

# MENDEZ V. WESTMINSTER: A LIVING HISTORY

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*In April 2014, Michigan State University and the University of Missouri–Kansas City co-hosted a two-day symposium exploring the past, present, and future of school desegregation. The first panel focused on Mendez v. Westminster,<sup>1</sup> a federal court decision in 1946. Mendez is significant for many reasons: it was the first time a federal court ordered school desegregation, it represented a major victory for Latino and Latina civil rights, and it helped lay the foundation for the Brown v. Board<sup>2</sup> litigation and the Supreme Court’s decision. What follows is a transcript of the compelling and historic discussion about the Mendez case.*

Professor Kristi L. Bowman: Good morning, my name is Kristi Bowman, and I am a Professor of Law at Michigan State University in East Lansing, Michigan. On behalf of all the conference organizers, it is my pleasure to welcome you all to this conference. As you know, this is a two-day videoconference with half of each panel live in Kansas City and half live here in East Lansing. Our goal is for the conference to be a fully integrated experience.

We begin this conference with a discussion of *Mendez v. Westminster*, a case we do not usually hear much about, although that is changing. Let’s turn the clock back about eighty years to talk about some of the first court-ordered school desegregation in this country, which occurred in California. The students who were segregated from one another were not whites and blacks, but rather

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1. *Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544, 545 (S.D. Cal 1946) *aff’d*, 161 F.2d 774 (9th Cir. 1947) (en banc).

2. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

whites and Latinos. In 1931, a county court in Lemon Grove, California ordered a school district to stop segregating its white and Latino students. Fifteen years later in 1946, a federal court reached the same result in the *Mendez* case, thus being the first federal court to order the desegregation of schools.

We have an incredible group of people with us this morning to tell us about this case and its significance. First, we will begin with a roundtable discussion with three panelists. The first panelist, Mr. Gonzalo Mendez, is in Kansas City this morning. He is a retired master carpenter who lives in Orange County, California. He was seven years old when his family became plaintiffs in the *Mendez* case. Also in Kansas City is Ms. Sandra Robbie, who works at Chapman University. She learned about the *Mendez* case about fifteen years ago, and she wrote and produced an Emmy award-winning documentary about the case titled *Mendez v. Westminster: For All the Children* in 2003.<sup>3</sup> She has also helped develop the *Mendez* archives at Chapman University. Here in East Lansing, we are joined by Ms. Sylvia Mendez, the sister of Mr. Gonzalo Mendez. Ms. Mendez was eight years old when the *Mendez* case started. She is a retired pediatric nurse and civil rights activist. In 2010, she received the Presidential Medal of Freedom from President Obama.<sup>4</sup>

Following the roundtable discussion with these panelists, we will hear prepared comments from two speakers. The Honorable Frederick Aguirre is a judge on the Superior Court of Orange County. He will speak about the legal significance of the *Mendez* case. Dr. Philippa Strum is a Senior Scholar at the Woodrow Wilson International Center for Scholars and she actually did “write the book” about *Mendez*.<sup>5</sup> She will discuss how and why scholars write about desegregation cases. Then, we will have a bit of time for questions from the audience in East Lansing and in Kansas City.

Mr. Mendez, I will turn to you to tell us where this story begins. What happened when your family moved from Santa Ana to Westminster?

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3. *MENDEZ VS. WESTMINSTER: FOR ALL THE CHILDREN* (Sandra Robbie 2003).

4. *2010 Presidential Medal of Freedom Recipient—Sylvia Mendez*, THE WHITE HOUSE, <http://www.whitehouse.gov/photos-and-video/video/2011/02/16/2010-presidential-medal-freedom-recipient-sylvia-mendez> (last visited Sept. 30, 2014).

5. PHILIPPA STRUM, *MENDEZ V. WESTMINSTER: SCHOOL DESEGREGATION AND MEXICAN-AMERICAN RIGHTS* (2010).

Mr. Gonzalo Mendez: Soon after we moved to Westminster, our aunt took us kids down to enroll us in the local schools. The school officials said that they would enroll my cousins because they had a French-sounding last name and pale skin, but we, with a Mexican-sounding name, had to go to the segregated school in Westminster, which was about four blocks from there. My aunt, being a little bit outspoken, told them that she was not going to leave her kids there if they did not accept my father's kids. She decided to take us all back to the farm and tell my father what had happened, and my father got pretty upset and decided to do something about it.

Professor Bowman: Ms. Sylvia Mendez, can you pick up the story from here? How did your family react to the school district's decision that they would enroll your cousins but not you and your brother in Westminster Main?

Ms. Sylvia Mendez: I think it was the first time my father realized the blatant discrimination in Orange County because we had gone to a Mexican school in Santa Ana before we moved to Westminster, and we were told we had to go to that school because of the district lines they had placed. So, we were enrolled in a Mexican school before we moved to Westminster. But, this time we lived in the Anglo district, and so when my aunt took us to the school and we were denied entry, that's when my father realized that this was so unjust. This is when they just made him so upset, so he told my tía—my aunt Sally—he told her, "Calm down, Sally. I'll go and talk to the principal tomorrow. There's been a mistake. We live in this district. There's no reason why we can't have the children in that school." So the next day he went to the principal, and the principal told him, "I'm sorry Mr. Mendez, but we are not allowing Mexicans in this school." So he decided he would go to the Superintendent of Schools, who told him the same thing. Then he went to the Orange County School Board. And that's when he discovered that certain cities—Garden Grove; Modena, which is really Orange County; Santa Ana; and Westminster—had decided that they were going to have separate schools and that they were going to place Latinos in the Mexican schools. My father thought that was an injustice, and he decided that he had to do something about it. So, he was speaking to this gentleman, Rivera, who said, "Gonzalo, I know of a lawyer that just fought a case in Riverside where the Latinos were not allowed to go into the public parks or the swimming pools, and he won. His name was Marcus, and he will fight for you." My father went back and told my mother, and my mother said "Gonzalo, we have the money. Let's go hire him." So, they did. They went to Los Angeles,

and they hired Davis Marcus. David Marcus was a very smart man, and he is the one that decided they were going to have a class action suit instead of just a plain suit against Orange County.

Professor Bowman: We will pick up with the story of the litigation in a minute, but before we do, I want to turn to Ms. Robbie and ask her to tell us more about the social context of the time. Most of us may think about school segregation as being a black–white issue, so can you tell us more about the Latino community and how schools were segregated in California and Texas and other areas with a substantial Latino population at that time?

Ms. Sandra Robbie: I grew up in Westminster, and I had never really heard about the case until I was reading a news article that talked about the school that was going to be built and named in honor of the Mendez family in Santa Ana. I was floored to discover that segregation happened in my hometown because, as you said, the way our history books tell it generally is that segregation is a black-and-white issue. To discover that segregation happened in my hometown, not just in schools, but also in movie theaters and swimming pools, and that all of the segregation that happened in the South was also present in my hometown just blew my mind. It was an absolute paradigm shift for me that day. I remember reading the newspaper, and I could feel the walls spinning around me. That began my study into the history of segregation throughout the American Southwest.

