OVER THE RAINBOW: *HERNANDEZ V. TEXAS, BROWN V. BOARD OF EDUCATION*, AND BLACK V. BROWN

*NEIL FOLEY**

In the aftermath of the 2004 presidential election, many pundits sought to explain why President Bush received over forty percent of the Latino vote compared to only twelve percent of the African American vote. The notion persists that minorities, like African Americans and Latinos, often share similar political views that reflect a similar history of racial discrimination and civil rights struggles against Jim Crow practices. The picture is much more complicated than that, of course, and always has been.

Some of the differences that divide many blacks and Latinos today, such as the dominance of African Americans on school boards and city councils in districts and cities where Latinos greatly outnumber blacks, stand in contrast to the efforts of both groups to find common ground in their earliest civil rights struggles, especially school desegregation cases in California and Texas. In the 1946 Mexican school desegregation case in Orange County, California, *Mendez v. Westminster*,[1] Thurgood Marshall and the NAACP submitted an amicus curiae brief that many legal scholars acknowledge was a dry run for *Brown v. Board of Education*.[2] And in Corpus Christi, in the late 1960s, parents of African American and Mexican American school children brought suit against the school district for busing ethnic Mexicans to predominantly black schools and African Americans to predominantly Mexican schools, while leaving Anglo schools

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1. Mendez v. Westminister Sch. Dist., 64 F. Supp. 544 (D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947). Although the district court misspells the name of the school district, spelling it incorrectly as "Westminister" instead of "Westminster," I use the correct spelling within the text.

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

alone.[3] These black-brown collaborations in lawsuits represent high water marks in the relations between African Americans and Mexican Americans.

However, Mexican American commitment to a Caucasian racial identity from the 1930s through the 1950s complicated, and in some ways compromised, what at first appeared to be a promising start to interracial cooperation. African Americans can hardly be faulted for failing to find common ground with a civil rights strategy based on the premise that Mexican Americans were Caucasians, and whose goal it was to end de facto segregation of Mexicans — not de jure segregation of blacks. Of significant importance in the evolution of this Caucasian identity was the finding of the 1930 U.S. census that for the first time, persons of Mexican descent, born in the United States, outnumbered Mexican immigrants. Second generation Mexican Americans, the so-called Mexican American generation, thought of themselves as "Americans" and stressed their American citizenship as the basis for being treated with equality under the law. The Mexican American generation was quick to learn a fundamental lesson of American life: being white was not just a racial identity; it was a property right that conferred concrete privileges and rights denied to those, like African and Asian Americans, who could not lay claim to a white identity.

The first Mexican American civil rights organizations, both founded in Texas, the League of United Latin American Citizens (LULAC) and the American GI Forum, argued to anyone within earshot that Mexican Americans were white and citizens of the United States. The word "Mexican" does not even appear in the name of these organizations. "Latin American" in the 1940s and 1950s was the politically correct way to refer to Mexican Americans, and was intended to stress their affiliation with other Caucasians, principally Anglo Americans. The word "Mexican," civil rights leaders decided, was too often conflated with Mexican nationality and carried the stigma of racial mixture. In fact, to further cement their place within American society, LULAC and American GI Forum leaders joined forces with working-class Anglos to end the *bracero* program, referring to Mexican farm workers in the United States as "wetbacks" who competed with Americans for jobs and lowered wages in agricultural work.

The Mexican American generation had two decades of success in litigating against school segregation in the courts before 1954, and in all these cases the courts acknowledged, whether

3. *Mendez*, 64 F. Supp. 544 (D. Cal. 1946); Cisneros v. Corpus Christi Indep. Sch. Dist., 324 F. Supp. 599 (S.D. Tex. 1970), *aff'd in part, modified in part*, 467 F.2d 142 (5th Cir. 1972), *cert denied*, 413 U.S. 922 (1973).

