texas, 1930) p. 71.

These Mexican children are holding state textbooks discarded by the school for other whites and then issued to them. When this picture was taken they had received no new books, nor enough of the worn ones.

Drinking facilities such as these are common. Incidentally, the children pictured are themselves an interesting study.

DOCUMENT 5.3

Founding Principles of LULAC

The League of United Latin American Citizens (LULAC) was founded in Corpus Christi, Texas, on February 17, 1929, as a result of the merger of four small organizations. It was founded by middle-class Mexican Americans frustrated with continuing discrimination and violation of the political and civil rights of Latinos in the Southwest. In 1933 women were encouraged to join LULAC Ladies Councils that focused on civic activities, including the improvement of educational facilities and bilingual training. LULAC became involved in several key desegregation cases involving Mexican American children, in addition to securing broader political rights for Latinos in the Southwest. The following document is from Article 2 of the original 1929 constitution.

From *LULAC News*, August 1931, in the LULAC Archives, Benson Latin American Collection, University of Texas, Austin.

Article 2. The Aims and Purposes of This Organization Shall Be:

1. To develop within the members of our race the best, purest, and most perfect type of a true and loyal citizen of the United States of America.
2. To eradicate from our body politic all intents and tendencies to establish discriminations among our fellow citizens on account of race, religion or social position as being contrary to the true spirit of Democracy, our Constitution, and our Laws.
3. To use all legal means at our command to the end that all citizens in our country may enjoy equal rights, the equal protection of the laws of the land, and equal opportunities and privileges.
4. The acquisition of the English language, which is the official language of our country, being necessary for the enjoyment of our rights and privileges, we declare it to be the official language of this organization and we pledge ourselves to learn and speak the same to our children.
5. To define with absolute and unmistakable clearness our unquestionable loyalty to the principles, ideals, and citizenship of the United States of America.
6. To assume complete responsibility for the education of our children as to their rights and duties and the language and customs of this country; the latter, in so far as they may be good customs.

7. We solemnly declare once and for all to maintain a sincere and respectful reverence for our racial origin, of which we are proud.
8. Secretly and openly, by all lawful means at our command, we shall assist in the education and guidance of Latin-Americans and we shall protect and defend their lives and interests whenever necessary.
9. We shall destroy any attempt to create racial prejudices against our people, and any infamous stigma which may be cast upon them, and we shall demand for them the respect and prerogatives which the Constitution grants to us all.
10. Each of us considers himself with equal responsibilities in our organization, to which we voluntarily swear subordination and obedience.
11. We shall create a fund for our mutual protection, for the defense of those of us who may be unjustly prosecuted, and for the education and culture of our people.
12. This organization is not a political club, but as citizens we shall participate in all local, state, and national political contests. However, in doing so we shall ever bear in mind the general welfare of our people; and we disregard and abjure for all in any personal obligation which is not in harmony with these principles.
13. With our vote influence we shall endeavor to place in public office men who show by their conduct respect and consideration for our people.
14. We shall select as our leaders those among us who demonstrate, by their integrity and culture, that they are capable of guiding and directing us properly.
15. We shall maintain public means for the diffusion of these principles and the expansion and consolidation of this organization.
16. We shall pay our poll tax, and that of the members of our families, in order that we may enjoy our rights fully.
17. We shall diffuse our ideas by means of the press, lectures, and pamphlets.

DOCUMENT 5.4

Méndez v. Westminster School District, Orange County, California, 1946

In 1931 a lower jurisdictional court in California had ruled against the school segregation of Mexican American children in Lemon Grove v. Alvarez, *CA (1931). Méndez and the accompanying appeal provided broader jurisdiction, making it against the law in Orange County, California, to segregate children of "Mexican or Latin descent." The court ruled that segregating children by their ethnicity denied them equal protection of the law, "notwithstanding English language deficiencies of some of the children." For the first time, the NAACP joined in the school district's unsuccessful appeal, as an amicus curiae (friend of the court). (See document 5.5).*

From: *Méndez et al. v. Westminister School District of Orange County et al.* Civil Action No. 4292. 64 F. Supp. 544 District court, S. D. California, Central Division, February 18, 1946 (excerpts).

McCormick, District Judge.

Gonzalo Méndez, William Guzman, Frank Palomino, Thomas Estrada and Lorenzo Ramirez, as citizens of the United States, and on behalf of their minor children, and as they allege in the petition, on behalf of "some 5000" persons similarly affected, all of Mexican or Latin descent, have filed a class suit pursuant to Rule 23 of Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c, against the Westminister, Garden Grove and El Modeno School Districts, and the Santa Ana City Schools, all of Orange County, California, and the respective trustees and superintendents of said school districts.

The complaint, grounded upon the Fourteenth Amendment to the Constitution of the United States[1] and Subdivision 14 of Section 24 of the Judicial Code, Title 28, Section 41, subdivision 14, U.S.C.A.,[2] alleges a concerted policy and design of class discrimination against "persons of Mexican or Latin descent or extraction" of elementary school age by the defendant school agencies in the conduct and operation of public schools of said districts, resulting in the denial of the equal protection of the laws to such class of persons among which are the petitioning school children.

Specifically, plaintiffs allege:

"That for several years last past respondents have and do now in furtherance and in execution of their common plan, design and purpose within their respective Systems and Districts, have by their regulation, custom and usage and in execution thereof adopted and declared: That all children or persons of Mexican or Latin descent or extraction, though Citizens of the United States of America, shall be, have been and are now excluded from attending, using, enjoying and receiving the benefits of the education, health and recreation facilities of certain schools within their respective Districts and Systems but that said children are now and have been segregated and required to and must attend and use certain schools in said Districts and Systems reserved for and attended solely and exclusively by children and persons of Mexican and Latin descent, while such other schools are maintained, attended and used exclusively by and for persons and children purportedly known as White or Anglo-Saxon children.

"That in execution of said rules and regulations, each, every and all the foregoing children are compelled and required to and must attend and use the schools in said respective Districts reserved for and attended solely and exclusively by children of Mexican and Latin descent and are forbidden, barred and excluded from attending any other school in said District or System solely for the reason that said children or child are of Mexican or Latin descent."

The petitioners demand that the alleged rules, regulations, customs and usages be adjudged void and unconstitutional and that an injunction issue restraining further application by defendant school authorities of such rules, regulations, customs, and usages.

It is conceded by all parties that there is no question of race discrimination in this action. It is, however, admitted that segregation per se is practiced in the abovementioned school districts as the Spanish-speaking children enter school life and as they advance through the grades in the respective school districts. It is also admitted by the defendants that the petitioning children are qualified to attend the public schools in the respective districts of their residences.

In the Westminister Garden Grove and El Modeno school districts the respective boards of trustees had taken official action, declaring that there be no segregation of pupils on a racial basis but that non-English-speaking children (which group, excepting as to a small number of pupils, was made up entirely of children of Mexican ancestry or descent), be required to attend schools designated by the boards separate and apart from English-speaking pupils; that such group should attend such schools until they had acquired some proficiency in the English language.

The petitioners contend that such official action evinces a covert attempt by the school authorities in such school districts to produce an arbitrary discrimination against school children of Mexican extraction or descent and that such illegal result has been established in such school districts respectively. The school authorities of the City of Santa Ana have not memorialized any such official action, but petitioners assert that the same custom and usage exists in the schools of the City of Santa Ana under the authority of appropriate school agencies of such city.

The concrete acts complained of are those of the various school district officials in directing which schools the petitioning children and others of the same class or group must attend. The segregation exists in the elementary schools to and including the sixth grade in two of the defendant districts, and in the two other defendant districts through the eighth grade. The record before us shows without conflict that the technical facilities and physical conveniences offered in the schools housing entirely the segregated pupils, the efficiency of the teachers therein and the curricula are identical and in some respects superior to those in the other schools in the respective districts.

The ultimate question for decision may be thus stated: Does such official action of defendant district school agencies and the usages and practices pursued by the respective school authorities as shown by the evidence operate to deny or deprive the so called non-English-speaking school children of Mexican ancestry or descent within such school districts of the equal protection of the laws?

The defendants at the outset challenge the jurisdiction of this court under the record as it exists at this time. We have already denied the defendants' motion to dismiss the action upon the "face" of the complaint. No reason has been shown which warrants reconsideration of such decision.

1. and 2. While education is a State matter, it is not so absolutely or exclusively. Cumming v. Board of Education of Richmond County, 175 U.S. 528, 20 S.Ct. 197, 201, 44 L.Ed. 262. In the Cumming decision the Supreme Court said: "That education of the people in schools maintained by state taxation is a matter belonging to the respective states and *any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land.*" (Emphasis supplied.) . . .

Obviously, then, a violation by a State of a personal right or privilege protected by the Fourteenth Amendment in the exercise of the State's duty to provide for the education of its citizens and inhabitants would justify the Federal Court to intervene. State of Missouri ex rel. Gaines v. Canada, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208. The complaint before us in this action, having alleged an invasion by the common school authorities of the defendant districts of the equal opportunity of pupils to acquire knowledge, confers jurisdiction on this court if the actions complained of are deemed those of the State. Hamilton v. Regents of University of California, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343; cf. Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446.

Are the actions of public school authorities of a rural or city school in the State of California, as alleged and established in this case, to be considered actions of the State within the meaning of the Fourteenth Amendment so as to confer jurisdiction on this court to hear and decide this case under the authority of Section 24, Subdivision 14 of the Judicial Code, supra? We think they are.

