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**Méndez v. Westminster:**
Asian-Latino Coalition Triumphant?

Toni Robinson

Greg Robinson†

INTRODUCTION

*Méndez v. Westminster School District of Orange County,*¹ which put an end to the exclusion of Mexican American children from "white" schools in Southern California, is a bellwether event in the history of equal rights in the United States. Not only did the court’s decision represent a major advance for Mexican Americans in their quest for equality, but it also led directly to the repeal of all school segregation laws in California, which had been up until then the largest state to maintain separate schools for minority populations. *Méndez* can thus be claimed as the first victory in the postwar legal struggle against segregation in primary education that climaxed with the Supreme Court’s epochal *Brown v. Board of Education.*² decision.

*Méndez* has been enshrined both in historiography and in popular memory as a precursor of *Brown,* a challenge to racial discrimination by minority group representatives. In accordance with this view, historical accounts and commemorations of *Méndez* have tended to highlight the participation of civil rights organizations, such as the National Association for the Advancement of Colored People ("NAACP"), the Japanese American Citizens League ("JACL"), and the League of United Latin American Citizens ("LULAC"), and to portray the case as a golden moment of intergroup unity among Latinos, Asian Americans, and African Americans.
A notable illustration of the tendency to view Méndez as a landmark of (inter)racial struggle is the work of historian Ronald Takaki, whose book, *Double Victory: A Multicultural History of America in World War II*, provides the following commentary on the case:

The Mexican-American struggle for justice expanded [after World War II] to the right to equal education. In the 1946 case of *Méndez v. Westminster School District of Orange County*, the U.S. Circuit Court of Southern California declared that the segregation of Mexican children violated their right to equal protection of the law guaranteed to them under the Fourteenth Amendment and therefore was unconstitutional. To support the *Méndez* case, amicus curiae briefs were filed by the American Jewish Congress, the National Association for the Advancement of Colored People, and the Japanese American Citizens League. Together, they won a victory over prejudice in education.

The *Méndez* decision set a precedent for the historic 1954 *Brown v. Board of Education* decision. Aside from containing some factual inaccuracies (as will be made clear), Takaki’s account of the *Méndez* decision as the product of a united front of minority groups reflects the fundamental misconception of the case that pervades the popular narrative. In fact, what the events of *Méndez* reveal most strongly are the tensions and complexities present in partnerships against discrimination among minority groups, such as the Japanese Americans and Mexican Americans, and the contingent nature of their self-identification as racial or ethnic minorities. The goals of the groups involved in *Méndez* were not only divergent and even contradictory, but the participants also adopted differing legal strategies to support their respective goals. The racial factor, which ostensibly united them, was at the center of their dispute. Thus, the final court decision and the nature of the “victory” won by the minority groups in *Méndez* was laced with ambiguity and irony.

### I. ROOTS OF THE CASE FOR MEXICAN AMERICANS AND JAPANESE AMERICANS

For both Japanese Americans and Mexican Americans, the roots of the *Méndez* case can be found in the Immigration Act of 1924, which severely restricted European immigration to the United States and completely barred

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immigration from Japan. In the years following the passage of the Immigration Act, ethnic Japanese ("Nikkei") communities in California, home of some 70 percent of mainland Japanese Americans, remained stigmatized by nativist prejudice. For instance, the Issei immigrants could not own agricultural land nor become naturalized citizens, while their native-born Nisei children, although American citizens, were subjected to widespread economic discrimination and anti-miscegenation laws. In some areas, the Nisei children were even required by law to attend separate "oriental" public schools.

The Japanese American communities were divided over the response to such discrimination. The Issei continued to favor close ties with Japan, and some even sent their children back to their old homeland to be educated. However, a handful of Nisei organizations, notably the JACL, founded in 1930, challenged their elders for dominance within the Nikkei communities. The JACL restricted its membership to American citizens, and its leaders advocated a platform of Americanization which included exclusive loyalty to the United States.

Meanwhile, immigration from the Americas, especially Mexico, remained unrestricted throughout the 1920s. During the years that followed 1924, waves of Mexicans were drawn or recruited to work in neighboring California. By 1930, the state's population of Mexican ancestry had more than tripled, and ethnic Mexicans were the state's largest

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7. California Education Code sections 8003 and 8004 permitted individual school districts the option of providing separate schools for "Indian children or children of Chinese, Japanese, or Mongolian parentage," and forbade the children of these groups from attending other schools once such separate schools were established. Although the law included "Mongolian" children starting in 1885, "Japanese" children were not explicitly listed until 1921. The law originally provided for the educational segregation of African Americans as well, but following civil rights protest by black Californians the law was amended in 1880 to remove black children from the list of groups that could be segregated. See CHARLES WOLLENBERG, ALL DELIBERATE SPEED: SEGREGATION AND EXCLUSION IN CALIFORNIA SCHOOLS, 1853-1973, at 23-24 (1976).
9. See id.
10. See id.
11. See id.
During the depression years, the Mexican American population of Southern California continued to grow — albeit much more slowly — despite the imposition of immigration restrictions and the deportation of significant numbers of Mexican American citizens as supposedly "illegal" aliens. Eighty-eight percent of the new immigrants settled in Southern California. Most took up jobs in agricultural areas, where local farmers (whites as well as some Japanese Americans) sought laborers to pick their crops. Others settled in the urban areas, for the 1940 U.S. Census counted 219,000 people of Mexican ancestry in the Los Angeles area, of whom 65,000 were Mexican-born.

The expansion of the Mexican American population was matched by a heightening of barriers of inequality against them. Although Mexican Americans, unlike Asian Americans, were not targeted by statewide race-based legislation, such as anti-miscegenation statutes, they were nonetheless forced to live in segregated districts and barrios, and were sometimes excluded by local ordinances or custom from public facilities, such as swimming pools and stores.