implicitly or explicitly, the membership of Mexicans in the Caucasian race. In response to pressure from LULAC to end discrimination against Mexican Americans in Texas and the Mexican government's deep concern over the mistreatment of *braceros*, the Texas state legislature passed the Caucasian Race Resolution in 1943, declaring that "all persons of the Caucasian Race" are entitled to "equal accommodations" and that "whoever denies to any [Caucasian] person" these equal accommodations "shall be considered as violating the good neighbor policy of this state."[4] While the concurrent resolution did not have the force of law, which would have levied fines for discrimination against Mexicans, the resolution did reflect the urgency of reaching an accommodation with the Mexican government to import *braceros* at a critical moment for the United States' involvement in World War II. LULAC took advantage of this emergency farm worker program to press its case for official recognition of their status as Caucasians, much as the courts and the census, with the exception of 1930, had been doing for decades.

With this brief history in mind, African Americans can be forgiven for not always recognizing Mexican Americans as people of color. That is not to imply, however, that blacks were unmindful of discrimination against Mexican Americans, particularly in states like Texas and California where segregation included other groups besides African Americans. Rather, African Americans had to contend with a Supreme Court decision, *Plessy v. Ferguson*,[5] that allowed states to enforce segregated accommodations on public transportation, which became the basis for the separate but equal doctrine in education. Because of *Plessy*, African Americans and the NAACP sought to use the courts to force school districts to provide the same educational facilities, teacher salaries, and per student expenditures for blacks as they did for whites. While Mexican Americans were challenging school segregation in the West during the 1930s and 1940s, African Americans, primarily under the leadership of Thurgood Marshall and the NAACP, were challenging separate and unequal schooling for black children throughout the South. Mexican Americans, however, were segregated by custom rather than law, and they therefore challenged segregation head-on, no matter how equal the facilities, as an unlawful violation of the Fourteenth Amendment. They were white, and whites cannot segregate "other whites."

4. NEIL FOLEY, THE WHITE SCOURGE: MEXICANS, BLACKS, AND POOR WHITES IN TEXAS COTTON CULTURE 206 (1997).

5. Plessy v. Ferguson, 163 U.S. 537 (1896)

This strategy could not have worked for blacks, obviously, but when the NAACP decided to attack *Plessy* head-on in the 1940s to argue that separate was inherently unequal, African American litigators began taking a closer look at challenges to segregation made by other groups. And it was to the Mexican American school segregation cases that they turned, just as Gus García and Carlos Cadena turned to black challenges to jury exclusion in arguing the *Hernandez*[6] case.

Let us briefly look at three Mexican American school desegregation cases for the information and ideas that may have been useful to the NAACP in their uphill battle to overturn *Plessy*. The first thing they would have noticed was the relative ease with which the courts ended segregation in school districts where it appeared that Mexicans were being segregated on account of race. Thurgood Marshall wanted to challenge *Plessy* on precisely the ground that segregation based on race was inherently unequal and had damaging effects on those being segregated. At least in legal matters it appeared that African Americans and Mexican Americans had much to learn from each other.

We begin in 1930 when Mexican American parents in Del Rio, Texas, brought the first desegregation suit in Texas, *Independent School District v. Salvatierra*.[7] They charged school officials with enacting policies designed to accomplish "the complete segregation of the school children of Mexican and Spanish descent . . . from the school children of all other white races in the same grade . . . ."[8] The parents did not question the quality of the instruction or the condition of the separate school house; their suit was aimed exclusively at the school district's policy of separating Mexican American children from Anglo children. The district Superintendent argued that the district had a "peculiar situation as regards people of Spanish or Mexican extraction here,"[9] which involved their English language deficiency and the fact that they missed a lot of school because most followed the cotton crop during the fall and were therefore "more greatly retarded" than Anglo pupils.[10] He assured the court that separate schooling "was not actuated by any motive of segregation by reason of race or color . . . ."[11] In fact, he continued, Mexican children had teachers specialized in "the matter of teaching them English and American citizenship," revealing that citizenship was something