3. In the public school system of the State of California the various local school districts enjoy a considerable degree of autonomy. Fundamentally, however, the people of the State have made the public school system a matter of State supervision. Such system is not committed to the exclusive control of local governments . . .

4. The Education Code of California provides for the requirements of teachers' qualifications, the admission and exclusion of pupils, the courses of study and the enforcement of them, the duties of superintendents of schools and of the school trustees of elementary schools in the State of California. The appropriate agencies of the State of California allocate to counties all the State school money exclusively for the payment of teachers' salaries in the public schools and such funds are apportioned to the respective school districts within the counties. While, as previously observed, local school boards and trustees are vested by State legislation with considerable latitude in the administration of their districts, nevertheless, despite the decentralization of the educational system in California, the rules of the local school district are required to follow the general pattern laid down by the legislature, and their practices must be consistent with law and and [*sic*] with the rules prescribed by the State Board of Education. See Section 2204, Education Code of California.

When the basis and composition of the public school system is considered, there can be no doubt of the oneness of the system in the State of California, or of the restricted powers of the elementary school authorities in the political subdivisions of the State . . .

5. We therefore turn to consider whether under the record before us the school boards and administrative authorities in the respective defendant districts have by their segregation policies and practices transgressed applicable law and Constitutional safeguards and limitations and thus have invaded the personal right which every public school pupil has to the equal protection provision of the Fourteenth Amendment to obtain the means of education

We think the pattern of public education promulgated in the Constitution of California and effectuated by provisions of the Education Code of the State prohibits segregation of the pupils of Mexican ancestry in the elementary schools from the rest of the school children.

Section 1 of Article IX of the Constitution of California directs the legislature to "encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement" of the people. Pursuant to this basic directive by the People of the State many laws stem authorizing special instruction in the public schools for handicapped children. See Division 8 of the Education Code. Such legislation, however, is general in its aspects. It includes all those who fall within the described classification requiring the special consideration provided by the statutes regardless of their ancestry or extraction. The common segregation attitudes and practices of the school authorities in the defendant school districts in Orange County pertain solely to children of Mexican ancestry and parentage. They are singled out as a class for segregation. Not only is such method of public school

administration contrary to the general requirements of the school laws of the State, but we think it indicates an official school policy that is antagonistic in principle to Sections 16004 and 16005 of the Education Code of the State.[3]

Obviously, the children referred to in these laws are those of Mexican ancestry. And it is noteworthy that the educational advantages of their commingling with other pupils is regarded as being so important to the school system of the State that it is provided for even regardless of the citizenship of the parents. We perceive in the laws relating to the public educational system in the State of California a clear purpose to avoid and forbid distinctions among pupils based upon race or ancestry[4] except in specific situations[5] not pertinent to this action. Distinctions of that kind have recently been declared by the highest judicial authority of the United States "by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." They are said to be "utterly inconsistent with American traditions and ideals." Kiyoshi Hirabayashi v. United States, 320 U.S. 81, 63 S.Ct. 1375, 1385, 87 L.Ed. 1774.

Our conclusions in this action, however, do not rest solely upon what we conceive to be the utter irreconcilability of the segregation practices in the defendant school districts with the public educational system authorized and sanctioned by the laws of the State of California. We think such practices clearly and unmistakably disregard rights secured by the supreme law of the land. Cumming v. Board of Education of Richmond County, supra.

6. and 7. "The equal protection of the laws" pertaining to the public school system in California is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican ancestry that are available to the other public school children regardless of their ancestry. A paramount requisite in the American system of public education is social equality. It must be open to all children by unified school association regardless of lineage.

8. We think that under the record before us the only tenable ground upon which segregation practices in the defendant school districts can be defended lies in the English language deficiencies of some of the children of Mexican ancestry as they enter elementary public school life as beginners. But even such situations do not justify the general and continuous segregation in separate schools of the children of Mexican ancestry from the rest of the elementary school population as has been shown to be the practice in the defendant school districts—in all of them to the sixth grade, and in two of them through the eighth grade.

The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation, and that commingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals.[6] 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. One of the flagrant examples of the discriminatory

results of segregation in two of the schools involved in this case is shown by the record. In the district under consideration there are two schools, the Lincoln and the Roosevelt, located approximately 120 yards apart on the same school grounds, hours of opening and closing, as well as recess periods, are not uniform. No credible language test is given to the children of Mexican ancestry upon entering the first grade in Lincoln School. This school has an enrollment of 249 so-called Spanish-speaking pupils, and no so-called English-speaking pupils; while the Roosevelt, (the other) school, has 83 so-called English-speaking pupils and 25 so-called Spanish-speaking pupils. Standardized tests as to mental ability are given to the respective classes in the two schools and the same curricula are pursued in both schools and, of course, in the English language as required by State law. Section 8251, Education Code. In the last school year the students in the seventh grade of the Lincoln were superior scholarly to the same grade in the Roosevelt School and to any group in the seventh grade in either of the schools in the past. It further appears that not only did the class as a group have such mental superiority but that certain pupils in the group were also outstanding in the class itself. Notwithstanding this showing, the pupils of such excellence were kept in the Lincoln School. It is true that there is no evidence in the record before us that shows that any of the members of this exemplary class requested transfer to the other so-called intermingled school, but the record does show without contradiction that another class had protested against the segregation policies and practices in the schools of this El Modeno district without avail.

While the pattern or ideal of segregating the school children of Mexican ancestry from the rest of the school attendance permeates and is practiced in all of the four defendant districts, there are procedural deviations among the school administrative agencies in effectuating the general plan.

In Garden Grove Elementary School District the segregation extends only through the fifth grade. Beyond, all pupils in such district, regardless of their ancestry or linguistic proficiency, are housed, instructed and associate in the same school facility.

This arrangement conclusively refutes the reasonableness or advisability of any segregation of children of Mexican ancestry beyond the fifth grade in any of the defendant school districts in view of the standardized and uniform curricular requirements in the elementary schools of Orange County.

But the admitted practice and long established custom in this school district whereby all elementary public school children of Mexican descent are required to attend one specified school (the Hoover) until they attain the sixth grade, while other pupils of the same grade are permitted to and do attend two other elementary schools of this district, notwithstanding that some of those pupils live within the Hoover School division of the district, clearly establishes an unfair and arbitrary class distinction in the system of public education operative in the Garden Grove Elementary School District.

The long standing discriminatory custom prevalent in this district is aggravated by the fact shown by the record that although there are approximately 25 children of Mexican descent living in the vicinity of Lincoln School, none of them attend that school, but all are peremptorily assigned by the school authorities to the Hoover School, although the evidence shows that there are no school zones territorially established in the district.

The record before us shows a paradoxical situation concerning the segregation attitude of the school authorities in the Westminister School District. There are two elementary schools in the undivided area. Instruction is given pupils in each school from kindergarten to the eighth grade, inclusive. Westminister School has 642 pupils, of whom 628 are so-called English-speaking children, and 14 so-called Spanish-speaking pupils. The Hoover School is attended solely by 152 children of Mexican descent. Segregation of these from the rest of the school population precipitated such vigorous protests by residents of the district that the school board in January, 1944, recognizing the discriminatory results of segregation, resolved to unite the two schools and thus abolish the objectionable practices which had been operative in the school of the district for a considerable period. A bond issue was submitted to the electors to raise funds to defray the cost of contemplated expenditures in the school consolidation. The bonds were not voted and the record before us in this action reflects no execution or carrying out of the official action of the board of trustees taken on or about the 16th of January, 1944. It thus appears that there has been no abolishment of the traditional segregation practices in this district pertaining to pupils of Mexican ancestry through the gamut of elementary school life. We have adverted to the unfair consequences of such practices in the similarly situated El Modeno School District.

Before considering the specific factual situation in the Santa Ana City Schools it should be noted that the omnibus segregation of children of Mexican ancestry from the rest of the student body in the elementary grades in the schools involved in this case because of language handicaps is not warranted by the record before us. The test applied to the beginners are shown to have been generally hasty, superficial and not reliable. In some instances separate classification was determined largely by the Latinized or Mexican name of the child. Such methods of evaluating language knowledge are illusory and are not conducive to the inculcation and enjoyment of civil rights which are of primary importance in the public school system of education in the United States.

It has been held that public school authorities may differentiate in the exercise of the reasonable discretion as to the pedagogical methods of instruction to be pursued with different pupils.[7] And foreign language handicaps may be to such a degree in the pupils in elementary schools as to require special treatment in separate classrooms. Such separate allocations, however, can be lawfully made only after credible examination by the appropriate school authority of each child whose capacity to learn is under consideration and the determination of such segregation must be based wholly upon indiscriminating foreign language impediments in the individual child, regardless of his ethnic traits or ancestry.

9.–11. The defendant Santa Ana School District maintains fourteen elementary schools which furnish instruction from kindergarten to the sixth grade, inclusive.

About the year 1920 the Board of Education, for the purpose of allocating pupils to the several schools of the district in proportion to the facilities available at such schools, divided the district into fourteen zones and assigned to the school established in each zone all pupils residing within such zone.

There is no evidence that any discriminatory or other objectionable motive or purpose actuated the School Board in location or defining such zones.

Subsequently the influx of people of Mexican ancestry in large numbers and their voluntary settlement in certain of the fourteen zones resulted in three of the zones becoming occupied almost entirely by such group of people.

Two zones, that in which the Fremont School is located, and another contiguous area in which the Franklin School is situated, present the only flagrant discriminatory situation shown by the evidence in this case in the Santa Ana City Schools. The Fremont School has 325 so-called Spanish-speaking pupils and no so-called English-speaking pupils. The Franklin School has 237 pupils of which 161 are so-called English-speaking children, and 76 so-called Spanish-speaking children.