The Mexican American children were also frequently placed in separate and markedly inferior "Mexican" schools. Significantly, even though California Education Code sections 8003 and 8004 did not list children of Mexican ancestry as a group that could be segregated, white educators and school psychologists in Southern California believed the Mexican American children were inferior, and thus in need of "Americanization" — that is, assimilation to Anglo American values and customs — rather than traditional academic education. In 1931, parents of Mexican American children in Lemon Grove, with aid from the Mexican consulate in San Diego, brought legal action against the placement of their children in segregated schools and won a writ of mandate from the Superior Court in California that admitted their children to the "white"...
schools. Unfortunately, the ruling in the Lemon Grove case did not set a precedent for the other school districts. For example, in Orange County, where the Mexican American children made up one-fourth of the total student population, some 70 percent of Mexican American children attended predominantly segregated elementary schools by 1934. In contrast, the entire ethnic Japanese population of Orange County by 1940 was only 1,855, and the small fraction of Japanese American children in the student population reportedly attended "white" schools.

II. EFFECTS OF WORLD WAR II

A. The Japanese American Internment

World War II fundamentally reshaped both the Japanese Americans and Mexican Americans. In the days after the Japanese attack on Pearl Harbor, thousands of Issei were arrested and interned as potentially dangerous enemy aliens. In February 1942, following a pressure campaign by West Coast military officials and various political/economic interest groups, President Franklin D. Roosevelt signed Executive Order 9066, under which all Japanese Americans, whether Issei or Nisei, were forcibly expelled without trial from the West Coast and shipped under armed guard to a network of barren camps in the interior. There the Japanese Americans remained confined behind barbed wire, in most cases until the end of the war. Following the evacuation order, the Japanese Americans were forced to abandon most of their land and possessions, or sell them off cheaply, and thus the once-prosperous community became impoverished. The trauma of imprisonment and the rigors of the camp experience also triggered a widespread psychological disturbance among the internees and brought about the breakdown of existing community and family structures.

23. See id.
25. U.S. Census Bureau, Japanese Population in the State of California, by Sex and Nativity or Citizenship, by Counties, in NATIONAL DEFENSE MIGRATION 97 (1942). See also WOLLENBERG, supra note 7, at 73; Arriola, supra note 3, at 176-77.
28. ROBINSON, supra note 26, at 4-5.
29. Id.
30. Id.
Although the federal government endeavored to persuade the Japanese Americans to resettle in other regions by closing off the Pacific Coast to the Japanese Americans until 1945, the vast majority of them chose to return to California and the other West Coast states following their release from confinement. Moreover, the California state legislature tried to discourage the Japanese Americans from returning to California by barring them from various professions and bringing escheat proceedings to strip the Nisei of title to the landholdings purchased for them by their Issei parents.

The readjustment that the Japanese Americans went through was difficult. For example, the Japanese Americans were subjected to widespread discrimination and terrorist attacks by resident white bigots, and the federal government offered neither police protection nor financial aid to the Japanese American resettlers in California. Ultimately, many returning Japanese Americans were forced to settle in urban areas, despite housing scarcities and high rents, and were squeezed into overcrowded apartments or mobile homes in the ghettos and barrios. However, there was one important change from the prewar years. The old “oriental” schools were abandoned, and the Japanese American children throughout California were enrolled in integrated schools.

Both the wartime confinement of the Nisei and their postwar resettlement experiences helped reshape the Nisei’s political orientation after 1945. The internment of the influential Issei community leaders and the subsequent overall stigmatization of the Issei in the camps as “enemy aliens” left the Nisei with the chief responsibility of leading and representing the Japanese American community. The JACL, partly as a result of its (still controversial) decision to cooperate with the federal government in executing the removal and confinement of Japanese Americans, emerged during the war years as the dominant Nikkei voice. The JACL remained committed to its “Americanization program” – indeed, the JACL members, like other Japanese Americans, seem to have absorbed from their mass incarceration the lesson that only through assimilation to (white) American norms could they hope to avoid a repeat of their exclusion. But the JACL also perceptibly shifted its platform at this time by becoming markedly more assertive in its demands for civil rights for the Japanese Americans. The injustice of the government’s wartime actions

31. See id. at 231.
32. See U.S. COMM’N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, supra note 5, at 241-42.
33. See id.
34. See id.
37. See WOLLENBERG, supra note 7, at 80.
38. See HOSOKAWA, supra note 8, at 92. See generally HARRY H. L. KITANO, JAPANESE
against the Japanese Americans, coupled with the spectacular military record of the Japanese American GIs, encouraged the JACL to press for full citizenship rights for the Japanese Americans and to eliminate further discrimination. For instance, under the leadership of A.L. Wirin and his law partner, JACL president Saburo Kido, the JACL instituted lawsuits challenging California's Alien Land law and discriminatory commercial fishing laws.  

Furthermore, in sharp contrast to their pre-World War II position, the JACL leaders now reached out to the other minority groups by joining interracial committees and sponsoring joint events with groups, such as the NAACP. Specifically, the JACL leaders, such as Larry Tajiri and Mike Masaoka, and the Japanese American newspapers, such as The Pacific Citizen and The Utah Nippo, urged the Nisei to recognize that they were a minority group with the same problems as other racial and ethnic minorities, and that it was in their own interest to support civil rights for all. Thus, in December 1946, the JACL established a special defense fund that supported its participation in civil rights litigation involving other racial minorities. Most significantly, JACL counsels A.L. Wirin and Saburo Kido collaborated with NAACP attorney Loren Miller in a series of legal cases challenging restrictive covenants against nonwhites in housing.

B. The Mexican American Community

The second World War was also a defining moment for Southern California's Mexican American community, for it energized community leaders to press for civil rights, albeit in a different way than the Japanese Americans. By 1940, the majority of the ethnic Mexicans in the United States were American citizens, and they came of age during the war years. Nationwide, as many as 350,000 Mexican Americans (of whom Californians comprised a significant fraction) served in the Armed Forces. As was true for the Nisei, the distinguished military service records of the Mexican American GIs bolstered the Mexican American community's self-confidence and sharpened the Mexican American

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39. See FRANK CHUMAN, THE BAMBOO PEOPLE: THE LAW AND JAPANESE-AMERICANS 205-17, 228-33 (1976). Wirin was not only a Los Angeles lawyer and director of the Southern California American Civil Liberties Union ("ACLU"), but was also the JACL's counsel during the war.
42. See supra text accompanying note 146-147.
44. Id. at 283.
community's awareness of unequal treatment received by its members. Moreover, due to the wartime labor shortages, tens of thousands of Mexican American workers were hired for jobs in the U.S. shipyards and other war industries—17,000 in the Los Angeles shipyards alone by 1944. The ethnic Mexican population also swelled by the arrival of migrant laborers recruited to the United States under the bracero program that reached 120,000 per year by 1946.

