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**A History of Unequal Opportunity in the U.S.  
Segregation of Latino School Children**

*Diplomová práce*

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## Abstrakt

### Historie nerovných příležitostí v USA. Segregace hispánských dětí ve školách

Již půl století uplynulo od doby, kdy Nejvyšší soud Spojených států amerických slavně rozhodl, že segregované školy jsou protiústavní, protože oddělená vzdělávací zařízení jsou ze své podstaty nerovná, a ukončil tak institucionalizovanou segregaci menšin. Přesto jsou dnes segregované školy stále realitou a stále nenabízejí srovnatelné vzdělání.

Tato diplomová práce se zabývá vzděláváním hispánských dětí ve Spojených státech amerických od počátku dvacátého století po současnost. Z hlediska geografie se práce zaměřuje především na oblast amerického Jihozápadu. Tematicky pak věnuje velkou pozornost významným soudním sporům, ve kterých Hispánci bojovali proti segregaci a za rovné příležitosti ve vzdělávání. Soudy sehrávaly v USA tradičně zásadní roli v bojích za občanská práva, jelikož v americkém systému fungují soudní rozhodnutí jako legislativní precedenty. Proto tato práce věnuje velkou pozornost soudnímu případu *Mendez vs. Westminster*, jehož rozhodnutí vedlo po druhé světové válce k ukončení institucionalizované (tzv. „de iure“) segregace hispánských dětí v USA. Segregace dětí ve vzdělávání je odbornou literaturou jen zřídka zkoumána v souvislosti s hispánskou menšinou. V obecném povědomí pak bývá téměř výhradně spojována s afroamerickou menšinou. Přitom je to velice důležité téma vzhledem k tomu, že hispánského původu je v dnešní době celá čtvrtina všech žáků amerických základních a středních škol.

Autorka práce dochází k závěru, že v důsledku segregace byla historie vzdělávání hispánské menšiny v USA historií nerovných příležitostí. Přístup hispánských dětí ke kvalitnímu vzdělávání je přitom segregací omezován i nadále, na počátku jednadvacátého století, kdy jsou právě Hispánci ve školách izolovaní větší měrou než kterákoli jiná americká menšina. Vzhledem k tomu, že většina segregovaných škol poskytuje výrazně horší kvalitu vzdělání, je zkoumané téma dobrým příkladem toho, že skutečná rovnost příležitostí pro všechny bez ohledu na původ, je ve Spojených státech stále ještě iluzí, iluzí o naplnění amerického snu.

**Klíčová slova:** Hispánci, vzdělávání, segregace škol, státní škola, nerovnost příležitostí, *Mendez vs. Westminster*, Spojené státy americké, americký Jihozápad

## **Abstract**

### **A History of Unequal Opportunity in the U.S. Segregation of Latino School Children**

Half a century has passed since the U.S. Supreme Court famously stated that separate educational facilities are inherently unequal. After all this time, separate facilities are still the reality and they are still unequal.

This thesis examines the educational experience of Latino children in the United States from the twentieth century up to the present, with the main focus on the area of the American Southwest. The history of Latino school segregation is examined from the legal perspective, focusing on the significant court cases in which Latinos fought against segregation and for equal educational opportunities. A special attention is paid to *Mendez v. Westminster* federal court case, which has ended de jure segregation of Latinos after the World War II. While the topic of school segregation in relation to Latinos is often overlooked by professional literature and little known to the public, it is very important as Latinos represent one fourth of all public school children in the United States today.

This paper concludes that, because of school segregation, the educational history of Latinos in the United States is one of unequal opportunity. Moreover, the educational opportunities of Latino children remain restricted by segregation in the present, when Latinos represent the most segregated minority in American public schools. As most segregated schools are inferior in terms of quality, this means that there is not a level playing field for all children at the start. As a result some children must try much harder in order to succeed.

**Keywords:** Latinos, Hispanics, Education, School segregation, Public schools, Inequality, Mendez v. Westminster, U.S. Southwest, United States

**Rozsah práce:** 98 204 znaků = 55 normostran

(bez poznámkového aparátu, abstraktu a resumé)

## **Prohlášení**

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3. Souhlasím s tím, aby práce byla zpřístupněna pro studijní a výzkumné účely.

V Praze dne 15. května 2015

Eva Veselková

## **Poděkování**

Děkuji vedoucímu své diplomové práce PhDr. et Mgr. Kryštofu Kozákovi, Ph.D. za cenné podněty, rady a připomínky při zpracovávání daného tématu, a dále profesorce Normě Hervey, Ph.D. za pomoc s jazykovými korekturami.

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## INTRODUCTION

For over a century the “American Dream”, a promise of a land where no matter who you are or where you come from, you can, through hard work, achieve anything of which you are capable, attracted millions of newcomers to come to the United States. Successful businessman and historian James Truslow Adams described the American Dream for the first time in his 1931 book *The Epic of America*:

“that dream of a land in which life should be better and richer and fuller for everyone, with opportunity for each according to ability or achievement. (...) It is not a dream of motor cars and high wages merely, but a dream of social order in which each man and each woman shall be able to attain to the fullest stature of which they are innately capable, and be recognized by others for what they are, regardless of the fortuitous circumstances of birth or position.”<sup>1</sup>

American Dream, however, was not realized by all immigrants. For some immigrant groups, including Hispanics, a path to success was complicated by the discrimination they had to face in many aspects of everyday life. Latinos, who were the major immigrant group of the second half of the twentieth century, and now comprise the greatest minority in the U.S. population,<sup>2</sup> are usually perceived as economically less successful. They tend to receive lower wages and, on average, less education than the majority of the U.S. population. The achievement gap between the U.S. majority and foreign-born Hispanics isn't surprising considering that among current immigrant groups they are, on average, the least educated upon arrival. It is, however, disturbing that this gap does not disappear for American children of those immigrants, sometimes not even by the third generation.<sup>3</sup> They lack intergenerational mobility, which seems to be due largely to low educational achievement of Hispanic children in American schools. It is well known that receiving a good education is now, more than ever, crucial for success in the U.S. Research shows that for Hispanics, especially, low educational achievement appears to be the biggest obstacle to their integration into the mainstream

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<sup>1</sup> James Truslow Adams, *The Epic of America*, (Boston, Mass.: Little, Brown, and Co., 1931), p. 214-215, quoted in: <http://www.loc.gov/teachers/classroommaterials/lessons/american-dream/students/thedream.html>

<sup>2</sup> Accounting for 17% of the country's overall population in 2014

<sup>3</sup> See Jeffrey Grogger a Stephen J. Trejo, *Falling Behind or Moving Up? The Intergenerational Progress of Mexican Americans* (San Francisco: Public Policy Institute of California, 2002) or Edward E. Telles a Vilma Ortiz, *Generations of Exclusion: Mexican Americans, Assimilation, and Race* (New York: Russell Sage Foundation, 2009)

society.<sup>4</sup> Unfortunately, many Latino children fail to receive the level of education that would enable them to be more successful than their parents or to join the ranks of the middle-class and thus achieve their “American dream”.

If the same trend continues in the future, the Hispanic minority might become a permanent underclass and that would mean, not only that most Latinos could not achieve American dream, but as Latinos are projected to represent 29 % of the U.S. population by 2060, it could pose a threat to the prosperity of the whole country.<sup>5</sup> In the context of current international economic competition, one can hardly imagine that U.S. could afford to have such a high percentage of its population without sufficient education or qualifications to compete on the global level.

Such a perspective is alarming and educational experts repeatedly expressed their concerns about it. Yet, U.S. policy makers pay surprisingly little attention to the issue and public discussion seems to focus on blaming Latinos for their lack of individual effort and failure to share American values instead of identifying possible structural causes of the problem within the system of public school education. Why isn't there more willingness to solve the problem on institutional level?

From a European perspective it is interesting to consider how much the American public's conception of Hispanics' attitudes towards education and hard work might be rooted in their own beliefs about the possibility of upward mobility and the importance of individual responsibility. According to a 2014 Global Attitudes survey, Americans celebrate individualism more than other nations. While, for example, in Germany 31% of respondents disagreed with the statement that “success in life is pretty much determined by forces outside our control”, in the U.S. 57% disagreed, the largest percentage of all countries examined. In the same survey, 73% of U.S. respondents said it is very important to work hard to succeed in life compared to 49% in Germany or 28% in Indonesia.<sup>6</sup> Considering that Americans, more than any other people, believe that individuals create their own destinies, it is understandable that they are also more likely to view wealth as a product of personal effort and poverty as a result of personal failure.<sup>7</sup> This belief in individual responsibility for achievement and the possibility of

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<sup>4</sup> Ibid

<sup>5</sup> National Population Projections of U.S. Census Bureau 2014 release (“Projections of the Size and Composition of the U.S. Population: 2014 to 2060”)

<sup>6</sup> Pew Research Center Spring 2014 Global Attitudes survey

<sup>7</sup> In one of the first large U.S. studies of attributions for poverty, Joseph Feagin (1975) found that the role of characterological flaws in causing poverty, such as laziness, substance abuse, lack of thrift, were

upward mobility makes Americans more likely to approve economic inequality within society with the reasoning that as long as there is equality of opportunity for all, unequal outcomes are not unfair.<sup>8</sup> Grounded on that premise is the conviction of conservative policy makers and their supporters that there is no need for any political action to reduce economic inequality.

Although arguments of individualism seem logical and compelling, they all rest on the premise that there actually is more or less level playing field for everyone. But, what if that premise is wrong? If we talk about a level playing field at the start, shouldn't that mean a level playing field in schools - the first public institution in American lives, the first place where the government can guarantee fair conditions? Schools, more than any other public institution, are supposed to serve as equalizers. By giving all children the same opportunity to succeed, they should made upward mobility possible for every child regardless of their class, origin or race.

Unfortunately research shows that American schools fail to provide Latino children with the same educational opportunities as the "white" majority. This paper presents evidence that, during the twentieth century, educational opportunities of Latino children have been increasingly restricted by educational segregation. At the beginning of the 21<sup>st</sup> century most Hispanic children are educated in schools whose student bodies are made up predominantly of minorities. In 2008-09 school year 60% of Latino students attended schools with minority enrollment higher than 75% and 79% attended schools in which more than half of the students were minorities.<sup>9</sup> Half a century has passed since the Supreme Court famously stated that separate educational facilities are inherently unequal by *Brown v. Board of Education* case.<sup>10</sup> After all these years, separate facilities are still the reality and they are still unequal. Majority-minority schools have in most cases, fewer financial resources and consequently worse teaching aids, less qualified

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supported more strongly than structural causes, such as discrimination, inferior schools, low wages, or fatalistic attributions, such as bad luck or unfortunate circumstances; Joseph R. Feagin, *Subordinating the Poor: Welfare and American Beliefs*, (Englewood Cliffs, 1975), quoted in: Heather E. Bullock, "Justifying Inequality: A Social Psychological Analysis of Beliefs About Poverty and the Poor", chapter 3 in: Ann Chih Lin and David R. Harris, *The Colors of Poverty: Why Racial and Ethnic Disparities Persist*, (New York: Russell Sage Foundation, 2008), p. 53, available at:

<http://muse.jhu.edu/books/9781610447249>

<sup>8</sup> Bullock, "Justifying Inequality...", p. 53

<sup>9</sup> U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "Public Elementary/Secondary School Universe Survey," 1995-96, 2000-01, and 2008-09 available at [http://nces.ed.gov/programs/digest/d10/tables/dt10\\_101.asp?referrer=list](http://nces.ed.gov/programs/digest/d10/tables/dt10_101.asp?referrer=list)

<sup>10</sup> *Brown v. Board of Education of Topeka* 347 U.S. 483 (1954), available at: <https://supreme.justia.com/cases/federal/us/347/483/case.html>

teachers, fewer college preparatory courses and fewer extra-curricular activities. Such schools can hardly offer their students quality schooling. The differences in quality between schools are so great that it is impossible to argue that there is a level playing field at the start for all children. The system disadvantages Hispanics, as well as other minorities.

Therefore, the conservative premise of equal opportunity at the start, and the policies based on it, are mistaken and there needs to be a public discussion about what can be done to foster equality on institutional level.

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This thesis examines educational experience of Hispanic children in United States from the twentieth century to the present, with the primary focus on the U.S. Southwest. The history of Latino school segregation is examined from the legal perspective, focusing on the significant court cases in which Latinos fought against segregation and for equal educational opportunities. The courts have historically played a key role in ending institutionalized segregation of Latinos after World War II. The judicial struggle of Hispanics against school segregation during the twentieth century is a topic little known to the public and insufficiently covered in the professional literature. Legal scholar Kristi L. Bowman, for example, notes that out of six leading constitutional law casebooks, four overlook the topic of Latinos in connection with school desegregation.<sup>11</sup> In the national consciousness, the history of school segregation is a one of discrimination against African Americans. In reality, Latinos were also affected by educational segregation in the past, and today they are the most segregated minority in U.S. schools.<sup>12</sup> Although mostly ignored, the topic is important, because Hispanics now represent 24 % of all K-12 public school students, compared to 16 % of Blacks.<sup>13</sup>

### ***Structure and Research Questions***

The thesis is divided into three main chapters. The first one examines origins of segregation in the U.S. Southwest in the first half of the twentieth century. It explains why segregation of Latino students started at this time and in this area, what rationales

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<sup>11</sup> Kristi L. Bowman, "The New Face of School Desegregation", in: *Duke Law Journal* 50 (2001). Available at: <http://scholarship.law.duke.edu/dlj/vol50/iss6/5>

<sup>12</sup> Statistics supporting this claim will be presented in the last chapter of this paper

<sup>13</sup> Kena, G., Aud, S., Johnson, F., Wang, X., Zhang, J., Rathbun, A., Wilkinson-Flicker, S., and Kristapovich, P. *The Condition of Education 2014* (U.S. Department of Education, National Center for Education Statistics, Washington, DC, 2014), p. 48, available at: <http://nces.ed.gov/pubsearch>

were being used to justify it, and what was the role of racial prejudices. It also deals with a question of whether segregation of Hispanics at the time could retrospectively be considered as *de jure*, that is, institutionalized.

