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Volume 4, Issue 4 April 19, 2024

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REMEMBERING: *Mendez v. Westminster*

Mendez v. Westminster chiseled away at *Plessy* and laid the Foundation for *Brown.*

On April 14, 1947, nearly seven years before the historic *Brown v. Board of Education* Supreme Court case which held that separating children in public schools on the basis of race was unconstitutional, the United States Court of Appeals for the Ninth Circuit abolished the segregation of Mexican American students in schools in the State of California in *Mendez v. Westminster.* The historical context of *Mendez* is one in which Mexican-American students, who were considered "white" by the census data of the time, were being segregated into "Mexican schools" specifically designated for students who were of darker complexion, had Mexican sounding names, and/or spoke Spanish. At the time, California did not have specific laws that allowed segregating Mexican students, but there *were* state statutes that allowed for the segregation of Asian and Native-American students. Despite this, approximately 85% of California schools at the time segregated its Mexican students, with each school district making up its own rules of segregation. For example, some districts included Asian students in the Mexican schools while others included Asian students in the white schools. Some schools included African-American students with the white schools because they felt that linguistically and culturally, they were closer to the white students than to the Mexican students.

The Plaintiffs in *Mendez* were elementary school students who had recently moved to the white district of Westminster from the Mexican district of Santa Ana. Their aunt, Soledad Vidaurri, who had a European sounding last name and a light complexion, went to enroll her own children as well as her niece and nephews with darker complexions and the surname "Mendez" at the district school. She was told that her own children would be allowed to register, but that the Mendez children would have to be enrolled in the school designated for children of Mexican heritage. Dissatisfied with the blatant discrimination, Mr. Gonzalo Mendez, the father of the Mendez children, along with four other Orange County families, decided to pursue legal action.

The Plaintiffs brought the *Mendez* case before the United States District Court for the Southern District of California. Respondents immediately disputed the jurisdiction of the Federal Court arguing that education was a State matter. In response, the Court stated "[w]hile education is a State matter, it is not so absolutely or exclusively."[1] In the *Cumming* decision the Supreme Court said "education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case

[1] Cumming v. Board of Education of Richmond County, 175 U.S. 528, 20 S.Ct. 197, 201, 44 L.Ed. 262.

of a clear and unmistakable disregard of rights secured by the supreme law of the land.'"[2] The matter was treated as the State's violation of the Fourteenth Amendment Equal Protection clause for the State's failure to provide education of its citizens and was able to proceed in Federal Court.

At the onset, both Plaintiffs and Respondents stipulated that the case did not involve race discrimination, and that the Anglo parties as well as the Mexican parties would be considered of the white race. This position seems controversial with a modern lens, but when taken in the context of the 1947 Supreme Court, which was still very much clinging to the holding of *Plessy v. Fergusson* which found that segregation on the basis of race was constitutional, the position to remove race was innovative and effective. Counsel for Plaintiffs used anthropologists and other experts to discuss how Mexican-American children would develop inferiority complexes and Anglo-American children would develop superiority complexes as a result of continued segregation. This is much like what was done in *Brown*, where sociological experts were used to educate the judges, such as Dr. Kenneth Clark talking about the infamous doll study.

The District Court ultimately ruled in favor of Plaintiffs, wherein Judge Paul J. McCormick held "'[t]he 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 the their ancestry. A paramount requisite in the American system of public education is social equity. It must be open to all children by unified school association regardless of lineage."

What makes this case even more interesting, and what further bears its comparison to *Brown,* are the four amicus briefs filed on behalf of the NAACP, the ACLU (joined by the Lawyer's Guild and the Japanese American Citizens League), the American Jewish Congress, and the California Attorney General. Combined, the Amicus briefs reason against "separate but equal" and argued to overrule *Plessy* based on legal precedent, social science data, and an expansive perspective on human rights.[3] Thurgood Marshall authored the amicus brief in *Mendez* on behalf of the NAACP and used similar arguments when he argued the *Brown* case before the Supreme Court of the United States.

On April 14, 1947, the United States Court of Appeals for the Ninth Circuit affirmed Judge McCormick's ruling. Two months later, Earl Warren, the Governor of California, signed a bill which ended school segregation in California, making it the first state to officially desegregate its public schools. With the signing of this bill, *Mendez* was not appealed to the Supreme Court of the United States. While *Mendez* did not set a national precedent, the case brought public pressure on the State government of California to repeal all segregation laws on the books regarding Asians and Native Americans. *Mendez* was the first federal case to hold that separate schools for children of color were not equal and therefore violated their constitutional rights.

Although *Mendez* did not make it to the Supreme Court, its impact is significant nonetheless. *Mendez* is not cited by Thurgood Marshall or Chief Justice Warren's brief in *Brown*, but the analysis, the methodology, and the similarities are nevertheless evident.

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[2] See, also, Gong Lum v. Rice, 275 U.S. 78, 48 S.Ct. 91, 72 L.Ed. 172; Wong Him v. Callahan, C.C., 119 F. 381; Ward v. Flood, 48 Cal. 36, 17 Am.Rep. 405; Piper et al. v. Big Pine School District, 193 Cal. [**7] 664, 226 P. 926.

[3] CITE