The Mexican American community was also largely drawn together by outbreaks of wartime bigotry. For example, in August 1942, after José Diaz, a young Mexican American, was found dead by a road in Sleepy Lagoon on the outskirts of Los Angeles, detectives instituted mass arrests of Mexican Americans. Twenty of these arrestees were subsequently brought to trial in an atmosphere marked by baseless newspaper stories of a “Mexican” crime wave and a presiding judge who was later found by a higher court to have been biased against the defendants. Although proof was never presented that Diaz had been murdered, let alone by any of those charged, twelve of the defendants were found guilty of murder and of eight lesser offenses by an all-Anglo jury.

Another significant instance of wartime bigotry against Mexican Americans followed in June 1943. White Anglo soldiers and sailors went on a rampage after a long campaign of sensationalist stories in the popular Hearst press about the depredations of Mexican American gang members in “zoot suits.” The white Anglo soldiers and sailors not only seized the young Mexican American *pachucos*, but also beat them and stripped them of their clothing. Local police ultimately arrested the victims, but left their attackers unharmed. In response to these events, Mexican American activists from groups such as the Spanish Speaking People's Congress and the Coordinating Council for Latin-American Youth sought to combat discrimination and lessen ethnic tensions by creating public education campaigns and forging coalitions with Anglo liberals, African Americans, and others, most notably in the Sleepy Lagoon Defense Committee.

45. See id. at 285.
46. Leonard, supra note 18, at 192, 195-96.
47. CAREY McWILLIAMS, BROTHERS UNDER THE SKIN 129 (2d ed. 1964).
49. See id. at 314-16.
50. See id. The verdict was subsequently overturned on appeal.
52. PERRET, supra note 48, at 314-16. See generally MAZON, supra note 51.
In addition, the various Mexican American groups grew more assertive in the fight for integration and civil rights. A major vehicle of activism at that time was LULAC. Founded in Texas at the end of the 1920s, LULAC was an organization of young lawyers and middle-class professionals whose membership was restricted to American citizens.\(^{54}\) LULAC was dedicated to the assimilation of Americans of Mexican ancestry, and opposed discrimination against Latino citizens.\(^{55}\) During the 1930s, LULAC instituted legal actions that challenged the placement of Mexican American children in segregated schools in Texas, and achieved only inconclusive results.\(^{56}\) But fueled by the presence of returning Mexican American veterans at the close of World War II, LULAC renewed its desegregation efforts. Thereafter, LULAC established its first California chapter in Santa Ana in 1945 and supplemented the efforts of a local Latin American group in organizing parents and demanding integrated schools.\(^{57}\) Along with the Coordinating Council for Latin-American Youth and the Federation of Hispanic American Voters, LULAC also encouraged Mexican American parents in El Monte, California to demand educational equality for their children, and joined the lobbying campaign to persuade the California Assembly to repeal Education Code sections 8003 and 8004.\(^{58}\)

C. Differences between the Mexican Americans and Japanese Americans

Although both the Mexican American and Japanese American communities underwent significant transformations during World War II and intensified their campaign for equality in its aftermath, they pursued opposite strategies in pursuit of that goal. As noted, the JACL became heavily invested in intergroup alliances. Conversely, the Mexican American leaders chose to distance themselves from such coalitions despite the support they received from African Americans and Japanese Americans. For example, during the first postwar years, the Mexican American organizations did not participate in the multi-group legal struggle against restrictive housing covenants (on the contrary, some Mexican

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\(^{54}\) See Guadalupe San Miguel, Jr., The Struggle Against Separate and Unequal Schools: Middle Class Mexican Americans and the Desegregation Campaign in Texas, 1929-1957, 23 HIST. OF EDUC. Q. 343, 344-45 (1983).

\(^{55}\) See id. at 343-59.

\(^{56}\) See id.

\(^{57}\) See Garcia, supra note 43, at 279.

\(^{58}\) See id. at 282-83. In 1945, the Assembly voted to repeal sections 8003 and 8004, but the legislation subsequently died in the state Senate.
Americans continued to reside in housing covered by such covenants). Furthermore, LULAC and the other Mexican American organizations did not coordinate their anti-segregation lobbying efforts with the JACL or NAACP, even though the Japanese American children were explicitly subject to separate schools under California law and some African American children were required by local school districts to attend segregated schools.\textsuperscript{59} The Mexican American leaders fighting discrimination may have feared their association with nonwhite minority groups would lead to categorizations that they were nonwhite. Historian Mario Garcia has noted that the leaders of the Coordinating Council for Latin-American Youth rejected any suggestion that Mexican Americans were a "minority" and explicitly distanced themselves from African Americans.\textsuperscript{60} According to Garcia,

\begin{quote}
[f]earing that any attempt to classify Mexicans as people of color might subject them to "legal" forms of discrimination and segregation, the Council rejected any implication that Mexicans were not white. The Council's insistence that Mexicans were white also appears to have stemmed from the historic ambivalence and insecurity of Mexicans on both sides of the border concerning their racial status. These feelings often led to a denial of possessing Indian blood.

\textsuperscript{***}
\end{quote}

Council members ... drew distinctions between Mexican Americans and Afro Americans as a way of trying to avoid the stigma of racial inferiority imposed on blacks ... [They] focused on ethnic rather than racial discrimination ... [and] insisted that Mexicans were white and hence no different from other ethnic groups such as the Irish, Italians or Germans.\textsuperscript{61}

Thus, the Japanese Americans, who rejected any question of cultural specificity attached to their group heritage, predominantly saw themselves as a nonwhite minority and sought to ally themselves with other nonwhite groups. In contrast, the Mexican Americans, who expressed pride in their particular ethnic and cultural legacy, conceived of themselves as white and refused interracial solidarity. This difference may be explained by historian Neil Foley's comment of how Mexican American leaders thought their citizenship rights depended on being able to claim that they were white.\textsuperscript{62} Foley stated that

\begin{quote}
59. For example, The New York Times reported that the Riverside school district had a longstanding custom of segregated schools for African Americans and Mexican Americans, which it abandoned in late 1946 under threat of a lawsuit. See Lawrence E. Davies, Segregation of Mexican American Students Stirs Court Fight, N.Y. TIMES, Dec. 22, 1946, § 4 (Magazine), at 6.

