A Leader in the Fight Against School Segregation

By David S. Ettinger

Before there was Linda Brown of Topeka, Kan., there were Sylvia, Gonzalo, and Jerome Méndez of Westminster, Calif. In 1950, third grader Linda was turned away when her father tried to enroll her in the neighborhood "white" school instead of the more-distant school for "colored" children. Seven years earlier, however, the Méndez children were similarly told they could attend only the "Mexican" school in their district.

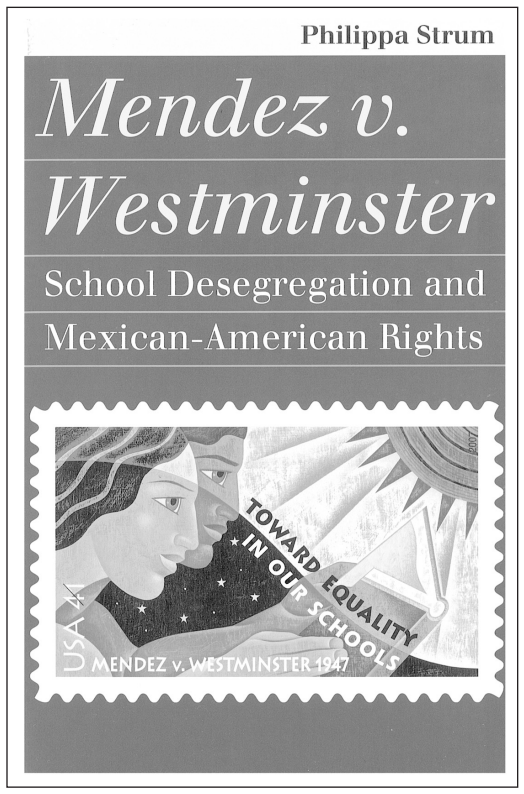
Both acts of segregation spawned successful legal challenges. Linda Brown's case against Topeka's Board of Education, of course, became one of the Supreme Court's most famous decisions. The earlier groundbreaking lawsuit by the Méndez children's father and others was fairly well publicized at the time, but because it never reached the high court it did not garner the same attention in the history books. The case was relegated almost to a historical footnote. In "*Simple Justice*," Richard Kluger's definitive account of the *Brown* case and its antecedents, the *Méndez* case merits a single paragraph.

Recently, the *Méndez* case has begun receiving some of the attention it deserves. A Santa Ana school has been named after the Méndez parents, a television documentary has aired, and a commemorative postage stamp has been issued. And now, there is a book: Philippa Strum's "*Mendez v. Westminster: School Desegregation and Mexican-American Rights*."

The book tells the story of a pioneering lawsuit. David Marcus, attorney for the Méndez children's father and others, decided to argue in federal court that the policies of several Orange County school districts requiring segregation of Mexican-American children violated the 14th Amendment's guarantee of equal protection. It was an audacious attack. When the lawsuit was filed in 1945, separate-but-equal was still accepted constitutional doctrine. That is, after all, why the Supreme Court's *Brown* decision almost 10 years later was such a big deal.

Marcus' legal approach could also have rightly been called reckless. The NAACP had devised and was implementing a more cautious, incremental plan to attack segregated schools in the courts and Marcus apparently had charged into court seemingly oblivious to any coordinated national strategy. The NAACP didn't even know about the case until after the district court issued its opinion. It would, however, file an *amicus curiae* brief on appeal, as would the American Jewish Congress, the ACLU, the National Lawyers Guild, the Japanese-American Citizens League, and the California Attorney General.

But Marcus' argument worked, up to a point. Federal District Court Judge Paul McCormick, after a lengthy trial, ruled for the parents in a stunning opinion. Not content to rest his decision on state statutory law grounds only, Judge McCormick found that segregation violated the students' federal equal protection rights. He concluded, "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." He also found that the school districts' segregation methods "foster antagonisms in the children and suggest inferiority among them where none exists." Eight years later, the Supreme Court in *Brown* would echo — without mentioning *Méndez* — that separating students "solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."



When the school districts appealed, however, the 9th Circuit was less adventurous than Judge McCormick. Although affirming the district court, the Court of Appeals found a 14th Amendment violation only because the school districts had violated state law — California statutes at the time provided segregated schools for Indians, Chinese, Japanese, and Mongolian children, and thus, the court concluded, "California law does not include the segregation of school children because of their Mexican blood."

The appellate court conspicuously resisted the urge for a landmark opinion. It expressly rejected the pleas of two *amicus curiae* briefs to "strike out independently on the whole question of segregation." Lecturing that "judges must ever be on their guard lest they rationalize outright legislation under the too free use of the power to interpret," the court said in language both ornate and defensive, "We are not tempted by the siren who calls to us that the sometimes slow and tedious ways of democratic legislation is no longer respected in a progressive society."

The concurring opinion was not as cautious. Judge William Denman railed against the "vicious principles" of the school authorities, which, he warned, if "followed elsewhere, in scores of school districts the adolescent minds of American children would become infected." He also "call[ed] to the attention of the prosecuting authorities" the defendants' conduct as possibly "warrant[ing]...an indictment."

The district court and 9th Circuit opinions are readily available in the published case law. What makes Strum's book interesting and valuable are the back stories. For example, we learn of the unwitting role in the case of another civil rights injustice — the Méndez family only moved to Westminster in the first place when, during World War II, they leased the asparagus farm of a Japanese-American family who had been removed to an Arizona internment camp.

Strum also does a service by relating details of the *Méndez* trial (details dug from the transcripts in the National Archives), which evidenced a stark contrast between unabashed, eye-popping racism on one side and simple eloquence of equality-seeking parents on the other.

The superintendent of one of the defendants — the Garden Grove School District — had earned a master's degree in education based on his university thesis that advocated segregated schools because of the lesser "mental ability and moral characteristics of the average Mexican school child," views he readily reiterated on the witness stand. An expert witness for the plaintiffs, on the other hand, testified about research for *her* master's thesis showing that "[s]egregation, by its very nature, is a reminder constantly of inferiority." And the Méndez children's mother told the court, "We always tell our children they are Americans...and we thought that they shouldn't...be treated the way they are. So we thought we were doing the right thing [by asking] to put our children together with the rest of the children there."

The book also explains the profound influence that World War II had on the case, as it had on the civil rights movement in general. Hundreds of thousands of Mexican-Americans had served in America's fight against the most extreme form of racism and yet faced discrimination when they returned home, including having their children segregated at school on the pretext that it helped "Americanize" the students and allowed them to better learn English.

For the parents, the war experience magnified the unfairness of the unequal treatment. One student's mother testified that she responded to a school official's remark about unsanitary Mexicans by asking "if our Mexican people were dirty...why didn't they [bring back] all of our boys that are fighting overseas," including her oldest son. In one of many similar references, the American Jewish Congress amicus brief stated, "If the Nazis while proclaiming the essential inferiority of the 'Jewish race,' compelled Jews to wear clothes of one given color while reserving another to the master race, it could not be said that Jews have received equal clothing facilities even if the physical qualities of the clothing were identical to those given to the members of the Aryan race."

Méndez was a case ahead of its time and is well-deserving of a book-length treatment. But as even Strum observes, the case wasn't completely unprecedented. Over a decade before, a San Diego County Superior Court judge had ruled in *Alvarez v. Lemon Grove School District* that the school district could not segregate Mexican-American students. Perhaps that case, which never reached an appellate court, could be the subject for another book.

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