Gilbert Gonzalez from the University of California, Irvine has discussed some research that shows that 85% of all school districts in California segregated Mexican children.<sup>6</sup> Part of the reason the case challenging this segregation was brought in California was because California did not have statutes that allowed for the segregation of Mexican children, but we did have statutes that allowed for the segregation of Asian children and Native American children.<sup>7</sup> So, for example, if you lived in San Francisco, where there is a predominant Chinese minority, there were Chinese schools in San Francisco. In Riverside County, there was the Sherman School for Indian children. But, what was different in Riverside was that the children were not just segregated into their own schools, in fact a boarding school was

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6. Gilbert G. Gonzalez, *Segregation of Mexican Children in a Southern California City: The Legacy of Expansionism and the American Southwest*, 16 W. HIST. Q. 55, 57 (1985) (citing Ward Leis, *The Status of Education for Mexican Children in Four Border States* 26 (1931) (unpublished Master's thesis, University of Southern California)).

7. CAL. EDUC. CODE §§ 8003-04 (West 1944) (repealed 1947).

geared to strip the children of their culture and language and to Americanize them.

So, that is the context in which the segregation happened. Because California did not have a law that specifically allowed for the segregation of Mexican children, the school officials who were segregating were kind of making up their own rules as they went along. So, different school districts would segregate in different ways. For example, when you see some of the pictures from that era, you might see Chinese or Asian children in the Mexican schools, but you might see other pictures with Chinese children in the white schools. In fact, Santa Ana was one of the few school districts in which black children were assigned to the white schools because school officials felt that culturally and linguistically black children were closer to white children than they were to Mexican children. So, black children in Santa Ana went to the white school. Therefore, it was very much a Wild West kind of attitude as to where children were sent to school.

Professor Bowman: Now we'll come back to Ms. Mendez. Your father met with attorney David Marcus and talked about bringing a case. One aspect of this litigation I'd like to discuss here is that a lot of the major desegregation cases had substantial involvement by national organizations that were able to support the plaintiff families. But this case started a slightly different way. So tell us more, Ms. Mendez, about how the case got off the ground, some of your father's early conversations with the attorney, and the strategy about how they were going to pursue this.

Ms. Mendez: Well, when my father went to the Mexican community in Westminster, they were satisfied with the Mexican school being right there in the Mexican district. They didn't want to join him. So, my father formed a little organization that had meetings every week to try to talk to everybody and let them see the injustice and how they had to join him. It took a while for the community to come to terms to join him, but they did. And Marcus decided that if they were going to have a class action suit, they had to go around to the other cities. At the same time, there were other families facing these same obstacles—the Guzmans in Santa Ana, the Palominos in Garden Grove, the Ramirezes in Orange, which was really El Modena at the time. Marcus said to my dad, "Let's have them all join in and let's have a class action lawsuit." My father took Marcus all

over Orange County trying to get the other families to join in, and that's how it ended up being a class action suit.<sup>8</sup>

Professor Bowman: Again, to help set the context, we're talking about the early to mid-1940s; 1944 was when the Supreme Court decided the *Korematsu* case saying that internment camps were constitutional.<sup>9</sup> That is also part of why your family moved to Westminster. In this social and legal context, how do you think your parents approached this case? In other words, do you have any idea whether your parents thought they would win or whether they thought it was most important to stand up against the segregation regardless of the outcome?

Ms. Mendez: My father always felt they were going to win—as did my mother—because they believed in our system, the American system. They believed in the Fourteenth Amendment. He had studied the Constitution, so they always felt that they were going to win. They never for one second—not one second—thought they would lose.

Mr. Mendez: The way I remember it is that my dad had an education at the Westminster school before, and he was upset that we weren't going to get the same education he had—or a better education. My sense was that he wanted his kids to be educated and be able to compete. Sometimes he would tutor us at home to give us a better education by helping us. I myself believe that it was more the education than anything else that he wanted us to get.

Professor Bowman: What were some of the differences that you recall, or perhaps that your family has talked about, between the school called the Mexican school and the white school, Mr. Mendez?

Mr. Mendez: Well, to me, I was so small that I didn't notice the differences. I enjoyed the Mexican school because all my buddies were there. It was hard to get me to go to another school. I really enjoyed playing marbles in the dirt compared to going to the other school and having swings. So, I myself would have rather stayed at the Mexican school—which is not right—but that was my opinion back then.

Professor Bowman: There was a lot of organization going on among the plaintiffs leading up to the trial. Ms. Robbie, I'd like to turn to you to tell us a little more about what happened at the trial.

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8. *Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544, 545 (S.D. Cal 1946) *aff'd*, 161 F.2d 774, 775 (9th Cir. 1947) (en banc) (stating that the allegations of the complaint applied to “some 5000 others” in addition to the named plaintiffs).

9. *Korematsu v. United States*, 323 U.S. 214, 223-24 (1944).

What were some of the arguments that the attorneys or some of the experts were presenting, and how did they work out?

Ms. Robbie: I work at Chapman University right now, and we've started to collect some of the documents regarding the case. One of the documents that we've been able to collect was a master's thesis that was presented as evidence during the case. This master's thesis was written by James Kent, the superintendent of Garden Grove school district, one of the defendants in the case. Attorney David Marcus presented this as evidence of discrimination because in his thesis, Kent wrote that segregating Mexican children was doing them a favor because there was no way they could ever compete with white children. Kent found that Mexicans were inferior in every way—morally, socially, hygienically, physically—and so Marcus used this as evidence to show the thinking that was going on behind the segregation. Marcus discussed how the children were being put into schools based on their last names without actually having been given a test on language to test their abilities. The assumption was that because a child was Mexican, because he or she had brown skin, he or she would not be able to speak the language. These were some of the arguments that were being made to establish that the segregation was happening with discrimination, not with any formal testing. Those were some of the basic arguments that were being established.

Professor Bowman: This case eventually attracted national attention when it was heard at the appellate level. But before we get to that part of the story, how did the trial court decide this case?