60. See Garcia, supra note 43, at 279.

61. Id. at 287.

\end{quote}
[as whites of a different culture and color than most Anglo whites, many
middle-class Mexicans learned early on that hostility to the idea of “social
equality” for African Americans went right to the core of what constituted
whiteness in the U.S. Whether or not they brought with them from
Mexico racial prejudice against blacks – and certainly many Mexicans did
– middle-class Mexican leaders throughout the 1930s, 40s, and 50s went
to great lengths to dissociate themselves socially, culturally, and
politically from the early struggles of African Americans to achieve full
citizenship rights in America.

Ultimately, this basic difference between the Mexican Americans and
Japanese Americans would suffuse the campaign against segregated
schools that both groups undertook in the postwar era Mén dez case.

III. THE MÉNDEZ CASE

A. Origins

In September 1944, Gonzalo Mén dez, a Mexican-born tenant farmer
who had moved to the town of Westminster in Orange County during the
war attempted to enroll his children at Westminster’s “white” school. The
school authorities, however, refused to admit Mén dez’s children.
Instead, the school authorities ordered Mén dez to enroll his children in the
“Mexican” elementary school. Hence, in early 1945, Mén dez, together
with William Guzman, Frank Palomino, Thomas Estrada, and Lorenzo
Ramirez who were the parents of students in three other Orange County
school districts with segregated schools, brought a lawsuit on behalf of
their children and 5,000 other “Mexican and Latin descent” children that
sought to challenge the school districts’ discriminatory policies. On the
advice of the new Santa Ana LULAC chapter, Mén dez and his co-
complainants hired Los Angeles attorney David Marcus to handle the
case. Marcus filed a petition alleging that the school districts’
maintenance of separate schools deprived the petitioners of the educational
benefits enjoyed by “white” or “Anglo” children solely because of their
“Mexican or Latin descent.” According to the petitioners, segregation
constituted arbitrary discrimination in violation of the Due Process and
Equal Protection clauses of the Fourteenth Amendment and should thus be
enjoined. The defendants, on the other hand, claimed in their answer that

63. Id.
64. According to one source, Gonzalo Mendez lived on farmland rented from a Japanese
American who was confined in the camps. See Maria Sacchetti, School Integration is O.C. Family’s
Legacy: In 1944, the Mendezes Fought for the Future of Their Children and Made History, ORANGE
65. See Wollenberg, supra note 12, at 317.
66. See id. at 325.
4292-M), Arriola, supra note 3, at 193. Arriola describes Marcus as “an African American civil rights
the separation of pupils was practiced for the sole purpose of instructing the children of Mexican descent the English language and was in their best interest.68

B. Argument

The Méndez case was heard by Senior Judge Paul J. McCormick of the Federal District Court in Los Angeles.69 The defendants initially argued that the lawsuit raised no federal issue since education was exclusively a state matter and the school districts were governed by state law.70 However, the defendants were unsuccessful in their aggressive attempt to dismiss the action for lack of subject matter jurisdiction.71 When the case went to trial, petitioning attorney Marcus called a number of educational and social science experts who testified that the segregation of Mexican American children by the defendants was both contrary to modern educational understanding and injurious to its victims.72 The petitioners also introduced evidence that directly contradicted the defendant school boards’ claims that the segregation was necessitated by the alleged English-language deficiencies of the supposedly Spanish-speaking “Mexican” children.73 But defense attorney Joel Ogle countered by arguing that the U.S. Supreme Court had held in Plessy v. Ferguson74 that “separate but equal” racially segregated facilities were constitutional.75 Furthermore, Ogle introduced evidence showing that the physical facilities, teachers, and curricula afforded to the Mexican American children were equal or even superior to those available to the Anglo children.76

C. The Question of Race

During the trial, both Marcus and Ogle agreed to a crucial stipulation that race was not an issue in the case.77 The defendant school districts had initially attempted to justify segregation on grounds that Mexican

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68. See Wollenberg, supra note 12, at 326.
69. Id. at 317. See also Méndez v. Westminster Sch. Dist., 64 F. Supp. 543 (S.D. Cal. 1946).
70. Wollenberg, supra note 12, at 326.
71. Id.
72. Arriola, supra note 3, at 185.
73. Id.
74. 163 U.S. 537 (1896).
75. See Wollenberg, supra note 12, at 325-26.
76. Id.
American children were not members of the white race. However, after one school official testified that segregation was a necessary result of the Mexican American children’s inferiority to the white children, and another spoke of segregation as being based on the “social problem” created by the presence of the Mexican Americans, Ogle changed the course of his argument by agreeing to stipulate that there was no question as to “racial” segregation in the case. Thereafter, Ogle defended segregation solely as a rational response to the Mexican American children’s alleged lack of proficiency in the English language. Marcus and his clients, meanwhile, agreed to the stipulation because they were clearly aware of the “social value of whiteness” and the potential detriment the Mexican Americans would face if classified as a non-white “race.”

D. The Lower Court Ruling

On February 18, 1946, Judge McCormick ruled in favor of the petitioners. By finding that the school districts violated the Mexican American children’s rights under both the Fourteenth Amendment and California state law, Judge McCormick’s decision took a powerful swipe at the constitutionality of race or ancestry-based public school segregation. Such segregation, Judge McCormick stated, hindered the Mexican American children from developing “a common cultural attitude which is imperative for the perpetuation of American institutions and ideals” and harmed them by “foster[ing] antagonisms in the children and suggest[ing] inferiority among them where none exists,” and thus, he anticipated the language of Chief Justice Earl Warren eight years before the Brown v.
Board of Education decision. Judge McCormick declared that the equal protection of the laws... is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to students 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.