The second, most extensive chapter examines three significant desegregation court cases in which Latino communities challenged institutionalized segregation to win their children access to quality education. The greatest attention is paid to *Mendez v. Westminster School District* (1947), a ground-breaking federal court case which ended institutionalized segregation of Latinos in U.S. schools, and was, historically, the first federal court case to rule that segregation in itself was unconstitutional, because it violated the fourteenth amendment of the Constitution.<sup>14</sup> The case is introduced in the context of post-War change of atmosphere in the U.S. society. The background of the case and legal arguments of both sides of the lawsuit are examined. Most importantly, the chapter analyzes legal arguments the court used in its ruling. The chapter ends with evaluation of the consequences of the case, not only for Latinos, but also for the desegregation campaign that followed in the U.S. in subsequent years.

The third chapter examines Latino schooling experience at the beginning of the 21<sup>st</sup> century, focusing on how is it different 68 years after *Mendez v. Westminster* - what has changed, and what remained the same? The chapter begins with a statistical overview of segregation trends from the second half of the twentieth century to the present, first assessing nationwide trends, and then those in the State of California. After that, possible reasons for existence of segregated schools, even years the *Mendez* and *Brown* cases, are examined. Finally, evidence is presented to support the claim, that separate schools remain unequal.

### ***Methodology and Review of the Sources***

The thesis is based on critical analysis of primary and secondary sources. From secondary sources, a book written by Charles Wollenberg, *All Deliberate Speed: Segregation and Exclusion in California Schools, 1855– 1975*, represents one of the most comprehensive and valuable publications written about the history of Latino educational segregation. This book provided me with lot of valuable material, especially for the first chapter. I did not know about it at first, but, as I went through several more recent works, I have noticed that basically all of them were referring to Wollenberg's

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<sup>14</sup> *Mendez et al. v. Westminster School Dist. Of Orange County et al.*, 64 F. Supp. 544 (S.D. Cal. 1946)

work. I also drew from his article *Mendez v. Westminster: Race, Nationality and Segregation in California Schools* which thoroughly examines the background of the *Mendez* court case.

Works written by educational historian, Professor Rubén Donato, also represents an extremely valuable contribution to the history of Latino school segregation. I use three works written, or co-written, by him in my paper, including a book he wrote in order to draw attention to the often overlooked history of Mexican Americans fighting against school segregation and challenging it in courts; *The Other Struggle for Equal Schools: Mexican Americans During the Civil Rights Era*. Another work, that Donato co-authored with Jarrod S. Hanson, *Legally White, Socially "Mexican": The Politics of De Jure and De Facto School Segregation in the American Southwest*, was crucial for my understanding of concepts of de jure versus de facto segregation. It also made me realize how much discrimination of Latinos in U.S. Southwest in the first half of the twentieth century was actually based on racial prejudices. Analyses of the court cases contained in *The New Face of School Desegregation* written by legal scholar Kristi L. Bowman and *Mendez v. Westminster School District: How It Affected Brown v. Board of Education* by Frederick P. Aguirre helped me to get a legal perspective for my second chapter, that focuses on significant Latino desegregation cases.

Apart from the scholarly literature I also used primary sources, and reports that are processing primary data. For the second chapter, I thoroughly studied the opinions of both the lower and appellate courts in *Mendez v. Westminster* case, and some of the amicus briefs. I analyzed them and tried to draw my own conclusions. On-line project *justia.com* also helped me, as it enabled me to access the transcripts of the rulings very easily.

In order to get most recent statistics on current segregation trends, for the last chapter, I researched through the datasets in electronic databases of U.S. Department of Education's National Center for Education Statistics (Common Core of Data) where I found "Public Elementary/Secondary School Universe Survey," which contains data on public elementary and secondary school students, by racial/ethnic enrollment concentration of school for school years 1995-96, 2000-01, and 2008-09. For recent segregation trends I also went through several studies that assessed primary data, mostly using the National Center for Education Statistics Common Core of Data as well.

I found out that basically all of the most comprehensive recent studies on contemporary segregation trends were written or co-authored by professor Gary Orfield,

who was a co-founder and director of the Harvard Civil Rights Project, and now serves as co-director of the Civil Rights Project/Proyecto Derechos Civiles at UCLA.<sup>15</sup> I have used some of the most recent studies he co-authored: *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* from 2003, *Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies* from 2007, and *Segregating California's Future: Inequality and its Alternative 60 Years after Brown v. Board of Education* from 2014.

As for the primary sources, in addition to those already mentioned, I include information from a huge database of U.S. Census Bureau data (census.gov), and some information from California Department of Education statistics.

### ***Terminology***

I am using both Latino/a and Hispanic interchangeably for persons of Latin American origin, but I use Latino/a more often as most of my secondary sources use it, because it geographically refers to Latin America, i.e. Central and South America, and Spanish speaking Caribbean Islands as places of origin. The term "Latino" is shortened from Spanish "latino americano", Latin American.

Most of Latinos whose history is examined in this paper were specifically of Mexican descent. The narrative of the first chapter especially relates to Mexican immigrants and Mexican Americans and their experience in the U.S. Southwest. For this reason I am sometimes using segregation of Latino children and segregation of Mexican children interchangeably in the first chapter, not however to imply that they are one group.

Some parts of the work refer to Latinos as non-whites. Hispanic or Latino is clearly an ethnic group, not a race. Since, however, there clearly existed a social construct of Latinos as "non-white" race in the past in the U.S., I may refer to Latinos as non-white or as a distinct race when I am describe the past and contemporary arguments of Anglo communities that were racially biased. I also note that Latinos were in some cases referred to as non-whites by courts for the purposes of school desegregation after 1973, because the desegregation plans were based on a white / non-white frame work, as a result of which Latinos could not take part in desegregation programs without fulfilling

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<sup>15</sup> <http://civilrightsproject.ucla.edu/about-us/staff/gary-orfield-ph.d>

the criteria of being discriminated against based on race, which essentially means without being non-white.<sup>16</sup>

In regards to last chapter, educational statistic surveys tend to use categories of Hispanics, as an ethnic group, and non-Hispanic whites to refer to all other “whites” than Hispanics in order to distinguish those groups for purposes of research in educational attainment and other characteristics. I am therefore using these categories as well in the last chapter, but because the terms are repeated many times in some paragraphs, I might use non-Hispanic whites at the beginning of the paragraph, and then, in repeating, only use white purely for the purpose of simplification.

Lastly I note that I am using terms de jure and de facto segregation retrospectively to describe the nature of segregation in a time period, in which these classifications did not yet exist. I recognize that they were only invented by the courts during the Civil Rights Era and used by both the courts and the scholars ever since. They are, nevertheless very useful, because they enable one to distinguish between institutionalized segregation, enforced by the law or the government, as opposed to de facto segregation, that is not directly enforced, very briefly and clearly.

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<sup>16</sup> Kristi L. Bowman, *The New Face of School Desegregation*, p. 1777



# 1. ORIGINS OF LATINO EDUCATIONAL SEGREGATION IN THE U.S. SOUTHWEST

## 1.1 *How did it start?*

Most of us have heard about the African Americans' history of educational segregation and the famous Supreme court decision in *Brown v. Board of Education* (1954) which has ended de jure segregation of Black students, but it is generally little known that Latinos, also have a history of segregated education with court battles for equal educational opportunities. As historian Rubén Donato notes, the *Plessy v. Ferguson* (1896) and *Brown v. Board* (1954) cases

“created a national consciousness that viewed school and social segregation as an African American problem. Americans have either forgotten or never realized that most Mexican American children were segregated into ‘Mexican’ classrooms” or into entirely separate ‘Mexican schools’.”<sup>17</sup>

American school boards first began to assign Mexican American children to separate classrooms and schools in the 1920's in reaction to a rapid increase of Mexican school enrollments caused by the increase of Mexican immigration to the U.S. Southwest between 1910 and 1930. This was the result of a combination of factors. A strong U.S. economy needed labor, especially during World War I, while the Mexican Revolution drove people out of Mexico between 1910 and 1920. Then, in the early 1920's, immigration from Europe was severely reduced by the imposition of strict quotas on the immigration from Southern and Eastern Europe, and further immigration from China and Japan was restricted even more, resulting in a great shortage of labor in the U.S. At the same time, the border between Mexico and the U.S. remained relatively open allowing thousands of Mexican laborers to settle in the U.S. Southwest and become an important part of its economy.<sup>18</sup> As a result, the Mexican born population residing in the

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<sup>17</sup> Rubén Donato, *The Other Struggle for Equal Schools: Mexican Americans During the Civil Rights Era*, SUNY Press, 1997, p. 12.

<sup>18</sup> Imposition of the quotas shifted the overall composition of immigration to the U.S. dramatically. For example while Italians accounted for 17,2% of total number of immigrants arriving to U.S. between 1911 and 1920, for years 1925-1927 they accounted for just 3,1% of arrivals. The opposite was true for Mexicans for whom the numbers for those same periods went from 3,6% to 15,2%.

U.S. tripled between 1910 and 1930, rising from 221 900 - 1,6% of total immigrants - to 641 500 - 4,5% of total.<sup>19</sup>

4,5% of total is still a relatively small share. The Mexican population was, however, highly concentrated in a relatively small part of the U.S. close to the Mexican border.<sup>20</sup> So the impact was strong in the U.S. Southwest where the shares of Mexican population increased more than was the national average. California Governor, C. C. Young's Mexican Fact Finding Committee report *Mexicans in California*, published in 1930 shows a profound increase in the Mexican population of California. Significant changes had occurred during the 1920's. Between 1919 and 1921 an average 14,8% of all immigrants coming to California were from Mexico, but in 1925-1928 it reached 41,3%.<sup>21</sup> According to the committee's estimates number of Mexican-born residents of California rose from 33 694 in 1910 to 88 771 in 1920 and 234 000 in 1930.<sup>22</sup>

The growth greatly affected Californian school enrollments. By 1927, the state had 65 527 pupils of Mexican origin, almost 10% of the state's public-school students. The ratio was much higher in certain counties with high concentration of Mexican population. In Imperial County, Mexicans or Mexican Americans represented 36% of all public school pupils.<sup>23</sup> The change created tensions within local communities. Many Anglo-Saxon parents were not enthusiastic about their children being educated alongside Mexican children whom they believed to be less intelligent and culturally inferior. As in the present, they feared that Mexican children could be bad influences on their children's education and hold them back. In many cases "white" parents petitioned local school boards so that their children would not share classrooms with Mexican peers. A Californian educator of that time Grace Stanley wrote in 1920 that "One of the first demands made from a community in which there is a large Mexican population is for a separate school" because of the English-speaking public's conviction that

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<sup>19</sup> Data from Migration Policy Institute website, table available at:

[http://www.migrationpolicy.org/sites/default/files/datahub/MPI%20Data%20Hub\\_Mexican%20Immigrants%20in%20the%20US\\_2013.xlsx](http://www.migrationpolicy.org/sites/default/files/datahub/MPI%20Data%20Hub_Mexican%20Immigrants%20in%20the%20US_2013.xlsx)

<sup>20</sup> At the time the vast majority of Mexican newcomers settled in one of the three states of Texas, California and Arizona

<sup>21</sup> Will J. French, *Mexicans in California: report of Governor C.C. Young's Mexican Fact Finding Committee*. Sacramento, California State Print. Office, 1930, p. 25

<sup>22</sup> Ibid, p. 44

<sup>23</sup> Charles Wollenberg, *All Deliberate Speed: Segregation and Exclusion in California Schools, 1855-1975*, University of California Press, 1978, p. 111

“Mexican is a menace to the health and morals of the rest of the community.”<sup>24</sup> Needless to say Mexican schools did not offer quality of schooling comparable to Anglo schools. They had “inadequate resources, poor equipment, unfit building construction and less paid teachers”.<sup>25</sup>

A study of segregation of Mexican children in the Oxnard Elementary School District in California describes pressure in the Oxnard School board to accommodate “White” parents' demands for segregation of Mexican children. The parents asked the school board to put their children into “all American” classrooms. This demand was not easy to meet for the school board though since there were 214 Mexican, 68 “White” and 10 Asian children in the school. At a meeting of the board and parents Superintendent Haydock explained that in order to group more American children together they would have to combine multiple grades in one classroom. Dissatisfied with the solution one frustrated parent exclaimed: “Mr. Haydock, you don’t seem to understand what these people want. They want complete segregation of the white children. Why can’t that be done?”<sup>26</sup> Subsequently parents presented a recommendation to the board to transfer all American (meaning Anglo) children from the Haydock school to another school in the district and conversely all “Mexican grades”<sup>27</sup> with their teachers to the Haydock school which would become an all Mexican school.<sup>28</sup> In the Oxnard district a solution of complete segregation was not implemented only because it was not technically feasible. The Haydock school didn’t have the capacity to accommodate all Mexican grades. The school board however took steps to segregate Mexican children from other children to maximum possible extent segregating at least within school through separate Mexican grades. In many other districts, where it was technically feasible, all Mexican schools were established or newly build.