6. Hernandez v. Texas, 347 U.S. 475, 482 (1954).
7. Indep. Sch. Dist. v. Salvatierra, 33 S.W.2d 790 (Tex. Civ. App. 1930).
8. *Id.* at 794.
9. *Id.* at 792.
10. *Id.*
11. *Id.*

even U.S.-born Mexicans needed to learn.[12] He also told the segregated Parent Teachers Association of the Latin American Association that "Spanish speaking children are unusually gifted in music" and possessed "special facilities" for art and handicrafts, talents he hoped to develop with the hiring of new teachers.[13] Never did the Superintendent mention the word race and was careful to refer to Mexican children as "Latin Americans" or "children of Spanish or Mexican descent."[14]

The Texas Court of Appeals reversed the lower court's ruling and dissolved the injunction against expanding "the Mexican school," but warned that "school authorities have no power to arbitrarily segregate Mexican children, assign them to separate schools, and exclude them from schools maintained for children of other white races, merely or solely because they are Mexicans."[15] The arbitrary exclusion of Mexican American children from "other whites," the court ruled, constituted "unlawful racial discrimination."[16] Segregation, in other words, was unlawful when Anglo whites treated Mexican whites as a separate racial group. The Texas Court of Appeals recognized that Mexicans constituted a distinct white "race" distinguished "from all other white races."[17] Almost twenty-five years later, the Supreme Court ruled in *Hernandez* that Mexicans constituted a "distinct class" that had been discriminated against in jury selection.[18] While the *Hernandez* case avoided references to Mexicans as a race, the wording of the *Salvatierra* ruling could have easily been adapted to *Hernandez*: That is, jury commissioners "have no power to exclude" Mexicans from juries, "merely or solely because they are Mexicans."[19] Where cases involving jury exclusion are concerned, one could substitute the word Italian or German or even Negro for Mexicans.

The understanding that Mexicans could not be arbitrarily segregated as a separate race from whites, like blacks in the South or Chinese and Native Americans in California, was affirmed in 1947 when the United States Ninth Circuit Court of

12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* at 795.
16. *Id.*
17. The language of the court decision in 1930 was interesting because it made no distinction between "race" and "ethnicity" as has been the general practice since World War II. Thus, the court wrote in the same decision, "Naturally, and in fact, the population of this section is in many communities and counties largely of Spanish and Mexican descent, who may be designated, for convenience of expression in this opinion, as the Mexican race, as distinguished, for like convenience, from all other white races." *Id.* at 794.
18. Hernandez v. Texas, 347 U.S. 475, 480 (1954).
19. Indep. Sch. Dist. v. Salvatierra, 33 S.W.2d 790, 795 (Tex. Civ. App. 1930).

Appeals ruled in *Westminster School District v. Mendez* that segregation of Mexican-descent children, in the absence of state law mandating segregation of Mexicans, deprived them of "liberty and property without due process" and "denied them the equal protection of the laws."[20] Judge Stephens noted that California law authorized segregation of children "belonging to one or another of the great races of mankind," which Stephens identified as Caucasoid, Mongoloid, and Negro.[21] Stephens further noted that California law permitted segregation of Indians and "Asiatics" (as well as blacks), but that no state law authorized the segregation of children "*within* one of the great races."[22] Although European Americans, or Anglos, rarely regarded Mexican Americans as "within" the white race, in the eyes of the law, Mexican Americans were "Caucasoid" who could not be arbitrarily segregated from "other whites." In other words, the Court of Appeals for the Ninth Circuit ruled in favor of Mexican American children not on the ground that the separate-but-equal provision of *Plessy* was invalid, but that there was no California statute that mandated the segregation of Mexican Americans.