Although Judge McCormick recognized that English-language deficiency was the only tenable ground on which segregation could be defended, he nevertheless found that it was not the true basis for the defendants' practices. The evidence showed, in fact, that the Mexican American children were segregated on the basis of their "Mexican" or "Latinized" names, and in some cases, their appearance. Damningly, Judge McCormick characterized the defendants' methods for determining the Mexican American children's English language proficiency as "illusory" because he found it to be "generally hasty, superficial and not reliable." The defendants maintained entirely separate schools for all Mexican American students through the sixth grade, and in two instances, the eighth grade, a duration far longer than possibly could be justified by any language deficiency. Ironically, the "Spanish-speaking" children in the "Mexican" schools were actually held back in learning English by their lack of exposure to its use. Therefore, Judge McCormick stated, it was clear that the defendants singled out the Mexican American children as a class solely based on their ancestry, which was a practice forbidden by California's Education statutes and a distinction "recently" declared by the Supreme Court to be "odious" and "utterly inconsistent with American tradition and ideals."

IV. THE MÉNDEZ APPEAL

A. Arguments Within the Appellate Briefs

Almost immediately after Judge McCormick issued his judgment, the defendants appealed to the Court of Appeals for the Ninth Circuit. Ogle attempted to make the best of an unfavorable situation. According to Ogle, Judge McCormick's ruling against the defendants' segregation practices was invalid. Since the defendants' segregation practices were not done under color of California law, they could not be considered "state action" under the Fourteenth Amendment, and thus, the federal courts had no

85. Id.
86. Id. at 550.
87. Id.
88. Id. at 549.
89. Id. at 548. Ironically, the language quoted by McCormick came from Hirabayashi v. United States, 320 U.S. 81 (1943), one of the "internment" cases which upheld the constitutionality of wartime restrictions imposed on Japanese Americans on the basis of their ancestry.
jurisdiction over the case.\textsuperscript{90} On the other hand, Marcus (who was joined by appellate attorney William Strong) emphasized Judge McCormick's finding that the defendants' discrimination was harmful to the petitioners, and that Mexican Americans were not a group for whom the school district could establish segregated schools under California Education Code sections 8003 and 8004.\textsuperscript{91}

\textbf{B. Public Comment}

By this time, the M\textsuperscript{e}ndez case had begun to attract the attention of leaders of other minority groups. According to \textit{The New York Times}, the M\textsuperscript{e}ndez case was a "guinea pig case" for the issue of segregated schools and was therefore being closely watched.\textsuperscript{92} Writer-activist Carey McWilliams, who was reporting on the case for \textit{The Nation}, added that if M\textsuperscript{e}ndez went to the U.S. Supreme Court, it could "sound the death knell of Jim Crow in education."\textsuperscript{93} McWilliams asserted that the exclusion of race as an issue in the case was actually advantageous because "with the 'racial issue' not directly involved, the court will be compelled to examine the social and educational consequences of segregated schools in a realistic manner."\textsuperscript{94} McWilliams also drew attention to the historical background of the efforts to overturn school segregation in California through the courts.\textsuperscript{95} For instance, McWilliams noted that in 1907, President Theodore Roosevelt had filed suit in federal court in an abortive attempt to halt local authorities from segregating Japanese public school children.\textsuperscript{96}

\textbf{C. The Amicus Curiae Briefs}

The widespread press coverage reflected the belief that the M\textsuperscript{e}ndez case would set an important legal precedent. As a result, a number of different ethnic and political organizations submitted amicus curiae briefs in support of the Mexican Americans. The briefs varied widely in their legal reasoning and strategies, and all differed significantly from those advanced by plaintiffs' attorney Marcus. For example, the American Jewish Congress submitted a brief (one of whose signatories was African American lawyer Pauli Murray) asking the Ninth Circuit to overturn segregated schools as a violation not only the Fourteenth Amendment Equal Protection guarantees, but also the federal government's treaty guarantees.

\textsuperscript{90} Appellees' Reply Brief at 20-30, Westminster Sch. Dist. v. M\textsuperscript{e}ndez, 161 F.2d 774 (9th Cir. 1947) (No. 11310).
\textsuperscript{91} Id. at 34-37.
\textsuperscript{92} Davies, supra note 59, at 6.
\textsuperscript{93} Carey McWilliams, \textit{Is Your Name Gonzales?}, 102 THE \textit{NATION} 302 (Mar. 15, 1947).
\textsuperscript{94} Id.
\textsuperscript{95} See id. at 303.
\textsuperscript{96} See id.
obligations under the United Nations Charter. It also urged the Ninth Circuit to reject the Plessy v. Ferguson “separate but equal” standard. The brief asserted that segregation of a group considered “inferior” according to community standards was “a humiliating and discriminatory denial of equality” to that group even if the physical facilities were equal to those of the “better” group.

Another striking appellate amicus brief was filed by California Attorney General Robert Kenny. Although Kenny filed on behalf of the State of California, he forthrightly admitted that California’s Educational Code sections 8003 and 8004 violated the Fourteenth Amendment. Moreover, Kenny cannily argued that even if the school segregation laws were constitutional, the defendants’ segregation practices were prohibited by the Education Code that mandated free and universal admission of all children to California’s single standardized public school system. According to Kenny, persons of Mexican descent did not fall within the exception group expressly listed in the Education Code for whom separate schools could be established.