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<sup>24</sup> Charles Wollenberg, “Mendez v. Westminster: Race, Nationality and Segregation in California Schools”, in:

*California Historical Quarterly*, Vol. 53, No. 4 (University of California Press, 1974), p. 319, available at: <http://www.jstor.org/stable/25157525>

<sup>25</sup> Kristi L. Bowman, “The New Face of School Desegregation”, p. 1769

<sup>26</sup> David G. García, Tara J. Yosso, and Frank P. Barajas, “A Few of the Brightest, Cleanest Mexican Children“

School Segregation as a Form of Mundane Racism in Oxnard, California, 1900–1940”, *Harvard Educational Review*, Volume 82, Number 1, 2012, p. 8, available at:

<http://her.hepg.org/content/40328h635h7745r3/?p=7e0594d29d264347a7d4884f68748bb4&pi=0>

<sup>27</sup> as authors of the study note, usage of the term „Mexican grades“ suggests that within school segregation was already common practice by that time

<sup>28</sup> García, Yosso, Barajas, „A Few of the Brightest, Cleanest Mexican Children“..., p. 9

Oxnard is just one example of the common practice throughout the two American states with largest Mexican population, California and Texas. In 1928, California's government conducted a survey in which sixty four of the schools that responded in southern California reported that they had 90 to 100 % Mexican enrollments. Three years later, the government conducted a second survey in which 85 % of the state's public schools, and 9 out of 10 school districts, reported that they were segregating Mexican students in separate schools or in separate classrooms.<sup>29</sup> In Texas, segregation of Mexican children became widespread at the same time as in California, as was the growth of the state's Mexican immigrant population. By 1930, as many as 90 % of Texas schools were racially segregated.<sup>30</sup> School segregation was again most intense in areas with the highest concentration of Mexican population. In Texas this was the area of lower Rio Grande Valley.

## **1.2 What were the Rationales for Latino School Segregation?**

This chapter began with the opinion that history of Latino educational segregation is commonly unknown and somewhat neglected. It is also complicated as a research topic because there is a whole range of factors to be taken into account including cultural and linguistic issues. In the first half of the 20<sup>th</sup> century, the rationale for school segregation of Latinos, and therefore also its mechanisms, were different than for segregation of African American children. For African Americans, segregation practice was clearly based on a racist ideology of racial inferiority, openly explained as such. It was an open racism. In comparison the rationale for school segregation of Latinos seems to be more complicated and, at times, confusing. While racist arguments had a strong impact, other arguments were also used, such as cultural differences, language, I.Q., social class or even lack of hygiene. Certainly these "other" arguments were rooted in racial prejudices. That is however somewhat different kind of racism, one that is hidden behind some seemingly rational arguments.

One argument used to justify segregation of Mexican children was the need to "Americanize" them. After millions of newcomers arrived at the beginning of the 20<sup>th</sup> century, the U.S. had to deal with the question of how to integrate them into the

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<sup>29</sup> Rubén Donato and Others, "Segregation, Desegregation, and Integration of Chicano Students: Problems and Prospects", chapter 2 in: *Chicano School Failure and Success: Research and Policy Agendas for the 1990s*, 1993, p. 35

<sup>30</sup> Ibid, p. 35

American mainstream. Institutionally, public schools were seen as essential instruments of acculturation to teach children of immigrants the American way of life and American cultural values. However, the schools chose different acculturation tactics for different immigrant groups. While children of immigrants from Southern Europe, for example, were quite logically expected to Americanize while sharing classrooms with their Anglo peers, most educational specialists in the 1920's considered Mexican children as culturally too different from Anglo children to be put in the same classroom with them. Therefore Mexican pupils were expected to Americanize in segregated classrooms during their first years of elementary education, a paradox. Only after "Americanization" would they be assigned to regular classroom with all other children. As Rubén Donato explains this possibility remained largely a theory of educational specialists.<sup>31</sup> In reality very few Mexican children were ever recognized as Americanized and reassigned from segregated classrooms and schools, because, unlike children of European immigrants, Mexicans weren't deemed able to ever truly assimilate. So, while the need for Americanization, was publicly used to justify school segregation, the belief that Mexicans were in fact unable to Americanize was paradoxically the true motivation.

Closely related to Americanization rationale was the argument that Mexican children must be educated separately because of their insufficient knowledge of English. Learning English was seen as crucial part of Americanization process. In theory, again, children would be transferred to regular classrooms once they acquired sufficient knowledge of English. In reality however many of the children in segregated settings were proficient in English or even born in the U.S. who did not speak Spanish at all.<sup>32</sup> Oftentimes a Mexican or non- Mexican surname mattered more than English proficiency.

On the other hand it needs to be acknowledged that in the 1920's some educators truly were convinced that segregation would be beneficial to Mexican children and believed that segregated grades or schools would serve them best. A California educator Grace Stanley for example argued that Mexican children needed a special curriculum to suit their special abilities. She described how in one school which was not segregated in

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<sup>31</sup> Donato, *The Other Struggle for Equal Schools*, p. 16-19.

<sup>32</sup> Margaret E. Montoya, *A Brief History of Chicana/o School Segregation: One Rationale for Affirmative Action*, 12 Berkeley Tech. L.J. 159 (2015), p. 166, Available at: <http://scholarship.law.berkeley.edu/blrlj/vol12/iss2/2>

San Bernardino Mexican and Mexican-American children “appeared to be dull, stupid and phlegmatic”, while in another all-Mexican school the children’s faces “radiated joy, they had thrown off the repression that held them down when they were in school with other children.”<sup>33</sup> Similarly a scholar Milo Hogan concluded that most schools in the Imperial Valley were ill equipped to serve Mexican children and recommended that segregation would be best for both groups of children because Mexican children would not hinder educational progress of Anglo children and at the same time Mexican children could have instruction focused on their specific needs.<sup>34</sup> Donato also notes that even more liberal educators were concerned that contact with “bright white children” would have “damaging effects on the Mexican children’s psychological well-being” and that Mexican children cannot be expected to “compete in English with Anglos”.<sup>35</sup>

Whatever the well-being of Mexican children themselves was never at the forefront of the segregation debate. Interests of Anglo children and Anglo communities were seen as most important. As it was shown earlier on the Oxnard district accommodating demands of Anglo parents wishing to separate their children from Mexican peers certainly worked as an important factor in school boards’ segregation decisions. Those demands were largely motivated by racial prejudices the Anglo population had towards Mexicans. The role of racial prejudices as incentives for segregation will be examined more closely later in this chapter.

Secondly there was also something we might call a class interest. While in theory the U.S. took pride in being a land of opportunity for all, a land of the “American Dream”, the example of the Anglo community of the Southwest shows us that the reality was at times more prosaic. Local employers, benefiting from the supply of cheap labor provided by Mexican workers, were understandably quite satisfied with the status quo. García, Yosso and Barajas note that experiences of Mexican children in U.S. schools must be analyzed within the context of Mexican workers because poor education of their children ensured the reproduction of a cheap labor force available for the agricultural economy of the region.<sup>36</sup> Illustrative of that is an example of some employers of Mexican labor in Imperial Valley who thought that it would be best if the children of their workers did not receive any education at all, complaining that “the

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<sup>33</sup> Grace Stanley, *Special School for Mexicans*, The Survey, 1920, p. 714, quoted in: Wollenberg, *All Deliberate Speed: Segregation and Exclusion in California Schools*, p. 113

<sup>34</sup> Donato, *The Other Struggle for Equal Schools*, p. 15

<sup>35</sup> Ibid

<sup>36</sup> García, Yosso, Barajas, “A Few of the Brightest, Cleanest Mexican Children”..., p. 18-19

schools teach Mexicans to look upon farm labor as menial” and education “only makes them dissatisfied”.<sup>37</sup>

### **1.3 De jure or de facto Segregation?**

Segregation of Latino children was linked to the question of whether and how was their segregation entrenched in the law? Were segregation practices sanctioned by the law or were they happening without legal backing?

Based on its legal nature, scholars distinguish between two types of segregation: de jure and de facto. The distinction was established by the courts after the *Brown v Board of Education* case because, during the legal battles which followed, they needed to differentiate between government-mandated racial segregation and segregation caused by private, market-based practices. The courts recognized segregation resulting from intentional governmental actions over which the courts exercised authority as de jure while segregation that resulted from private actions and government actions that weren't primarily intended to be discriminatory (as for example housing pattern) as de facto and therefore outside the reach of the judiciary.<sup>38</sup> This distinction grew in importance during the subsequent decades not only because it was important in the courts' decisions in specific cases but because it also influences retrospective understanding of segregation history of different racial / ethnic groups.

Unfortunately these definitions are not adequate to determine whether, or not segregation of Latinos during the first half of the 20<sup>th</sup> century was de facto or de jure. It is clear that the basic difference between the two was whether or not segregation was required by the law. Latino segregation was not required by the federal or state law. Racial / ethnic isolation of Latino students was not mandated by any legal statuses. Their segregation would therefore appear as de facto at the first sight. But If we look at the example of California again, Mexicans were the most segregated group in that state's education at the time despite not being mentioned by California State Code as a prohibited from admission to regular public schools like Negroes, Mongolians or Indians were.<sup>39</sup> Margaret E. Montoya notes Latinos were placed in segregated schools

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<sup>37</sup> Wollenberg, “Mendez v. Westminster”, p. 319

<sup>38</sup> Rubén Donato and Jarrod S. Hanson, “Legally White, Socially “Mexican”: The Politics of De Jure and De Facto School Segregation in the American Southwest”. In: *Harvard Educational Review* Vol. 82 No. 2, 2012, p.203, available at: <http://her.hepg.org/content/a562315u72355106/?p=ed50558a92d24e29adb31855c4c10295&pi=1>

<sup>39</sup> Montoya, “A Brief History of Chicana/o School Segregation”, p. 165

with no explicit constitutional, statutory or regulatory authority thorough the whole Southwest and because of that it was later almost impossible to fashion legal remedies for this discrimination using theories of de jure or de facto segregation.<sup>40</sup>

Moreover the entrenchment in law was not the only criteria used by the courts in post-Brown era to decide the character of segregation. They also considered whether the segregation practice was caused by governmental actions with discriminatory intent or not. In case of Latinos there clearly was a discriminative intent to separate them from White children at the level of local institutions. Their segregation therefore should not be interpreted as a naturally occurring pattern without a discriminatory intent. Legal scholar Kristi L. Bowman claims that under contemporary standards segregation of Latino students would be characterized as de jure segregation because of the districts' prejudice-based intent to educate separately Latino and White students.<sup>41</sup>

Rubén Donato and Jarrod S. Hanson discuss the question of de jure / de facto categorization of Latino segregation in detail in an article aptly titled *Legally White, Socially "Mexican": The Politics of De Jure and De Facto School Segregation in the American Southwest*.<sup>42</sup> They argue that it does not make a difference whether the segregation occurred as a result of a law that mandated it or as a result of decisions made by local school officials. Like Bowman they claim that the important thing is that policies of school officials resulting in the segregation of Mexican American students were carried out for the purpose (or with an intent) "to keep them apart from White children, (no matter the pedagogical or other rationale provided)" and because of that segregation of Mexican children in the U.S. Southwest should be retroactively considered de jure.<sup>43</sup>

#### **1.4 Racial Categorization as a Reason for the Absence of Legal Mandate for Segregation of Latinos**

The question of Latino segregation occurring without a proper legal mandate is closely related to the fact that they were racially categorized as White by the U.S. government ever since the Treaty of Guadalupe Hidalgo of 1848 extended the U.S.

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<sup>40</sup> Ibid

<sup>41</sup> Kristi L. Bowman, "The New Face of School Desegregation", p. 1770

<sup>42</sup> Donato and Hanson, "Legally White, Socially "Mexican": The Politics of De Jure and De Facto School Segregation in the American Southwest..."

<sup>43</sup> Ibid, p. 205



citizenship to Mexicans living in the newly American territories.<sup>44</sup> Discriminative laws that mandated segregation of African Americans, or Native Americans, were based on the rationale of their alleged racial inferiority. It was not possible to apply such laws - based on racist argumentation - to a group that was officially recognized as White with equal rights of citizenship. So legislatively, the rationale to include Mexicans to that legislation simply did not exist. It is important to acknowledge though, that the reason why Mexican segregation was not entrenched in law, and was implemented outside the law, was not that the racist rationale did not exist, but because of that legal obstacle.

In California, in 1930, Attorney General Webb attempted to categorize Mexicans, classified as Caucasians by the California government, as Indians in order to be able to legally segregate them. He argued that majority of the population of Mexico were Indians and therefore Mexicans “are subject to laws applicable generally to other Indians”.<sup>45</sup> Although this and other attempts to pass legislation that would legalize segregation were unsuccessful, there also was no effort to prevent school officials from segregating Mexican children in schools. The fact that they were segregated without any legal basis wasn’t successfully challenged before federal courts until after World War II.