Ms. Robbie: Judge McCormick in the federal court in Los Angeles decided this case (Orange County didn't have a federal court at the time). He was an Irish-Catholic judge who ruled for the first time, as attorney Chris Arriola says, that separate is never equal. American equality calls for social mixing, and when we do not have the opportunity for children to be together socially, that is an inequality; that is inherent in the system.<sup>10</sup>

After the federal district court decided the case, it attracted the attention of many civil rights groups, including the NAACP, who

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10. *Mendez*, 64 F. Supp. at 549 (“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.”).

were looking for court cases that would further their quest to end segregation of African-American children. The NAACP's strategy had been to go with the higher education's segregation cases first.<sup>11</sup> They were starting with law schools and colleges because they did not feel that they would have much success starting out with the grade schools, given the intense prejudices. The idea that people are afraid their little white girls are going to go to school with overgrown black boys was something that the NAACP thought our nation would never be able to overcome. So, once this case was decided about elementary schools, the NAACP was one of the many groups that contributed to friend-of-the-court briefs on appeal.<sup>12</sup> I had the great privilege of interviewing Robert L. Carter to discuss the friend-of-the-court brief that he contributed to the *Mendez* case on appeal. In this interview, Carter said that his brief in *Mendez* served as the model for the NAACP's argument in *Brown v. Board of Education*.<sup>13</sup>

Additionally, it was very important that at the time of *Mendez*, the governor of the State of California was Earl Warren. Most people don't realize this, but Earl Warren was a very popular governor. In fact, at the time of his second run for office, he was so popular that he was the candidate for both the Republican and Democratic parties. He was so popular, in fact, that they were afraid he was going to run for President, and so, Eisenhower said, "Here's the deal: If you don't run for president I will appoint you to the next position on the Supreme Court." When the Supreme Court had heard the arguments the first time for *Brown* and Vinson was the presiding Supreme Court Chief Justice, people were sure where this *Brown* decision was going to go. And when Chief Justice Vinson died, Earl Warren calls up the President and reminds the President of their deal. President Eisenhower said, "But it's the Chief Justice position." Warren replied, "You said the next position." So that's how Earl Warren was appointed to the Supreme Court.

So, Earl Warren being the California Governor at the time that the *Mendez* appeal is decided is very important because, of course, most folks know when we talk in our history books that he was one

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11. See *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938) (involving law school admissions); *Sipuel v. Bd. of Regents of the Univ. of Okla.*, 332 U.S. 631 (1950) (same); *Sweatt v. Painter*, 339 U.S. 629 (1950) (same); *McLaurin v. Okla. State Regents*, 339 U.S. 637 (1950) (involving graduate programs other than law).

12. Frederick P. Aguirre, *Mendez v. Westminster School District: How It Affected Brown v. Board of Education*, 4 J. HISP. HIGHER EDUC. 321, 326 (2005).

13. See *id.*

of the chief proponents of Japanese internment.<sup>14</sup> So as a proponent for the Japanese internment and now being the presiding Governor when a California case is going to be discussing school desegregation, well, I'll have to tell you about what happens later in a minute.

Professor Bowman: On that topic, I'd like to turn to Ms. Mendez. What do you make of the role of Earl Warren? In 1941, he was spearheading the Japanese internment camps,<sup>15</sup> and yet, we see him then as Governor of California signing into law a bill that is repealing school segregation.<sup>16</sup> We know, of course, about his role in *Brown v. Board of Education*. How do you make sense of all of that? It is interesting that he is involved in this story at so many different points and not always in consistent ways.

Ms. Mendez: Earl Warren, when he was governor of California, was against school segregation. He was a friend of my father's, and I have a letter from Earl Warren that thanks my father for helping him when he was trying to become governor. So I know that he knew the injustice of segregation in California. And the other thing that he did when we were in court was he sent his attorney general to help in *Mendez v. Westminster*,<sup>17</sup> and that is another action that he showed he favored desegregation.

Professor Bowman: Before we get too much further, I want to make sure we tie up that loose end with how this case ended. Ms. Robbie, we will come back to you here for a summary of the Ninth Circuit decision, which is slightly different, but in a very important way, from the trial court decision.

Ms. Robbie: When the case went up to the Ninth Circuit Court they listened to the arguments and they took a step back from what the federal district court had said. They were not willing to go so far to say that segregation is unconstitutional. They said that the segregation that was happening in Orange County was happening based on national origin. So, because California did not have laws that allowed for segregation of Mexican children, the segregation was in violation of the Fourteenth Amendment.<sup>18</sup>

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14. RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* 657 (1976).

15. *Id.*

16. Aguirre, *supra* note 12, at 327.

17. *Id.* at 326.

18. *Westminster Sch. Dist. v. Mendez*, 161 F.2d 774, 781 (9th Cir. 1947) ("Therefore, conceding for the argument that California could legally enact a law authorizing the segregation as practiced, the fact stands out unchallengeable that

So the case was won, but then it only applied to four school districts in Orange County, and two months exactly to the date after the *Mendez* case was won, Earl Warren signed the Anderson Bill, which repealed the school segregation statutes that existed on California's books—the segregation statutes that allowed for the segregation of Asian-Americans and Native Americans.<sup>19</sup> In 1947, Earl Warren made California the first state in the nation to end school segregation. Then seven years later, he was on the Supreme Court, and he was ruling on the arguments that were related to the friend-of-the-court briefs that he had read and known about in *Mendez v. Westminster* in *Brown v. Board of Education*. Even though *Mendez* is not mentioned in the footnotes of *Brown*, after the *Mendezes* won, activists in other states, like Arizona and Texas, were calling for repeal of their state segregation statutes. The legal arguments that were necessary to overturn *Plessy*<sup>20</sup> moved much closer to victory after *Mendez*. I have had legal scholars say, “Tell me again why you think *Mendez* impacted *Brown*?” The impact is not going to show up in the legal court documents, but it is in the personal experiences of Earl Warren. I think that it is undeniable that *Mendez* influenced Warren's thinking before he entered the Supreme Court and, of course, it influenced the arguments of Thurgood Marshall and the NAACP for *Brown v. Board of Education*.

Professor Bowman: Judge Aguirre will talk about that in more detail in a few minutes. What was happening in courts is obviously a very important part of the story. But, why we have Ms. Mendez and Mr. Mendez here is to tell us what was happening outside of the courts as well. So, Mr. Mendez we will turn to you, and then, we will come back to your sister to tell us, how did the local schools react? In other words, we had all of these battles going on in the courts, and how did the schools respond to this? Did they integrate? If so, how did that go? What was that experience like?

Mr. Mendez: Well, they did integrate everybody into schools, and the Latino kids were allowed to go to the white schools and vice versa, which never worked. The white kids never did go to the

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California has not done so . . . . By enforcing the segregation of school children of Mexican descent against their will and contrary to the laws of California, respondents have violated the federal law as provided in the Fourteenth Amendment to the Federal Constitution by depriving them of liberty and property without due process of law and by denying to them the equal protection of the laws.”)

19. *Id.* at 327.

20. *Plessy v. Ferguson*, 163 U.S. 537, 548-49 (1896), *overruled by Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

Mexican schools, but the Latinos did get to go to the white schools. For me, it went really well. There was nothing like in the South, any violence or anything like that. It just went well. A lot of kids I met when I first went to the white school are still my friends. The white children were not prejudiced—maybe some of their parents, maybe all of their parents—but not the majority of children.

Professor Bowman: Thank you. Ms. Mendez, what do you recall about your own experience from that time?

Ms. Mendez: What they decided to do in Westminster was to put all of the older kids in the Mexican school, and to put all of the younger kids in the white school. That is how they integrated in Westminster. Of course the parents—the Anglos, the white parents—got very upset that their children were going to that horrible, dilapidated wooden school, so before you knew it, the old Mexican school was gone and everybody was integrated into the white school in Westminster. That was during the first trial. In the meantime, the school board had appealed, and Santa Ana had decided that they were not going to integrate until after the judgment came from the appellate court.