The evidence shows that approximately 26 pupils of Mexican descent who reside within the Fremont zone are permitted by the School Board to attend the Franklin School because their families had always gone there. It also appears that there are approximately 35 other pupils not of Mexican descent who live within the Fremont zone who are not required to attend the Fremont School but who are also permitted by the Board of Education to attend the Franklin School.

Sometime in the fall of the year 1944 there arose dissatisfaction by the parents of some of the so-called Spanish-speaking pupils in the Fremont School zone who were not granted the privilege that approximately 26 children also of Mexican descent, enjoyed in attending the Franklin School. Protest was made en masse by such dissatisfied group of parents, which resulted in the Board of Education directing its secretary to send a letter to the parents of all of the so-called Spanish-speaking pupils living in the Fremont zone and attending the Franklin School that beginning September, 1945, the permit to attend Franklin School would be withdrawn and the children would be required to attend the school of the zone in which they were living, viz., the Fremont School.

There could have been no arbitrary discrimination claimed by plaintiffs by the action of the school authorities if the same official course had been applied to the 35 other so-called English-speaking pupils exactly situated as were the approximate 26 children of Mexican lineage, but the record is clear that the requirement of the Board of Education was intended for and directed exclusively to the specified pupils of Mexican ancestry and if carried out becomes operative solely against such group of children.

It should be stated in fairness to the Superintendent of the Santa Ana City Schools that he testified he would recommend to the Board of Education that the children of those who protested the action requiring transfer from the Franklin School be allowed to remain there because of long attendance and family tradition. However, there was no official recantation shown of the

action of the Board of Education reflected by the letters of the Secretary and sent only to the parents of the children of Mexican ancestry.

The natural operation and effect of the Board's official action manifests a clean purpose to arbitrarily discriminate against the pupils of Mexican ancestry and to deny to them the equal protection of the laws.

The court may not exercise legislative or administrative functions in this case to save such discriminatory act from inoperativeness. Cf. Yu Cong Eng v. Trinidad, 271 U.S. 500, 46 S.Ct. 619, 70 L.Ed. 1059.

There are other discriminatory customs, shown by the evidence, existing in the defendant school districts as to pupils of Mexican descent and extraction, but we deem it unnecessary to discuss them in this memorandum.

We conclude by holding that the allegations of the complaint (petition) have been established sufficiently to justify injunctive relief against all defendants, restraining further discriminatory practices against the pupils of Mexican descent in the public schools of defendant school districts. See Morris v. Williams, 8 Cir., 149 F.2d 703.

Findings of fact, conclusions of law, and decree of injunction are accordingly ordered pursuant to Rule 52, F.R.C.P.

Attorney for plaintiffs will within ten days from date hereof prepare and present same under local Rule 7 of this court.

1. "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
2. "The district courts shall have original jurisdiction as follows: * * *"
   64 F.SUPP.–35
   Sec. 41, subd. (14) "Suits to redress deprivation of civil rights. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."
3. "Sec. 16004. Any person, otherwise eligible for admission to any class or school of a school district of this State, whose parents are or are not citizens of the United States and whose actual and legal residence is in a foreign country adjacent to this State may be admitted to the class or school of the district by the governing board of the district."

   "Sec. 16005. The governing board of the district may, as a condition precedent to the admission of any person, under Section 16004, require the parent or guardian of such person to pay to the district an amount not more than sufficient to reimburse the district for the total cost, exclusive of capital outlays, of educating the person and providing him with transportation to and from school. The cost of transportation shall not exceed ten dollars ($10) per month. Tuition

payments shall be made in advance for each month or semester during the period of attendance. If the amount paid is more or less than the total cost of education and transportation, adjustment shall be made for the following semester or school year. The attendance of the pupils shall not be included in computing the average daily attendance of the class or school for the purpose of obtaining apportionment of State funds."

4. Sec. 8501, Education Code. "Children between six and 21 years of age. The day elementary school of each school district shall be open for the admission of all children between six and 21 years of age residing within the boundaries of the district."

   Sec. 8002. "Maintenance of elementary day schools and day high schools with equal rights and privileges. The governing board of any school district shall maintain all of the elementary day schools established by it, and all of the day high schools established by it with equal rights and privileges as far as possible."
5. Sec. 8003. "Schools for Indian children, and children of Chinese, Japanese, or Mongolian parentage: Establishment. The governing board of any school district may establish separate schools for Indian children, excepting children of Indians who are wards of the United States Government and children of all other Indians who are descendants of the original American Indians of the United States, and for children of Chinese, Japanese, or Mongolian parentage."

   Sec 8004. "Same: Admission of children into other schools. When separate schools are established for Indian children or children of Chinese, Japanese, or Mongolian parentage, the Indian children or children of Chinese, Japanese, or Mongolian parentage shall not be admitted into any other school."
6. The study of American institutions and ideals in all schools located within the State of California is required by Section 10051, Education Code.
7. See Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256.

Position: Not de jure

DOCUMENT 5.5

Appeal from Westminster School District, California, 1947

The defendant in Méndez *(Westminster School District) appealed Judge McCormick's finding in favor of the plaintiffs. As a result, the school district appealed the decision in the Ninth Circuit but the finding was upheld. Note the support (amicus curiae) filed on behalf of the Mexican Americans from a broad range of organizations including the American Jewish Congress, the NAACP, and the American Civil Liberties Union.*

From: *Westminster School District of Orange County et al. v. Méndez et al.* No. 11310 161 F.2d 774 Circuit Court of Appeals, Ninth Circuit, April 14, 1947, as Corrected Aug. 1, 1947 (excerpts).

Appeal from the District Court of the United States for the Southern District of California, Central Division; Paul J. McCormick, Judge.

Action by Gonzalo Mendez and others, by their father and next of friend, Gonzalo Mendez, and others, against Westminister School District of Orange County, and others, to redress alleged violations of civil rights. Judgment for plaintiffs, 64 F.Supp. 544, and defendants appeal.

Affirmed.

Joel E. Ogle, County Counsel, George F. Holden and Royal E. Hubbard, Deputies County Counsel, all of Santa Ana, Cal., for appellant.

David C. Marcus, Los Angeles, Cal. (William Strong, of Los Angeles. Cal., of counsel), for appellees.

Thurgood Marshall, and Robert L. Carter, both of New York City, and Loren Miller, of Los Angeles, Cal., for Nat. Ass'n Advancement of Colored People, amicus curiae.

Will Maslow and Pauli Murray, both of New York City, Anne H. Pollock, of Los Angeles, Cal. (Alexander H. Pekelis, of New York City, Spe. Advisor), for American Jewish Congress, amicus curiae.

Julien Cornell, Arthur Garfield Hays and Osmond K. Fraenkel, all of New York City, A. L. Wirin and Fred Okrand, both of Los Angeles, Cal., for American Civil Liberties Union, amicus curiae.

Charles F. Christopher, of Los Angeles, Cal., for Nat. Lawyers Guild, Los Angeles Chapter, amicus curiae.

A. L. Wirin and Saburo Kido, both of Los Angeles, Cal., for Japanese-American Citizens League.

Robert W. Kenney, Atty. Gen., of Cal., and T. A. Westphal, Jr., Deputy Atty. Gen., for Atty. Gen., for Atty. Gen of Cal., amicus curiae.

Before GARRECHT, DENMAN, MATHEWS, STEPHENS, HEALY, BONE, and ORR, Circuit Judges.

STEPHENS, Circuit Judge.

The petition herein which prays for present and future relief and costs is filed under authority of section 24, subdivision 14, of the Judicial Code, 28 U.S.C.A. § 41 (14),[1] and section 43 of 8 U.S.C.A.,[2] and is based upon alleged violations of petitioners' civil rights as guaranteed by the 5th and 14th amendments to the Constitution of the United States. No argument as to the application of the 5th amendment is made in this appeal and it need not be considered.

The petition contains allegations to the following effect. A number of minors (at least one each from each school division herein mentioned) for themselves and for some 5000 others as to whom the allegations of the complaint apply,[3] citizens of the United States of Mexican descent, who attend the public schools of the State of California in Orange County, filed a petition by their fathers, as next friends, for relief against trustees and superintendents of several school districts and against the superintendent and secretary and members of a city board of education. Unless we shall indicate otherwise, our use of the terms "school districts," "districts" or "schools" will be understood as inclusive of both district and city school territories or schools. The term "school officials" includes all respondents.

All petitioners are taxpayers of good moral habits, not suffering from disability, infectious disease, and are qualified to be admitted to the use of the schools and facilities within their respective districts and systems.

A common plan of the school officials has been adopted and practiced, and common rules and regulations have been adopted and put into effect, whereby (using the words of the petition) "petitioners and all others of Mexican and Latin descent" are "barred, precluded and denied," "attending and using and receiving the benefits and education furnished to other children," and are segregated in schools "attended solely by children of Mexican and Latin descent." To such treatment, petitioners and others in the same situation have objected, and they have demanded and have been refused admission to schools within their respective districts which they would attend but for the practice of segregation. "That by this suit and proceedings, petitioners seek to redress the deprivation by respondents herein [school officials] under color of regulation, custom and usage of petitioners' civil rights, privileges and/or immunities secured to them by the Laws of the United States, and guaranteed to each of them by the Laws and Constitution of the United States of America."