Regardless of laws and official racial classifications it is important to understand that school segregation of Mexicans was in reality strongly motivated by the racist idea that they were racially inferior. The fact that Mexican Americans were treated as people of color by the White communities in the American Southwest can be easily demonstrated by examples of daily exclusion. For example in Santa Ana, California there were segregated movie theaters with the main floor reserved for Americans and the balcony designated for Mexicans and, in nearby Orange County, Mexicans were only allowed to use the swimming pool on Mondays, called Mexican days. On Tuesdays the pool was closed for cleaning and refilling.<sup>46</sup> In Texas and thorough the Southwest it was normal to see signs in public places stating “Mexicans and Dogs Not Allowed”.<sup>47</sup>

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<sup>44</sup> The transcript of the Treaty is available here:

<http://www.ourdocuments.gov/doc.php?flash=true&doc=26&page=transcript>

<sup>45</sup> Donato, *The Other Struggle for Equal Schools*, p. 15

<sup>46</sup> Christopher Arriola, *Knocking on the Schoolhouse Door...* (La Raza 166, 1995), quoted in: Montoya, *A Brief History of Chicana/o School Segregation*, p. 163

<sup>47</sup> Donato and Hanson, “Legally White, Socially Mexican”, p. 205

To return to the schools, I.Q. testing and comparing test results of different ethnic / racial groups became quite popular in the nineteen twenties. Several scientists claimed that the results of such tests proved that Mexicans were inferior to Anglos in terms of intelligence. For example, Thomas Garth from the University of Denver gave the National Intelligence Test to over 1 000 Mexican and Mexican-American students in Texas, New Mexico and Colorado and concluded that “the median I.Q. of those tested was 78,1” while William Sheldon of the University of Texas tested Mexican students in Texas and found that Mexican students averaged only 85 % of the I.Q. of “American” students. Sheldon’s national / racial comparison said that Mexicans had lower average I.Q. “than Americans, English, Hebrews and Chinese, but higher than Indians, Slavish, Italians and Negroes”.<sup>48</sup>

Although contemporary social scientists were clearly quite confident about the accuracy of their I.Q. testing methods, today’s standards question their accuracy. In the past, however, results of such tests echoed the existing prejudiced opinions of educators such as the one given by a California Superintendent of schools who said: “some Mexicans are very bright, but you can’t compare their brightest with the average white children. They are inferior race.”<sup>49</sup> Consequently I.Q. “research” served as evidence that Mexicans should not be educated together with “White” children, but in separated educational facilities.

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<sup>48</sup> William H. Sheldon (“The Intelligence of Mexican Children” in: *School and Society*, 1924) and Thomas Garth (“The Intelligence of Mexican School Children” in: *School and Society*, 1928), both quoted in: Wollenberg, “Mendez v. Westminster”, p. 361

<sup>49</sup> Kristi L. Bowman, *The New Face of School Desegregation*, p. 1770

## 2. LITIGATING FOR AN EQUAL OPPORTUNITY

### 2.1 *Salvatierra v. Del Rio Independent School District*

In the first chapter it was explained that segregation of Latino school children was common in districts with large Mexican populations in the U.S. Southwest in the nineteen twenties. This did not meet with significant resistance from the Latino community until 1930. At the beginning of nineteen thirties, Latinos mobilized and gathered enough resources to challenge segregation in the Courts. In order to be successful they needed to establish a platform which would help them to coordinate their political actions and gain ideological and financial support. For this purpose The League of United Latin American Citizens (LULAC) was founded in 1929 in Corpus Christi, Texas, the first Latino civil rights organization in the United States.<sup>50</sup> The leaders of the organization, mostly middle-class Mexican Americans, tried to motivate Latinos with U.S. citizenship to become active citizens, because they understood that participation in the political, economic and social institutions would enable them to improve the status of Latino community in the U.S. Alonso S. Perales, one of the founders of LULAC, believed that the socioeconomic problems of all Latinos living north of the border could only be solved by using their rights as citizens.<sup>51</sup>

LULAC also understood that education was fundamentally important for the advancement of the Latino community in the U.S. In 1931 the organization's newsletter, *LULAC News*, stated in an editorial:

“Again and again at different times our orators of the League have expressed their belief that the fundamental and basic problem of our race in Texas and the United States was education. Educate the children of Mexican extraction and we will have a new generation that will measure up to the requirement of American standards.”<sup>52</sup>

LULAC was therefore determined to help Latinos to acquire better and longer formal schooling. They realized that the first step to accomplish that was to challenge the legality of segregated schools. That is why the organization provided the professional,

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<sup>50</sup> See the website of „LULAC“: <http://lulac.org/advocacy/issues/education/>

<sup>51</sup> Guadalupe San Miguel, Jr., “The Struggle against Separate and Unequal Schools: Middle Class Mexican Americans and the Desegregation Campaign in Texas, 1929-1957”, *History of Education Quarterly*, Vol. 23, No. 3 (Autumn, 1983), pp. 343-359, Published by: History of Education Society, p. 345, Available at: <http://www.jstor.org/stable/367762>

<sup>52</sup> "The Segregation of Mexican Children at Del Rio," LULAC News, I, No. 1 (August 1931): 12-13, quoted in Guadalupe San Miguel, Jr., “The Struggle against Separate and Unequal Schools”, p. 347

financial, and organizational support for the first class action lawsuit against segregated “Mexican Schools” in Texas: *Salvatierra v. Del Rio Independent School District* in 1930.

Mobilization of the Mexican community in Del Rio in Southwest Texas was initiated by the local school board’s plan of expansion of school facilities according to which Mexican children would be assigned to a separate school. This school would be established by adding five rooms to an existing brick and tile building of two rooms that was designated as the “Mexican” or “West End” school.<sup>53</sup> The plan would intensify segregation of Latino students in the district. In order to prevent the school board from implementing it, a group of Mexican American parents, who were also U.S. citizens and tax payers, headed by Jesus Salvatierra hired the lawyer, John L. Dodson, to file a lawsuit against Del Rio school district with a charge of depriving students of Mexican descent of the benefits afforded “other white races” in the previous year.<sup>54</sup> They claimed that it was unconstitutional for the school board to segregate their children on the basis of race. The first decision was in favor of Mexican Americans by a trial court which prohibited further segregation in the district.<sup>55</sup>

But the Del Rio school district appealed, and the Texas appellate court reversed the decision. It agreed with the trial court that the school board was not permitted to educate children of Spanish or Mexican descent separately from students of other white races “merely or solely because they were Mexican”.<sup>56</sup> Due to the fact that Mexican Americans were recognized as members of the “other White race”, there was no state law that would sanction their segregation. However the court also stated that separating children for acceptable pedagogical reasons, without the intent to discriminate against them based on race, was not illegal, because such a case would only be an administrative act falling within the discretion of the local school board.<sup>57</sup> The school board managed to convince the court that the latter was true in this case arguing that it was educating Latino children separately because of their special language needs and also because children of Latino migrant workers oftentimes missed part of the school

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<sup>53</sup> Cynthia E. Orozco, "Del Rio Isd v. Salvatierra," Handbook of Texas Online, Published by the Texas State Historical Association, available at: <http://www.tshaonline.org/handbook/online/articles/jrd02>

<sup>54</sup> Ibid

<sup>55</sup> Kristi L. Bowman, “The New Face of School Desegregation”, p. 1751

<sup>56</sup> Guadalupe San Miguel, Jr., “The Struggle against Separate and Unequal Schools”, p. 349

<sup>57</sup> Donato and Hanson, “Legally White, Socially Mexican”, p. 212

year due to the migrant working schedule and they would disrupt the instruction in regular classroom by joining it belatedly.<sup>58</sup>

At the first reading the court's decision to accept these reasons and consequently not to prohibit segregation seem acceptable. In reality, however, it is questionable whether an appellate judge could in fact reasonably believe that Latino children were educated separately merely for pedagogical reasons when there was substantial evidence to the contrary. Reading the language rationale, for example, it seems that only non-English speakers would be assigned to separate class or school to learn English. In reality, all Latino children including English speaking children were assigned to them and no evaluation of the students' language abilities was made.<sup>59</sup> The other argument of different school-year schedules is not entirely plausible considering that "white" migrant children in the same situation were never send to different schools. The superintendent of the district who emphasized the rationale of a shorter school-year schedule confirmed that himself when he said:

„Yes, there are other children, American English speaking children who come in late, but a very small per cent of them. No, I did not send any of those English-speaking children who came in late over to the school where I sent the Mexican or Spanish speaking children . . . I only sent the Spanish speaking children over there, those who came in late.“<sup>60</sup>

Yet the court found that the assignments of the students into separate schools were not racially motivated. Therefore, it not only seems that the pedagogical rationales used in the lawsuit by the school board were substitute arguments intentionally neglecting the issue of race, or ethnic origin, but also that the court itself intentionally decided to use those arguments in its ruling despite being aware of the racial bias behind the practices of the school board to avoid race based decisions that were not legal.

After the Texas appellate court decided the case in favor of the district, the Latino community tried to get the case before the U.S. Supreme Court. LULAC initiated a huge fund-raising campaign to support the case and managed to raise more than \$1,000 in contributions during time of Great Depression.<sup>61</sup> The Supreme Court, however, refused to hear the *Salvatierra* case.

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<sup>58</sup> Kristi L. Bowman, "The New Face of School Desegregation", p. 1751

<sup>59</sup> Donato and Hanson, "Legally White, Socially Mexican", p. 214

<sup>60</sup> *Independent School District v. Salvatierra*, 1930, p. 793 quoted in Donato and Hanson, "Legally White, Socially Mexican", p. 213

<sup>61</sup> C. E. Orozco, "Del Rio Isd v. Salvatierra"...

## **2.2 Alvarez v. Lemon Grove School District**

Shortly after the *Salvatierra* case (in 1931), *Roberto Alvarez v. the Board of Trustees of the Lemon Grove School District* case was addressed in California before the Superior Court of San Diego County. The circumstances of the case were very similar to those of *Salvatierra v. Del Rio School District*, but with different outcome. The school board in Lemon Grove School District, as in Del Rio, came up with a plan to build a separate school for 75 students of Mexican origin who were, until then, attending the local grammar school, with other children.<sup>62</sup> The school board did not even bother to inform parents of Mexican children about the decision beforehand, so on January 5, 1931 the children were on their way to the Lemon Grove Grammar school as usual when its principal Jerome T. Green stood at the door and forbade them to enter the school announcing that Mexican children do not belong at this school. He then told all the Mexican children to go to a separate school constructed for them in an old two room building which, according to one student, everyone called “La Caballeriza”, the barnyard.<sup>63</sup> Mexican students refused to go to such “school”. They returned home and their parents did not send them to school. On the 8th of January, the *San Diego Evening Tribune* published an article titled *75 Mexican students go on strike* stating that Mexican community accused the school board with segregation after Principal Green send all Mexican children to the new Americanization school.

The Mexican community in Lemon Grove mobilized to help Mexican parents who organized themselves into the *The Comite de Vecinos de Lemon Grove*, The Lemon Grove Neighbors Committee, and they filled a court lawsuit against the Lemon Grove School Board charging it with unlawful segregation. They chose Roberto Alvarez to speak on behalf of the segregated students, because he was very good student and spoke English without problems.

When the court case began, the school board was asked to explain why Mexican children needed to be educated separately. As in the *Salvatierra* case, school officials argued that they needed to address their special curricular and pedagogical needs.<sup>64</sup>

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<sup>62</sup> “San Diego Mexican and Chicano history” website: *What was the Lemon Grove School Desegregation Case all about?*, available at: <http://aztlan.sdsu.edu/chicanohistory/chapter07/c07s02.html>

<sup>63</sup> Interviews with Roberto Alvarez, Sr. and Mary Smith Alvarez, February 1981, San Diego, California, quoted in Robert R. Alvarez, Jr., “The Lemon Grove Incident: The Nation's First Successful Desegregation Court Case”, in: *The Journal of San Diego History*, Vol. 32, No 2, 1986, available at: <http://www.sandiegohistory.org/journal/86spring/lemongrove.htm>

<sup>64</sup> Donato and Hanson, *Legally White, Socially "Mexican"*, p. 214

They said that new “Americanization school” would teach Mexican children English and American customs to bring them up to standards of American children while education of American students in the main school would not be diminished by the contact with Mexicans.

The lawyer of the Mexican parents, Fred Noon, called ten witnesses to the stand to challenge the argument that Mexican children were educationally backwards, or lacked English knowledge. Most of the students had been born in the U.S. and spoke English and, at least one student, spoke no Spanish at all.<sup>65</sup> Mexican parents further argued that as U.S. citizens their children were entitled to all the rights and privileges common to all citizens of the United States so the board had no right to exclude them from receiving instruction on an equal basis and that such exclusion was clearly an attempt at racial segregation of children of Mexican parentage from the children of American, European and Japanese parentage.<sup>66</sup>

Unlike in *Salvatierra* case in Texas, in *Lemon Grove* case Judge Claude Chambers refused the pedagogical argument. The following excerpt illustrates his questioning:

**Judge Chambers:** When there are American children who are behind (in grade level), what do you do with them?  
**Answer:** They are kept in a lower grade.  
**Judge:** You don't segregate them? Why not do the same with the other children?  
Wouldn't the association of American and Mexican children be favorable to the learning of English for these (Mexican) children?  
**Answer:** (Silence)  
**Lawyer Noon:** All the Mexican children were behind (in their work)?  
**Answer:** Many of them from the Lemon Grove School counsel.  
(...)  
**Noon:** What was the reason for separating them?  
**Answer:** To provide them with more personal attention.<sup>67</sup>

On March 1931 The Superior Court of San Diego County decided the case in favor of the Mexican community, agreeing that the district implemented unlawful segregation, and ordered immediate re-assignment of Mexican children back to the regular school building where they would be instructed equally with other children. The court concluded that the law of the State of California did not authorize or permit

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<sup>65</sup> “San Diego Mexican and Chicano history” website: *What was the Lemon Grove School Desegregation Case all about?*

<sup>66</sup> Superior Court of the State of California, San Diego County, Writ of Mandate, February 13, 1931, quoted in: R. R. Alvarez, Jr., “The Lemon Grove Incident...”