While the Ninth Circuit narrowly tailored its ruling to the illegality of segregation of Mexicans in the absence of state law, the lower district court ruling attacked segregation on much broader grounds. In ruling that segregated education violated the Fourteenth Amendment, Judge McCormick cited the 1943 Supreme Court decision *Hirabayashi v. United States*, which held that singling out citizens of Japanese descent for restriction of movement during curfew hours was constitutional in time of warfare.[23] Nevertheless, the Court did so reluctantly and acknowledged the offensiveness of making distinctions based on race: "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality."[24] McCormick then stated that:

> '[E]qual protection of the laws' pertaining to . . . California [public schools] is not provided by furnishing in separate schools the same technical facilities, text books and courses of instruction to children of Mexican 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.[25]

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20. Westminster Sch. Dist. v. Mendez, 161 F.2d 774, 777 (9th Cir. 1947).
21. *Id.* at 780 & n.7.
22. *Id.* (emphasis added).
23. Hirabayashi v. United States, 320 U.S. 81 (1943).
24. *Id.* at 100.
25. Mendez v. Westminister Sch. Dist., 64 F. Supp. 544, 549 (D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947).

In other words, a California district court had just ruled that separate but equal was unconstitutional.

Here, the trajectories of Mexican American civil rights intersected with those of African Americans. During the 1940s, after a decade of litigation, the NAACP shifted its strategy of forcing school districts to provide equal facilities for black children to attacking the separate-but-equal doctrine of *Plessy* head-on. In the *Mendez* decision they had found a court willing to rule that segregation based on race was unconstitutional. Thurgood Marshall seized on the language of the *Mendez* lower court ruling to argue in his brief that "separation itself [is] violative of the equal protection of the laws . . . on the grounds that equality cannot be effected under a dual system of education."[26] In that brief, Marshall skillfully combined the goals of African Americans and Latinos, namely, "equality at home" as well as the "equality which we profess to accord Mexico and Latin American nationals in our international relations."[27] For added measure, Marshall reminded the Ninth Circuit Court that the United States had ratified and adopted the Charter of the United Nations in 1945, which states that our government is obligated to promote "[u]niversal respect for . . . human rights and fundamental freedoms for all without distinction as to race . . . ."[28] Seven years later, in *Brown v. Board of Education*, Marshall would hammer home the idea, using social science literature, that segregation was inherently unequal because of the damaging effects of discrimination on black children.[29]

Unfortunately, the Ninth Circuit dismissed Marshall's argument that segregation was unconstitutional. Some of the briefs alluded to the "recent world stirring" — World War II — in the hope that the court would "strike out independently on the whole question of segregation" and re-examine "concepts considered fixed."[30] Instead Judge Stephens wrote, almost disdainfully, "[w]e are not tempted by the siren who calls to us that the sometimes slow and tedious ways of democratic legislation is [sic] no longer respected in a progressive society."[31] While the Ninth Circuit decision in *Mendez* gave Mexican Americans what they wanted, an end to segregated schooling, it gave African Americans little to hope for, since it was not likely that state legislatures throughout the South would enact democratic legislation to end

26. Motion and Brief of Amicus Curiae NAACP at 9, Westminster Sch. Dist. v. Mendez, 161 F.2d 774 (9th Cir. 1947) (No. 11310).

27. *Id.*

28. U.N. CHARTER art. 55, para. c.

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

30. Westminster Sch. Dist. v. Mendez, 161 F.2d 774, 780 (9th Cir. 1947).

31. *Id.*

Jim Crow laws in anybody's lifetime. The remedy to racial segregation would have to come from the courts, if it was to come at all. The district court in the *Mendez* case offered African Americans at least a glimmer of hope: American public education, it held, "must be open to all children . . . regardless of lineage," an unambiguous repudiation of *Plessy v. Ferguson.*[32] Judging from the roster of civil rights groups presenting briefs in the case — the American Jewish Congress, the Japanese American Citizenship League, the American Civil Liberties Union, the NAACP, and the Attorney General of California — the *Mendez* case illustrates the possibilities for cooperation and coalition building, particularly between Mexican Americans and African Americans.