1. JACL’s Intervention

The JACL and NAACP also intervened on the side of Mendez. The JACL was listed as a participating organization in the amicus brief A.L. Wirin and Saburo Kido wrote on behalf of the Southern California ACLU, and which was submitted in the name of the ACLU and the National Lawyers Guild’s Los Angeles chapter. In addition to joining the brief, Wirin and Kido participated in the oral argument on behalf of the JACL, which was the only group other than the parties to actually present its case before the Court. Although the JACL had never before intervened in a civil rights lawsuit involving another group, Wirin and Kido received permission from the JACL leaders to place the organization’s imprimatur on the brief. The JACL leaders were no doubt well aware that the

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97. See Brief of the American Jewish Congress at 23-25, Mendez (No. 11310).
98. See id. at 21-22.
99. Id. at 4.
100. Brief of the Attorney General of the State of California as Amicus Curiae at 11, Mendez (No. 11310).
101. Id. at 7-8.
102. Id. at 8-9.
103. Brief for the ACLU and National Lawyers Guild at 6, Mendez (No. 11310). During the lower court case, Wirin had been listed as “of counsel” on the amicus brief submitted in the name of the National ACLU, while African American attorney Loren Miller had submitted a separate brief on behalf of the National Lawyers Guild.
104. Lawrence E. Davies, Pupil Segregation on Coast is Fought, N.Y. TIMES, Dec. 10, 1946, §1 (Magazine), at 28.
105. Separate Schools for Mexican Children Ruled Illegal by Ninth District Federal Court, PACIFIC CITIZEN, Apr. 19, 1947, at 3. The significant coverage the Mendez case received during 1946 and 1947 in the organization’s newspaper, The Pacific Citizen, and in other Japanese American media
symbolic presence of the Japanese Americans in the amicus brief just months after their wartime internment would send a potent signal to the Ninth Circuit regarding the importance of the Mendez case and the potential consequences of upholding inequality.

As with the other amicus briefs, Wirin and Kido's brief diverged from Marcus' legal argument. While Marcus asserted that the segregation of the Mexican American children was unlawful because Mexican Americans were not listed as one of the named groups for whom separate schools could be created under the explicit California school segregation statutes, Wirin and Kido argued that the school segregation laws, which continued to stigmatize Japanese Americans, were unlawful and should be voided. Wirin and Kido began their argument by asserting that segregation on the basis of ancestry violated the Fourteenth Amendment. Wirin and Kido contended that the Fourteen Amendment's Equal Protection clause protected citizens, aliens, and "all minorities, whether racial or religious, as well as Negro, for whom it was originally designed," and thus voided any law that discriminated against one of those groups without a reasonable basis.

Next in their argument, Wirin and Kido referred to Korematsu v. United States, which was a wartime case involving Japanese Americans. The Supreme Court had declared in that case that "racial antagonism" could never justify restriction of civil rights. Using somewhat convoluted logic, Wirin and Kido argued that such a declaration was authority for the proposition that the U.S. Constitution forbade discrimination solely by reason of ancestry or national origin, and that it thereby protected Mexican Americans from segregation.

were an additional sign of the JACL's interest in the Mendez case. See, e.g., Legality of California School Segregation Argued in Court, PACIFIC CITIZEN, Dec. 14, 1946, at 3; Segregated Schools, PACIFIC CITIZEN, Dec. 14, 1946, at 4; School Segregation, PACIFIC CITIZEN, Apr. 19, 1947, at 4.

106. Wirin clearly felt that a straightforward attack on sections 8003 and 8004 of the state Education Code was necessary. Ten days after Mendez was argued, the Utah Nippo reported that Wirin's firm had commenced a separate action, sponsored by the ACLU and the JACL, that directly challenged the constitutionality of the two statutes. The named plaintiff in that suit was Takao Aratani, a third-generation Japanese American and the son of a recently discharged Nisei GI. The complaint alleged that since Aratani and all other Japanese American schoolchildren in California (none of whom was in fact attending a separate school) could be removed at any time to segregated schools, they were being unconstitutionally discriminated against solely because of their race. Just days later, however, the Wirin firm withdrew the complaint, stating that the immediate purpose of the suit had already been achieved inasmuch as Attorney General Kenny's amicus brief in the Mendez case had declared that the statutes in question were unconstitutional. See Legality of Segregating Grade School Children Challenged, UTAH NIPPO, Dec. 23, 1946, at 1; Class Segregation Suit Dismissed, UTAH NIPPO, Jan. 10, 1947, at 1.

107. See Brief for the ACLU and National Lawyers Guild at 6, Mendez (No. 11310).

108. Id.


110. Brief for the ACLU and National Lawyers Guild at 9, Mendez (No. 11310). In view of the fact that the Supreme Court had actually ruled in Korematsu that the mass removal of Japanese Americans from the West Coast was constitutional, Wirin and Kido's argument is especially strained.
the brief, Wirin and Kido were careful to exclude any further mention of racial discrimination, and instead, focused exclusively on the unlawfulness of "arbitrary" discrimination due to ancestry or national origin, or to what the brief called in the case of Méndez and the others, "the accident of birth, that of Mexican or Latin descent." Ultimately, Wirin and Kido maintained that the U.S. Constitution forbade any law that singled out such a class without reasonable basis, for they wrote that

[i]f appellants can justify discrimination on the basis of ancestry only, then who can tell what minority group will be next on the road to persecution. If we learned one lesson from the horrors of Nazism, it is that no minority group, and in fact, no person is safe, once the State, through its instrumentalities, can arbitrarily discriminate against any person or group.  

2. The NAACP Brief

While Wirin and Kido's brief did not directly attack the Plessy "separate but equal" doctrine, the NAACP brief (drafted by Robert Carter and submitted in the names of Carter, Thurgood Marshall, and Loren Miller) made a straightforward attack on California's segregation statutes. The NAACP brief addressed the Méndez case as if it was a case of segregation based on race. Indeed, it radically conflated race, color, and national origin as equally protected categories on the basis of which the Fourteenth Amendment forbade discrimination. The NAACP brief also stated that all distinctions based solely on "race and color" violated the Fourteenth Amendment. With more fervor than consistency, the brief referred to individuals of Mexican and Latin descent as "persons of this particular racial lineage," but spoke of the non-Mexican American children as being "purportedly of the white or Anglo-Saxon race." The NAACP brief further pointed to three of the wartime Japanese American internment cases as authorities for the proposition that, even though the Fourteenth Amendment and the rigorous standards embodied in its Equal Protection clause applied only to state government, the fundamental concept of due process embodied in the Fifth Amendment barred the federal government from making distinctions based on race or color except in extraordinary