<sup>67</sup> Lemon Grove School Board Minutes. March 12, 1931, quoted in: R. R. Alvarez, Jr., “The Lemon Grove Incident...”

maintenance of separate schools for the instruction of pupils of Mexican parentage, nationality, or descent. It also refused the pedagogical argument, that Mexican children would benefit from segregation due to special curricula focused on Americanization and English instruction. In concluding, Judge Chambers stated that segregation would on the contrary harm Mexican children and slow down their language progress:

“I understand that you can separate a few children, to improve their education they need special instruction; but to separate all the Mexicans in one group can only be done by infringing the laws of the State of California. And I do not blame the Mexican children because a few of them are behind (in school work) for this segregation. On the contrary, this is a fact in their favor. I believe that this separation denies the Mexican children the presence of the American children, which is so necessary to learn the English language.”<sup>68</sup>

*Alvarez v. Lemon Grove School District* is a remarkable case because it was the first school desegregation case in the U.S. history to be decided in favor of discriminated students. Unfortunately it did not have a state-wide, or even nationwide, impact that the Mexican community hoped for because it was never a precedent and ended as an unnoticed victory. They had to wait until 1946 for a court decision that would actually have a major impact.

### **2.3 Mendez v. Westminster School District**

#### ***Change of Attitudes within the U.S. society after the World War II***

World War II changed the nation’s way of thinking about racial discrimination. After the Holocaust in Europe, some people were shocked, at how far racial hatred can go and how badly it can end. They were also influenced by the ideological layer of the War. U.S. political elites emphasized that this conflict was not only about super powers fighting over territories. Rather it was a battle between good and evil. U.S. was fighting to defend values of democracy, including equality and justice, against totalitarian tyranny of Nazi Germany which was based on racist ideology. Thus U.S. reaffirmed its core values as opposite to racist ones and some Americans from then on associated racism with Hitler and the Holocaust. Moreover what happened in Europe was seen as a warning that, especially in a country composed by people of many different ethnic backgrounds, it is necessary to ensure that there are no tensions between them and that new immigrants can be integrated.

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<sup>68</sup> R. R. Alvarez, Jr., “The Lemon Grove Incident...”



In this time, education specialists recommended education of minority children in mixed rather than segregated classrooms in order to integrate them and raise them to be good American citizens. In California, for example, educators spoke out against segregation in the California Elementary Schools' Principals Association yearbook of 1945 titled *Education for Cultural Unity*. The appeal on to educators sought to lessen the hatred and prejudice in the U.S. by ending segregation. They also stressed that U.S. should not fall behind other countries in terms of equality of citizens and racial prejudices when United Nation's mission is to "bring liberation and equality to the beaten and downtrodden",<sup>69</sup> and the critique did not come from educators only. Other authors warned that segregation lowers children's self-confidence by creating a feeling of inferiority, that children in segregated classes are not trained for democratic living and, also, that Spanish-speaking children learn English much faster in mixed classrooms.<sup>70</sup> The idea of the 1920's and 1930's that Latino children would be most easily "Americanized" in separate "Americanization" schools was now rejected by educators and replaced by emphasize on assimilation through integration. Change also occurred in Latino community itself. A new generation matured and demanded equal rights and economic opportunities. New organizations were found to defend Latino civil rights and organize political action. Many members of the older generation, the parents, started to do better economically during the 1940's and joined the middle-class. Consequently they were able to mobilize recourses needed for civil action more easily.

In 1944 they won a lawsuit against Californian City of San Bernardino, which had excluded Latinos from using public facilities of the city.<sup>71</sup> In *Lopez v. Seccombe* case Judge Yankwich ruled that Latino petitioners have been denied admission to the swimming pool, bath house, playground and other facilities solely because of their Mexican or Latin descent and that such conduct violated rights and privileges "guaranteed to them as citizens of the United States, by the Constitution of the United States of America, as particularly provided under the Fifth and Fourteenth Amendment", i.e. their equal protection of law and due process of law clause.<sup>72</sup>

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<sup>69</sup> Martha Seeling, "Segregation in the Public Schools", in: *Education for Cultural Unity*, 69,71, quoted in: Wollenberg, "Mendez v. Westminster", p. 363

<sup>70</sup> Wollenberg, "Mendez v. Westminster", p. 363

<sup>71</sup> Remarkably two of the plaintiffs were as taxpayers financing the facilities from which they were excluded.

<sup>72</sup> *Lopez v. Seccombe*, 71 F. Supp. 769 (S.D. Cal. 1944), p. 771, available at:

<http://law.justia.com/cases/federal/district-courts/FSupp/71/769/1674780/>

Soon after this victory, in 1945, California parents once again filled a class-action lawsuit against school segregation in Orange County school districts. *Mendez v. Westminster School District of Orange County* was as ground breaking a case for Latinos as *Brown v. Board of Education* was for African-Americans several years later. It was also the first lawsuit in which civil rights advocates attempted to persuade the court to decide anew about the constitutionality of the “Separate but equal” doctrine itself. The case was first tried in 1946 by the Federal District Court in Los Angeles, California and then, in 1947, by the Ninth Circuit Court of Appeals in San Francisco.

### ***The Background of Mendez v. Westminster***

The background of the case was similar to the pre-war desegregation court cases mentioned earlier. In September 1943 three children of Gonzalo Mendez were refused admission to the 17<sup>th</sup> Street School in Westminster when their aunt, Soledad Vidaurri, wanted to enroll them with her own children as the Mendez parents had to work at the fields that day. The school authorities told Mrs. Vidaurri that her children, who were half-Mexican, but fair-skinned with French surname, could register at the “white” elementary school, but that Mendez children, who were dark skinned and had a Mexican sounding last name would have to go to a Mexican school that was ten blocks away.<sup>73</sup> All three children were born in the U.S. and spoke English fluently. When Gonzalo Mendez heard that his children were denied enrollment he first went to the school’s superintendent and then to the Orange County School District. When these efforts failed he hired Los Angeles civil rights attorney David Marcus, who has just won the above mentioned *Lopez* case for Latinos, to sue the Westminster school district. Marcus advised him to try to get parents from other districts to join the lawsuit, because chances to win the case would better if they could prove that segregated schools for Hispanic children were maintained also in other Orange County school districts. In a short time, Mendez was joined by the Lorenzo Ramirez family from El Modeno School district, the Frank Palomino family from Garden Grove school district, and the William Guzman and Thomas Estrada families from Santa Ana, each in Orange County).

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<sup>73</sup> Phillip Zonkel, *Righting a wrong. Mendez v. Westminster brought an end to segregation in O.C. schools - and ultimately throughout the state and nation*, an article available on a website dedicated to Sylvia Mendez: <http://sylviamendezinthemendezvswestminster.com>

***Legal arguments used by both sides of the lawsuit***

In March, 1945 David C. Marcus filed a class suit on behalf of all the families against these school districts in the Federal District Court. The parents stated in the petition that they were, as U.S. citizens, representing their minor children along with the other five thousand children, similarly affected. They claimed that the school districts in Orange County forced all children of Mexican or Latin descent to go to schools attended solely and exclusively by Mexican and Latin children and barred them from attending all other schools in those districts, that were attended exclusively by children “purportedly known as White or Anglo-Saxon children”.<sup>74</sup> They alleged that by segregating their children based solely on their descent the districts violated equal protection of the laws and claimed that as citizens of the United States their children are entitled to equal access to all the benefits of the education enjoyed by all other children.

During the trial which began on July 5, 1945, local community members, who had attended separate schools testified about the inferior quality of segregated facilities and gave examples of Mexican parents whose requests to transfer their children to regular schools have been denied. Other witnesses testified that segregation had negative impact on segregated children’s psyche. The head of UCLA’s Anthropology Department, Dr. Ralph Deals, claimed that in his opinion separating Mexican American children from “White” children stamped the Mexican American children with a badge of inferiority and that such practice would lead to unproductive Mexican American citizens. He compared segregation based on origin to practices of Nazi Germany where Jews and Gypsies were labeled as inferior, and he said that the U.S. should not follow such attitudes.<sup>75</sup> Children themselves also testified at the trial about their feelings in schools.

Sylvia Mendez, the nine year old daughter of Gonzalo and Felicitas Mendez, testified in perfect English that she was ready to go to her neighborhood school - the 17<sup>th</sup> Street School. Decades later she recalled the time: “I don't remember much, except that we knew this was important for my dad. (...) I do remember going to court and sitting in a big chair when I testified. I had to testify, because [school authorities] said

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<sup>74</sup> Mendez et al. v. Westminster School Dist. Of Orange County et al., 64 F. Supp. 544 (S.D. Cal. 1946), (U.S. District Court for the Southern District of California, Civil Action No. 4292), p. 545, transcript available at: <http://law.justia.com/cases/federal/district-courts/FSupp/64/544/1952972/>

<sup>75</sup> Frederick P. Aguirre, “Mendez v. Westminster School District: How It Affected Brown v. Board of Education”, in: *Journal of Hispanic Higher Education*, 4/321, 2005, p. 325 available at: <http://jhh.sagepub.com/cgi/content/abstract/4/4/321>

we didn't speak English.”<sup>76</sup> Her testimony was important because it disproved the defendant districts' argument that the children were not educated separately from English-speaking pupils because of race, but because of their language deficiency, and that the school boards required them to attend such schools only until they acquired some proficiency in English language.<sup>77</sup>

Ironically, the racial bias of the school officials was demonstrated by the testimony of a witness who was called to testify in favor of the school officials. James L. Kent, superintendent of the Garden Grove School District, testified that Mexicans were not white in his opinion and that they were “inferior in personal hygiene, ability and in their economic outlook”. Those racist statements prompted David C. Marcus to compare Kent to Hitler. Furthermore Kent said that he would never allow a Latino child to attend an all-white school even if that child met all the qualifications to attend such a school, according to court documents.<sup>78</sup> This statement was in complete contradiction to the claims made by attorneys of the school districts and Marcus naturally took advantage and used it against them. Testimony of another superintendent, Frank A. Henderson from Santa Ana School District, confirmed that students were assigned to the city's 14 elementary schools solely on the basis of their last name.<sup>79</sup>

With all this evidence it became clear that the defendants would fail to disprove that Latino children were being segregated based solely on their descent. But attorneys of the school districts still had one more weapon. They hoped to circumvent the court process by stating that Federal Courts lacked jurisdiction because the local school boards' decisions to segregate Latino children did not constitute state action.

### ***Ruling of the Federal District Court***

On February 18, 1946 Judge McCormick decided the case in favor of Mendez concluding that the school boards acted with a clear purpose to arbitrarily discriminate against the pupils of Mexican ancestry and to deny to them the equal protection of the laws which was unconstitutional.<sup>80</sup> McCormick rejected the arguments of defendants in his opinion. First he closely examined the question of jurisdiction concluding that

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<sup>76</sup> H. G. Reza, “Lesson Learned on School Discrimination”, in: *Los Angeles Times*, September 1996, available at: [http://articles.latimes.com/1996-09-09/news/mn-42058\\_1\\_school-districts](http://articles.latimes.com/1996-09-09/news/mn-42058_1_school-districts)

<sup>77</sup> Mendez et al. v. Westminster School Dist. Of Orange County et al., 64 F. Supp. 544 (S.D. Cal. 1946), p. 546

<sup>78</sup> H. G. Reza, “Lesson Learned on School Discrimination”

<sup>79</sup> Ibid

<sup>80</sup> *Mendez et al. v. Westminster School Dist.*, p. 551

Federal Court was entitled to take the case, because actions of public school authorities of California state schools are considered actions of the State within the meaning of the Fourteenth Amendment.<sup>81</sup> After affirming the jurisdiction, the court examined the actions of the school officials in terms of the State's legislation concluding that segregation of the pupils of Mexican ancestry in the elementary schools was in conflict with the Constitution of California and the California Education Code.<sup>82</sup> Of greatest significance was the conclusion, that the defendants' practices clearly disregarded rights guaranteed by the supreme law of the land:

“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.**”<sup>83</sup>

This opinion is extremely important, because it declares that equal protection of the laws would be violated even if the separate schools provided equal quality of instruction, because it was the segregation itself that violated the equal protection clause. This was a ground-breaking idea at the time. It was the first time that a federal court ruled that segregation was unequal and discriminative by definition.

Lastly the court concluded that the records available to the court did not prove alleged language handicaps and that, in some cases, separate classification was determined largely by the Latinized or Mexican name of the child which was “illusory” as a method of evaluating language knowledge. Moreover the opinion stated that, even if they were not proficient in English, children should not be put into entirely separate schools because those would actually prevent them from learning the language:

“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.** 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.**”<sup>84</sup>

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<sup>81</sup> Here the judge explained that although various school districts enjoy a considerable degree of autonomy in California, they are still supervised by the State and must obey the State legislation.

<sup>82</sup> Mendez et al. v. Westminster School Dist., p. 548

<sup>83</sup> Ibid

<sup>84</sup> Ibid, p. 549

In this paragraph McCormick clearly states that segregation was socially harmful and had negative impact on the children's psyche and self-esteem. The decision, especially this quotation, is similar to the ruling that was later used in *Brown v. Board* case (1954). Comparing several paragraphs from each decisions shows parallels between them. For example the parts of the opinions that discuss that segregation violates equal protection of the laws and "suggests inferiority among children where none exists" or the mention that education must be open equally to all children are very similar. Aguirre suggests that Chief Justice Earl Warren clearly "read and thoroughly absorbed McCormick's ruling in *Mendez* prior to authoring the *Brown* decision, not only because of similarities in the language of both opinions, but also because Warren, then Governor of California, directed the attorney general's office to assist the plaintiffs in the *Mendez* case in 1946 which confirms his familiarity with the case.<sup>85</sup>

In conclusion McCormick ordered the defendant school districts to allow pupils of Mexican or Latin descent equal access to the district's public schools and to restrain from further discriminatory practices. But the battle was not won yet.