The *Mendez* case, for all of its historical and juridical importance, was not cited in *Brown v. Board of Education* principally because *Brown* occurred within the familiar black-white binary. The *Brown* decision was premised on racial segregation, which was not the central issue in the *Mendez* case. The Mexican American claim that they could not be segregated because they were Caucasians and that no state law specifically mandated their segregation was virtually irrelevant to the legal argument being made by Marshall and the NAACP. And of course, the Ninth Circuit Court flatly rejected Judge McCormick's direct attack on the separate-but-equal doctrine of *Plessy*. *Plessy* remained practically immune to constitutional challenges that segregation was a violation of the Fourteenth Amendment. The Fourteenth Amendment, paradoxically, was ratified in 1868 at the very time the U.S. Congress had devised a system of segregated schooling in the District of Columbia. Segregation of blacks and whites was the natural order of things and did not, until 1896, require constitutional approval. The *Brown* decision was based on relatively recent rulings having to do with inequality of professional and graduate education for African Americans in Oklahoma, Texas, and Missouri, as well as on social science literature that made clear the connection between segregated schooling and feelings of racial inferiority fostered by state-mandated segregation.

The influence of the *Mendez* case, however, went beyond California. Thurgood Marshall and other NAACP lawyers were preparing a desegregation case in Hearne, a small town in east Texas, in 1948, while LULAC, Mexican American attorney Gus García, and University of Texas Professor, George I. Sánchez, were preparing the first desegregation case in Texas since the 1930 *Salvatierrra* case. With financial support from LULAC and

32. Mendez v. Westminister Sch. Dist., 64 F. Supp. 544, 549 (D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947).

the legal assistance of Gus García, Minerva Delgado and twenty parents of Mexican American children from five segregated school districts filed a complaint alleging that the school districts had "prohibited, barred and excluded" children "from attending the certain regular schools and classes . . . [with] other white school children . . . ." and that segregation was "unjust, capricious, and arbitrary and in violation of the Constitution . . . and denies them the equal protection of laws . . . as guaranteed by the Fourteenth Amendment . . . ."[33] Judge Rice ruled on June 15, 1948, that the five school districts named in the suit and the state superintendent of public instruction were "permanently restrained and enjoined from . . . segregating pupils of Mexican or other Latin American descent in separate schools or classes."[34] Two weeks later, Professor Sánchez received a letter from Thurgood Marshall asking for access to the case file in preparation for the desegregation case in Hearne, Texas, that was going to trial later that month.[35] Sánchez wrote back that he would be happy to cooperate, but that the affidavits in the case would not be useful "in an issue such as being raised in Hearne." Affidavits in the *Delgado* case, Sánchez wrote, are "pointed specifically towards a denial of the pedagogical soundness of segregation that is based on the 'language handicap' excuse."[36] In other words, the strategy in the *Delgado* case was not to challenge segregation

33. Complaint to Enjoin Violation of Federal Civil Rights and for Damages, Delgado v. Bastrop Indep. Sch. Dist., Civil Action No. 388 (W.D. Tex. June 15, 1948) (unpublished order).

34. Final Judgment, Delgado v. Bastrop Indep. Sch. Dist., Civ. No. 388 (W.D. Tex. June 15, 1948) *in* George I. Sánchez Papers, Box 79, Folder 5 (Benson Latin American Collection, General Libraries, University of Texas at Austin). *See also* GUADALUPE SAN MIGUEL, "LET ALL OF THEM TAKE HEED": MEXICAN AMERICANS AND THE CAMPAIGN FOR EDUCATIONAL EQUALITY IN TEXAS, 1910-1981, at 123-26 (1987).

35. Letter from Thurgood Marshall, to George I. Sánchez (July 1, 1948) *in* George I. Sánchez Papers, Box 24, Folder 8 (Benson Latin American Collection, General Libraries, University of Texas at Austin). Marshall learned about the work of Sánchez in school desegregation cases from a phone conversation with Arthur Wirin, ACLU attorney from Los Angeles, who had filed amicus curiae briefs in numerous court cases involving school desegregation, including Mendez v. Westminster Sch. Dist., 161 F.2d 774 (9th Cir. 1947) and Gonzales v. Sheely, 96 F. Supp. 1004 (D. Ariz. 1951). Marshall had also filed an amicus brief in the *Mendez* case.