Then the war ended and the Japanese families came back. The Munemitsus allowed us to stay on their farm and harvest the crop, and we lived together for a while because my dad had used all of the money on the lawyer. Then, we moved back to Santa Ana, and Santa Ana had decided that they were not going to integrate their schools, but my dad went to the school board and he said, “I am taking my children to the white school.” The school knew that we were coming and that we were going to go to that white school even though they were not allowing Latinas and Latinos in white schools in Santa Ana.

The first day that I went to that school, the teacher—very nice—accepted the direction from the school board that the Mendez family is going to come here, and she said, “Sylvia! Say hi to everybody.” I was so excited because I had been in a white school in Westminster, and we were coming to Santa Ana, where they decided they were not going to integrate. When the school bell rang, I went out to play with the kids. Then this little white boy comes to me and says, “You’re a Mexican, what are you doing here?” And I started crying. I couldn’t believe what he was doing. I went home, and I told my mother, “Mother, they don’t want me in that school; they don’t want Mexicans in that school.” I had gone to court when I was nine years old; I was there every day, going to court, never realizing what my parents were fighting. All I wanted to do was go to that white school in Westminster that had the swings and the monkey bars. I

was nine years old. So, here we are in Santa Ana, going to that white school, and this young boy that comes to me—I had never felt that horrible feeling of not being wanted. I was crying, and I went home, and I said, “Mother, I don’t want to go to that white school.” And my mother said, “Sylvia, don’t you know what we were fighting for. Didn’t you realize why you were in court every day?” I said, “No mama, I wanted to go to that school.” And she said, “Sylvia, you are just as good as that boy. You are equal to that boy. You are going to go back to that school.” And, of course, I went back to that school, and I found out, like my brother Gonzalo did, that everybody is not prejudiced, and before you knew it, we were being invited to their homes and parties. And from then on, we continued in integrated schools.

Professor Bowman: To conclude this portion of the panel, we’ll start with you, Ms. Mendez. As you look back on this case and think about this case, why is it important that we know about this case, and how did it become important to you to start speaking to so many students and organizations about this case and this history?

Ms. Mendez: What happened was that my mother was very sick, and she was in her eighties. I was a registered nurse. I had become an assistant nursing director, and I knew that I had to return and take care of my mother. She would be there in bed saying, “Sylvia, nobody knows about this case. This case is history of the United States, history of California. How California was the first state to be integrated, and how it was precedent to *Brown v. Board of Education*. Sylvia, everybody needs to know about this case.” And it was that day that I promised my mother I would go across the country and start talking about *Mendez v. Westminster*. Since then, I’ve been speaking, and still, I’ll go to high schools and universities, and I’ll say, “Can everybody raise their hand who does *not* know about *Mendez v. Westminster*?” And about half of them will still raise their hand, so we have a long ways to go. It is very important that everybody knows about the history, especially now. Since Latinos are the first ones to drop out of high school, it’s so important that they know that aside from Cesar Chavez and Dolores Huerta, they have other Latino heroes that have fought for education, and that Latino parents want their children to succeed and go to college. I think that it is so important that they know about this case: *Mendez v. Westminster*.

Ms. Robbie: So, I am going to take you again back to that day when I learned about *Mendez v. Westminster*. I was sitting at mom’s kitchen table as a mom with two small children reading for the first

time about segregation in my hometown. I'm reading about segregation that nobody's ever told me about, that no one has ever thought was important enough to mention in my elementary school, in my high school, or in college. When I looked up from that article that day, it was as if all the puzzle pieces of my life got thrown up in the air, came back together, and revealed an entirely different picture of American civil rights history that I never knew existed. It was one that included my family, my friends, and my community. After the dust cleared, the first emotion that came to me was anger. I was angry that this case had happened and nobody thought it was important enough to mention in my schooling. And then, almost immediately after that, I felt ashamed and guilty because I thought for sure somebody, somewhere did something that warranted this treatment of being less than and different than everybody else. I felt this deep shame. And then, almost immediately after that I felt this sense of joy, pride, and excitement. It was discovering that somebody like me, like my mom and my dad, like my brothers and sisters, had done something that made a difference in our country. It was like discovering I was related to all those people in my history books: Earl Warren and Thurgood Marshall, like all my heroes: Martin Luther King Jr. and, I always say, Denzel Washington.

It was just an amazing connection to everybody and everything. I thought that if I am feeling this, I know that there are thousands of people that are feeling this, that are hungry for this. I know that the NAACP stands for the National Association for the Advancement of Colored People, but I knew that I was not part of the "colored people" that had the history: a slave history. And I could not respectfully claim that as mine. But now, I had a history. I have framed in my house a Western Union telegram that was sent to me from the National Archive, which is a repository for the *Brown v. Board of Education* papers, and it's the Western Union telegram from Thurgood Marshall discussing *Mendez v. Westminster* saying, "Here are the papers for this." That makes me still cry to think of it. And so, when I looked up at it, I said, "I don't know how, I don't know what I'm going to do, but before I'm done, my children need to know, everybody is going to know about *Mendez v. Westminster*." That helped me to eventually become the world's oldest intern at our public television station. When I pitched them the idea of doing a documentary on *Mendez v. Westminster*, they said, "OK, Sandra, we can see you are really excited about this, but here's the deal: no budget, no pay." So, we did this very humble documentary that ended up winning an Emmy. I have to say, I'm very proud of that

because we're here today, I think, because of this very humble film that has helped us to get this story told across the country.

But, I just want to share, too, that we talk about the crippling effect of segregation, but I think that today we still very much segregate the way that we study American civil rights history. We talk about our histories as if they don't touch each other. And what was so exciting for me about the *Mendez* history is here we have a Latino family—a Mexican and Puerto Rican family because Mrs. Mendez was Puerto Rican and Mr. Mendez was Mexican—we have them leasing land from a Japanese family, an argument being fought by a Jewish lawyer who married a Latina, in front of an Irish-Catholic judge involving, eventually, Thurgood Marshall and the NAACP. This blows the walls off what we think the American civil rights struggle is all about. This absolutely touches all of us. And so, I want to thank you all for including us in this important discussion because this is really progress to show how we are all connected.

One of my favorite stories is when I was talking in Orange County because, at the time we did the *Mendez* documentary, only 10% of the population knew that there was segregation in Orange County. I remember speaking with Patrick Miles, one of the “100 Black Men of Orange County”—despite the name there are more than 100 black men in Orange County—talking to him about *Mendez* for the first time, and he was shocked to discover segregation happened in Orange County, and that Thurgood Marshall was involved. He looked at me and he said, “Sister,” and he hugged me. And that is exactly what all this is about. So, I think it is important to include this in our history books because children learn that we are connected. And also, what's really important is that by including this with culturally relevant curriculum, it teaches children what they are capable of. But also, what is very important is that it also impacts the attitudes of the teachers who teach the children. The attitudes of teachers are critical in children believing and knowing that they can achieve. So when we learn about *Mendez*, we break the stereotypes, and we break the attitudes of what people think Mexican children, or children of any color, are capable of. And we know that somebody fought for us, that we are capable, and teachers treat children as if they are capable. That is critical for all successes for our students. And that's why I'm so thankful to all of you for including us today.