### ***A trial before the Ninth Federal District Court of Appeals and Involvement of Civil Rights Organizations***

The defendants' attorney, Joel Ogle, filed an appeal to the Ninth Federal District Court of Appeals in San Francisco in December 1946 claiming, again, that the federal court lacked jurisdiction, and that even if it had legal authority, segregation alone was not a denial of equal protection of the laws. The case caught the attention of the whole nation at this point because it became clear that the outcome could influence the future of all school segregation.

The American Civil Liberties Union, the National Association for the Advancement of Colored People, the Japanese-American Citizens League, the American Jewish Congress, the National Lawyers Guild and the Attorney General of California all filed Amicus briefs on behalf of the Mendez family for the Appellate Court.<sup>86</sup> The Attorney General's brief expressed the belief that majority of Californians wanted no part of race discrimination or segregation and that segregation of pupils on account of race was not

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<sup>85</sup> Frederick P. Aguirre, "Mendez v. Westminster School District: How It Affected Brown v. Board of Education", p. 328-331

<sup>86</sup> Westminster School Dist. of Orange County et al. v. Mendez et al., 161 F.2d 774 (9th Cir. 1947), (U.S. Court of Appeals for the Ninth Circuit, No. 11310), April 14, 1947 as corrected in August 1, 1947, transcript available at: <http://law.justia.com/cases/federal/appellate-courts/F2/161/774/1566460/>

the policy of the State. He suggested that the appellate court should uphold the decision of the lower court and that the sections 8003 and 8004 of California's Education Code that permitted segregation of children of Native American, Japanese, Chinese or Mongolian ancestry should be revoked based on the same reasoning, the violation of the due process and equal protection clauses of the Fourteenth Amendment.<sup>87</sup>

One of the authors of the NAACP's amicus brief was Thurgood Marshall,<sup>88</sup> who would several years later argue the *Brown v. Board* case before the Supreme Court and eventually became the first African American Justice of the Supreme Court. Maria Blanco writes that exchanges between Marshall and Marcus about the stigma attached to segregation and the psychological damage caused by it undoubtedly played a large role in the Mendez litigation and that "Marshall's participation in *Mendez* paid critical dividends for years to come."<sup>89</sup> The NAACP's brief for *Mendez* provided extensive legal argumentation proving that segregation by itself violated the equal protection clause of the Fourteenth Amendment and suggested that the court should strike down the whole "Separate but equal" doctrine established in 1896 by *Plessy v. Ferguson* which would mean end of segregation for children of all ancestries, not only Latinos. The brief had brilliant line of reasoning, for example:

"The segregated citizen cannot give his full allegiance to a system of law and justice based on the proposition that "all men are created equal" when the community denies that equality by compelling his children to attend separate schools. Nor can the white child learn this fundamental of American citizenship- when his community sets a contradictory example."<sup>90</sup>

On April 14, 1947 seven judges of the Court of Appeals unanimously upheld the decision of the district court rejecting all arguments of the appeal. Mainly they rejected the motion to dismiss the case for lack of federal court jurisdiction concluding that the school officials were acting under color of California State law when they segregated

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<sup>87</sup> Aguirre, "Mendez v. Westminster School District...", p. 326

<sup>88</sup> the other two authors were R. L. Carter and Loren Miller

<sup>89</sup> Maria Blanco, "Before Brown, there was Mendez: The Lasting Impact of Mendez v. Westminster in the Struggle For Desegregation", article on the website of the *Immigration Policy Center*, Mar 25, 2010, available at: <http://www.immigrationpolicy.org/perspectives/lasting-impact-mendez-v-westminster-struggle-desegregation>

<sup>90</sup> "Brief for the National Association for the Advancement Of Colored People as Amicus Curiae" No. 11,310 written for "Westminster School Dist. of Orange County v. Mendez, 161 F.2d 774 (9th Cir. 1947)", transcript available at: <http://www.esauboock.com/index/ThMarshall.html>

the children, because they could only do so by using the authority entrusted to them by the state, which they overstepped by their actions.<sup>91</sup>

Judge Stephens, however, refused to strike out on the whole question of segregation independently, as ACLU and the NAACP proposed in their briefs. He basically said that the court is not willing to, and does not need to deal with the question of lawfulness of segregation per se, because it was not necessary in order to decide this specific case. The fact that segregation happened without legislative support, and in “fatal collision with the legislation of the state” was sufficient to decide this case within the existing legal parameters. The court therefore preferred not to delve into something as tricky as deciding anew on validity of the *Plessy* precedent.<sup>92</sup>

The court also avoided labeling discrimination based on Mexican or Latin descent as race-based. In his opinion, Judge Stevens only mentioned that, while the parties in the case stipulated that there was no question as to race segregation in this case, the amicus curiae brief writers did consider it to be race-based, but that the court “was not put to this choice” because California law in any case did not permit “segregation of school children because of their Mexican blood.”<sup>93</sup>

## **2.4 Consequences of *Mendez v. Westminster***

The decision in *Mendez* was met with great acclaim in California, especially from the Latino community. *La Opinión*, a large Spanish-language newspaper based in Los Angeles wrote that the appellate decision was a blow to “those who believe in the anti-Semitic theories of Adolf Hitler” and that the case had established that people of Latin descent “must be treated as the same race (as *norteamericanos*).<sup>94</sup> However the ACLU and the NAACP were dissatisfied that the appellate court did not strike down the “separate but equal” doctrine and therefore it could not be used as a precedent to end segregation of children of other ancestries as well. *Open Forum*, published by the ACLU, criticized the opinion of Judge Stevens as “devoid of social imagination.”<sup>95</sup> Despite the criticism, the case was actually useful for the NAACP, because it served as

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<sup>91</sup> The affirmation that segregation happened under color of California State law further supports the view presented earlier in this paper, that segregation of Latino children in the first half of the 20<sup>th</sup> century should retrospectively be considered as de jure segregation.

<sup>92</sup> *Westminster School Dist. of Orange County et al. v. Mendez et al.*, 161 F.2d 774, p. 779-780

<sup>93</sup> *Ibid*

<sup>94</sup> *La Opinión*, April 16, 1947, quoted in: Wollenberg, “*Mendez v. Westminster*”, p. 368

<sup>95</sup> *Open Forum* (Los Angeles), May 3, 1947, quoted in: Wollenberg, “*Mendez v. Westminster*”, p. 368



a test case for the *Brown* litigation. It provided Thurgood Marshall and the NAACP with valuable experience for the future. As mentioned earlier the legal line of reasoning of Judge McCormick also may have inspired Chief Justice Earl Warren when he wrote his decision for *Brown v. Board* several years later. But at the time of the ruling, civil rights organizations and their attorneys understood the significance and potential of the decision and requested copies of the order.<sup>96</sup>

Moreover, in California, *Mendez* was significant not only for Latinos, but for children of Native American and Asian descent as well, because it drew attention to discriminative provisions of California Education Code<sup>97</sup> that mandated segregation of Asians and Native Americans, which prompted then California governor Earl Warren to request that the state legislature repeal them. After the bill was signed on June, 1947 California law no longer authorized segregation of pupils of any descent.<sup>98</sup>

Most importantly, however, the ruling ended de jure segregation of Latino children in the United States. It was a ground-breaking case coming after years of struggle for equal opportunity. The ruling in *Mendez v. Westminster* served as a precedent for desegregation of schools across the whole Southwest. In Texas, the Attorney General, Prince Daniel, issued a legal order prohibiting segregation of Latin Americans on account of race or descent in April 1947 and LULAC successfully sued school officials who segregated Latino children in central Texas in 1948, in *Delgado v. Destrop Independent School District*. The case was very similar to *Mendez* and affirmed an end of de jure segregation in Texas.<sup>99</sup> In Arizona, the federal court followed *Mendez* by its decision in *Gonzales v. Sheely* case in 1951. Many school districts across the Southwest closed or integrated the former Mexican schools.

These accomplishments were revolutionary and unprecedented at the time. The following decades however, illustrated the negative aspects of the fact that *Mendez* only dealt with de jure segregation. The next chapter demonstrates that it was not enough to prevent segregation of Latino children in the second half of the twentieth century, which emerged as de facto segregation.

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<sup>96</sup> H. G. Reza, "Lesson Learned on School Discrimination"

<sup>97</sup> Code Sections 8003 and 8004

<sup>98</sup> Frederick P. Aguirre, "Mendez v. Westminster School District: How It Affected Brown v. Board of Education", p. 327

<sup>99</sup> Guadalupe San Miguel, Jr., "The Struggle against Separate and Unequal Schools: Middle Class Mexican Americans and the Desegregation Campaign in Texas, 1929-1957", p. 349-350

### **3. WHAT WENT WRONG? STILL SEGREGATED AT THE BEGINNING OF THE 21<sup>ST</sup> CENTURY**

#### ***3.1 Statistical Overview of Contemporary Segregation Patterns in the U.S.***

Sixty eight years have passed since *Mendez v. Westminster*. At that time, no one have guessed that Latino students would still be segregated at the beginning of the 21<sup>st</sup> century. Yet they are even more isolated now than they were before. According to nationwide data collected by the National Center for Education Statistics, the distribution of Hispanic students is now as follows:

- 79% of Hispanic students attend schools in which more than half of the students are minority students<sup>100</sup>
- 60% attend schools in which more than three-fourths of the students are minorities
- 41% attend highly segregated schools where more than 90% of the students are minority<sup>101</sup>

Student bodies are much more diverse today than half a century ago. It is therefore logical that schools are more diverse. In integrated education system, however, composition of school attended by average Hispanic child should be similar to composition of school attended by average non-Hispanic white child. That is far from reality of U.S. education, where most non-Hispanic whites attend predominantly white schools with low shares of minority enrollments – specifically:

- 61,6% of white students attend schools where minority students account for less than 24%
- 33.3% attend schools where less than 10% of students are minority
- In contrast only 3,9% of whites attend schools in which more than 75% of the students are minorities<sup>102</sup>

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<sup>100</sup> Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaska Native students

<sup>101</sup> U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), “Public Elementary/Secondary School Universe Survey,” 1995-96, 2000-01, and 2008-09 Table 101 “Public elementary and secondary school students, by racial/ethnic enrollment concentration of school”, available at: [http://nces.ed.gov/programs/digest/d10/tables/dt10\\_101.asp?referrer=list](http://nces.ed.gov/programs/digest/d10/tables/dt10_101.asp?referrer=list)

Note: quoted figures relate to 2008-09 school year

<sup>102</sup> Ibid

African-Americans shares are similar to those of Hispanics, with a slightly lower share of students attending the most segregated schools.<sup>103</sup>

According to a valuable, recent nationwide studies of segregation patterns,<sup>104</sup> Latino students are today the most segregated minority group in the United States.<sup>105</sup> Assessing the data collected between 1968 and 2000, the report shows that percentage of Latino students attending predominantly minority schools<sup>106</sup> was steadily increasing during the last decades of the twentieth century, going from 55% in 1968-69 to 76% in 2000-01 school year.<sup>107</sup> During these school years, the percentage of Latino students attending extremely isolated (90-100% minority) schools, increased from 23% to 37%. Moreover, in 2000-01, one ninth of Latino students attended virtually all non-white schools, with 99-100% minority enrollment. The authors call such schools apartheid schools, emphasizing the enormous poverty, limited recourses, and social and health problems that are usually concentrated in them.<sup>108</sup>

Obviously, there is a strong relationship between racial/ethnic segregation and poverty. Students who are segregated by race/ethnicity are usually segregated by poverty as well. Positive correlation exist between the two patterns meaning that schools with the highest minority enrollments tend to also be schools of poverty. As data from another study of segregation trends, from 2007, show:

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<sup>103</sup> 53% of African Americans attend schools in which more than three-fourths of the students are minority (compared to 60% of Hispanics)

<sup>104</sup> Erica Frankenberg, Chungmei Lee, and Gary Orfield, *A Multiracial Society with Segregated Schools: Are We Losing the Dream?*, The Civil Rights Project Harvard University, (Cambridge, Massachusetts, January 2003).

whole report available at: <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/a-multiracial-society-with-segregated-schools-are-we-losing-the-dream/frankenberg-multiracial-society-losing-the-dream.pdf>

<sup>105</sup> According to the study (see note 104), the percentage of Latinos in predominantly minority schools was slightly higher than that of blacks (76% for Latinos, 72% for blacks) in 2000-01 school year. The difference was bigger in the 1980s, when Latinos clearly represented the most isolated group (as the authors explain, that was because segregation of African Americans decreased in the 1980s thanks to hundreds of desegregation orders, which did not apply to Latinos, but in the 1990s it increased again as many of those desegregation plans ended).

<sup>106</sup> Schools with 50-100% minority enrollment

<sup>107</sup> The percentage of Latino students in predominantly minority schools increased further in following years up to 79% in 2008-09 as mentioned above (for source, see note 101)

<sup>108</sup> Frankenberg, Lee, Orfield, *A Multiracial Society with Segregated Schools*, p. 77 (Table 29) note: strikingly, 18% of African-American students attended the “apartheid” schools in 2000-01 (schools, with 99-100% minority enrollment)

**in 2005-06 school year:**

- The average Latino student attended schools where 59% of students were poor
- The average white student attended schools where only 31% of students were poor

Interestingly, those figures represent a huge increase for both groups in just few years since 2000-01.