To the petition, the school officials respond by a motion to dismiss for lack of federal court jurisdiction, because (to use the words of the motion) "this is

not a suit at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statutes, ordinances, regulation, custom, or usage, of any state, of any right, privilege, or immunity, secured by any law of the United States providing for equal rights of citizens of the United States or of all persons within the jurisdiction of the United States," and because the "petition fails to state a claim upon which relief can be granted." The motion was denied without prejudice to the assertion of any available legal defenses by way of answers to the petition. Respondents in their answer reassert their position as to the law in the motion to dismiss, and put in issue all of the allegations relating to the subject of segregation.[4]

. . .

Summed up in a few words it is the burden of the petition that the State of California has denied, and is denying, the school children of Mexican descent, residing in the school districts described, the equal protection of the laws of the State of California and thereby have deprived, and are depriving, them of their liberty and property without due process of the law, as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Respondents are officers of the State of California in the Department of Education of that state, and as it will hereinafter be shown their action under the intendment of the Fourteenth Amendment is the action of the state in all cases where such action is taken under color of state law. We must, therefore, consider the questions: Are the alleged acts done under color of state law, and do they deprive petitioners of any constitutional right?

. . .

We hold that the respondents acting to segregate the school children as alleged in the petition were performing under color of California State law.

The court found that the segregation as alleged in the petition has been for several years past and is practiced under regulations, customs and usages adopted more or less as a common plan and enforced by respondent-appellants throughout the mentioned school districts; that petitioners are citizens of the United States of Mexican ancestry of good moral habits, free from infectious disease or any other disability, and are fully qualified to attend and use the public school facilities; that respondents occupy official positions as alleged in the petition.

In both written and oral argument our attention has been directed to the cases in which the highest court of the land has upheld state laws providing for limited segregation of the great races of mankind. In Roberts v. City of Boston, 5 Cush. Mass., 198,[6] a law providing for the segregation of colored school children was held valid in an opinion by Chief Justice Shaw of the Supreme Judicial Court of Massachusetts, but that equal facilities must be provided for the use of the colored children. Chief Justice Wallace of the Supreme Court of California in Ward v. Flood, 48 Cal. 36, 17 Am.Rep. 405,

followed with approval. Cumming v. Board of Education, 175 U.S. 528, 20 S.Ct. 197, 44 L.Ed. 262, reaffirmed the principle. In Gong Lum v. Rice, 275 U.S. 78, 48 S.Ct. 91, 72 L.Ed. 172, the principle of the Roberts case, supra, was followed in the opinion written by Chief Justice Taft and affirmed the State Supreme Court of Mississippi in its application of the "colored" school segregation statute to an American citizen of pure Chinese blood. Plessy v. Ferguson, 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256, was upon the right of the state to require segregation of colored and white persons in public conveyances, and the act so providing was sustained again upon the principles expressed by Chief Justice Shaw. This list of cases is by no means complete.

It is argued by appellants that we should reverse the judgment in this case upon the authority of the segregation cases just cited because the Supreme Court has upheld the right of the states to provide for segregation upon the requirement that equal facilities be furnished each segregated group. Appellees argue that the segregation cases do not rule the instant case. There is argument in two of the amicus curiae briefs that we should strike out independently on the whole question of segregation, on the ground that recent world stirring events have set men to the reexamination of concepts considered fixed. Of course, judges as well as all others must keep abreast of the times but judges must ever be on their 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 the sometimes slow and tedious ways of democratic legislation is no longer respected in a progressive society. For reasons presently to be stated, we are of the opinion that the segregation cases do not rule the instant ease and that is reason enough for not responding to the argument that we should consider them in the light of the amicus curiae briefs. In the first place we are aware of no authority justifying any segregation fiat by an administrative or executive decree as every case cited to us is based upon a legislative act. The segregation in this case is without legislative support and comes into fatal collision with the legislation of the state.

3. and 4. The State of California has a state-wide free school system governed by general law, the local application of which by necessity is to a considerable extent, under the direction of district and city school boards or trustees, superintendents and teachers. Section 16601 of the California Educational Code requires the parent of any child between the ages of eight and sixteen years to send him to the full time day school. There are some few exceptions, but none of them are pertinent here. There are no exceptions based upon the ancestry of the child other than those contained in §§ 8003, 8004, Calif.Ed.C. (Both repealed as of 90 days after June 14, 1947.), which includes Indians under certain conditions and children of Chinese, Japanese or Mongolian parentage. As to these, there are laws requiring them in certain cases to attend separate schools. Expressio Unius Est Exclusio Alterius. It may appropriately be noted that the segregation so provided for and the segregation referred to in the cited cases includes only children of parents belonging to one or another of the great races of mankind.[7] It is interesting to note at this juncture of the case that the parties stipulated that there is no question as to

race segregation in the case. Amicus curiae brief writers, however, do not agree that this is so. Nowhere in any California law is there a suggestion that any segregation can be made of children within one of the great races. Thus it is seen that there is a substantial difference in our case from those which have been decided by the Supreme Court, a difference which possibly could be held as placing our case outside the scope of such decisions. However, we are not put to this choice as the state law permits of segregation only as we have stated, that is, it is definitely confined to Indians and certain named Asiatics. That the California law does not include the segregation of school children because of their Mexican blood, is definitely and affirmatively indicated as the trial judge pointed out, by the fact that legislative action has been taken by the State of California to admit to her schools, children citizens of a foreign country, living across the border. Calif.Ed.C. §§ 16004, 16005. Mexico is the only foreign country on any California boundary.[8]

It follows that the acts of respondents were and are entirely without authority of California law, notwithstanding their performance has been and is under color or pretense of California law. Therefore, conceding for the argument that California could legally enact a law authorizing the segregation as practiced, the fact stands out unchallengeable that California has not done so but to the contrary has enacted laws wholly inconsistent with such practice. By enforcing the segregation of school children of Mexican descent against their will and contrary to the laws of California, respondents have violated the federal law as provided in the Fourteenth Amendment to the Federal Constitution by depriving them of liberty and property without due process of law and by denying to them the equal protection of the laws.

5. It may be said at this point that the practice could be stopped through the application of California law in California State Courts, and this may be so but the idea is of no relevancy. Mr. Justice Douglas made this point clear in the case of Screws v. United States, supra, when he said that the Fourteenth Amendment does not come into play merely because the federal law or the state law under which the officer purports to act is violated. "*It is applicable when and only when some one is deprived of a federal right by that action.*" (Emphasis ours.) And it is as appropriate for us to say here, what Mr. Justice Douglas said in a like situation in the cited case, "We agree that when this statute is applied [in our case when § 41(14) of 28 U.S.C.A. is applied] it should be construed so as to respect the proper balance between the states and the federal government in law enforcement." Punishment for the act would be legal under either or both federal and state governments. United States v. Lanza, 260 U.S. 377, 382, 43 S.Ct. 141, 67 L.Ed. 314; Hebert v. Louisiana, 272 U.S. 312, 47 S.Ct. 103, 71 L.Ed. 270, 48 A.L.R. 1102. However, since the practice complained of has continued for several consecutive years, apparent to California executive and peace officers, and continues, it cannot be said that petitioners violated Mr. Justice Douglas' admonition in taking their action in a federal court.

In the view of the case we have herein taken the contention that the Findings of Fact do not support the Conclusions of Law and the Judgment is

wholly unmeritorious. The pleadings, findings and judgment in this case refer to children of "Mexican and Latin descent and extraction," but it does not appear that any segregation of school children other than those of Mexican descent was practiced. Therefore, we have confined our comment thereto. If the segregation of all children of Latin descent and extraction in addition to those of Mexican descent were included in the practice and the plan, its illegality would, of course, be upon the same basis as that herein found. In addition, however, the impossibility of there being any reason for the inclusion in the segregation plan of all children of Latin descent and extraction and the palpable impossibility of its enforcement would brand any such plan void on its face.[9]

Affirmed.

1. Section 41. (Judicial Code, section 24, amended.) Original jurisdiction. The district courts shall have original jurisdiction as follows: * * * (14) Suits to redress deprivation of civil rights. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."
2. "§ 43. Civil action for deprivation of rights
   "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall he liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."
3. Rule 23 of Federal Rules of Civil Procedure, 28 U.S.C.A. following section 723c as to class suits.
4. It is alleged in the answer that a large number of school children concerned are unfamiliar with and unable to speak the English language. Other affirmative defenses are alleged but they need not be mentioned for the reason that the findings of fact are not attacked and the appeal is based upon the question as to whether or not petitioners' civil rights under the Fourteenth Amendment to the Constitution of the United States have been violated.
6. The decision in the case of Roberts v. City of Boston, 5 Cush. 198, cited in the majority opinion in the above entitled case (April 14, 1947), was not founded directly upon a state statute. A state statute granted certain discretionary powers to an elected School Committee, but these powers did not specifically provide for any segregation of school children on the basis of race or color. However, Boston had long conducted separate schools for colored school children. Shortly before institution of the case (the case antedated the Civil War), which was for damages allegedly suffered by the plaintiff, a colored child, for being excluded from the school nearest her residence, the School Committee had adopted a resolution approving the policy of continuing the separate schools. The decision in the case upheld the acts of the Committee. (Stephens, C.J.)