Mr. Mendez: After my parents won the case, the whole family forgot about it, and we just went on with our lives. I just forgot completely about prejudice, segregation, everything. I just went on and had a comfortable life for me and my family. So, I have never

really been passionate about what my parents did. I'm proud that they did it, but since it was pushed back in our minds, I never thought about it until, maybe, fifteen years ago, when Sandra Robbie and other people started bringing it up.

Professor Bowman: We appreciate each of you sharing your stories with us, Mr. Mendez; your sister, Ms. Mendez; and Ms. Robbie. Now it is time for us to turn to Judge Aguirre for his comments and then to Dr. Strum.

Judge Frederick P. Aguirre: The legal effect of the *Mendez v. Westminster* case is not found in *Brown v. Board of Education*, in its precedents that are cited in Chief Justice Warren's decision, any footnotes, or any law review articles regarding *Mendez* and *Brown*. But, when you look at the *Mendez* case, when you look at its underpinnings, when you look at the analysis, when you look at the decision that was rendered by Judge McCormick, and you mirror it to the decision that was authored by Chief Justice Warren, you see the similarities. You see the foundational underpinnings of the *Mendez* case and how *Brown* was built on the foundation laid by the *Mendez* case.

I want to talk about a couple of things that were happening while the lawsuit was being filed. As you know, the equal protection argument, the Fourteenth Amendment argument, requires state action, and the local school districts in Orange County alleged that what they were doing was local action, not by state mandate.<sup>21</sup> California did not have a state law that mandated segregated schools for Mexican-American children.<sup>22</sup> Unlike the seventeen states that had mandated segregation for African-American children, California's laws regarding segregated schools only applied to Asian students and to Native American students.<sup>23</sup>

Under local policies, a school board could maintain a school for children with disabilities and a school for children with special needs, as well as one for after-school schooling—whatever they thought was best for their children. That was the main argument that the school districts used to try to convince Judge McCormick and the Appellate Court that the Fourteenth Amendment to the United States Constitution did not apply. Well, both Judge McCormick and the Appellate Court found that reasoning was not sustainable because

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21. *Mendez*, 161 F.2d 774, 779 (concluding that school administrators “were performing under the color of state law”).

22. *Id.* at 780.

23. *Id.* (citing CAL. EDUC. CODE §§ 8003-04 (West 1944) (repealed 1947)).

local rules required that children attend the segregated schools and, of course, grammar school education being required, a child can be a truant if he or she does not go to grammar school up until age sixteen. Therefore, if children are required to attend grammar school, the education should be equally provided to all students. Since California did not require separate schools for Mexican-American children, a local school district could not maintain a segregated school. That was Judge McCormick's decision, and that was upheld by the Appellate Court.<sup>24</sup>

The reason that *Brown* does not cite *Mendez* is because *Mendez* did not deal with state-mandated segregated schools. *Brown*, *Briggs*, the case out of Delaware, the case out of Maryland; all of those cases dealt with state-allowed segregated schools.<sup>25</sup> So when the District Court in *Mendez* decided that the Fourteenth Amendment was violated, it did not decide this on the basis of a state mandate, it reached its conclusion on the basis that, since there was not a state mandate allowing separate schools, a Fourteenth Amendment violation occurred because the local school districts could not on their own maintain separate schools.<sup>26</sup>

It was an interesting argument that David Marcus made. He also talked about how this was violating our good neighbor policy with Mexico during the time of World War II. He was maintaining that Mexican-Americans should not be treated in that fashion. It is interesting to note that Governor Earl Warren instructed the Attorney General, Robert Kenny, to file a friend-of-the-court brief in the Appellate Court, and in that friend-of-the-court brief, Robert Kenny not only stated that the appellate court should uphold the trial court decision, but also called for the repeal of those two statutes we were talking about:<sup>27</sup> Education Code Sections 8003 and 8004 required the

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24. *Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544, 545 (S.D. Cal 1946) *aff'd*, 161 F.2d 774 (9th Cir. 1947) (en banc) (“[T]he pattern of public education promulgated in the Constitution of California and effectuated by provisions of the Education Code of the State prohibits segregation of the pupils of Mexican ancestry in the elementary schools from the rest of the school children.”); *aff'd Westminster Sch. Dist. v. Mendez*, 161 F.2d 774, 780 (9th Cir. 1947) (“It follows that the acts of respondents were and are entirely without authority of California law.”).

25. *Brown*, 347 U.S. at 486 & 486 n.1.

26. *Mendez*, 64 F. Supp. at 549-51.

27. Aguirre, *supra* note 12, at 326.

separate schools for Native American children and Asian children.<sup>28</sup> That resulted, in 1947, in the repeal of those two statutes.<sup>29</sup>

It is my feeling, and other scholars', that Governor Warren had to have known about the *Mendez* case in order to instruct his Attorney General not only to file an *amicus* brief that was supportive of the Mendez family and the other families against county counsel and against the school districts, but also to request that the Appellate Court find those two Education Code sections unconstitutionally viable. He had to have understood the underpinnings in order to go to the Supreme Court later on in 1953 and so aggressively vie for integrated schools across the country.

I am going to read to you from an article that was written by Professor Peter Irons in his book *The Supreme Court*. Governor Warren had never been a judge before he became a Justice, in fact, the Chief Justice. He had been an Attorney General; he had been a Governor, a three-time Governor, but he had never been a jurist. However, he was a politician and a very good one. Let me just describe to you what Mr. Irons said Earl Warren did. As you know, the *Brown* case, and all the other cases, concluded in 1953, and the decision came down in 1954.

“The argument concluded on December 10, 1953, but five months passed before Chief Justice Warren announced the decision. During that time, the Court’s marble walls concealed from outsiders the politicking that swirled inside. Earl Warren made no pretensions of legal scholarship. But no other Justice ever matched his political skills. Even more than Frankfurter, the Chief was determined to forge a unanimous Court around a brief and forceful opinion. Only if the justices spoke with one voice, in words the American people could understand, would the Court be able to help the nation heal its racial wounds. Warren set himself an ambitious task, and spent months cajoling his colleagues. Three Justices required the full ‘Warren Treatment.’”<sup>30</sup>

Now, Warren was a big man: 6’1”, 220 pounds. His father was a Norwegian immigrant; his mother was a Swedish immigrant. Their actual name was Varren: V-A-R-R-E-N. When his father came to Bakersfield to work in the railroads, he changed it to Warren.

“Warren won over Frankfurter by suggesting that the Court issue the opinion (in the form) he wanted by giving the southern districts time to comply with ‘all deliberate speed,’ and also order a third round of

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28. CAL. EDUC. CODE §§ 8003-04 (West 1944) (repealed 1947).