**in 2000-01 school year:**

- average Latino student attended schools where 44% of students were poor
- average non-Hispanic white student attended schools with only 19% of poor students<sup>109</sup>

These figures are significant, because high-poverty schools have been shown to increase educational inequality for many reasons, including lack of resources.

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This statistical overview briefly demonstrates the extent of isolation Latino students are experiencing at the beginning of the 21<sup>st</sup> century and shows that it steadily increased in the second half of the twentieth century. An explanation of why did that happen should logically follow. It will be discussed later in this chapter, but first we will look at contemporary segregation patterns in California, the state where Latino communities so actively litigated for equal opportunity half century ago.

### **3.2 California Schools 68 Years after Mendez**

In California, segregation of Hispanic students also steadily increased during the last few decades. In 1970 Latinos, on average, attended schools that were 54% white.<sup>110</sup> In 2013, however, the schools of typical Latino student in California were only 15.6% white, with 84% minority enrollment.<sup>111</sup> Furthermore, over 50% attended intensely

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<sup>109</sup> Gary Orfield and Chungmei Lee, *Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies*, A report of the Civil Rights Project, UCLA, 2007, p. 19 (Table 5), available at: <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/historic-reversals-accelerating-resegregation-and-the-need-for-new-integration-strategies-1/orfield-historic-reversals-accelerating.pdf>

<sup>110</sup> meaning non-Hispanic white

<sup>111</sup> Most of those minority students were Latino – Latinos accounted for 68,3% of the total

segregated schools, above the national average, making Hispanics the most isolated group in California schools.<sup>112</sup>

Sylvia Mendez, the little girl, testified in *Mendez v. Westminster* is now 78 years old. In a recent interview, she says she thinks Latinos are more segregated now, than she and her peers were back in the 1940's:

“Two schools that are named after my mother and father are 99 and 100 percent Latino, so what does that tell you? They fought and they won, so by law we cannot be segregated — that is called de jure — but what we have now is de facto segregation.”<sup>113</sup>

She also noted, that she has watched her neighborhood go from strongly middle class and diverse to more working class and Latino over the past 40 years.

The levels of segregation are different in various districts in California. The most integrated large districts are located in the Sacramento and Fresno areas, where housing segregation is low, while the most segregated districts are in the Los Angeles-Inland Empire Region. Santa Ana, one of the school districts sued in *Mendez* case half century ago, is today one of the most segregated, with a typical Latino student attending school with 95% minority enrollment.<sup>114</sup> In contrast, in one of the most integrated district, San Juan (in Sacramento suburb), Latinos, on average, attend schools with 36.9% minority enrollment.<sup>115</sup>

At this point it is important to note, that statistics can easily lead reader to inaccurate conclusions, if they are not presented in context. In order to avoid that mistake, the trends mentioned above must be seen in the context of California's demography. 68 years ago California's population was predominantly white. Today, due to the huge influx of immigration in last few decades, California has one of the most diverse population in the United States. The total U.S. population includes 62,6%

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<sup>112</sup> California Department of Education, Enrollment by School Data, 2012-2013 processed by the report by: Gary Orfield and Jongyeon Ee, *Segregating California's Future: Inequality and its Alternative 60 Years after Brown v. Board of Education*, May 2014, UCLA Civil Rights Project Report, available at: <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/segregating-california2019s-future-inequality-and-its-alternative-60-years-after-brown-v.-board-of-education>

<sup>113</sup> An interview with Sylvia Mendez made by Shereen Marisol Meraji, *Before 'Brown v. Board,' Mendez Fought California's Segregated Schools*, (Code Switch: Frontiers of Race, Culture and Ethnicity, May 16, 2014), available at: <http://www.npr.org/blogs/codeswitch/2014/05/16/312555636/before-brown-v-board-mendez-fought-californias-segregated-schools>

<sup>114</sup> For comparison, typical non-Hispanic white student in the district attends school with 52.0% minority enrollment

<sup>115</sup> California Department of Education, Enrollment by School Data, 2012-2013 as processed in: G. Orfield and J. Ee, *Segregating California's Future*, table 13, p. 48

non-Hispanic whites and Hispanics account for 17,1%.<sup>116</sup> California's majority is not a majority anymore. In a population of more than 15 million people, Hispanics became the state's biggest ethnic group in 2014, accounting for 39% of the population, followed by non-Hispanic whites, 38%.<sup>117</sup>

As 53% of California public school students are Hispanic, compared to just 25% non-Hispanic whites, followed by 8,7% of Asians and 6% African Americans, it is quite understandable that many California schools have high minority enrollments.<sup>118</sup> A typical white student, however, still attends school where 47% of students are white, while typical Latino student attends school that is only 15.6% white.<sup>119</sup> That clearly is not in proportion to the state's school population.<sup>120</sup> Despite the diversity of its student body, California schools could be more integrated. The fact that some school districts, like San Juan, are able to integrate their students more so than others, demonstrates that there is still potential for change towards greater integration.

### **3.3 Why de facto Segregation of Latinos occurred?**

The Statistical overview presented in the first part of this chapter demonstrates that even though institutionalized de jure segregation has been illegal for several decades now, large numbers of Latino, as well as African American children, still attend schools that are predominantly non-white, and that some even attend highly segregated, virtually all non-white, schools. But why is that so? What are the reasons? Answers to those questions are very complex and deserve greater research. To briefly summarize what are the most important factors leading to school segregation of Latinos; after

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<sup>116</sup> U.S. Census Bureau data, available at: <http://quickfacts.census.gov/qfd/states/00000.html>

<sup>117</sup> Edmund G. Brown Jr. Governor, State of California, *2015-16 Budget Summary*, January 2015, available at:

<http://www.google.cz/url?url=http://www.ebudget.ca.gov/fullbudgetsummary.pdf&rct=j&q=&esrc=s&sa=U&ei=v1hOVabdCaSgyAO5joBQ&ved=0CBQQFjAA&sig2=sQxGQr78NEOtu642UMhF-g&usg=AFQjCNHf7jnhfmKIIELAoLRbMB3mysaDjw>

The summary states that, as of early 2014, California is the first large state and only the third overall, after Hawaii and New Mexico, without a white, non-Hispanic plurality

<sup>118</sup> California Department of Education statistics, available at:

<http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp>

<sup>119</sup> California Department of Education, Enrollment by School Data, 2012-2013 processed by the report by: G. Orfield and J. Ee, *Segregating California's Future*, Figure 5, p. 35

<sup>120</sup> These figures might not be that much disturbing if schools with very low white enrollments were equal to schools with substantial share of non-Hispanic whites, but they are not. The relationship between "whiteness" of the school and quality of education provided by the school will be discussed later in this chapter.

*Mendez v. Westminster* and *Brown v. Board* many school districts still use various mechanisms to isolate white students from minority students as much as possible. There were, for example, gerrymandering attendance boundaries to separate white students from minority students. Moreover, it was also common that they enabled white students from areas with substantial enrollment of minority students to transfer to school located elsewhere.<sup>121</sup>

However, the most important cause of school segregation is housing segregation. Across United States lot of white middle-class families moved from the cities to suburbs during the 1950s and 1960s, in the so called White Flight.<sup>122</sup> Commonly it was not possible for minorities to buy houses in white suburbs.<sup>123</sup> In California, Latinos often could not buy a house in white neighborhood because of racially restrictive covenants that prohibited the sale of a home to members of racial and ethnic minorities.<sup>124</sup> Federal mortgage policies further contributed to this pattern. Segregated neighborhoods logically led to segregated neighborhood schools. Inner city school districts became increasingly non-white and poor as opposed to suburban school districts which were predominantly white and middle class.

In the case of Latinos however, it is also important to acknowledge the role of demographic change. Due to huge influx of immigrants, the U.S. Hispanic population has increased six fold between 1970 and 2012,<sup>125</sup> and a large number is concentrated in metro areas in a few states.<sup>126</sup>

Lastly the fact that most school desegregation plans did not include Latino students is very important. During the Civil Rights era there was effort to desegregate African American students through extensive desegregation plans, including unpopular busing. Even though, due to of enormous indignation of white parents, these plans did not survive long, they actually improved situation of African American students in the

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<sup>121</sup> G. Orfield, *Must We Bus? Segregated Schools and National Policy*. Washington, DC: Brookings Institution Press, 1978, pp. 19-22, quoted in: Gary Orfield and Jongyeon Ee, *Segregating California's Future*, p. 23-24

<sup>122</sup> see this webpage <http://www.citylab.com/work/2013/11/mapping-60-years-white-flight-brain-drain-and-american-migration/7449/>

<sup>123</sup> Marc Seitles, *The Perpetuation Of Residential Racial Segregation In America*, available at: <http://archive.law.fsu.edu/journals/landuse/vol141/seit.htm>

<sup>124</sup> Orfield, Ee, *Segregating California's Future*, p. 24

<sup>125</sup> Anna Brown, *The U.S. Hispanic population has increased sixfold since 1970*, Pew Research Center, February, 2014, available at: <http://www.pewresearch.org/fact-tank/2014/02/26/the-u-s-hispanic-population-has-increased-sixfold-since-1970/>

<sup>126</sup> Frankenberg, Lee, Orfield, *A Multiracial Society with Segregated Schools*, p.16

South significantly.<sup>127</sup> Latinos, however, mostly did not benefit from these plans. Ruben writes that despite their active involvement in several desegregation court cases in the pre-*Brown* era, Latinos “quickly became an invisible minority group and did not receive much attention in the desegregation process after the 1950s”.<sup>128</sup>

This situation was caused by the fact, that Latinos did not fit into White-Non-White paradigm upon which school desegregation operated after *Brown*.<sup>129</sup> Latinos were officially classified as racially white, but at the same time, as discussed in the first chapter, they were treated and discriminated against as non-Whites in the U.S. Southwest. In pre-*Brown* desegregation court cases discussed in the first chapter, attorneys of Latinos insisted that they are classified as whites and therefore should not be segregated. This, paradoxically, sort of turned against them after *Brown*, because as a “white” group they were not considered as candidates for segregation remedies.

The ruling in *Keyes v. School District No. 1* case raised hopes for improvement in 1973. In this case, the court had to decide whether Latino students should be recognized as White, and therefore integrated with blacks, or if they should be viewed as an identifiable minority group, and be placed into mixed schools with white students. The decision recognized the right of Latinos to school desegregation for the first time, holding that Latino students should be classified with African-American students as non-White for the purposes of school desegregation.<sup>130</sup> Although this was very important step that made change possible, Donato and Bowman both conclude that it, unfortunately, did not made significant difference on a national level.

### **3.4 Separate is still Unequal**

In the contemporary U.S. society desegregation programs similar to those used during the Civil rights era will not meet with support. Policy makers therefore try to at least make segregated schools more equal instead of aiming for greater integration. The research, however, indicates that separate schools cannot be equal. As Orfield and Lee note:

“From the “excellence” reforms of the Reagan era and the Goals 2000 project of the Clinton Administration to the No Child Left Behind Act of

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<sup>127</sup> African Americans are today paradoxically least segregated in school districts of the South thanks to desegregation plans, (Frankenberg, Lee, Orfield, *A Multiracial Society with Segregated Schools*, p. 37)

<sup>128</sup> Donato, “Segregation, Desegregation, and Integration of Chicano Students”, p. 14-15

<sup>129</sup> Kristi L. Bowman, “The New Face of School Desegregation”, p. 1777

<sup>130</sup> Ibid



2001, we have been trying to focus pressure and resources on making the achievement of minority children in segregated schools equal. The record to date justifies deep skepticism. On average, **segregated minority schools are inferior in terms of the quality of their teachers, the character of the curriculum, the level of competition, average test scores, and graduation rates.**<sup>131</sup>

Apart from above mentioned characteristics, segregated schools also tend to have much higher concentrations of poverty than integrated schools. And these characteristics are common not in few, but in most segregated schools. Frankenberg, Lee, and Orfield write that, with only few exceptions, most separate schools, are still unequal schools.<sup>132</sup>

The inferiority of segregated schools is closely related to the system of school funding and inequality in the United States. School funding is decentralized in the U.S. In the school year, 2007-08, only 8%, of total revenues for elementary and secondary education were provided by the federal government; 48% were provided by the states and 44% came from local sources. Importantly, more than three-fourths of this local portion was derived from local property taxes.<sup>133</sup> Poor neighborhoods are naturally less able to raise funds from local property taxes than well off neighborhoods, which usually leads to inequalities, sometimes huge.