7. Somewhat empirically, it used to be taught that mankind was made up of white, brown, yellow, black and red men. Such divisional designation has little or no adherents among anthropologists or ethnic scientists. A more scholarly nomenclature is Caucasoid, Mongoloid and Negroid, yet this is unsatisfactory, as an attempt to collectively sort all mankind into distinct groups.
8. The right of children to attend schools organized under laws of the state has been termed a fundamental right. See Wysinger v. Crookshank, 82 Cal. 588, 23 P. 54. Education "is a privilege granted by the state constitution, and is a legal right as much as is a vested right in property." 23 Cal.Jur. pp. 141, 142. In the same volume, p. 161: "It is now settled that it is not in violation of the organic law of the state or of the nation to require children in whom racial differences exist to attend separate schools, provided the schools are equal in every substantial respect. But only in the event such schools are established may children be separated in respect of race. And no separation may be had, in the absence of statutory or constitutional authority therefor."
9. The case of Lopez v. Seccombe, D.C.S.D.Cal., 71 F.Supp. 769, cited and commented upon in the concurring opinion, went to uncontested judgment upon stipulation, and is supported alone by formal findings of facts and conclusions of law. No discussion of principles appears in the record, no opinion or memorandum was filed, and no counsel in the instant case mentioned it in his brief, notwithstanding the same lawyer was chief counsel in both cases. (Stephens, C.J.)

DOCUMENT 5.6

Delgado vs. Bastrop Independent School District, Bastrop County, Texas, 1948

In 1947 six-year-old Minerva Delgado was denied entrance to a so-called white school because she was of Mexican American descent. On her behalf, Delgado's grandfather, Samuel Garcia, sued "in behalf of all school children of Mexican descent within the School District . . . and this suit is filed as a Class Suit . . . in that they are all required to attend segregated schools and classes solely because they are of Mexican descent." Although the defendants attempted to demonstrate (see transcripts below) that lack of English facility required the segregation of Mexican and Latin-origin children, the judge ruled on the children's behalf. One of the key points that Delgado's lawyer, Gus Garcia, had to demonstrate, was that segregating Latin children, although not a law in Texas, was the custom and thus could be tried in a court of law. Both Delgado v. Bastrop *and* Méndez v. Westminster *were county or district level desegregation cases that preceded* Brown v. Board of Education *(1954).*

From: *Minerva Delgado, et al. v. Bastrop Independent School District of Bastrop County, Texas, et al.* Civil Action no. 388 United States District Court Western District of Texas, Austin Division, June 15, 1948. In National Archives and Records Administration, Southwest Region, Fort Worth, Texas.

The Plaintiffs allege:

This Court has jurisdiction under the provisions of 28 U.S. Code, Sec. 41 (14), in that this is a suit, in equity and at law, to redress the deprivation of civil rights; said deprivation being by officials of the State of Texas, under color of custom and/or usage by said officials, acting for and in behalf of said State of Texas, of rights, privileges, and immunities secured by the Constitution of the United States under the Fourteenth Amendment, and rights secured by the laws of the United States, including particularly 8 U.S. Code, Sec. 43 . . .

IV.

1. The defendants have exceeded the authority vested in them by the Constitution and Laws of the State of Texas in carrying out a policy of segregating children of Mexican descent from other children as hereinafter

set forth. For several years last past, the Defendants adopted a common custom, plan, or usage and/or practice as follows: That children of Mexican descent be barred, prohibited and excluded, solely because of said Mexican descent, from attending those certain public schools and classes under Defendants' charge, which said schools and classes (hereinafter referred to as regular schools and classes) are exclusively established or maintained by said Defendants for attendance by school children of so-called white or Anglo-American parents (these latter children being hereinafter referred to as other white children); and that said children of Mexican descent be segregated into public schools and classes, commonly referred to as "Mexican" schools (hereinafter referred to as segregated schools and classes), established or maintained exclusively for the attendance of school children of Mexican descent.

2. Pursuant to said custom, usage and/or common plan, the above-named Defendants have, for several years last past, prohibited, barred and excluded, and do now prohibit, bar and exclude, the Plaintiffs, and all such school children of Mexican descent, from attending the certain regular schools and classes, within their charge and under their control, reserved by said Defendants for the exclusive attendance of the other white school children; and said Defendants have thus prevented said Plaintiffs, and said school children of Mexican descent, from receiving the educational, health and recreational benefits which such other white children receive in said regular schools and classes; and the said Plaintiffs, and said children of Mexican descent have, for several years last past, been generally and continuously assigned to certain segregated schools and classes intended exclusively for said children of said Mexican descent.

3. There is no provision in the Constitution of the State of Texas or in any Statute of said State authorizing or permitting the segregation, into segregated schools and classes, by Officers of the State of Texas engaged in the administration of the Public School Laws of the State of Texas, of school children of Mexican descent.

4. The exclusion of the Plaintiffs and said children of Mexican descent from said regular schools and classes, and the segregation of said children of Mexican descent in said segregated schools and classes as aforesaid, is solely because said children are of Mexican descent; and said exclusion and segregation are intended to, and have the effect of, discriminating against the Plaintiffs and the said children of Mexican descent solely because of their Mexican ancestry.

5. Said segregation aforesaid is unjust, capricious and arbitrary and in violation of the Constitution of the United States in that it deprives the plaintiffs and said children of Mexican descent of liberty and property without due process of law, and denies them the equal protection of laws, and of privileges and immunities as citizens of the United States, as guaranteed by the Fourteenth Amendment to the Constitution of the United States; and said segregation further deprives said Plaintiffs, and said children of Mexican descent, of rights under the 8 U.S. Code Sec. 43.

V.

The Attorney General of the State of Texas has rendered an opinion that it is illegal for School Officials of the State of Texas to segregate children of Mexican descent into separate schools and classes solely because of such descent. Despite said opinion, said Defendants above-named have continued the segregation aforesaid.

VI.

1. The practice, custom and/or usage of segregating school children of Mexican descent, as aforesaid, is general in the State of Texas, and obtains in many school districts of the State of Texas in addition to the school districts named as defendants herein; and said existence of practice is of general and common knowledge in the State of Texas, and of general and common knowledge to the educational officials of the State of Texas. Said practice has been expressly called to the attention of the defendant L.A. Woods, as State Superintendent of Public Instruction. Said defendant, as said State Superintendent, has issued no orders, instructions or regulations, pursuant to his duty so to do [*sic*], to the defendant School Districts and their officers, nor to any school district in the State of Texas, directing that said practice be discontinued; on the contrary, he has participated in said practice by allocating certain school funds, which said school funds were, to the knowledge of said Defendant, to be used for the maintenance of segregated schools and classes, and to be used for the maintenance of the practice of segregation hereinabove complained of.

2. The existence of said practice is known to Defendant members of the State Board of Education, and said Board and the members thereof have issued no orders, instructions, or regulations to the State Superintendent of Public Instruction nor to the Defendant School Districts and their officers and members named herein through said Superintendent of Public Instruction, nor to any School District in the State of Texas, directing that such practice be discontinued; on the contrary they have participated in said practice by allocating certain school funds and textbooks which said schools funds and textbooks were, to the knowledge of said Defendants, to be used for the general maintenance of the practice of segregation hereinbefore complained of.

VII.

This suit is brought by the Plaintiffs for and in behalf of themselves and for and in behalf of all school children of Mexican descent within the School District within which said Plaintiffs are respectively residenced, and this suit is filed as a Class Suit for and in behalf of said children of Mexican descent so

residenced in that, as heretofore set forth in this complaint, all of said children of Mexican descent are in the same class as said Plaintiffs in that they all are required to attend segregated schools and classes solely because they are of Mexican descent; said Class is so numerous that it is impracticable to bring all of its members before the Court; and the character of the right sought to be enforced herein is several and there are common questions of fact and of law affecting the several rights of the school children of Mexican descent constituting said class; and a common relief is sought by said school children of Mexican descent against all the Defendants herein.

VIII.

Unless enjoined by order of this Court both by permanent injunction, and by injunction pendente lite, the Defendants intend to continue to practice the custom and/or usage aforesaid, and to continue the general practice of segregation aforesaid. The Plaintiffs and the Class in whose behalf this proceeding is filed, have no plain, speedy or adequate remedy at law, and will suffer great and irreparable injury unless an injunction pendente lite and a permanent injunction are issued by this Court enjoining said practice, custom and/or usage.

xxxxxxxxxxxxxxxxxx

For a second cause of action, being a cause of action for damages against the Defendants Bastrop Independent School District of Bastrop County [et. al.] . . .

I.

The Plaintiffs incorporate herein all of the allegations set forth in the Plaintiffs' first cause of action . . .

II.

The Plaintiffs, as aforesaid, by the acts of the Defendants complained of, were deprived of their rights under the Constitution of the United States and the Laws of the United States to be free from discrimination solely because of their ancestry; and were thus denied the right, by the said Defendants, to receive an education in the regular schools of Texas, free from such discrimination; and were further deprived by said Defendants from securing the educational, recreational and health benefits accorded by said Defendants to other white children, to the damage of the Plaintiffs, and of each of them, in the sum of Five Thousand ($5,000) Dollars.

III.

The acts of the Defendants Bastrop Independent School District of Bastrop County, [et al], were wantom [*sic*], reckless and with a complete disregard of the rights of the Plaintiffs by virtue whereof the Plaintiffs, and each of them, are additionally entitled to punitive or exemplary damages in the sum of Five Thousand ($5000) Dollars.

xxxxxxxxxxxxx

Wherefore the Plaintiffs pray for relief as follows:

Under the first cause of action:

For a judgment and decree granting a permanent injuction, and for an order granting an injunction pendente lite, against all the Defendants in behalf of the Plaintiffs, and the school children of Mexican descent represented by them, enjoining said Defendants and their agents from in any manner assigning into segregated schools and classes school children of Mexican descent under their control; and from in any manner, directly or indirectly, participating in said practice of segregation, including the proration and/or payment of any funds and/or instructional materials of the State of Texas, used, or to be used, for the purpose of maintaining segregated schools and classes for school children of Mexican descent.