29. Aguirre, *supra* note 12, at 327.

30. PETER IRONS, *A PEOPLE’S HISTORY OF THE SUPREME COURT* 396-97 (1999).

arguments on methods of compliance. Stanley Reed finally succumbed to Warren after twenty lunchtime discussions.”<sup>31</sup>

We think that the Justices sit in their chambers and contemplate, but Warren was using his political skill to make the rounds of the chambers. And so when Justice Warren issued his opinion and he read it on that fateful day, May 17, 1954, he stated in open court, “We conclude *unanimously*, that in the field of public education that the doctrine of ‘separate but equal’ has no place.”<sup>32</sup> Notably, the printed opinion in *Brown v. Board of Education* does not contain the word “unanimously,” but he said it to reporters.<sup>33</sup>

Here’s why I feel that *Brown* was based on *Mendez* principles: if you look at the *Brown* case and you look at the decision in the *Mendez* case, as written by Judge McCormick, you are going to see striking similarities. Let me read to you some excerpts. In *Mendez*, Judge McCormick says, “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.”<sup>34</sup> They are in 1946 there. Here is what *Brown* says, written by Warren in 1954, “[Education] is required in the performance of our most basic public responsibilities, even service in the armed forces, it is the very foundation of good citizenship. Today, it is a principle instrument in awakening the child to cultural values.”<sup>35</sup> Now, that came out of both the decisions, differing in the way that it was framed.

In *Mendez*, Marcus was keen. He used an anthropologist by the name of Ralph Deals, from UCLA, to come and talk about how Mexican-American children would be stamped with an inferiority complex and Anglo-American children would be stamped with a superiority complex.<sup>36</sup> This is much like what was done in the NAACP cases in *Brown v. Board of Education* and all those other cases where they used sociological expert witnesses to educate the judges, like Dr. Kenneth Clark talking about the doll study.<sup>37</sup> In

31. *Id.*

32. Aguirre, *supra* note 12, at 330 (2005) (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954)).

33. *Id.*

34. *Id.* (quoting *Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544, 549 (S.D. Cal 1946) *aff’d*, 161 F.2d 774 (9th Cir. 1947) (en banc)).

35. *Id.* (quoting *Brown*, 347 U.S. at 493).

36. Transcript of Record at 674-77, *Mendez*, 64 F. Supp. 544 (No. 4292), available at [http://mendezetalvwestminster.com/pdf/Trial\\_Transcript\\_July%2011\\_1945.pdf](http://mendezetalvwestminster.com/pdf/Trial_Transcript_July%2011_1945.pdf).

37. *Brown*, 347 U.S. at 494 n.11.

*Mendez*, the court says, “The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation.”<sup>38</sup> In *Brown*, the Court says, “Segregation with the sanction of law therefore has a tendency to retard the educational development of Negro children and to deprive them of some of the benefits they would receive in a socially integrated school system.”<sup>39</sup> In *Mendez*, the court writes, “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>40</sup> In *Brown*, the Court writes, “Segregation of white and colored children in public schools has a detrimental effect on the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group.”<sup>41</sup>

And here are the final paragraphs that I think are so strikingly similar in both cases. In *Mendez*, Judge McCormick says, “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, textbooks, and courses of instruction to children of Mexican ancestry that are available to other public school children regardless of their ancestry.”<sup>42</sup> So, even if there are equal books and facilities segregation is still not equal. It is still not constitutional. It still violates the equal protection of the law. Now, of course, Chief Justice Warren’s statement is almost word for word: “We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate education facilities are inherently unequal. Therefore, we hold that the plaintiffs . . . are deprived of the equal protection of the laws.”<sup>43</sup>

So when we look at *Mendez*, we see the structural foundation upon which *Brown* is built. Of course, the briefs that were submitted by the NAACP helped the litigators develop their strategy. Federal Judge Robert Carter authored the NAACP’s brief in *Mendez*, and he has said it was almost identical to the brief he submitted in *Brown*.<sup>44</sup> Similarly, the Japanese American Citizens League under Saburo

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38. Aguirre, *supra* note 12, at 326 (quoting *Mendez*, 64 F. Supp. at 549).

39. *Id.* (quoting *Brown*, 347 U.S. at 494-95).

40. *Id.* (quoting *Mendez*, 64 F. Supp. at 549).

41. *Id.* (quoting *Brown*, 347 U.S. at 494).

42. *Id.* (quoting *Mendez*, 64 F. Supp. at 549).

43. *Id.* (quoting *Brown*, 347 U.S. at 495).

44. *Id.*

Kido, who argued *Korematsu*<sup>45</sup> and *Hirabayashi*<sup>46</sup> in the Supreme Court, mirrored the briefs that were filed in *Brown*.

When we look at *Mendez*, we see the underpinnings of *Brown*. And I'm extremely proud that this stance was taken by the Mendez family, the Ramirez family, the Estrada family, the Palomino family, and the Guzman family. My dad would have been a part of that lawsuit because my dad was born and raised in Orange County, went to segregated schools, but in 1945, he was serving in our country's defense in the battle of Okinawa. So when he came back in 1946 and heard about the case in 1947, he formed a group in Placentia, my hometown, and threatened a lawsuit similar to the *Mendez* case. As Sandra Robbie indicated, the *Mendez* case only applied to the four school districts of Orange County that were sued, but didn't apply to my hometown in Placentia, which of course maintained separate schools for Mexican-American students.

Professor Bowman: Judge Aguirre, thank you so much for your comments and for establishing all of these important connections between *Mendez* and *Brown*. Now, we turn to Dr. Strum for her insights.

Dr. Philippa Strum: My assignment is to talk about the challenges facing authors who write about school desegregation cases and the challenges facing the rest of us when we read those books: what we should look at when we read their studies? The first question is: why do scholars choose to write about school desegregation cases? Presumably, we do that because we feel passionately about them. That makes one of the challenges for authors finding a way to tamp down that passion when we write about the cases because we don't want our books to come across as polemics rather than scholarship. We want our books to be persuasive on the basis of the facts of the story. That is a bit of a challenge.

A bigger challenge is putting the cases into context. First of all, there's the context of other cases. We have to show how the case that we're writing about is unique but somehow fits into a line of litigation. Some of what you've heard this morning indicates that, for example, *Mendez* fits because it was the first time that a federal court ever said that separate but equal is not equal, and because it shows that there was organizing by communities in addition to the African-American community. It shows that we could no doubt find similar

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45. 323 U.S. 214 (1944).

46. 320 U.S. 81 (1943).

stories about the Japanese-American community, the Chinese-American community, and so on. *Mendez* indicates that it was not merely a situation of Mexican-American and other groups piggybacking on the African-American civil rights movement; they were out there very early on.