111. Id. at 21.
112. Id. at 17.
113. See RICHARD KLUGER, SIMPLE JUSTICE: BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY 399 (1975). Richard Kluger later called the NAACP's Méndez brief a "dry run" for the NAACP's subsequent briefs in its Supreme Court challenges to Jim Crow schools.
114. See Motion and Brief for the NAACP as Amicus Curiae, Westminster Sch. Dist. v. Méndez, 161 F.2d 774 (9th Cir. 1947) (No. 11310).
115. Id. at 5.
116. Motion and Brief for the NAACP as Amicus Curiae at 4, Méndez (No. 11310).
circumstances, such as a war emergency.\textsuperscript{117} Seeking to persuade the Ninth Circuit that it was not required to uphold the "separate but equal" racially segregated schools, the NAACP argued that \textit{Plessy} was not controlling on the Méndez case since \textit{Plessy} had dealt only with railroads and was thus inapplicable to public education.\textsuperscript{118} Indeed, the NAACP asked the Court to reject \textit{Plessy} altogether by calling it "a departure from the main current of constitutional law."\textsuperscript{119} As a result, the NAACP stated that the Ninth Circuit should uphold the trial court's ruling and strike down public school segregation since "such discrimination contravenes our constitutional requirements."\textsuperscript{120}

\textbf{D. Analysis of the Differences Between the Briefs}

Because their interests and agendas were disparate, the approaches and legal arguments employed by the attorneys for Méndez, the JACL, and the NAACP differed widely. The Mexican Americans, who were not listed in the state's school segregation laws but were \textit{de facto} enrolled in the separate schools, argued primarily that the establishment of the segregated "Mexican" public schools for their children was not authorized by state law and was indeed forbidden by it.\textsuperscript{121} The constitutionality of the school segregation laws in general and California's in particular occupied a secondary place in their arguments on the appeal.\textsuperscript{122} Although the Mexican Americans accepted the participation of the other minority organizations, such as the JACL and NAACP, they sought to avoid any suggestion of a racial difference between themselves and the defendants in both their appellate brief and oral argument.\textsuperscript{123}

In the Méndez case, the JACL's primary goal was to strike at any law that singled out a group for disparate treatment solely on the account of race, ancestry, or national origin, which it maintained were all prohibited classifications under the Fourteenth Amendment.\textsuperscript{124} The JACL's position was presented in even more radical terms in the NAACP brief, which not only contended that the disparate treatment of any group on the basis of race, color, national origin, ancestry, or "racial lineage" was forbidden by the Constitution except in highly specialized circumstances, but also asked the Ninth Circuit to hold that the long-established "separate but equal" \textit{Plessy} doctrine was inapplicable to public school segregation, if not

\begin{itemize}
  \item \textsuperscript{117} \textit{Id.} at 7-8.
  \item \textsuperscript{118} \textit{Id.} at 26.
  \item \textsuperscript{119} \textit{Id.} at 25.
  \item \textsuperscript{120} \textit{Id.} at 31.
  \item \textsuperscript{121} \textit{See} Appellees' Reply Brief at 34-37, Méndez (No. 11310).
  \item \textsuperscript{122} \textit{See generally} Appellees' Reply Brief, Méndez (No. 11310).
  \item \textsuperscript{123} \textit{See generally id.}
  \item \textsuperscript{124} Brief for the ACLU and National Lawyers Guild at 6, 9, Méndez (No. 11310).
\end{itemize}
completely outdated and void. Curiously, although both the JACL and NAACP briefs cited the Supreme Court’s *Korematsu* decision — a case which had reached the Supreme Court after the Ninth Circuit asked for guidance on deciding the central issues — neither organization attempted to invoke the principle of “strict scrutiny” which the Supreme Court had just begun to formulate in *Korematsu* and which paved the way for the Supreme Court’s epochal *Brown v. Board of Education* decision.

E. The Appellate Court’s Decision

On April 14, 1947, the Ninth Circuit unanimously upheld Judge McCormick’s Judgment and Injunction. However, the Ninth Circuit clearly retreated from Judge McCormick’s ringing denunciation of segregation. Focusing on narrow legal issues, the Ninth Circuit declared that the defendants’ segregation practices were entirely without legal authorization and incompatible with California law because California omitted Mexicans from the statutory list of groups whose children could be placed in segregated schools. Furthermore, in language that decisively rejected the expansive JACL and NAACP positions and laid bare their conflict with the Mexican Americans over group difference, the Ninth Circuit declined to answer the question of whether the state could constitutionally establish segregated schools with equal facilities for children on the basis of either race or ancestry. Specifically, the Ninth Circuit declared that

[...]

The Ninth Circuit also observed that all of the cases cited by the defendants that had upheld the constitutionality of the “separate but equal”

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125. Motion and Brief for the NAACP as Amicus Curiae at 6-8, 25-31, *Méndez* (No. 11310).
126. *Id.*; Brief for the ACLU and National Lawyers Guild at 9, *Méndez* (No. 11310).
127. *See* *Méndez* v. Westminster Sch. Dist, 161 F.2d 774 (9th Cir. 1947) (a corrected version followed in August 1947).
128. *Id.* at 780. The Ninth Circuit stated that it arrived at this decision by applying the principle of legal interpretation *Expressio Unius Est Exclusio Alterius* (to state one is to exclude all others). *Id.*
129. *Id.* The Ninth Circuit’s reasoning was extended in a concurring opinion by Judge William Denman, who had previously issued vituperative dissents in the *Hirabayashi* and *Korematsu* cases. Although Denman also avoided discussion of the constitutionality of “separate but equal” facilities for racial minorities, he warned that if “the vicious principle sought to be established in Orange [County]” were permitted, it could easily extend to Italians, Greeks, Jews, or other “white” ethnics. *Id.* at 783. In addition, Denman proclaimed that the school district officials who had brazenly admitted in their appellate brief that their actions violated California law should be arrested forthwith. *Id.*
facilities involved the segregation of people of different races, or what it termed "children of parents belonging to one or another of the great races of mankind." The Ninth Circuit then noted the lack of scientific support for making racial distinctions, and stated that

[s]omewhat empirically, it used to be taught that mankind was made up of white, brown, yellow, black, and red men. Such divisional designation has little or no adherents among anthropologists or ethnic scientists. A more scholarly nomenclature is Caucasoid, Mongoloid, and Negroid, yet this is unsatisfactory, as an attempt to collectively sort all mankind into distinct groups.