Under the second cause of action:

For damages in behalf of the Plaintiffs, and each of them, against the . . . Bastrop Independent School District of Bastrop County, [et al.], in the sum of Five Thousand ($5000) Dollars actual damages, and, additionally, the sum of five thousand dollars as punitive and/or exemplary damages.

And Plaintiffs further pray for such other relief as may be proper.

_____

Gus C. Garcia
Attorney for Plaintiff

Robert C. Eckardt
A. L. Wirin
State of Texas
County of Travis

Before me, the undersigned authority, on this day personally appeared Gus C. Garcia, known to me to be the person whose name is subscribed below, who states upon oath that he had read the foregoing complaint, designed to be used in the case of *Minerva Delgado, By Her Grandfather and Next of Friend, Samuel Garcia, et al vs. Bastrop Independent School District of Bastrop County, et al,* that he knows the contents of said complaint, and that the facts and statements therein contained are true and correct.

(signed Gus. C. Garcia)
Affiant.

SUBSCRIBED and sworn to before me, the undersigned authority, on this 17th day of November, A.D. 1947.

GIVEN under my hand and seal of office.

(signed Louise Vine)
Louise Vine
Notary Public in and for Travis
County, Texas.

DOCUMENT 5.7

Desegregation Orders, Bastrop County, Texas, 1948

Honorable Ben H. Rice Jr. ruled in favor of Minerva Delgado, declaring that the segregation of Latino pupils was "arbitrary and discriminatory" and violated the equal rights clause of the Fourteenth Amendment. The judge did permit schools to clearly demonstrate through "scientific and standardized tests" separation of children who lacked English proficiency during their first scholastic year, but only for one year.

From: *Minerva Delgado, et al. v. Bastrop Independent School District of Bastrop County, Texas, et al.* Civil Action no. 388 United States District Court Western District of Texas Austin Division, filed on June 15, 1948. In National Archives and Records Administration, Southwest Region, Fort Worth, Texas.

FINAL JUDGMENT

Abstract of Principal Features

This action came on for trial on the 15th day of June, 1948, before the Honorable Ben H. Rice, Jr., Judge Presiding, the plaintiffs . . . and the defendants . . . being represented by their attorneys. . . . The plaintiffs having heretofore voluntarily dismissed their second cause of action in their complaint; and the evidence having been introduced both oral and documentary and said action having been submitted for decision on the merits, the court being fully advised in the premises, and findings of fact and conclusions of law having been waived by stipulation of the parties,

It Is Therefore Ordered, Adjudged, and Decreed that:

1. This action by plaintiffs is a representative class action on behalf of themselves and of all pupils of Mexican or other Latin-American descent, and the action has been properly brought as such class action pursuant to law.

2. The regulations, customs, usages, and practices of the defendants, Bastrop Independent School District of Bastrop County, et al, and each of them in so far as they or any of them have segregated pupils of Mexican or other Latin-American descent in separate classes and schools within the respective school districts of the defendant school districts heretofore set

forth are, and each of them is, arbitrary and discriminatory and in violation of plaintiff's constitutional rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States, and are illegal.

[3.] The [defendant school districts and their officers] are hereby permanently restrained and enjoined from segregating pupils of Mexican or other Latin American descent in separate schools or classes within the respective school districts of said defendants and each of them, and from denying said pupils use of the same facilities and services enjoyed by other children of the same ages or grades; provided, however, that this injunction shall not prevent said defendant school districts or their trustees, officers, and agents from providing for, and maintaining, separate classes on the same campus in the first grade only, and solely for instructional purposes, for pupils in their initial scholastic year who, at the beginning of their initial scholastic year in the first grade, clearly demonstrate, as a result of scientific and standardized tests, equally given and applied to all pupils, that they do not possess a sufficient familiarity with the English language to understand substantially classroom instruction in first-grade subject matters.

4. If in any school district obedience to this decree renders it practically necessary, in the discretion of the school district, that additional school buildings be provided or moved from one campus to another, then a reasonable time is hereby allowed for compliance, but in no event beyond September 1949.

5. The defendant, L. A. Woods, as State Superintendent of Public Instruction, is hereby permanently restrained and enjoined from in any manner, directly or indirectly, participating in the custom, usage or practice of segregating pupils of Mexican or other Latin-American descent in separate schools or classes.

6. The motion of the State Board of Education and the members thereof to be dropped as parties hereto is sustained, and they are hereby dropped and dismissed from this suit with their costs.

Dated at Austin, Texas, this 15th day of June, 1948.
(Ben H. Rice, Jr.)
United States District Judge

DOCUMENT 5.8

Deposition for Delgado v. Bastrop, 1948

As part of the depositions for Delgado v. Bastrop, lawyer Gus Garcia questioned numerous school officials regarding the custom and practice of segregating Mexican and Latin children into different schools. As the following testimonial reveals, the number of grades available to Mexican children, the condition of the schools, and quality of teachers was often greatly inferior to that available to Anglo children.

Source: *Minerva Delgado, et al. v. Bastrop Independent School District of Bastrop County, Texas, et al.* Civil Action no. 388 United States District Court Western District of Texas Austin Division. In National Archives and Records Administration, Southwest Region, Fort Worth, Texas.

Appearances:

A. L. Wirin
Gus Garcia

Attorneys for Plaintiffs

Ireland Graves
J. Chrys Dougherty

Attorneys for defendants, Bastrop Independent School district and others.

Joe R. Greenhill, Asst. Atty. General
Martin Harris, Asst. Atty. General

Attorneys for L. A. Woods, State Supt. of Schools

Depositions of Gus F. Urbantke, I. W. Popham, P. J. Dodson, Claud E. Brown, C. R. Akin, and F. Kenneth Wise, defendants, taken on the 30th day of April, 1948, before me, Mrs. Opal Looke, a Notary Public in and for the County of Travis, State of Texas, in the Capital National Bank Building, Austin, Texas, between the hours of 9:30 o'clock A.M. and 4:30 o'clock P. M. of said day. And the said witnesses personally appeared before me to depose in

a civil case pending in the District Court of the United States for the Western District of the State of Texas, wherein Minerva Delgado et al. are plaintiffs and the Bastrop Independent School District of Bastrop et al. are defendants; and that I was then and there attended by counsel, as above set out; and that said Gus F. Urbantke, I. W. Popham, P. J. Dodson, Claud E. Brown, C. R. Akin, and F. Kenneth Wise, each being of lawful age and sound mind, and each being by me first duly examined, cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, touching his knowledge of the matters and things in controversy in said civil cause, depose and say as hereinafter set out.

. . . agreeing that same [deposition] may be reduced to typewriting and thereafter used in evidence by either party upon the trial of said cause, subject to all legal objections and exceptions, except as to the manner and form of taking. It is further expressly agreed that the depositions may be signed by the witnesses at any time before the trial of said cause.

. . .

P. J. Dodson, having been duly sworn, testified as follows:

Direct Examination

Questions by Mr. Wirin:

Q Are you the Superintendent of the Bastrop Independent School District?
A Yes, sir.
Q How long have you been superintendent for that district?
A This is my 17th year.
Q Generally, as superintendent, what are your duties?
A Well, supervising the school system entirely, all sections of it.
Q And as superintendent, you carry out the policies of the school district?
A Yes, sir.
Q How many grade schools are there in the district?
A We have, I guess you would call it three. We have the—the colored school has a grade school; then we have a grade school incorporated with the White school, in with the high school, a so-called White building; and then we have the Manor Ward School.
Q The Manor Ward School ?
A Yes, sir.
Q What is that school?
A That is a school for Latin-American children primarily.
Q Where is the White school located?
A It is on the corner of Farm and Hill Street.
Q With respect to that location, where is the school for Latin-American children?

A I imagine it is about six blocks away; it is out at North and Main.
Q How long has the "White" school been in existence, to your knowledge?
A I don't know.
Q Many years?
A The building got torn down and replaced with another building and was built in '92; there was a school there before that, so I don't know how long.
Q Anyway, it was there before you became superintendent?
A That is right.
Q How long has the Latin-American school been in existence?
A The Manor Ward School was built the first year after I went there. We did have a one-teacher school with about 15 Latin-American students in it when I went there.
Q Well, in any event, after the first year you went there, there have been these two schools?
A Well, this one-teacher Latin-American school was a separate school when I went there; you see, we didn't have many Latin-Americans in town, only 15 or 16, but there were Latin-American schools all around us that had a large enrollment. One had fifty some-odd; one had 90 some-odd; with one teacher and very few pupils going, I made an arrangement with the County Superintendent, if he would transfer them to me, I would take the State money and buy a bus, give them a building and give them a good school; so we took our 16 out of that tumble-down building, and about 125 from the rural districts surrounding us, and created a good school for the Latin-Americans.
Q And since then that school has been used for the Latin-Americans?
A Yes, sir.
Q And the other school has been used by "White" children?
A Not entirely; we have had some Latin-Americans, of course, in the other school. There have been no American children in the Latin-American school, but there have been Latin- Americans in all the grades in the so-called "White" school.
Q As of what grade is the—what grades are taught in the Latin-American school?
A At the present time we have four grades .
Q And has there been any change in the number or amount of grades?
A Yes, sir; when we first established it, we had eight grades.
Q When was the four-grade curriculum put into effect?
A Four-grade? This past September.
Q And prior to this past September, what grades were in the Latin-American school?
A Last year I believe we had fifth and sixth over there.
Q And before last year?
A And the year before, I think we had the seventh over there; about two years before that, we had the eighth over there.
Q Now, during the period when you had up to the eighth grade, was it the regular practice that children attending the Latin-American school, when they reached the eighth grade, were then all transferred to the "White" school?