As part of putting the cases in context, we have to look at the societal conditions. One question is: was it the right time for the case? If the *Mendez* case had been brought ten years earlier, it probably would have lost. The reasons it succeeded had to do, in part, with the fact that Mexican-American veterans like Judge Aguirre's father, who had fought in World War II, came home saying, "We want the same justice here that we fought for overseas." There is a similarity there with African-American soldiers who came back with the same feeling. In addition, the legal profession was turning to civil liberties as a main concern in the 1940s, as it had not done before, recognizing that so many of the other issues that it cared about had already been adjudicated by the Supreme Court and other federal courts. And perhaps most importantly, the biological determinism that had permitted the segregation of Mexican-American school children, the belief that they were physically different, the belief that their IQs were much lower than those of the "white" students, was being tossed out. Scholars were turning away from biological determinism. That becomes really important to the outcome of the story.

In addition to the societal conditions, we have to look at the players in the case, and that is why it is so wonderful to have two of the Mendezes here. We always have to ask, "Why was the case brought? Was it brought by outsiders? Was it part of a concerted campaign?" In the *Mendez* case, that certainly was not true. I think one of the interesting things about the *Mendez* case was that Felicitas Mendez, Mrs. Mendez, was a Puerto Rican, and so she was born an American citizen. She felt very strongly, "I am an American citizen; my children are American citizens. They have the rights to everything else American citizens have." So what you get in the *Mendez* case is outraged parents, five different sets of parents, who had tried every other means possible and finally decided litigation was the only way to go. What a totally "American" attitude that is—we have a problem we cannot solve any other way, we go into the courts. Americans are, of course, incredibly litigious, and the Mendezes were very "American" in that sense.

Then we have to look at who the lawyers were and what doctrinal problems they faced. Here, I would like to emphasize two

things that have not come out so far in this morning's discussion. The first is that David Marcus could have brought *Mendez* in state court. He could have argued, "Look, the law in California says you can segregate Asian-American students and Native American students; it doesn't say anything about Mexican-American students,<sup>47</sup> so you have to end this practice." But if he had done that, he knew the California legislature could have altered the law the next day to include Mexican-Americans, so that wasn't going to be satisfactory. And more than that, Marcus was outraged by segregation, as the Mendezes were outraged by segregation, and Marcus said in effect, "I want to mount a frontal attack on segregation."

But how could he do that? In 1945, the Supreme Court of the United States was still committed to *Plessy v. Ferguson*<sup>48</sup> maintaining that segregation of school children was constitutional. How could Marcus possibly get around that? Thurgood Marshall, right at that moment, was telling the NAACP, "We cannot take segregation head on right now because it won't get anywhere in the Supreme Court." How could Marcus get around that? What he did was absolutely brilliant. He said, "This is not a case about race; this is a case about white people. Mexican-Americans are white, and therefore, what is happening is that one group of whites are being segregated from another group of whites." How could he say that? The Census Bureau at the time considered and counted Mexican-Americans as white. That enabled Marcus to claim, "The federal government says Mexican-Americans are white; therefore, this improper segregation is based on ethnicity, not on race." He said over and over again during the trial, "Judge, this is not a case about race. This is a case about people being discriminated against because of their ethnicity."

Then, as we've already heard, we have to look at the judge or judges in the case and see what impact who they were had on the case. Judge McCormick was a very interesting person, and I can't take the time now to go into his background, but it's worth looking at how this man, whose initial reaction was, "This case doesn't belong in my court; it has to do with state educational policy and that's a matter for state courts," became convinced that *Mendez* really was a Fourteenth Amendment case.

Next, we have to look at what the impact of the case was, first of all, on people. We've heard what the impact on the Mendez

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47. CAL. EDUC. CODE §§ 8003-04 (West 1944) (repealed 1947).

48. 163 U.S. 537 (1896).

children was. But *Mendez* led to organizing in districts not only across California but also throughout the Southwest. People were going to their school boards and demanding that their children be placed in integrated schools. What's really interesting here for political scientists is the result for involvement in politics by a group that, for the most part, had kept out of politics. As a result of the *Mendez* case, the Mexican-American community started demanding political offices. They started saying, "We can run for office now, initially for school boards, but then we can go further and run for other offices as well." That shows us something about the nexus between education and the making of public policy. Well-educated people get involved in public policy. They are not just the objects of public policy; they become the subjects of public policy. At what point the objects of desegregation become involved in politics and what that does to our society is something worth examining.

Then we have to look at the impact on the law. We've already heard something about that. It's important to note that just two weeks before *Brown v. Board* was handed down, the court handed down a case called *Hernandez v. Texas*, which had to do with a criminal conviction of a Mexican-American in Texas.<sup>49</sup> In announcing that case for a unanimous court, Chief Justice Earl Warren declared that the Fourteenth Amendment's Equal Protection Clause did not apply only to whites on the one hand and African Americans on the other. It applied to other discrete groups in the society, and he specifically said that Mexican-Americans are protected by the Equal Protection Clause of the Fourteenth Amendment.<sup>50</sup> So we see a major impact on the law.

In addition, we have the impact on the situation. What Judge Aguirre talked about illustrates this point; his dad went to court because of the *Mendez* case and the judge-to-be himself was then able to go to a desegregated school. This was happening all over the Southwest. What was the impact on the society? Were there attitudinal changes as a result of this decision? The *Mendez* case was handed down at just the right moment for the thinking of the legal elite, as I have indicated, and this was reflected in law reviews across the country. Law reviews looking at the *Mendez* case—the *Harvard Law Review*, the *Yale Law Journal*, the *California Law Review*, major law journals—not only applauded it but also specifically said

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49. 347 U.S. 475, 476-77 (1954).

50. *Id.* at 479-80.

that this case shows that it's the time to end segregation of schools in the United States.<sup>51</sup> It all came together at a phenomenal time.

I first became aware of the *Mendez* case when I read a story in the *Washington Post* one day about a stamp being issued in honor of the *Mendez v. Westminster* decision. Apparently, this was supposed to be an important constitutional law case. And I admit that I thought, "No, no, no; this is not possible. I have been teaching constitutional law for thirty-five years, and I have never heard of this case." So, of course, I had to do some research, and I discovered that *Mendez v. Westminster* is an incredibly important moment not just in Mexican-American history, but in American history, and it is a case that people ought to know something about. That raised the question of why has it been ignored. I came up with two hypotheses. One is that because the school districts caved, the *Mendez* case never got to the Supreme Court of the United States. I'm afraid that we political scientists in the twentieth century were looking only at cases that were decided by the Supreme Court, and we forgot that there were lower federal courts as well as state courts in this country. We didn't bother examining them, and therefore, the case just wasn't in the political science literature or the legal casebooks for that matter. Another reason was the orthodox wisdom that I mentioned earlier that civil rights in this country were a matter only of African-American activism, not activism by other groups, which had merely piggybacked on the African-American movement. There is so much more richness to the civil rights story in this country, and *Mendez* was a major part of it.<sup>52</sup>

Finally, of course, we have to look at what difference all of these cases made. If we look at the resegregation of public schools in this country today, we have to ask ourselves, has the fight been won or are all of the cases that we look at just stages in a fight that has to continue today and tomorrow?