Following this reasoning and noting that the parties had stipulated that there was no issue of racial segregation, the Ninth Circuit concluded that Mexicans were not a separate race from whites. Nowhere in California law, declared the Ninth Circuit, was there any suggestion that segregation could be made "within one of the 'great races.'" Moreover, according to the Ninth Circuit, the Mexican children could not lawfully be placed in segregated schools based on their ancestry because it was without statutory or constitutional authority. Therefore, the question of whether or not the laws permitting or mandating the public school segregation of children of African or Asian ancestry (i.e., members of the other "great races") was constitutional remained unanswered until the 1954 decision in Brown v. Board of Education—which did not cite Méndez as a precedent.

F. The Aftermath of Méndez

Despite the legalistic language and restrictive reading of the segregation issue, the Ninth Circuit's Méndez decision generated profound echoes. The Méndez decision provided ammunition for the liberals in the California legislature who had already sought to overturn the school segregation laws as outdated and prejudicial. Less than two months after the Ninth Circuit ruling, the legislature, encouraged by State Attorney General Kenny, voted decisively to repeal California Education Code sections 8003 and 8004, and Governor Earl Warren signed the repeal into law. The Méndez decision also provided a precedent for striking

130. Id. at 780.
131. Id. at 780 n.7.
132. Id. at 780.
133. Id.
134. Id. at 780-81.
137. See Wollenberg, supra note 12, at 329.
down the exclusion of Mexican Americans from public facilities in other states. For instance, several weeks after the Méndez victory, LULAC activists successfully brought forth a lawsuit (Delgado v. Bastrop Independent School District\textsuperscript{138}) in federal court to end state-mandated segregation of Mexican Americans in Texas.

In turn, the Méndez and Delgado decisions gave rise to a trend of court cases that challenged the exclusion of Mexican Americans as "other whites" in different areas of public life. This legal campaign climaxed in the case of Hérran dez v. State of Texas,\textsuperscript{139} which was decided by the Supreme Court just weeks before the Justices announced their Brown v. Board of Education decision. In Hérrandez, the Supreme Court ruled that under the Fourteenth Amendment, it was unconstitutional to segregate Mexican Americans based on their ancestry.\textsuperscript{140} Thus, almost eight years later, the Supreme Court finally endorsed the doctrine initially enunciated by Judge McCormick and passed over by the Ninth Circuit Court of Appeals in the Méndez case.

**CONCLUSION**

In the years following Hérran dez, the Mexican American Movement moved away from LULAC's cautious legalism and assimilationism. During the 1960s, Mexican Americans embraced more confrontational protest tactics, such as boycotts, under leaders such as César Chavez and Delores Huerta.\textsuperscript{141} In the process, Mexican American and Chicano groups moved toward an alliance with African Americans on different issues, including voting rights legislation and Affirmative Action.\textsuperscript{142} However, disagreements among Mexican Americans and scholars over the nature of their group identity and interests remain explosive. Some scholars have argued that the members of "la Raza" are akin to a racial minority in status and should thus benefit from similar legal protections.\textsuperscript{143} Nevertheless, many Mexican Americans are still identified, or identify themselves, as "white."\textsuperscript{144} In considering the legacy of Méndez, political scientist Peter Skerry notes the irony that "[i]n the past, when Mexican Americans were more likely to be treated like a racial minority, they sought protection by

\textsuperscript{139} 347 U.S. 475 (1954).
\textsuperscript{140} Id. at 478-79.
\textsuperscript{141} See generally RODOLFO ACUNA, OCCUPIED AMERICA: A HISTORY OF CHICANOS (1987).
\textsuperscript{142} See id.
\textsuperscript{143} See Richard Delgado & Vicky Palacios, Mexican Americans as a Legally Cognizable Class Under Rule 23 and the Equal Protection Clause, 50 NOTRE DAME LAW. 323 (1975); Greenfield & Kates, supra note 24, at 662-731.
denying any racial distinctiveness; while today, when they experience dramatically fewer such racial barriers, their leaders are intent on defining them as a minority.”

Although the Méndez case did not lead the Mexican Americans to identify themselves as a minority in common cause with the Japanese Americans or African Americans at that time, the case did help cement the alliance between the JACL and NAACP. In the months that followed the Ninth Circuit’s decision, Wirin and Kido accelerated their collaboration with Loren Miller in the fight against racially based restrictive covenants. In late 1947, the JACL even submitted an amicus curiae brief to the Supreme Court in support of the NAACP’s suit in *Hurd v. Hodge*. Both *Hurd* and its companion case, *Shelley v. Kraemer*, struck a major blow against residential restrictive covenants, for the Supreme Court held that those covenants were judicially unenforceable. Meanwhile, the NAACP reciprocated in early 1948 with an *amicus* brief that supported the JACL’s Supreme Court appeal in *Takahashi v. Fish and Game Commission*, whereby the Supreme Court struck down state laws that discriminated against nonwhite aliens “ineligible to citizenship.” Ultimately, the JACL and NAACP pursued a joint commitment to end educational segregation in *Brown v. Board of Education*, in which the JACL was the sole non-African American racial minority organization to participate as *amicus curiae*.

Both the postwar collaboration between the African Americans and Japanese Americans and the continuing debate over the racial status of Mexican Americans underscore a central lesson of the Méndez case. The lesson is that solidarity among victims of discrimination is possible, but it is neither automatic nor easy to maintain. Advocates of civil rights too often envision alliances between minority groups as natural and unproblematic. Representatives of minority groups do indeed come together at different times in struggles against injustice. However, the interests, attitudes, and priorities of minority groups are often quite different, and these differences make such coalitions difficult to hold together. Furthermore, in the face of a dominant culture of white supremacy, which generates and reproduces inequality through laws based on racial distinctions, it is tempting and sometimes profitable for members of a minority group to identify themselves with the dominant white population and to seek equality by distancing themselves from more identifiably nonwhite groups. If the Méndez case presents an example of a genuine victory won through the joint action of different minority groups, it also reveals why such victories tend to be rare and incomplete.

146. 334 U.S. 24 (1948).
147. 334 U.S. 1 (1948).