36. Although the plaintiffs won the case before it went to trial, Sánchez offered to share with Marshall the strategies they had developed for winning the case, which he thought might have "some value" to Marshall. Letter from George I. Sánchez, to Thurgood Marshall (July 6, 1948) *in* George I. Sánchez Papers, Box 24, Folder 8 (Benson Latin American Collection, General Libraries, University of Texas at Austin). The only other evidence of contact between the two civil rights leaders, one a lawyer, the other a professor, came in 1955 when Sánchez discussed the merits of enforcing desegregation by using the "discretionary power" of state education commissioners to cancel teacher certificates for teachers in school districts that were not desegregating, and the "disturbing tendency" of using "'free choice' and 'transfer policies' for students who do not wish to attend the school nearest their homes (that is, the 'Negro' school)." Letter from George I. Sánchez, to Thurgood Marshall (Sept.

on the grounds that distinctions based on race were odious to a free people, but rather on the grounds that segregation on the basis of a "language handicap" was pedagogically unsound. Sánchez abhorred discrimination of all kinds, but his pedagogical approach to ending segregation did not resonate with Marshall's direct challenge to *Plessy* that separate schooling was inherently unequal.

A few years after the *Mendez* and *Delgado* cases, attorneys Gus García and Carlos Cadena chose to challenge the court conviction of Pete Hernández on the grounds that Mexican Americans had been systematically excluded from jury service in Jackson County, Texas. The details of the case are too well known to bear repetition here. What is important is that García and Cadena relied heavily on numerous jury discrimination cases brought by African Americans who had won their cases by demonstrating that blacks had been systematically excluded from jury service. So why were Texas courts ignoring these cases (particularly *Norris v. Alabama*)[37] in ruling against García and Cadena? Texas courts consistently ruled that the Fourteenth Amendment applied only to the interplay between blacks and whites in discrimination cases. Since Mexican Americans had for two decades argued that they were white, they could not claim discrimination. In their brief García and Cadena strenuously objected to the appeal court judge's ruling in these words: "If, then, this Court holds that, while such statutes forbid exclusion of Negroes [from jury service], they allow exclusion of persons of Mexican descent because the latter are members of the white race, the Court is in effect saying that the statutes protect only colored men, and allow discrimination against white men."[38] The attorneys concluded their brief in these words: "All of the talk about 'two classes;' all of the verbal pointing with alarm at a 'special class' which seeks 'special privileges' cannot obscure one very simple fact which stands out in bold relief: the Texas law points in one direction for persons of Mexican descent . . . and in another for Negroes."[39] Mexican Americans wanted to be accorded the same treatment as African Americans, at least where the law and the Fourteenth Amendment were concerned.

Two weeks after the *Hernandez* ruling, African Americans won their case in *Brown v. Board of Education*. Mexican Americans wondered if the law applied to them, or if the courts might

24, 1955) *in* George I. Sánchez Papers, Box 24, Folder 8 (Benson Latin American Collection, General Libraries, University of Texas at Austin).

37. Norris v. Alabama, 294 U.S. 587 (1935).

38. Brief for Appellant at 16, Hernandez v. State, 251 S.W.2d 531 (Tex. Crim. App. 1952) (No. 25816).

39. Brief for Petitioner at 30, Hernandez v. State, 347 U.S. 475 (1954) (No. 406).

rule, as the lower courts in Texas had ruled in the *Hernandez* case, that desegregation applied only to black and white schools. Mexican Americans sought the answer twelve years later when busing appeared to be the way to integrate schools. In 1968 African Americans and Mexican Americans in Corpus Christi joined together in a suit against the practice of busing Mexican children to predominantly black schools to achieve integration, while leaving predominantly white schools alone. School officials used the "other white" argument to justify grouping black and Latino children to achieve integration. But the judge in the case ruled otherwise: As "an identifiable, ethnic-minority group . . . *Brown* can apply to Mexican-American students in public schools."[40] The Corpus Christi desegregation case coincided with the Chicano/a Movement's evocation of "la raza," signifying their rejection of a white racial identity and embracing their mestizo heritage.