A Well, about the second year after I got there, it was. Up until that time we didn't teach any Latin-Americans in the "White" school at all.
Q I see.
A In other words, I have been trying gradually to bring about a social revolution; you know what is necessary to do that.
Q When you got there or after you got there, you arranged for the Latin-American children who got through, say, the seventh grade to be transferred to the "White" school?
A That is right; at that time it was the seventh grade was the top grade.
Q Seventh grade?
A The eighth grade was the top grade later on, but I don't know just how long it was before I got the Latin-Americans started; but I know for the last 10 or 12 years we have had Latin-Americans in high school, at least.
Q All right. Now, let's see. In other words, you arranged for the entire class, for all the pupils in the entire class to be transferred when they reached the seventh grade?
A That is right; when they finished the grade that we taught over there.
Q Finished the grade that you taught over there; and that is the practice now, except the grade has been lowered to the fourth grade rather than originally the seventh?
A No, not necessarily; we have some Latin-American students in the first, second, third, and fourth in the "White" school, and since—
Q But is it the general practice for the transfer to be made when the group of pupils, as a group, reach a certain grade?
A As a general practice, unless they come and ask to go to the other school and speak English; there are some that start in the first grade in the other school.
Q Now, you say there are some children of all grades of Latin-American descent who are in the "White" school'?
A Yes, sir.
Q How many such children are there?
A Not very many in the first four grades.
Q Well—
A I have that information in my car down there, if you want me to go down and get that envelope. I forgot to bring it up.
(Discussion omitted. The envelope referred to above was obtained.)
Q All right; now, you said if a child can speak English, then he is allowed to go to the "White" school?
A No, you understand I don't go over there and ask them if they can speak English and bring them in; but if the kids want to go to the school and can speak English, we bring them in. We haven't made a practice of giving them an examination; I recognize that we should have, but I have never thought of it; but all who want to come, come over.
Q You say you have not had the practice of giving any tests in English?
A No, sir.

Q How, then, is a determination made as to whether a child of Latin-American descent can speak sufficient English to be allowed to go to the "White" school?

A Well, merely by questioning. As a matter of fact, there has never been but one child that anybody asked to go to the "White" school that we didn't take into the "White" school.

Q Do you know—will your records show something about that child?

A I can tell you.

Q Suppose you do.

A This past fall, the first day of school, one of our Latin-American students in the freshman class in high school called me that afternoon and said, "Mr. Dodson," says, "Mama wants Minerva Delgado to go to the 'White' school." I said, "Why" He says, "She is too far from the Latin-American school." I said, "Does she speak English?" He says, "No, sir." "Does your Mother speak English?" He says, "No, sir." I says, "She will have to go up there until she can speak English well enough to do the work."

That is the only child I know that has ever been turned down; that was a six-year-old beginner who didn't speak English by their own admission.

Q To your knowledge are there any children of Anglo-American descent who attend the Latin-American school?

A No, sir.

Q Has there ever been a case—

A Not that I know of.

Q —when a child of Anglo-American descent attended ?

A There have been some half Anglo-American.

Q But a full Anglo-American, so far as you know, has never attended the Latin-American school?

A Has never, so far as I know.

Q What would you say are the reasons for the maintenance of the different or separate school buildings?

A I don't know how it became started; just custom, I suppose . That is what started it before I got there.

Q In other words, when you got there, it was just a custom?

A That is right.

Q Have you just continued the custom, except the grades have been lowered?

A The grades have been lowered, and I more or less continued the custom except for the cases I have talked of where they came and asked, and could speak English.

Q And the records which are coming up will have those cases?

A Yes; they will have the names of the children, some of them. Now, you understand I just made a hurried check over the old registers for about the last five or six years.

Q Now, in addition to the custom which was responsible for this practice before you became superintendent, are there any other reasons for this practice?

A Well, common sense, in my viewpoint, says if a child can't speak English, I don't know what I would do with him if I put ten of them that can't speak English in with twenty that can speak English. He might be able to learn to speak English under those conditions, but if I did, I know I would be slowing down those that do speak English.

Q So that in addition to custom, the other reason for the maintenance of separate schools is the matter of English or the teaching of English?

A That is the primary interest now; that is the primary reason.

Q Is there any reason besides that reason for your maintenance of separate school buildings now?

A No, sir.

Q Now, are there some children, let us say for the purpose of this question, comparatively few, of Latin-American descent who attend the Latin-American school who, let's say, in the third grade show some proficiency in the acquirement of English; are there?

A If they could speak English before they started.

Q There would be some such children?

A Yes.

Q As a matter of regular practice, are those Latin-American children who show proficiency in the acquirement of English in the third grade transferred to the "White" school?

A I don't make any investigation and bring them over.

Q Are there some children, perhaps, a few in the Anglo-American school who somehow or other don't seem to acquire a proficiency in English even up to the third grade?

A No, sir.

Q There aren't?

A No, sir, I wouldn't think so; you mean in the American—

Q American school.

A Anglo-American school that don't speak English?

Q Wouldn't there be some children who come from under-privileged or poor parents who for one reason or another don't speak English well or don't speak the kind of English which it is necessary to know in order to progress in other studies in the school?

A Oh, there is some of them that will fail English in school, yes, in high school.

Q Well, let's talk about an Anglo-American child who fails English with a very low mark in the Anglo-American school, is he transferred to the Mexican—

A No, sir; he doesn't fail English because he doesn't understand it. He fails English because he doesn't know grammar and doesn't know the technical part in English; but as far as the teacher telling him to do something, he is able to understand and follow directions. This big trouble with Latin-Americans, if you tell them to do something and they don't understand enough English to follow directions and do what the teacher tells them to, then we have got to teach them basic English. When you

talk about deficiency in English, we have plenty students [*sic*], of course, that are not finished English students; they don't make "A's" in their English subjects; but when the teacher tells them to do such and such, they understand what she says. They might not be able to do it, but they understand what she says.

Q Well, is the standard which is used in determining whether or not a child speaks English, the kind of English which the child speaks in order to be able to get promoted from one class to another because the child is able to understand the matters which are taught in the class, or is the kind of English which the child needs to know in order to follow the general instructions of the teacher?

A Well, for putting them into your Anglo-American school, I would think the English we would want them to know—we can teach them grammar and things like that, but we would want them to know enough so they understand what we are saying when we try to tell them to do something.

Q Suppose that instead of having separate schools, children of Mexican descent with a deficiency in the knowledge of English for the purpose of following the instructions of the teacher were allowed to go to the "White" school and were given special instruction in the "White" school in English so that they could understand and follow the teacher, wouldn't that adequately dispose of the problem?

A Well, that is what we are doing; it doesn't make any difference to me; I am perfectly satisfied to put them over in the other school. I don't have room for them; I don't have trained teachers that have taught Spanish-speaking children enough to know how to teach them English; but as far as association is concerned, we have no resentment at all to putting Latin-American students in our school, the "White" school.

Q In other words, then, if there were the facilities from — so far as teaching the children of Mexican descent proficient English, that can be done just as well when children of Mexican descent are in the same building as when the children of Mexican descent are in a different building?

A In the same building and separate classes, yes.

Q Yes.

A My only reason has always been the fact that if I put them in the same room, those who speak English are going to be suffering while they wait for those to be taught English.

Q If they were put in separate rooms, that problem would be disposed of?

A That is right, yes, sir.

Q As a matter of fact, also, as an experienced educator of young school children, wouldn't you say that children who do not have a proficiency in the English language might derive some benefit from rather continuous association with children who speak the English language well—I mean on the playground?

A I wouldn't doubt that a bit in the world. As a matter of fact, when they get out of school up there at the Latin-American school, about 90 per cent of them, you see, these children don't belong to us very much; most of them belong to the rural districts around there; they ride in on buses, all right on the same bus. They get out up at the other school at 2:30 or 2:20; the bus leaves at 4:00. They leave the Latin-American school and come down on the campus and play with the "White" children waiting for buses; they get a lot of association that way; I am sure that helps.

Q So that as an educator, you would say that except for the problems in physical arrangement and perhaps, even, financial problems, there would be an advantage in the acquirement of English—

A That is right.

Q If there were no separate building?

A If they were on the same grounds in separate classes, yes, sir.

Q Yes, sir.

A That would be ideal from my mind, as a matter of fact.

Q Because then the child would have the advantage of acquiring English by speaking it with his friends and associates?

A That is right.

Q As well as merely listening to English from the teacher?

A That is right.

Q Which is all that a child gets when it attends a separate school building; you agree to that?

A Yes. Because of that, we insist that those children speak English on the school ground up there at the Latin-American school.

Q And of course, if they played with Anglo-American children and associated with them more, they would more naturally and readily—

A That is right.

Q —just naturally speak better English?

A That is right.

Q Wouldn't you say, then, as an educator, that from your experience the maintenance of separate school buildings tends to retard the acquirement of proficient English by those who are not already proficient, rather than improve it, so far as the separation is concerned?

A Well, now, I don't know.

Q I think you have already said that the association which comes by children not proficient in English with children who are, through continuous association and exchange, is an important factor in the acquirement of proficiency in English?