Professor Bowman: Thank you, Dr. Strum. We have time for a few questions. We'll start with one here in East Lansing and then we'll go to our friends in Kansas City. Of course, audience members may ask questions of panelists in either location. So, do we have a question in East Lansing?

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51. See, e.g., Note, *Segregation in Public Schools—A Violation of 'Equal Protection of the Laws'*, 56 YALE L.J. 1059, 1060, 1063-64, 1066-67 (1947); Note, *Is Racial Segregation Consistent with Equal Protection of the Laws? Plessy v. Ferguson Reexamined*, 49 COLUM. L. REV. 629, 634, 637 (1949); Comment, *Restrictive Covenants and Equal Protection*, 21 S. CAL. L. REV. 358, 370 (1958).

52. See STRUM, *supra* note 5.

Audience Member: Beyond the political elements and legal sophistication did any of you either at the time or looking back on it kind of think, “The respondent arguments are kind of stupid. They aren’t very sophisticated in responding to justifying the policy at the time.” Was that kind of difficult to temper how you navigated talking about the cases?

Dr. Strum: I think when we read about the arguments on the other side now we get really angry, but we have to put them into context. It was a time of transition in people’s minds, but the old thinking was still very much there. When we look at somebody—Kristi, you asked earlier about Earl Warren, and how you put together *Brown v. Board* and what he did in the Japanese-American relocation cases—Earl Warren did not believe in segregation. Earl Warren really believed that there was a danger during the Second World War. If we look at what Earl Warren said throughout much of his life, we find that he thought that segregation, particularly of Mexican-Americans, which he saw a lot of in California, was wrong, and yet, he couldn’t get beyond that to see what was happening in the relocation cases. I think that was true of many of the people on the other side in these cases. They were very much a product of their own socialization and were not necessarily bad people but were, as I say, reflective of what was going on in their societies. It’s the same kind of thing that we see today, isn’t it? We see people on the other side of wherever we happen to be, and we ask, “How can they possibly believe that stuff?” Well, they do.

Audience Member: I’d like to follow up on that last question just a bit. I question the premise whether the arguments made then are actually so strange in today’s society. I guess I’ll ask all of you: Do you see the same arguments being made in different forms today about the treatment of Latinos, Blacks, Asian-Americans, Native Americans, et cetera? Are those same arguments showing up again in new forms in your experience?

Judge Aguirre: Well, certainly we don’t have restrictive covenants like we had in the past that required people to live in certain areas of our communities.<sup>53</sup> People now are able, if they can afford it, to live in more affluent areas, move out of the ghetto or the barrio and go live in a more integrated setting. So we have resegregation, primarily due to economic factors, as opposed to legal

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53. *Shelley v. Kraemer*, 334 U.S. 1, 21-23 (1948) (holding that enforcement of restrictive covenants constitutes state action that violates the Equal Protection Clause of the Fourteenth Amendment).

restrictions that kept people from moving out. And that is why we have schools with higher minority-student levels.

However, I think the argument of local control that is made was a very strong argument in those days and is still a very strong argument theoretically. So when we are told, “Well if you don’t like what the school board is doing, then elect people on the school board that reflect your thinking,” that reflects a different approach to the issues. It’s still a very strong argument—didn’t de Tocqueville talk about how he was impressed with our town halls, and how it was local control and local participation in city councils and school boards and things of that nature that made our country strong?<sup>54</sup> I think he was right. That is a strength of our country, but sometimes that can be utilized in a fashion to place a problem elsewhere.

Ms. Robbie: Being on campus at Chapman with a lot of new undergraduates, I’d have to say I’m in awe, in the last three weeks, of being aware of the magic time that we are experiencing in history. Yes, there are arguments being made, but just seeing people’s minds open and the new reality that is being accepted is inspiring. We had what’s called “Delta Queen” on campus, where a queen is selected by the fraternities for fundraising and all these things. We had our first transgender candidate. When she went up to perform, the audience gave her a standing ovation.<sup>55</sup> I have never been prouder of Chapman University.

In just the last two weeks, Chapman also had the first gay collegiate football player come out in the nation.<sup>56</sup> While there are still arguments being made, the idea that 80% of our younger folks believe in equality for LGBTQ people<sup>57</sup>—we are living and riding an incredible wave that has been fought for hundreds and hundreds of years. So I am very hopeful for what is coming. I remember when my Uncle Danny died of AIDS twenty years ago, I thought, “I don’t know if I’ll live to see gay marriage,” and here we are. It is a powerful, hopeful time, but I don’t believe it is something that we

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54. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 55-56 (J.P. Mayer & Max Lerner, eds., Harper & Row Publishers 1966) (1835).

55. Fermin Leal, *Transgender Student Inspires at Chapman Pageant*, ORANGE COUNTY REG. (Aug. 26, 2014), <http://www.ocregister.com/articles/vincent-605466-transgender-chapman.html>.

56. Kevin Baxter, *Eby Announces He Is Gay*, L.A. TIMES (Apr. 1, 2014), <http://articles.latimes.com/2014/apr/01/sports/la-sp-chapman-eby-gay-20140401>.

57. Chris Cillizza, *Why Support for Gay Marriage Has Risen So Quickly*, WASH. POST (Mar. 19, 2013), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/03/19/why-support-for-gay-marriage-has-risen-so-quickly/>

will ever be able to put to rest because our human brains are made to generalize; that's how we get through the day. We stop at all red lights because that's what it means. So we put symbols in our brains that make us think, "This is how the world works." But, we are undoing many of those things. I am proud to say I don't see the *Mendez* history as only Latino history. I know the students that I have presented this case to, students of all colors, are equally excited about this. This is a transformative time in America, and, I think, around the world; when we can read a child's name, and we have no idea what color Mallory Shinumitsu is going to be. We have no idea what that student is going to look like. That's the world my children are growing up in. It's a fascinating and powerful time.

Audience Member: This may be asking the same question again, but if "comingling" [integration] has the same benefits today that it had in the 1940s, how does a law school look at all the barriers that are erected between here and comingling because, as I see it, the Supreme Court has laid down a number of rulings that really make a lot of comingling impossible? How do you think about this in a law school?

Judge Aguirre: The decisions that the Supreme Court has made carry with them different results. I think the resilience and the strength of our country lies in its ability to transcend even what the Supreme Court is ruling on. Sometimes those rules are coming in at a later date, after the fact. I think people have great tolerance in this country because we have every ethnic group, religious group, racial group, and cultural group represented in this great experiment we call "America." It poses tremendous challenges, but I'm very confident we will continue to be a better society and lead the world. I feel that we are making great strides. I'm not saying we are the greatest empire or country ever conceived, but certainly, I look at our country, and I think we've made some great strides and will continue to do great things.

Professor Bowman: On that hopeful note, we will conclude our first panel. I would like to thank all our panelists, particularly Mr. Mendez and Ms. Mendez. We appreciate you being with us this morning.