So what became of the promise of black-brown cooperation and collaboration in the years after World War II when Mexican Americans and African Americans borrowed from each other's case law to end segregation and jury discrimination? This is a complicated question and there is no easy answer. One is struck by the possibilities for meaningful collaboration and the failed promise of two very different civil rights activists, Thurgood Marshall and George I. Sánchez. They communicated by letter a few times, offered each other support and assistance, but their brief exchange of letters bore little fruit. A. I. Wirin, the activist lawyer from Los Angeles, even suggested to Sánchez that LULAC file an amicus brief in the *Heman Sweatt* case to desegregate the University of Texas Law School. Sánchez wrote back that he "would like to see an amicus brief developed along somewhat different lines from those forwarded by Thurgood Marshall."[41] In fact, however, Sánchez endorsed the logic of Marshall's argument. It's worth quoting in full how Sánchez's thinking had evolved in this 1949 letter to Wirin, a year or two after the *Delgado* and *Mendez* desegregation cases and five years before *Brown v. Board of Education*:

> In the first place, 'equal protection' should go far beyond mere comparison of professors-books-buildings in law school. The comparison should be one which involves the *whole* of education that has been made available to the white law-school

40. Cisneros v. Corpus Christi Indep. Sch. Dist., 324 F. Supp. 599 (S.D. Tex. 1970), *aff'd in part, modified in part*, 467 F.2d 142 (5th Cir. 1972), *cert denied*, 413 U.S. 922 (1973).

41. Letter from George I. Sánchez, to A. L. Wirin (Nov. 18, 1949) *in* George I. Sánchez Papers, Box 62, Folder 15 (Benson Latin American Collection, General Libraries, University of Texas at Austin).

> graduate and the *whole* of education available to the Negro. This would involve comparison of the entire common school program, the preparation of teachers, general college libraries, the pre-law programs, cultural entertainment and lecture programs, etc. Such a comparison would lead to the conclusion that equality would call for duplication all the way along the line — an impossibility since experts (not only in law but in the sciences and arts) cannot be duplicated. Furthermore, the whole idea of dichotomous education implies ostracism — and its whole spirit is based on the concept of inequality.[42]

Dichotomous education — segregation — does indeed imply ostracism, the "badge of inferiority" that *Plessy v. Ferguson* fraudulently claimed was a figment of the African American imagination. However different were their the strategies for ending segregation, Mexican Americans and African Americans were determined to make the state acknowledge the badge of inferiority that segregation imposed, and end it in every town and city of every state.

Perhaps it was the narrow focus on legal strategy that made it improbable that Marshall and Sánchez, NAACP and LULAC, might work closely with each other. When Sánchez was told in 1953 that the outcome of the *Brown* case would be influenced by the *Mendez* and *Delgado* decisions, he declared:

> There is no connection! Our cases really were on the 'due process' clause [that segregation was] ('arbitrary, capricious') much more than on the equality ('discrimination') clause — whereas the present [*Brown*] cases attack the right of the states to legislate segregation (something which has never been done for Mexicans). Does one of the present cases attack Negro segregation where there is no law decreeing such segregation? Only in such a case would we be concerned.[43]

Sánchez was correct in arguing that African Americans were challenging a half-century old Supreme Court decision that gave states the constitutional right to segregate on the basis of race, whereas Mexican Americans challenged not state laws but the decisions of school district officials to arbitrarily segregate Mexicans in the absence of state law. But this legal distinction misses the point that Sánchez himself made years earlier, that the "whole spirit" of segregation "is based on the concept of inequality."

Perhaps the single greatest obstacle to black-brown cooperation stemmed from the Mexican American insistence on a white racial identity. In a letter to Roger Baldwin, the Director of the

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42. *Id.* (underlining in original).