A I think it would help, yes.

Q Well, maintenance of separate schools don't permit that [*sic*], in so far as they are separate?

A Well, I don't know. We have, of course, we have children in the third and fourth grade who have learned a lot of English.

Q You mean—

A In the Latin-American school; and by requiring them to play on the ground together—to speak English on the playground and to associate with those who speak English—I am not exactly certain that they don't learn just as much English that way as they would with the American children.

Q In any event, I take it as your opinion that when children who are not proficient in English associate and talk with children who are proficient, the more of that that is done, the more readily the children who are not proficient acquire proficiency in English?
A I would say so.
Q And that is particularly true with children who are not proficient, when they are just naturally associated with in friendly relations on the playgrounds and buses with the Anglo-American children?
A Of course, I don't know if we would have a great deal more of that if we had them in the same building than we do having them on the same grounds from 2:30 to 4:00 o'clock; there wouldn't be a great deal more of that. They play on the playground together.
Q Is there a cafeteria in the "White" school?
A Yes, sir.
Q Is there a cafeteria in the Mexican school?
A Not at present, no, sir. We had one there before we had one in the "White" school, but limited space has forced us to close that.

. . .

Q Generally, is the curriculum in the Mexican school the same as in the "White" school?
A Yes, sir; put a little more stress on certain things in the Latin-American school.
Q What stress is—put on what things in the Latin-American school?
A Health, English, and citizenship.
Q With respect to English, just tell us specifically, if you can, in what particular respects the instruction or the treatment of the children in the Mexican school is different from the Anglo-American school.
A Well, of course, in the first grade at the Mexican school we have practically none of them that can speak a word of English when they start. The teacher has to use signs and everything else, just like we would have to in our high school Spanish class, teaching our students Spanish. We have to hold up a lemon and tell them "limon, lapel, ventana, and puerto."
Q That, of course, could be done just as satisfactorily and efficiently if the Mexican-American children were in a separate class in the same building as the Anglo-American students?
A Yes.

. . .

Q With respect to college training which the teachers have before they teach school, do you have an estimate as to the amount of college training which your teachers on an average have for the Anglo-American school?

A We have—most of them have degrees; we have probably four or five in the Anglo school that haven't completed their school; we have one that has only six hours of formal college work. We have four or five that have three years or less, and the other 18 all have degrees, Bachelor's and some Master's.
Q What about the Latin-American school, so far as college training is concerned?
A We have one in the Latin-American school has only six hours of formal college work, and we have two, I believe, that have three and three and a half.

. . .

Q Have some papers come up that might give answers as to the number of Mexican children who have been attending the "White" school?
A (Refers to records.) According to this hurried check that I made, in 1941–42 we had Dorothy Gonzales in the first grade.
Q All right; in the first grade.
A Clarence Gonzales in the fourth grade.
Q Are they related, do you know?
A I suppose they are brother and sister, but I don't know.
Q All right.
A And Richard Alvarado in the second grade.
Q That is the entire—
A That was in 1941–42.
Q All right.
A Now, I might have overlooked some. I just leafed through, looking for Latin-American names, is the principal thing about this.
Q All right.
A 1943–44 I found two in the second grade: Dorothy Rial and Carl Rial.
Q All right.
A 1944–45 I found Viola Martinez in the fifth grade.
Q All right.
A 1945–46 I found Joseana Rogers; that wasn't her true name. She was a step-child of a man named Rogers; she was a full blood Latin-American. In the sixth grade a Donald Pacheco; in the fifth—
Q Rogers was Anglo-American, the parent?
A Yes.
Q All right.
A 1944–45 I had Ralph Barrera, in the first grade; 1945–46 I had—
Q You have given us that, I think.
A I had Ralph and Janet Barrera at the same time. Ralph was still in the first grade, and Janet was starting the first grade.
Q All right.
A 1946–47 Ralph was in the second, and Janet in the second. 1947–48—let's see here; 1946–47 too there was Charles Schotz and Helen Schotz,

second and fourth grade. I understand probably their father was German, but they moved to us from Mexico City, where they had been attending the American school down there. Their mother was Mexican. Then 1947-48 I have got three Barrera children: Ralph in the third and Janet in the third and Shirley Ann in the first.

DOCUMENT 5.9

Aoy (Mexican Preparatory) School, El Paso, Texas, 1905

In 1887 Olives Villanueva Aoy (1823–1895) opened a bilingual private school in El Paso, Texas, for Spanish-speaking pupils. In 1888 the El Paso School Board incorporated the school into its system, hiring Mr. Aoy and two English-speaking assistants. By 1897, more than 200 students were enrolled. In 1899 the city erected a new building and by 1900 over five hundred children were seeking attendance at the school. In El Paso, as in other southwestern cities, school authorities often operated separate schools or classrooms for children who were non-English-speaking. Children in El Paso, for example, were separated by linguistic ability: "All Spanish speaking pupils in the city who live west of Austin Street will report at the Aoy School, corner of 7th and Campbell. English speaking Mexican children will attend the school of the district in which they live."[39] Because these regulations were often applied broadly, they eventually became the subject of several lawsuits.

From: *Report of the Public Schools of El Paso, Texas, 1905–1906*, pp. 35–36. Library of Congress, Washington, D.C.

I deem it unnecessary to go into details relative to the buildings, equipment, and work of all the ward schools, except to say that each of them is thoroughly equipped and the work is well organized and is progressing with unusual smoothness. But I do wish to call the attention of the Board to the Mexican school. This is a twelve-room building occupied exclusively by Mexican children. It is situated in the heart of the Mexican district of the city. It is well heated with steam heat, well lighted and thoroughly ventilated, furnished with the best new single desks, has the best toilet fixtures, is kept scrupulously clean, and all in all, is one of the most conveniently arranged and best equipped buildings we have. It is impossible to estimate the general good that this school is doing and has done among these benighted Mexican people. Yearly there are over six hundred children who attend regularly this school. They come from the humblest homes, where in years past, knowledge of English and habits of cleanliness and refinement were unknown; from families whose ancestors for ages have been under clouds of ignorance and superstition. To these little fellows, the school building is a veritable palace. It is possibly the most comfortable house, outside the church, that they ever

entered. Nice, clean floors, beautiful pictures on the walls, porcelain lavatories, clean towels, brushes, combs, well kept toilet rooms, are luxuries that these little beings never knew. Add to these comforts neatly dressed, cultured, refined, sympathetic teachers, whom these little ones love devotedly, and upon whom they look as beings a little more than human, and you see at once the opportunity for doing good at this building. Among the first lessons instilled into these children when they enter the school room is cleanliness. It is not an uncommon sight here to see a kind hearted school ma'am standing in the lavatory room by one of these home-neglected urchins and supervising the process of bringing about conditions of personal cleanliness as he applies with vigor to rusty hands, dirty ears and neck, unkempt face and head the two powerful agencies of American civilization, soap and water.

These are perhaps secrets intended by the instructors of this building to be kept sacredly within the walls of the school house, but I feel that they are such potent agencies for good that I am justified in revealing them. It has come to me that on several occasions these youngsters have returned home at the close of the day and were not recognized by their parents. I will not vouch for the truthfulness of this statement, but to him who his [*sic*] seen one of these little ones "before and after taking" it is not an incredible story.

Looking back over a period of ten years, since this work began one is astonished at what really has been accomplished . . .

Boys and girls who then were half dressed, half fed waifs of the alleys and streets, now speak English, hold positions as clerk in stores, book-keepers, teachers, interpreters, do all kinds of work where intelligent labor is required, dressmaking, laundrying, cooking, housekeeping, blacksmithing, work in foundries, railroad shops, carpenter shops, factories, etc. and have become so Americanized that the influence they exert for good upon this city in point of sanitation and morals can scarcely be estimated.

DOCUMENT 5.10

"Your American Pupil from Puerto Rico"

Between the years 1949 and 1968 the number of Puerto Rican children in the New York City public schools increased tenfold, from approximately 30,000 to 300,000. State and local school officials conducted numerous surveys and reports in order to determine the best methods to effectively teach English-language learners. In the 1950s and early 1960s the school district published several pamphlets designed to assist teachers and administrators with the influx of new pupils. The following images and captions are from the pamphlet, "Your American Pupil from Puerto Rico," which was tailored specifically for school districts 17 and 18 of the Bronx.

From: Material from publication, *Your American Pupil from Puerto Rico*, NY: Board of Education of the City of New York, 1957 (Vertical file—Education-Elementary). In Archives of the Center for Puerto Rican Studies/Centro de Estudios Puertorriqueños, Hunter College, New York, NY.

Additional Praise for Victoria-María MacDonald's *Latino Education in the United States*:

MacDonald has provided a comprehensive, readable, and provocative guide for those interested in the historical evolution of Latino education in the United States. The combination of shrewd introductory essays, carefully selected readings, and extensive bibliography should make *Latino Education in the United States* one of the preferred reference books in the fields of Latino studies, education, and history. . . . One of the most impressive elements of *Latino Education in the United States* is that it provides an outlet to the many voices associated with Latino educational issues: voices of oppression, hope, discrimination, opportunity, and relentlessness. MacDonald's scholarly command of the historiography of Latino education, combined with extensive archival research, make this book a must-read for those interested in Latino and educational issues.

—Félix V. Matos-Rodríguez, Ph.D. and Director, Centro de Estudios Puertorriqueños, Hunter College

Latino Education in the United States

A Narrated History from 1513–2000

Victoria-María MacDonald

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