School funding differs significantly not only between states, but also among districts within one state. The differences in per pupil expenditures between the highest-spending and lowest-spending districts are informative. For example, in California, the highest-spending large district, Palo Alto Unified, spend 13,733 USD per pupil in 2009, while the lowest spending large district in California, Upland Unified spend only 6,574 USD per pupil. The fact that in New Jersey the lowest spending district spends 12,005 USD and highest spending one 23,356 USD demonstrates that the funding of individual states can also vary greatly.<sup>134</sup>

Schools with high percentages of minority enrollments tend to be poorly funded. Recent data analysis show that schools that serve a greater number of minority students have,

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<sup>131</sup> Orfield, Lee, *Historic Reversals, Accelerating Resegregation, and the Need for New Integration Strategies*, p. 5

<sup>132</sup> Frankenberg, Lee, and Orfield, *A Multiracial Society with Segregated Schools*, p. 11

<sup>133</sup> Nancy Kober and Alexandra Usher, *A Public Education Primer: Basic (and Sometimes Surprising) Facts about the U.S. Educational System*. 2012 Revised Edition, Center on Education Policy, 2012, p. 31

<sup>134</sup> U.S. Census Bureau, "Public Education Finances": 2009 (2011), table 17, quoted in: Kober and Usher, *A Public Education Primer*, p. 38

on average, significantly fewer resources than those serving mostly white students.<sup>135</sup> In 2001, students in highly segregated schools in California were five times more likely to have an uncertified teacher than students in predominantly white schools.<sup>136</sup> The example of Luther Burbank Middle School in San Francisco (in 2001) demonstrates how bad poorly funded schools can be:

“Luther Burbank is infested with vermin and roaches and students routinely see mice in their classrooms. One dead rodent has remained, decomposing, in a corner in the gymnasium since the beginning of the school year. The school library is rarely open, has no librarian, and has not recently been updated. The latest version of the encyclopedia in the library was published in approximately 1988. Luther Burbank classrooms do not have computers. Computer instruction and research skills are not, therefore, part of Luther Burbank students' regular instruction in their core courses. The school no longer offers any art classes for budgetary reasons. Without the art instruction, children have limited opportunities to learn space, volume, and linear logic concepts. Two of the three bathrooms at Luther Burbank are locked all day, every day. The third bathroom is locked during lunch and other periods during the school day, so there are times during school when no bathroom at all is available for students to use. Students have urinated or defecated on themselves at school because they could not get into an unlocked bathroom. Other students have left school altogether to go home to use the restroom. When the bathrooms are not locked, they often lack toilet paper, soap, and paper towels, and the toilets frequently are clogged and overflowing.”<sup>137</sup>

Apart from the issue of funding, research shows that the segregation in itself affects learning negatively, because achievement of minority students tends to be better in integrated schools than in segregated ones. Integrated classrooms lead to enhanced learning, higher educational and occupational aspirations, and positive social interaction among members of different racial and ethnic backgrounds.<sup>138</sup> A nationwide study of student achievement from the 1990s shows that, even allowing for family background and prior achievement - test scores of Latinos and African Americans were substantially closer to those of whites in integrated elementary schools than in segregated ones.<sup>139</sup>

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<sup>135</sup> Linda Darling-Hammond, *What Happens to a Dream Deferred? The Continuing Quest for Equal Educational Opportunity*, Stanford University, p. 608

<sup>136</sup> *Ibid.*, 609

<sup>137</sup> The Experiences of Plaintiff School Children in *Williams et al. v. State of California et al.* (Superior Court, San Francisco), quoted in: <https://tcla.gseis.ucla.edu/rights/background/williamsthefacts.html>

<sup>138</sup> Frankenberg, Lee, and Orfield, *A Multiracial Society with Segregated Schools*, p. 12

<sup>139</sup> J. Liebermann, “Schools Where Kids Succeed”, *Readers Digest*, January 1999, 145-51, quoted in: Jennifer Hochschild and Nathan Scovronick, *The American Dream and the Public Schools*, Oxford University Press, 2003, p. 39

Several studies, that examined the outcomes of particular desegregation plans in various school districts, also found that minority students were learning better in integrated schools.<sup>140</sup>

Inferiority of segregated schools on one hand, and positive correlation between integrated environment and student achievement on the other, both seem to be strong arguments in favor of school desegregation.

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<sup>140</sup> Frankenberg, Lee, and Orfield, *A Multiracial Society with Segregated Schools*, p. 13-14

## CONCLUSION

The history of Latino educational experience in United States is one of unequal opportunity and discrimination. From the nine-teen twenties, school officials in various school districts across the American Southwest forced Latino children to study in segregated classrooms or schools, that were called Americanization schools. The schools were trying to justify their segregation practices by the pretext of special pedagogical needs of Latino students, such as need to acquire better knowledge of English, or by the need to “Americanize” them before they could interact with other children in regular classrooms. In theory the children would be placed to separate schools only temporarily until they are English proficient and “Americanized” enough to be assigned to regular classrooms. That, however, almost never really happened and those pedagogical rationales of segregation were largely red herrings meant to cover the real motivation behind the policy of racial prejudices and xenophobia of the Anglo parents who did not want their children to share classrooms with poor children of Mexican migrant workers.

The segregation of Latino children in the first half of the twentieth century should, retrospectively, be understood as *de jure*, because, although it was not mandated by law, it was institutionalized and enforced by the school districts. As the federal courts would later decide in *Mendez v. Westminster*, the school officials were acting under color of the law when they segregated Latino children, because they could only do so by using the authority entrusted to them by the state.

Beginning in the 1930s Latinos mobilized to fight against discrimination. They began to establish civil rights organizations to support their cause. The League of United Latin American Citizens (LULAC), founded in 1929 in Texas, was one of the first. With the support of organizations like LULAC, Latino parents joined together to fill a class-action lawsuits against the school boards which excluded their children from regular schools. In pre-World War II era *Salvatierra v. Del Rio Independent School District* (1930) and *Alvarez vs. Lemon Grove School District* (1931) represented two of the most important desegregation cases. In Texas, the case was first decided in favor of Latinos at first by the lower court, but the Texas appellate court then reversed that decision, because the school officials managed to convince the court, that they were segregating the children for acceptable pedagogical reasons without the intent to

discriminate them based on race. *Alvarez v. Lemon Grove* case was tried shortly after in California. The background of the case, and arguments used by both the defense and the plaintiffs, were very similar, but with a different outcome. *Lemon Grove* case was the first case in the U.S. history in which the court prohibited school segregation. Nevertheless its results were limited, because it was never used as a precedent to end segregation elsewhere in California or the U.S. Southwest.

After World War II the atmosphere in American society changed. Atrocities committed by Nazi Germany in the name of racist ideologies made people resent and fear racism. Attitudes towards segregation changed, and education professionals started to emphasize the positive influence of integrated classrooms. Hispanic communities went through changes as well. A younger generation came to maturity and demanded equal rights, new organizations were being formed and newly emerging middle-class Latinos were able to mobilize resources needed for civil action more easily. A breakthrough came in with *Mendez v. Westminster* case (1947) in which the Federal District Court and later the Court of Appeals both decided that segregation of Latino students violated the U.S. Constitution by denying them equal protection of the laws

Civil rights organizations representing other minorities, watched the case closely hoping that it could bring a breakthrough for other discriminated groups as well. The American Civil Liberties Union and the National Association for the Advancement of Colored People filled amicus briefs for the lawsuit asking the court to strike down the “Separate but equal” doctrine itself, but the court refused to do so. However, the case provided Thurgood Marshall and the NAACP with valuable experience for their future litigation in *Brown v. Board*. Most importantly, however, it ended de jure segregation of Latinos in the U.S. Southwest.

Despite all the past accomplishments in the field of law, Hispanic children are still segregated today, 68 years after *Mendez*. They are even more racially isolated now. The vast majority of them (79%) attend predominantly “non-white” schools and more than half of them attend highly segregated schools with very low numbers of non-Hispanic white children. In the second half of the twentieth century de jure segregation was replaced by de facto segregation.

The label of de facto indicates that school segregation in its present form emerged as an unintended by-product of the interplay of individual actions and choices whose primary intent was not to discriminate, and therefore it, unlike de jure segregation, does not require any governmental remedy. This approach, however, ignores the fact, that

essential causes of de facto segregation, i.e. the housing segregation and economic inequality, did not occur naturally, or by accident. They emerged as a result of long history of discrimination against minorities in the U.S. It is therefore hypocritical to turn a blind eye on school segregation under the excuse that it is result of natural development. It is not.

This paper examined both, the era of de jure and de facto segregation to find out that while they are very different by their nature, their impact on segregated children is the same - unequal opportunity to succeed, because, with fewer financial recourses, less qualified teachers and worse teaching aids, separate schools are still as unequal as they were half century ago.

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Latino experience proves that there is not a level playing field for everyone. Like other minorities in the U.S., Latinos are disadvantaged by a long history of discrimination. Schools could help to overcome inherited economic disadvantage if they were working as equalizers. But they are, unfortunately, often doing the opposite. Children of poor minority parents have high probabilities of being educated in poor schools, which will not prepare them for participation in higher education. Without quality education they most likely will not become middle class, buy a home in a good neighborhood, and send their own children to better schools. Disadvantage is thus inherited in a vicious circle.

American conservatives' ideology of individual responsibility, with minimum governmental interference, rests on a premise that there is actually a level playing field at the start. Evidence presented in this paper proves that this premise is mistaken. Governmental action would therefore be appropriate to remedy the situation and there should definitely be more public discussion in the public about what could be done to foster equality.

Greater integration of schools would be good way to begin. The fact that schools are still segregated half century after the end of de jure segregation, however, shows that prohibition of intentional segregation is not sufficient to achieve greater integration. The schools will not become integrated without concrete policies to make them integrated. Complex education reform should be introduced to target the actual roots of the problem instead of just trying to minimize the consequences. I believe that school segregation, as well as huge differences in funding and quality of schools, is the root of the problems of U.S. education. In order to be effective good education reform would,

in my opinion, have to centralize and equalize the system of funding of the schools and implement desegregation plans that would make it possible for minority children to access better schools.

Unfortunately, adoption of education reform of such magnitude seems very unlikely, at least, if not entirely impossible, in the context of current political environment in the U.S.

## SUMMARY

### **Historie nerovných příležitostí v USA. Segregace hispánských dětí ve školách**

Historie vzdělávání hispánské menšiny ve Spojených státech amerických je historií nerovných příležitostí. Na americkém Jihozápadě, kde byla hispánská populace nejpočetnější, byly hispánské děti již od dvacátých let minulého století nuceně zařazovány do oddělných škol, které byly nazývány „amerikanizační“ či „mexické“. Místní vzdělávací orgány se pokoušely ospravedlnovat tyto praktiky různými zástupnými důvody, jako například zvláštními vzdělávacími potřebami hispánských studentů či potřebou „amerikanizovat“ je, dříve než budou komunikovat s ostatními studenty v běžných třídách. Teoreticky měly být děti v oddělených školách umístěny jen dočasně, do té doby, než se naučí lépe anglicky a budou dostatečně „amerikanizované“ na to, aby mohly být zařazeny do smíšené školy či třídy. Na to však v praxi většinou vůbec nikdy nedošlo a i děti, které neměly s angličtinou žádný problém, byly dále ponechávány v segregovaných školách. Zmíněné pedagogické důvody pro segregaci dětí tak byly jen zástupnými důvody, zatímco skutečnou hlavní motivací byly rasové předsudky a xenofobie anglosaských rodičů, kteří si nepřáli, aby jejich děti chodily do školy společně s dětmi chudých mexických přistěhovalců.

Ve třicátých letech začali Hispánci zakládat první občanskoprávní organizace, aby jejich prostřednictvím koordinovali společný boj proti diskriminaci. Jednou z nejstarších takových organizací byla „League of United Latin American Citizens“ (LULAC) založená v roce 1929 v Texasu. Za pomoci této a dalších organizací pak rodiče, jejichž děti byly nuceny vzdělávat se v segregovaných školách, podávali hromadné žaloby proti místním školským radám, z jejichž rozhodnutí byly děti do oddělených škol zařazovány. Dva z nejvýznamnějších soudních procesů, které se odehrály v meziválečné době, byly *Salvatierra vs. Del Rio Independent School District* (1930) v Texasu a *Alvarez vs. Lemon Grove School District* (1931) v Kalifornii. *Alvarez vs. Lemon Grove* byl historicky první případ ve Spojených státech, ve kterém soud rozhodl ve prospěch segregovaných dětí a nařídil, aby jim byl umožněn přístup do normální školy. Jeho dopady však byly pouze lokální, protože nebyl použit jako precedent k ukončení segregace v jiných oblastech Kalifornie, nebo celého Jihozápadu. To se podařilo až po válce, v roce 1947, kdy skupina hispánských rodičů, podporovaná několika občanskoprávními organizacemi, úspěšně žalovala školské rady několika různých školních obvodů v Orange County v Kalifornii. V procesu s názvem



*Mendez vs. Westminster* federální soud rozhodl, že segregace studentů na základě jejich původu je v rozporu se čtrnáctým dodatkem Ústavy Spojených států, který zaručuje všem občanům rovnost před zákonem, a je tedy nezákonná. Toto byl v USA historicky první rozsudek, který rozhodl, že segregace je ze své podstaty v rozporu s Ústavou. Pro Hispánce byl případ zlomový, protože na základě jím vytvořeného precedentu byla následně postupně ukončena institucionalizovaná segregace hispánských dětí po celém Jihozápadě Spojených států.

Navzdory tomuto úspěchu je segregace hispánských dětí i 68 let poté stále realitou. „De iure“ tedy institucionalizovaná segregace již neexistuje. Nahradila ji však „de facto“ segregace, která vzniká zdánlivě jako přirozený důsledek kombinace soukromých rozhodnutí, která nejsou činěna s primárně diskriminačními úmysly. V důsledku tohoto, údajně nahodilého, jevu jsou však dnes hispánské děti ve školách izolované ještě více, než byly před půl stoletím. Naprostá většina Hispánců (79%) chodí do škol, ve kterých je většina studentů příslušníky etnických nebo rasových menšin, a více než polovina pak chodí do vysoce segregovaných škol, ve kterých je jen minimum nehispánských „bílých“ studentů. Vzdělání poskytované těmito školami je přitom ve většině případů na výrazně horší úrovni než vzdělání poskytované školami, na nichž je většina studentů „bílých“. Hispánským dětem se tudíž v průměru dostává méně kvalitního vzdělání.

Historická i současná zkušenost hispánské menšiny s americkým vzdělávacím systémem tak velmi dobře prokazuje, že vize rovnosti příležitostí pro všechny bez ohledu na původ, má ve Spojených státech do reality stále ještě daleko.

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