43. Letter from George I. Sánchez, to A. L. Wirin (Oct. 14, 1953) *in* George I. Sánchez Papers, Box 62, Folder 18 (Benson Latin American Collection, General Libraries, University of Texas at Austin).

ACLU, urging continued support for Mexican American civil rights activities, George Sánchez wrote in 1958:

> Let us keep in mind that the Mexican-American can easily become the front-line defense of the civil liberties of ethnic minorities. The racial, cultural, and historical involvements in his case embrace those of all . . . other minority groups. Yet, God bless the law, he is 'white'! So, the Mexican-American can be the wedge for broadening of civil liberties for others (who are not so fortunate as to be 'white' and 'Christian'!).[44]

He concluded, "I am sorry that Thurgood Marshall and the NAACP have not seen fit to consult with us in these matters."[45] Perhaps Marshall had good reason not to. Marshall, after all, did not bless the law that granted white privilege to Mexican Americans but denied it to blacks, nor could he bless a strategy that opposed segregation on the narrow ground that Mexicans could not be segregated from other whites.

In more recent times the possibilities for collaboration and cooperation between blacks and Latinos in the political sphere seem remote, though not implausible. African Americans and Mexican Americans often support different political candidates for local and national elections. It is no secret that many African Americas resent the "minority" status of Mexican Americans who, they believe, have not suffered the degree of discrimination and exclusion they have. They also point out that forty-eight percent of all Latinos in the United States chose "white" as their race in the 2000 census. Many Latinos, on the other hand, were troubled when almost half of all African Americans in California voted for Proposition 187 in 1994 to deny undocumented Mexican immigrants basic public services, including education and health care. In many cities, African Americans and Latinos continue to regard each other with mutual suspicion over competition for municipal employment and private sector jobs, representation on school boards and in city councils, and supporting candidates for political office, especially when one of their own is running.

Tensions between blacks and Latinos surfaced in the mayoral election in Los Angeles in 2001 when African Americans joined ranks with Anglos to elect James Hahn over Antonio Villaraigosa, the former speaker of the California state assembly, thus denying Latinos the opportunity to have a Mexican American mayor for the first time since the nineteenth-century. It was an especially bitter loss because Latinos constituted forty-five

44. Letter from George I. Sánchez, to Roger N. Baldwin (Aug. 27, 1958) *in* George I. Sánchez Papers, Box 31, Folder 8 (Benson Latin American Collection, General Libraries, University of Texas at Austin) (underlining in original).

45. *Id.*

percent of the population compared to eleven percent for African Americans. Four years later, however, Villaraigosa defeated Hahn decisively, in large part because of Hahn's extreme unpopularity and the ongoing investigation of corruption during his term, but also because Villaraigosa ran in 2005 as a non-ideological pan-ethnic who played down his ethnic roots and won the support of the African American community. It is too early to predict if this election represents a meaningful political re-alignment of Latinos, Anglos, and African Americans in the nation's second largest city.

The 2001 mayoral election in Houston was also a source of conflict between Latinos and blacks when the incumbent African American mayor, Lee Brown, was challenged by a Cuban American Republican, Orlando Sánchez. Of those who voted, seventy-two percent of Latinos voted for Sánchez, while ninety percent of African Americans voters supported Lee, who won by a few percentage points.[46] Voting for one's own, regardless of party affiliation or political beliefs, may merely be an expression of ethnic or racial pride, but the suspicion nevertheless remains that Latinos do not trust African American politicians to look after their interests any more than African Americans trust Latinos who are in office. Ask any African American or Haitian resident of Miami. Looking back on early black and brown civil rights struggles in Texas, we have to wonder if African Americans and Mexican Americans can find common ground again.

46. On recent tensions between Latinos and African Americans in political contests see NICK CORONA VACA, THE PRESUMED ALLIANCE: THE UNSPOKEN CONFLICT BETWEEN LATINOS AND BLACKS AND WHAT IT MEANS FOR AMERICA (2004).